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Contents

Federal Register

Vol. 89, No. 177

Thursday, September 12, 2024

Agriculture Department

See Forest Service

Air Force Department

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 74222

Antitrust Division

NOTICES

Changes Under the National Cooperative Research and Production Act:
Cooperative Research Group on Numerical Propulsion System Simulation, 74287
Expeditionary Missions Consortium—Crane, 74287–74288
Interchangeable Virtual Instruments Foundation, Inc., 74290
MLCommons Association, 74290
National Armaments Consortium, 74288–74289
ODVA, Inc., 74290–74291
Subcutaneous Drug Development and Delivery Consortium, Inc., 74288

Centers for Disease Control and Prevention

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 74276–74277

Children and Families Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
The Understanding and Expanding the Reach of Home Visiting Program, 74213–74214

Coast Guard

RULES

Safety Zone:
Fireworks Displays in the Fifth Coast Guard District, Philadelphia, PA, 74132, 74135
Kentucky River, Frankfort, KY, 74132–74135

NOTICES

Port Access Route Study:
Approaches to the Port of Cape Canaveral and Vessel Transit Offshore Jacksonville, Daytona, and Canaveral, FL, 74280

Commerce Department

See Foreign-Trade Zones Board
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration

Commission of Fine Arts

NOTICES

Hearings, Meetings, Proceedings, etc., 74221

Defense Department

See Air Force Department

See Engineers Corps

See Navy Department

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 74222–74223, 74258, 74277–74279
Arms Sales, 74223–74260
Request for Applications:
University Consortium for Cybersecurity Support Center, 74250

Education Department

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Early Childhood Longitudinal Study, Kindergarten Class of 2023–24 August 2024 Materials Revision Request, 74264–74265

Energy Department

See Federal Energy Regulatory Commission

NOTICES

Privacy Act; Systems of Records, 74265–74268
Request for Information:
Frontiers in Artificial Intelligence for Science, Security, and Technology Initiative, 74268–74270

Engineers Corps

NOTICES

Final Federal Agency Action:
Authorization for the New England Wind Farm and New England Wind Project, 74263
Hearings, Meetings, Proceedings, etc.:
Civil Works Environmental Justice Strategic Plan and Vision, 74260–74263

Environmental Protection Agency

RULES

New Source Performance Standards:
Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry; Correction, 74135–74136

PROPOSED RULES

Air Quality State Implementation Plans; Approvals and Promulgations:
North Carolina, Forsyth County; Removal of Excess Emissions Provisions, 74171–74174
Tennessee, Shelby County; Revisions to Startup, Shutdown, and Malfunction Rules, 74165–74171

NOTICES

Clean Air Act Operating Permit Program:
Order on Petition for Objection to State Operating Permit for Mountain Coal Co.—West Elk Mine, 74272

Federal Aviation Administration

RULES

Airspace Designations and Reporting Points:
Langtry, TX, 74131–74132

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Reduced Vertical Separation Minimum, 74355–74356

Federal Communications Commission**PROPOSED RULES**

Improving the Effectiveness of the Robocall Mitigation Database; Commission Registration System, 74184–74199

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 74272–74273

Federal Emergency Management Agency**NOTICES**

Flood Hazard Determinations, 74228–74229, 74282–74286

Federal Energy Regulatory Commission**PROPOSED RULES**

Petition for Rulemaking:
Alliance for Tribal Clean Energy; Tribal Consultation Meetings, 74161–74162

NOTICES

Application:
Black Canyon Hydro, LLC, 74270–74272

Federal Highway Administration**NOTICES**

Final Federal Agency Action:
Transportation Project in Washington State, 74360
Request for Information:
Medium- and Heavy-Duty Electric Charging Technologies and Infrastructure Needs, 74356–74359

Federal Maritime Commission**NOTICES**

Investigation Into Conditions Affecting United States Carriers in Connection With Canadian Ballast Water Regulation in the United States/Canada Great Lakes Trade, 74273–74274

Federal Mine Safety and Health Review Commission**NOTICES**

Meetings; Sunshine Act, 74274

Federal Reserve System**NOTICES**

Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 74275

Federal Transit Administration**NOTICES**

Funding Opportunity:
Fiscal Year 2025 Solicitation of Proposals for the National Rural Transit Assistance Program, 74360–74366

Food and Drug Administration**NOTICES**

Draft Strategy Document on Innovative Manufacturing Technologies, 74279–74280

Foreign Assets Control Office**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Reporting, Procedures and Penalties Regulations and Other Information Collections Maintained by the Office of Foreign Assets Control, 74375–74376

Foreign-Trade Zones Board**NOTICES**

Authorization of Production Activity:
BMW Manufacturing Co. LLC, Foreign-Trade Zone 38, Spartanburg, SC, 74204

Forest Service**NOTICES**

Newspapers Used for Publication of Legal Notices by the Rocky Mountain Region:
Colorado, Kansas, Nebraska, and Parts of South Dakota and Wyoming, 74203–74204
Privacy Act; Systems of Records, 74200–74202
Proposed Recreation Fee Site, 74202–74203

General Services Administration**NOTICES**

U.S. Open Government National Action Plan, 74275–74276

Government Ethics Office**RULES**

Post-Employment Conflict of Interest Restrictions:
Departmental Component Designations, 74107–74109

Health and Human Services Department

See Centers for Disease Control and Prevention

See Children and Families Administration

See Food and Drug Administration

PROPOSED RULES

Organ Procurement and Transplantation: Implementation of the HIV Organ Policy Equity Act, 74174–74184

Homeland Security Department

See Coast Guard

See Federal Emergency Management Agency

See Transportation Security Administration

See U.S. Customs and Border Protection

Internal Revenue Service**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 74376–74377

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Casualties and Thefts, 74377

International Trade Administration**NOTICES**

Antidumping or Countervailing Duty Investigations, Orders, or Reviews:

Certain Metal Lockers and Parts Thereof From the

People's Republic of China, 74204–74206

Glycine From India, Japan, and Thailand, 74206–74207

Ripe Olives From Spain, 74207–74212

Scope Ruling Applications Filed, 74212–74213

International Trade Commission**NOTICES**

Investigations; Determinations, Modifications, and Rulings, etc.:

Certain Firearm Disassembly Tongs, 74286–74287

Certain Smart Ceiling Fans, Components Thereof, and

Associated Systems and Software Thereof, 74286

Justice Department

See Antitrust Division

Labor Department

See Occupational Safety and Health Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals
 Retirement Savings Lost and Found, 74291
 Agency Information Collection Activities; Proposals, Submissions, and Approvals:
 Disclosures by Insurers to General Account Policyholders, 74292–74293
 Labor Condition Application for H–1B, H–1B1, and E–3 Nonimmigrants and the Nonimmigrant Worker Information Form, 74291–74292

Maritime Administration**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
 Automated Mutual-Assistance Vessel Rescue System, 74371
 Opportunity To Apply for Designation:
 Centers of Excellence for Domestic Maritime Workforce Training and Education, 74366–74371

National Aeronautics and Space Administration**NOTICES**

Performance Review Board Members, 74302

National Institute of Standards and Technology**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
 Generic Clearance for Decision Science Data Collections, 74214–74215

National Oceanic and Atmospheric Administration**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
 Social and Economic Survey of Hired Captains and Crew in Commercial Fisheries, 74215–74216
 Hearings, Meetings, Proceedings, etc.:
 Mid-Atlantic Fishery Management Council, 74218
 National Sea Grant Advisory Board, 74219–74220
 Pacific Fishery Management Council, 74216–74217, 74219
 South Atlantic Fishery Management Council, 74217–74218
 Space Weather Advisory Group, 74218–74219
 Permits; Applications, Issuances, etc.:
 Endangered Species; File No. 23096, 74217

National Science Foundation**NOTICES**

Permits; Applications, Issuances, etc.:
 Antarctic Conservation Act, 74302–74303

National Telecommunications and Information Administration**NOTICES**

Local Estimates of Internet Adoption, 74220–74221

Navy Department**NOTICES**

Hearings, Meetings, Proceedings, etc.:
 Science and Technology Board, 74263–74264

Nuclear Regulatory Commission**NOTICES**

Hearings, Meetings, Proceedings, etc.:
 Kairos Power LLC, 74303–74305

Occupational Safety and Health Administration**NOTICES**

Charter Amendments, Establishments, Renewals and Terminations:
 National Advisory Committee on Occupational Safety and Health, 74295–74296
 Nationally Recognized Testing Laboratories:
 Bureau Veritas Consumer Product Services Inc.; Application for Expansion of Recognition, 74300–74301
 CSA Group Testing and Certification Inc.; Application for Expansion of Recognition, 74297–74299
 DEKRA Certification Inc.; Application for Expansion of Recognition, 74294–74295
 Nemko North America, Inc.; Application for Expansion of Recognition, 74296–74297
 TUV Rheinland of North America, Inc.; Grant of Expansion of Recognition, 74299–74300
 TUV SUD America, Inc.; Grant of Expansion of Recognition, 74293–74294

Pipeline and Hazardous Materials Safety Administration**NOTICES**

Permits; Applications, Issuances, etc.:
 Hazardous Materials, 74371–74375

Postal Regulatory Commission**NOTICES**

New Postal Products, 74305

Presidential Documents**PROCLAMATIONS**

Special Observances:
 World Suicide Prevention Day (Proc. 10806), 74105–74106

Securities and Exchange Commission**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 74313–74314, 74317
 Order:
 Public Company Accounting Oversight Board, 74324–74347
 Self-Regulatory Organizations; Proposed Rule Changes:
 BOX Exchange LLC, 74430–74477
 Cboe EDGX Exchange, Inc., 74321–74324, 74480–74527
 Financial Industry Regulatory Authority, Inc., 74309
 Fixed Income Clearing Corp., 74309–74310
 Long-Term Stock Exchange, Inc., 74530–74577
 MEMX LLC, 74580–74627
 Miami International Securities Exchange, LLC, 74630–74677
 MIAx PEARL LLC, 74780–74827
 Nasdaq ISE, LLC, 74730–74777
 Nasdaq MRX, LLC, 74380–74427
 New York Stock Exchange LLC, 74305–74308
 NYSE American LLC, 74347–74351
 NYSE Arca, Inc., 74318–74321
 NYSE Chicago, Inc., 74314–74317
 NYSE National, Inc., 74310–74313
 The Nasdaq Stock Market LLC, 74680–74727

Small Business Administration**RULES**

Small Business Size Standards:
 Revised Methodology, 74109–74131

Social Security Administration**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 74351–74354

State Department**NOTICES**

Culturally Significant Objects Imported for Exhibition: Tamara de Lempicka, 74354

Imposition of Missile Proliferation Sanctions: Three PRC Entities, One PRC Individual, and a Pakistani Entity, 74355

Transportation Department

See Federal Aviation Administration

See Federal Highway Administration

See Federal Transit Administration

See Maritime Administration

See Pipeline and Hazardous Materials Safety Administration

Transportation Security Administration**PROPOSED RULES**

Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes: Phased Approach for Card-Based Enforcement, 74137–74161

Treasury Department

See Foreign Assets Control Office

See Internal Revenue Service

U.S. Customs and Border Protection**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Declaration of Unaccompanied Articles, 74281–74282

Establishment of a Bonded Warehouse (Bonded Warehouse Regulations), 74281

Veterans Affairs Department**PROPOSED RULES**

Schedule for Rating Disabilities-Ear, Nose, Throat, and Audiology Disabilities; Special Provisions Regarding Evaluation of Respiratory Conditions; Schedule for Rating Disabilities-Respiratory System, 74162–74164

Separate Parts In This Issue**Part II**

Securities and Exchange Commission, 74380–74427

Part III

Securities and Exchange Commission, 74430–74477

Part IV

Securities and Exchange Commission, 74480–74527

Part V

Securities and Exchange Commission, 74530–74577

Part VI

Securities and Exchange Commission, 74580–74627

Part VII

Securities and Exchange Commission, 74630–74677

Part VIII

Securities and Exchange Commission, 74680–74727

Part IX

Securities and Exchange Commission, 74730–74777

Part X

Securities and Exchange Commission, 74780–74827

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR**Proclamations:**

10806.....74105

5 CFR

2641.....74107

6 CFR**Proposed Rules:**

37.....74137

13 CFR

121.....74109

14 CFR

71.....74131

18 CFR**Proposed Rules:**

35.....74161

33 CFR

165 (3 documents) 74132,
74135

38 CFR**Proposed Rules:**

4.....74162

40 CFR

60.....74135

Proposed Rules:

52 (2 documents) 74165,
74171

42 CFR**Proposed Rules:**

121.....74174

47 CFR**Proposed Rules:**

1.....74184
64.....74184

Presidential Documents

Title 3—

Proclamation 10806 of September 9, 2024

The President

World Suicide Prevention Day, 2024

By the President of the United States of America

A Proclamation

On World Suicide Prevention Day, we honor the memories of all those lost to suicide, hold the loved ones grieving their memories close to our hearts, and recognize the many professionals working to end this public health problem.

Too many Americans have lost their lives to suicide. Last year, nearly 50,000 Americans died by suicide, and in 2022, over 10 million seriously considered suicide. In 2022, suicide was the second leading cause of death for young people aged 10 to 14 and 25 to 34, and the suicide rate for veterans was 50 percent higher than for anyone else. Suicide is also a leading cause of maternal death. Though there is no single cause or solution for suicide, we know that access to treatment and support can save lives. However, getting care in a crisis can be hard to access or afford. In 2021, less than half of all adults with mental illness received the care they needed. And nearly 70 percent of children who seek mental health care cannot find it.

A key part of my Unity Agenda is to connect more Americans to affordable, quality mental health care and strengthen our mental health care system—which will help address many of the risk factors associated with suicide. My Administration issued a rule that requires insurers to cover mental health care just as they do physical health care, and to make changes if required analyses show that health insurers are providing insufficient access to mental health care—an important step in ensuring people can get the mental health care they need. My American Rescue Plan provided over \$12 billion to expand mental health and substance use services through States, communities, and schools. And when we passed the most significant gun safety law in nearly 30 years, we expanded the number of Certified Community Behavioral Health Clinics paid for under Medicaid, which deliver mental health treatment, including crisis care 24 hours a day to communities across the country. That law also delivered funding to put more psychologists and counselors in schools, and my Administration has made it easier for schools to use Medicaid to deliver mental health services—helping ease the youth mental health crisis and ensuring that our children can go on to live long, healthy lives. Further, I signed into law expansions to counseling, benefits, and mental health resources for law enforcement and first responders who have faced trauma at work. Earlier this year, my Administration released a new National Strategy for Suicide Prevention and Federal Action Plan which includes over 200 actions that will strengthen suicide prevention programs across the Nation, including those designed to reach our most vulnerable.

I have always said that we have a sacred obligation to care for our Nation's veterans and their families—and that means making sure they have access to the care they need to thrive. To help keep that promise, my Administration invested in mental health and suicide prevention efforts for our service members and veterans. We have expanded access to confidential treatment and are working to hire more mental health professionals, removing cost-sharing for the first three mental health visits, and investing in hiring more

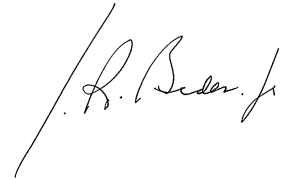
veterans to help their peers get the mental health care they need. And we are working to ensure that every veteran has a roof over their head—including by increasing access to permanent supportive housing for veterans and their families.

If you or a loved one are struggling, please know that you are not alone. My Administration launched 988, the National Suicide and Crisis Lifeline to quickly connect people with the support they need. Call or text 988 to reach a trained crisis counselor for free, confidential support right away. We also established the National Maternal Mental Health Hotline for new and expectant mothers. Call 1-833-TLC-MAMA (1-833-852-6262) for help navigating mental health issues like postpartum depression and anxiety before, during, or after pregnancy. For non-crisis support or to find help for mental health and substance use, visit [FindSupport.gov](https://findsupport.gov) or call 1-800-662-HELP (1-800-662-4357).

During World Suicide Prevention Day, we recommit to improving suicide prevention programs and putting affordable, accessible mental health care within reach of communities across our Nation—for all the lives we have lost and all those we can still save.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 10, 2024, as World Suicide Prevention Day. I call upon all Americans, communities, organizations, and levels of government to join me in creating hope through action and committing to preventing suicide across America.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of September, in the year of our Lord two thousand twenty-four, and of the Independence of the United States of America the two hundred and forty-ninth.

A handwritten signature in black ink, appearing to read "Joe Biden", with a long, sweeping horizontal line extending to the left.

Rules and Regulations

Federal Register

Vol. 89, No. 177

Thursday, September 12, 2024

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2641

RIN 3209-AA59

Post-Employment Conflict of Interest Restrictions; Revision of Departmental Component Designations

AGENCY: Office of Government Ethics.

ACTION: Final rule.

SUMMARY: The U.S. Office of Government Ethics (OGE) is issuing this final rule to revise the component designations of one agency for purposes of the one-year post-employment conflict of interest restriction for senior employees. Specifically, based on the recommendation of the Department of Health and Human Services, OGE is designating one new component in its regulations.

DATES: This rule is effective September 12, 2024.

FOR FURTHER INFORMATION CONTACT:

Kimberly L. Sikora Panza, Senior Associate Counsel, U.S. Office of Government Ethics, 250 E Street SW, Suite 750, Washington, DC 20024-3249; Telephone: 202-482-9300; TTY: 800-877-8339; FAX: 202-482-9237.

SUPPLEMENTARY INFORMATION:

I. Background

The Director of OGE (Director) is authorized by 18 U.S.C. 207(h) to designate distinct and separate departmental or agency components in the executive branch for purposes of 18 U.S.C. 207(c), the one-year post-employment conflict of interest restriction for senior employees. Under 18 U.S.C. 207(h)(2), component designations do not apply to persons employed at a rate of pay specified in or fixed according to subchapter II of 5 U.S.C. chapter 53 (the Executive Schedule). Component designations are listed in appendix B to 5 CFR part 2641.

The representational bar of 18 U.S.C. 207(c) usually extends to the whole of

any department or agency in which a former senior employee served in any capacity during the year prior to termination from a senior employee position. However, 18 U.S.C. 207(h) provides that whenever the Director “determines that an agency or bureau within a department or agency in the executive branch exercises functions which are distinct and separate from the remaining functions of the department or agency and that there exists no potential for use of undue influence or unfair advantage based on past Government service,” the Director shall by rule designate that agency or bureau as a separate component of that department or agency.

Pursuant to the procedures prescribed in 5 CFR 2641.302(e), the Department of Health and Human Services (HHS) requested that OGE amend its components listed in appendix B to part 2641. On May 28, 2024, OGE published a proposed rule in the **Federal Register** that proposed to designate the Administration for Strategic Preparedness and Response (ASPR) in appendix B to part 2641 as a separate component of HHS for purposes of 18 U.S.C. 207(c). The proposed rule provided for a 30-day comment period, which ended on June 27, 2024; OGE did not receive any comments. The rationale for the rule, which OGE is now adopting as final, is explained in the proposed rule preamble at 89 FR 46036.

For the reasons stated in the preamble to the proposed rule, OGE is granting the request of HHS to amend its listing in appendix B to part 2641 to designate ASPR as a distinct and separate component of the agency for purposes of 18 U.S.C. 207(c). As indicated in 5 CFR 2641.302(f), a designation “shall be effective on the date the rule creating the designation is published in the **Federal Register** and shall be effective as to individuals who terminated senior service either before, on or after that date.” Initial designations in appendix B to part 2641 were effective as of January 1, 1991. The effective date of subsequent designations is indicated by means of parenthetical entries in appendix B. The new component designation made in this rule for ASPR is effective on the date this final rule is published in the **Federal Register**.

II. Matters of Regulatory Procedure

Regulatory Flexibility Act

As Acting Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this final rule will not have a significant economic impact on a substantial number of small entities because it affects only Federal departments and agencies and current and former Federal employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this final rule because it does not contain information collection requirements that require the approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this final rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (as adjusted for inflation) in any one year.

Congressional Review Act

The final rule is not a major rule as defined in 5 U.S.C. chapter 8, Congressional Review of Agency Rulemaking.

Executive Orders 12866, 13563 and 14094

In promulgating this final rule, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in Executive Order 12866, Regulatory Planning and Review (58 FR 51735, Oct. 4, 1993); Executive Order 13563, Improving Regulation and Regulatory Review (76 FR 3821, Jan. 21, 2011); and Executive Order 14094, Modernizing Regulatory Review (88 FR 21879, Apr. 11, 2023). Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select the regulatory approaches that maximize net benefits (including economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs

and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This rule has not been reviewed by the Office of Management and Budget under Executive Order 12866 because it is not a “significant” regulatory action for the purposes of that order.

Executive Order 12988

As Acting Director of the Office of Government Ethics, I have reviewed this final rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

Executive Order 13715

The Office of Government Ethics has evaluated this final rule under the criteria set forth in Executive Order 13715 and determined that Tribal consultation is not required as this proposed rule has no substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

List of Subjects in 5 CFR Part 2641

Conflict of interests, Government employees.

Approved: September 9, 2024.

Shelley K. Finlayson,

Acting Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the U.S. Office of Government Ethics is amending 5 CFR part 2641 as set forth below:

PART 2641—POST-EMPLOYMENT CONFLICT OF INTEREST RESTRICTIONS

■ 1. The authority citation for part 2641 is revised to read as follows:

Authority: 5 U.S.C. ch. 131; 18 U.S.C. 207; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

■ 2. Revise appendix B to read as follows:

Appendix B to Part 2641—Agency Components for Purposes of 18 U.S.C. 207(c)

Pursuant to the provisions of 18 U.S.C. 207(h), each of the following agencies is determined, for purposes of 18 U.S.C. 207(c), and 5 CFR 2641.204, to have within it distinct and separate components as set forth below. Except as otherwise indicated, all designations are effective as of January 1, 1991.

Parent: Department of Commerce

Components

Bureau of the Census.
Bureau of Economic Analysis (effective June 26, 2020).
Bureau of Industry and Security (formerly Bureau of Export Administration) (effective January 28, 1992).
Economic Development Administration.
International Trade Administration.
Minority Business Development Agency (formerly listed as Minority Business Development Administration).
National Institute of Standards and Technology (effective March 6, 2008).
National Oceanic and Atmospheric Administration.
National Technical Information Service (effective March 6, 2008).
National Telecommunications and Information Administration.
United States Patent and Trademark Office (formerly Patent and Trademark Office).

Parent: Department of Defense

Components

Defense Advanced Research Projects Agency (DARPA) (effective April 6, 2021).
Department of the Air Force.
Department of the Army.
Department of the Navy.
Defense Information Systems Agency.
Defense Intelligence Agency.
Defense Logistics Agency.
Defense Threat Reduction Agency (effective February 5, 1999).
National Geospatial-Intelligence Agency (formerly National Imagery and Mapping Agency) (effective May 16, 1997).
National Reconnaissance Office (effective January 30, 2003).
National Security Agency.

Parent: Department of Energy

Component

Federal Energy Regulatory Commission.

Parent: Department of Health and Human Services

Components

Administration for Children and Families (effective January 28, 1992).
Administration for Community Living (effective December 4, 2014).
Administration for Strategic Preparedness and Response (effective September 12, 2024).
Agency for Healthcare Research and Quality (formerly Agency for Health Care Policy and Research) (effective May 16, 1997).
Agency for Toxic Substances and Disease Registry (effective May 16, 1997).
Centers for Disease Control and Prevention (effective May 16, 1997).
Centers for Medicare and Medicaid Services (formerly Health Care Financing Administration).
Food and Drug Administration.
Health Resources and Services Administration (effective May 16, 1997).
Indian Health Service (effective May 16, 1997).
National Institutes of Health (effective May 16, 1997).

Substance Abuse and Mental Health Services Administration (effective May 16, 1997).

Parent: Department of the Interior

Components^[1]

Bureau of Indian Affairs (effective January 28, 1992).
Bureau of Land Management (effective January 28, 1992).
Bureau of Reclamation (effective January 28, 1992).
National Park Service (effective January 28, 1992).
Office of Surface Mining Reclamation and Enforcement (effective January 28, 1992).
U.S. Fish and Wildlife Service (effective January 28, 1992).
U.S. Geological Survey (effective January 28, 1992).

Parent: Department of Justice

Components

Antitrust Division.
Bureau of Alcohol, Tobacco, Firearms and Explosives (effective November 23, 2004).
Bureau of Prisons (including Federal Prison Industries, Inc.).
Civil Division.
Civil Rights Division.
Community Relations Service.
Criminal Division.
Drug Enforcement Administration.
Environment and Natural Resources Division.
Executive Office for United States Attorneys^[2] (effective January 28, 1992).
Executive Office for United States Trustees^[3] (effective January 28, 1992).
Federal Bureau of Investigation.
Foreign Claims Settlement Commission.
Independent Counsel appointed by the Attorney General.
Office of Justice Programs.
Office of the Pardon Attorney (effective January 28, 1992).
Offices of the United States Attorney (each of 94 offices).
Offices of the United States Trustee (each of 21 offices).
Office on Violence Against Women^[4] (effective March 8, 2007).
Tax Division.
United States Marshals Service (effective May 16, 1997).
United States Parole Commission.

Parent: Department of Labor

Components

Bureau of Labor Statistics.
Employee Benefits Security Administration (formerly Pension and Welfare Benefits Administration) (effective May 16, 1997).
Employment and Training Administration.
Mine Safety and Health Administration.
Occupational Safety and Health Administration.
Office of Disability Employment Policy (effective January 30, 2003).
Office of Federal Contract Compliance Programs (effective December 29, 2016).
Office of Labor Management Standards (effective December 29, 2016).
Office of Workers' Compensation Programs (effective December 29, 2016).

Pension Benefit Guaranty Corporation (effective May 25, 2011).

Veterans' Employment and Training Service (effective June 26, 2020).

Wage and Hour Division (effective December 29, 2016).

Parent: Department of State

Component

Foreign Service Grievance Board.

Parent: Department of Transportation

Components

Federal Aviation Administration.

Federal Highway Administration.

Federal Motor Carrier Safety

Administration (effective January 30, 2003).

Federal Railroad Administration.

Federal Transit Administration.

Maritime Administration.

National Highway Traffic Safety Administration.

Pipeline and Hazardous Materials Safety Administration (effective December 29, 2016).

Saint Lawrence Seaway Development Corporation.

Parent: Department of the Treasury

Components

Alcohol and Tobacco Tax and Trade Bureau (effective November 23, 2004).

Bureau of Engraving and Printing.

Bureau of the Fiscal Service (effective December 4, 2014).

Comptroller of the Currency.

Financial Crimes Enforcement Network (FinCEN) (effective January 30, 2003).

Internal Revenue Service.

United States Mint (formerly listed as Bureau of the Mint).

Footnotes—Appendix B to Part 2641

^[1] All designated components under the jurisdiction of a particular Assistant Secretary shall be considered a single component for purposes of determining the scope of 18 U.S.C. 207(c) as applied to senior employees serving on the immediate staff of that Assistant Secretary.

^[2] The Executive Office for United States Attorneys shall not be considered separate from any Office of the United States Attorney for a judicial district, but only from other designated components of the Department of Justice.

^[3] The Executive Office for United States Trustees shall not be considered separate from any Office of the United States Trustee for a region, but only from other designated components of the Department of Justice.

^[4] The Office on Violence Against Women shall not be considered separate from the Office of Justice Programs, but only from other designated components of the Department of Justice.

[FR Doc. 2024–20699 Filed 9–11–24; 8:45 am]

BILLING CODE 6345–03–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards: Revised Size Standards Methodology

AGENCY: U.S. Small Business Administration.

ACTION: Notice of availability of white paper on revised size standards methodology.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) advises the public that it has revised its size standards methodology white paper, entitled “SBA’s Size Standards Methodology (June 2024)” (the Revised Methodology or Methodology), explaining how it establishes, reviews, or revises small business size standards. SBA will apply the Revised Methodology to the forthcoming third five-year review of size standards required by the Small Business Jobs Act of 2010. On December 11, 2023, SBA published a notification seeking comments on proposed revisions to its Methodology. This notification describes major changes to the Methodology and their impacts on size standards, followed by a discussion of the comments SBA received on the proposed revisions to the Methodology and Agency’s responses.

DATES: September 12, 2024.

ADDRESSES: The 2024 Revised Methodology is available on the SBA’s website at www.sba.gov/size.

FOR FURTHER INFORMATION CONTACT: Khem R. Sharma, Chief, Office of Size Standards, (202) 205–7189, or sizestandards@sba.gov.

SUPPLEMENTARY INFORMATION:

A. Background

To determine eligibility for Federal small business assistance programs, SBA establishes small business size definitions (commonly referred to as “size standards”) for private sector industries in the United States. Under the Small Business Act (the Act), 15 U.S.C. 632(a) (Pub. L. 85–536, 67 Stat. 232, as amended), the SBA’s Administrator (Administrator) has authority to establish size standards for Federal Government programs. SBA’s existing size standards use two primary measures of business size: average annual receipts and average number of employees. Financial assets and refining capacity are used as size measures for a few specialized industries. In addition, the SBA’s Small Business Investment Company (SBIC), 7(a), and Certified Development Company (CDC/504) Programs determine small business

eligibility using either the industry-based size standards or tangible net worth and net income based alternative size standards. Presently, there are 102 different size standards, covering 978 industries and 14 subindustries, also known as “exceptions.” Of these, 505 are based on average annual receipts, 483 on number of employees (one of which also includes barrels per calendar day total refining capacity), and four on average assets.

The Small Business Jobs Act 2010 (Pub. L. 111–240, 124 Stat. 2504, Sept. 27, 2010) requires SBA to review, every five years, all size standards and make necessary adjustments to reflect market conditions. SBA completed the first five-year review of size standards under the Jobs Act in early 2016¹ and completed the second five-year review of size standards in early 2023.² SBA will begin the next (third) five-year review of size standards in the near future.

The goal of SBA’s size standards review is to determine whether its existing size standards reflect the current industry structure and Federal market conditions and revise them if the latest available data suggests that revisions are warranted. The Act requires that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries. SBA evaluates the structure of each industry in terms of four economic characteristics or factors, namely average firm size, average assets size as a proxy of startup costs and entry barriers, the four-firm concentration ratio as a measure of industry competition, and size distribution of firms using the Gini coefficient (13 CFR 121.102(a)). Besides industry structure, SBA also examines the impact of an existing size standard as well as the potential impact of a revised size standard on small business participation in Federal contracting as an additional primary factor when establishing, reviewing, or modifying the size standards. SBA generally considers these five factors—average firm size, average assets size, four-firm concentration ratio, Gini coefficient, and small business participation in Federal

¹ See Report on the First Five-Year Comprehensive Review of Size Standards at <https://www.sba.gov/sites/sbagov/files/2023-09/Report%20on%20the%20First%205-Year%20Comprehensive%20Size%20Standards%20Review-508F.pdf>.

² See Report on the Second Five-Year Comprehensive Review of Size Standards at https://www.sba.gov/sites/sbagov/files/2023-07/SBA%27s%20Report%20on%20the%20Second%205%20Year%20Review%20of%20Size%20Standards_Final.pdf.

contracting—to be the most important factors in determining an industry’s size standard. The 2024 Revised Size Standards Methodology White Paper provides a detailed description of evaluation of these factors (including relevant data sources) and derivation of size standards based on the results.

SBA also periodically adjusts all monetary based standards for inflation. In accordance with SBA’s regulations (13CFR 121.102(c)) and rulemaking (67 FR 3041; January 23, 2002), an adjustment to size standards for inflation is made at least once every five years. In response to higher than normal rates of inflation, some past inflation adjustments have been made on more frequent intervals. For example, in response to ongoing higher than normal inflation, SBA issued an out-of-cycle inflation adjustment to monetary based size standards on November 17, 2022 (87 FR 69118). The SBA’s Methodology also explains how it adjusts monetary based size standards for inflation. SBA also updates its size standards, every five years, to adopt the Office of Management and Budget’s (OMB) quinquennial North American Industry Classification System (NAICS) revisions to its table of small business size standards. Effective October 1, 2022, SBA adopted the OMB’s 2022 NAICS revisions (86 FR 72277; December 21, 2021) for its table of small business size standards (87 FR 59240; September 29, 2022). The Methodology also explains the SBA’s procedures for adopting updated NAICS definitions for the table of size standards.

Section 3(a) of the Act provides the Administrator with authority to establish small business size standards for Federal Government programs. The Administrator has discretion to determine precisely how SBA should establish small business size standards. The Act and its legislative history highlight three important considerations for establishing size standards. First, as stated earlier, size standards should vary from industry to industry according to differences among industries. 15 U.S.C. 632(a)(3). Second, a firm that qualifies as small under the SBA’s size standard shall not be dominant in its field of operation. 15 U.S.C. 632(a)(1). Third, pursuant to 15 U.S.C. 631(a), the policies of the Agency should assist small businesses as a means of encouraging and strengthening their competitiveness in the economy. These three considerations continue to form the basis for the SBA’s methodology for establishing, reviewing, or revising small business size standards.

The 2024 Revised Methodology, available on the SBA’s website at www.sba.gov/size, describes in detail how SBA establishes, evaluates, and adjusts its small business size standards pursuant to the Act and related legislative guidelines.³ Specifically, the document provides a brief review of the legal authority and early legislative and regulatory history of small business size standards, followed by a detailed description of the size standards analysis. Below, SBA provides a brief summary of the revisions to SBA’s Methodology, which are described in greater detail in the 2024 Revised Methodology.

B. Revisions to SBA’s Size Standards Methodology

SBA’s 2024 Revised Methodology describes various changes and revisions to the 2019 Methodology and provides a detailed history of changes to SBA’s Methodology for evaluating size standards over the years. In the past, including the first five-year review of size standards under the Jobs Act, to determine an overall size standard for each industry, SBA compared the characteristics of each industry with the average characteristics of a group of industries associated with an “anchor” size standard. For example, in the first five-year review of size standards, \$7 million (now \$9 million due to the inflation adjustments in 2014, 2019, and 2022) was considered the “anchor” for receipts-based size standards and 500 employees was considered the “anchor” for employee-based size standards. If the characteristics of a specific industry under review were similar to the average characteristics of industries in the anchor group, SBA generally adopted the anchor size standard for that industry. If the specific industry’s characteristics were significantly higher or lower than those for the anchor group, SBA assigned a size standard that was higher or lower than the anchor.

In response to public comments received during the first five-year review of size standards concerning SBA’s size standards methodology, section 3(a)(7) of the Act (which limits the SBA’s ability to create common size standards by grouping related industries below the four-digit NAICS level), and its own review of the Methodology, in

the 2019 Methodology, SBA replaced the “anchor” approach with the “percentile” approach, as the basis of evaluating industry factors (*i.e.*, average firm size, average assets, the four-firm concentration ratio, and the Gini coefficient) and deriving a size standard for each industry factor for each industry.⁴ Under the “percentile” approach, for each factor, an industry is ranked and compared with the 20th percentile and 80th percentile values of that factor among the industries sharing the same measure of size standards (*i.e.*, receipts or employees). Combining that result with the 20th percentile and 80th percentile values of size standards among the industries with the same measure of size standards, SBA computes a size standard supported by each industry factor for each industry, then computes a weighted average of the resulting supported size standards to obtain an overall size standard for each industry.

In the 2024 Revised Methodology, SBA is maintaining the “percentile” approach as a basis of evaluating industry factors and deriving size standards for each industry factor for each industry; however, based on its review of the current methodology, SBA is adopting two major changes to its size standards methodology.

The first major change is to replace the current approach used to account for the Federal contracting factor with the disparity ratio approach. Under the 2019 Methodology, SBA defined the Federal contracting factor for each industry averaging \$20 million or more in Federal contracts annually as the difference between the small business share of total contract obligations and the small business share of industry receipts. If the small business share of an industry total receipts exceeds the small business share of total contract obligations by ten percentage points or more, all else being the same, SBA would increase that industry’s current size standard by a certain amount depending on the amount of that difference. If that difference is less than ten percentage points, SBA considers that the current size standard is sufficient with respect to the Federal contracting factor.

Under the disparity ratio approach, SBA computes a disparity ratio as a

³ Prior to finalizing the 2024 Methodology for establishing, reviewing, modifying size standards, SBA issued a notification in the December 11, 2023, issue of the **Federal Register** (88 FR 85852) to solicit comments from the public and notify stakeholders of the proposed changes to the Methodology. As discussed under the “Discussion of Comments” section of this notification, SBA considered all public comments in finalizing the 2024 Methodology.

⁴ For a detailed justification for replacement of the “anchor” approach to size standards analysis with the “percentile” approach and a detailed description of the percentile approach, see the SBA’s 2019 Size Standards Methodology White Paper, available on SBA’s website at <https://www.sba.gov/sites/default/files/2023-12/SBA%20Size%20Standards%20Methodology%20April%2011%2C%202019-508.pdf>.

ratio (instead of the difference) between the small business share of contract obligations (utilization ratio) and the small business share of industry receipts (availability ratio). SBA also computes a second disparity ratio as a ratio between small business share of the number of contracts (utilization ratio) and the share of small firms in the total population of firms that are willing, ready, and able to bid on and perform Federal contracts (availability ratio).

If an industry's disparity ratio is less than 0.8, SBA would assume that small businesses are either materially underrepresented (*i.e.*, the disparity ratio is 0.5 or greater and less than 0.8) or substantially underrepresented (*i.e.*, the disparity ratio is less than 0.5) in the Federal market under that industry's current size standard and would generally propose to increase the current size standard. If an industry's disparity ratio is 0.8 or higher, small businesses are considered overrepresented (*i.e.*, the disparity ratio is 0.8 or higher and less than 1.2) or substantially overrepresented (*i.e.*, the disparity ratio is 1.2 or higher) in the Federal market in that industry under the current size standard, and the size standard is maintained at the current level.

The second proposed major change is to replace the 20th percentile and 80th percentile values of industry factors for evaluating size standards at subindustry levels ("exceptions") currently calculated based on the Economic Census data with those calculated using the Federal Procurement Data System—Next Generation (FPDS-NG) and the System for Award Management (SAM) data.

SBA is adopting these changes in order to refine and improve its analysis of Federal contracting data used in the evaluation of industry size standards. These changes are also in response to public comments received during the second five-year review of size standards that pertained to Federal contracting trends generally. Although SBA did not specifically seek comments to the 2019 Methodology as part of the series of proposed rules issued to review size standards under the second five year review,⁵ SBA notes that a number

of commenters to SBA's proposed rules expressed positions both for and against SBA's proposed size standards based on Federal contracting trends, data, or analysis.⁶ Thus, given the demonstrated relevance of Federal contracting trends to small businesses, SBA believes that it is important to continually review and adjust its methodology for evaluating Federal contracting data to ensure its analysis accurately captures the varying impact of Federal contracting trends by industry.

To determine how the above changes in the Methodology would affect size standards across various industries and sectors, SBA derived the new size standards for all industries averaging \$20 million or more in Federal contract dollars annually (excluding Sectors 42 and 44–45) using the 2019 Methodology and the disparity ratio approach of defining the Federal contracting factor under the 2024 Methodology. Overall, the calculated size standards were quite similar between the two approaches when compared to the existing size standards, with size standards increasing for some industries and decreasing for others under both approaches.

SBA believes that using FPDS-NG and SAM data to obtain the 20th percentile and 80th percentile values of industry factors for evaluating size standards for the exceptions, instead of using the percentiles from the Economic Census, will promote consistency in its analysis of the exceptions by ensuring that the percentile values and factor values for each exception are in comparable terms. Specifically, SBA has found that for most industries, the average firm size of businesses participating in Federal contracting is generally larger than the average firm size of businesses represented in the Economic Census. There are also inconsistencies in data reporting

Business Size Standards: Education Services; Health Care and Social Assistance; Arts, Entertainment and Recreation; Accommodation and Food Services; Other Services (85 FR 76390; November 27, 2020), and Small Business Size Standards: Wholesale Trade and Retail Trade (86 FR 28012; May 25, 2021), Small Business Size Standards: Manufacturing and Industries With Employee-Based Size Standards in Other Sectors Except Wholesale Trade and Retail Trade (87 FR 24752; April 26, 2022). Comments available at www.regulations.gov.

⁶ Prior to finalizing the 2019 Methodology for revising size standards under the second five-year review, SBA issued a notification in the April 27, 2018, issue of the **Federal Register** (83 FR 18468) to solicit comments from the public and notify stakeholders of the proposed changes to the 2019 Methodology. SBA considered all public comments in finalizing the 2019 Methodology. For a summary of comments and SBA's responses, refer to the SBA's April 11, 2019, **Federal Register** notification (84 FR 14587).

between SAM/FPDS-NG data and the Economic Census, which SBA will address by adopting the revised approach. Thus, SBA believes that using FPDS-NG and SAM to obtain the percentile values of industry factors for the exceptions will better reflect the varying economic characteristics of the underlying industries. The full results of SBA's impact analysis as well as a detailed description of the major changes to SBA's evaluation of size standards are included in the 2024 Revised Methodology.

In the 2024 Revised Methodology, SBA is also updating the minimum and maximum size standard levels based on current minimum and maximum size standard levels. The minimum size standard generally reflects the size a small business should be to have adequate capabilities and resources to be able to compete for and perform Federal contracts. On the other hand, the maximum size standard represents the level above which businesses, if qualified as small, would cause significant competitive disadvantage to smaller small businesses when accessing Federal assistance. SBA will not generally propose or adopt a size standard that is either below the minimum or above the maximum level, even though the calculations might yield values below the minimum or above the maximum level.

With respect to receipts-based size standards, SBA is adopting \$8 million and \$47 million, respectively, as the minimum and maximum size standard levels (except for most agricultural industries in Subsectors 111 and 112). These levels reflect the current minimum and the current maximum of receipts-based size standards. As in the 2019 Methodology, the latest industry data from the 2017 Census of Agriculture suggests that \$8 million minimum and \$47 million maximum size standard levels would be too high for agricultural industries in Subsector 111 and Subsector 112. Accordingly, SBA is adopting \$2.25 million and \$5.5 million, respectively, as the minimum and maximum size standard levels for agricultural industries in Subsectors 111 and 112 (excluding NAICS 112112 and NAICS 112310). These levels represent the current minimum and current maximum levels of size standards in Subsectors 111 and 112 (excluding NAICS 112112 and NAICS 112310).⁷

⁷ NAICS 112112 (Cattle Feedlots) and NAICS 112310 (Chicken Egg Production) currently have a size standard of \$22 million and \$19 million, respectively, and will be subjected to the \$8 million minimum and \$47 million maximum size standards

Continued

⁵ See Small Business Size Standards: Agriculture, Forestry, Fishing and Hunting; Mining, Quarrying, and Oil and Gas Extraction; Utilities; Construction (85 FR 62239; October 2, 2020), Small Business Size Standards: Transportation and Warehousing; Information; Finance and Insurance; Real Estate and Rental and Leasing (85 FR 62372; October 2, 2020), Small Business Size Standards: Professional, Scientific and Technical Services; Management of Companies and Enterprises; Administrative and Support and Waste Management and Remediation Services (85 FR 72584; November 13, 2020), Small

Regarding employee-based size standards for manufacturing and other industries that have employee-based size standards (excluding Wholesale and Retail Trade), SBA's 250-employee minimum and 1,500-employee maximum are the current minimum and maximum employee based size standards among those industries. For employee-based size standards for Wholesale Trade and Retail Trade industries, the minimum and maximum size standards levels are 50 employees and 250 employees, respectively.⁸

SBA is also updating the percentile values, derived from the latest 2017 Economic Census and other industry data, used to evaluate the structure of each industry in terms of the four economic characteristics or factors, namely average firm size, average assets size, the four-firm concentration ratio, and the Gini coefficient. As explained in the 2024 Revised Methodology, SBA ranks industries by size standard types in terms of the four industry factors and in terms of the existing size standards, then computes the 20th percentile and 80th percentile values for both. SBA then evaluates each industry by comparing its value for each industry factor to the 20th percentile and 80th percentile values for the corresponding factor for industries under a particular type of size standard. The updated 20th percentile and 80th percentile values for the four factors for receipts-based and employee-based size standards are found in Table 5 and Table 6 of the 2024 Revised Methodology, respectively; the updated 20th percentile and 80th percentile values of size standards are found in Table 7.

C. Discussion of Comments

On December 11, 2023, SBA published a notification in the **Federal Register** seeking comments on the above changes to its size standards methodology and a number of policy issues or questions it faces regarding the size standards methodology (88 FR 85852). Pursuant to section 1344 of the Jobs Act, on June 23 and 25, 2023, SBA also held two public forums on size standards to update the public on the status of the quinquennial reviews of size standards under the Jobs Act and seek public feedback on proposed

revisions to the size standards methodology.

SBA received a total of 21 comments (including one received during the public forums on size standards), of which 19 were significant. Of these 19 comments, two represented SBA's administrative records of two public forums designed to update the public on the status of quinquennial reviews of size standards under the Jobs Act and seek feedback on SBA's Revised Methodology, which will be used to review and adjust size standards under the forthcoming third five-year review of size standards. Public comments are summarized below and are available on the Federal Government e-rulemaking portal at www.regulations.gov.

1. General Support/Comment

SBA received four comments that expressed full support for its Revised Methodology. One commenter found the Revised Methodology to be a reasonable and consistent approach to establish, review, and modify size standards. The commenter appreciated the SBA efforts to incorporate the recent amendments to the Small Business Act and to address the public comments to the 2019 Methodology. Specifically, the commenter commended the SBA for making certain analytical improvements, such as adopting a percentile approach, assigning a separate size standard for each NAICS industry, lowering the threshold for the Federal contracting factor, and applying the 4-firm concentration ratio to all industries. The commenter believed that these changes would better reflect the current market conditions and ensure that the size standards are in accordance with the legislative guidelines. Overall, the commenter supported the Revised Methodology, and urged SBA to finalize and publish it as soon as possible. The commenter stated that the Revised Methodology will provide a fair and consistent definition of a small business and will enable SBA to fulfill its mission of assisting and promoting the small business community.

Another commenter, a service-disabled veteran-owned small business (SDVOSB), extended its full support for the SBA's proposed revisions to the Methodology. The commenter believed that proposed revisions are a significant step toward creating a more equitable, competitive, and dynamic small business landscape. SBA received two comments that also supported SBA's proposed revisions to the Methodology but did not provide any reasons for their support.

A women-owned small business advocacy group submitted a comment to

the SBA Revised Methodology. The commenter neither opposed nor supported the proposed revisions to the Methodology. Similarly, an industry association circulated the Revised Methodology to its 400-plus members and solicited their feedback. The members' input neither supported nor opposed the overall Methodology but agreed with the SBA position on a number of policy issues and questions regarding the Methodology.

SBA Response

In absence of significant adverse comments against the Revised Methodology generally, SBA is adopting it as published for comments even though a couple of comments, as discussed below, objected using the FPDS-NG and SAM data to compute the 20th percentile and 80th percentile values of industry factors to evaluate the size standards at the subindustry levels, usually known as "exceptions." One comment, also discussed below, opposed using the maximum size standards caps in calculating new size standards for each industry factor as well as in calculating the overall size standard for the industry. SBA did not receive any comment that objected to the adoption of the disparity ratio approach to account for small business participation in the Federal market.

2. Comments on Specific Issues/Questions Pertaining to the Methodology

SBA sought feedback on a number of specific policy issues and questions it faces regarding the Methodology for establishing, reviewing, and modifying size standards. A number of commenters specifically addressed these issues, as discussed below.

Should SBA establish size standards that are higher than industry's entry-level business size?

Three commenters addressed this issue. A commenter concurred with the SBA's position that size standards must be established above the entry-level size to ensure small businesses have the necessary resources and capabilities to be able to perform and meet Federal Government contracting requirements. Another commenter supported the SBA's approach to establishing size standards that reflect the current realities of industry-specific dynamics, including setting standards above entry-level business sizes. This approach ensures that businesses with a footprint slightly above the "entry level" can still access vital resources and opportunities, fostering growth and innovation within their respective fields, the commenter added. SBA received another comment

⁸ proposed for other industries with receipts-based size standards.

⁸ Current employee-based size standards for the wholesale and retail trade industries range from 100 employees to 250 employees. However, as in the 2019 Methodology, SBA is proposing a lower 50-employee level as the minimum employee-based size standard to account for differences among industries more accurately.

from an industry association saying that SBA should continue using the size standards that are higher than the industry's entry-level business size. The commenter agreed with the SBA's position that establishing size standards at the industry entry-level firm size would cause small businesses to outgrow their eligibility very quickly, thereby lacking sufficient experience to succeed outside the small business market. More importantly, such size standards would likely lead to the undesirable outcome of fewer companies competing for Federal contracts, the commenter noted.

SBA Response

In the absence of adverse comments against establishing the size standard above the entry-level business size, SBA adopts its approach of setting size standards higher than the entry-level business size to enable small businesses to compete against others of their size and considerably larger businesses for Federal contracts set-aside for small businesses. It is important that small businesses can apply for and be eligible for the various SBA's contracting and business development programs that have additional requirements, such as a minimum number of years in business to qualify for its 8(a) Business Development Program. This precludes setting size standards at too low a level or at the entry-level size. Additionally, establishing size standards at the industry entry-level firm size would cause small businesses to outgrow their eligibility very quickly, thereby lacking sufficient cushion or experience to succeed outside of the small business market. Finally, size standards must be above the entry-level size to ensure that small businesses have necessary resources and capabilities to be able to bid on and perform Federal contracts.

Should there be a ceiling beyond which a business concern cannot be considered as small? In other words, should there be a maximum size standard?

SBA received three comments addressing this issue, with two supporting and one opposing the SBA's position. One commenter supported the introduction of a maximum size standard because it is beneficial for maintaining the integrity of small business programs. The commenter asserted that establishing a maximum size standard cap ensures that Federal small business programs remain accessible to businesses that genuinely need them while preventing larger entities from overshadowing the competitive landscape for true small businesses, including SDVOSBs. A

maximum size standard would serve as a safeguard, ensuring that the small business benefit is preserved for those it is intended to support, the commenter added.

SBA received a comment from an industry association supporting the SBA's policy to continue maintaining the minimum and maximum levels for both receipts- and employee-based size standards. The commenter agreed with the SBA's position that, without the maximum caps as defined by the Revised Methodology, the calculated size standards would be extremely large for some industries, allowing very successful businesses with hundreds of millions in receipts or tens of thousands of employees to qualify as small for Federal assistance intended for small businesses.

SBA received a comment disagreeing with SBA's proposed maximum caps of \$47 million for revenue-based size standards and 1,500 employees for employee-based size standards. The commenter explained that size standards would better reflect the economic characteristics of industries if there were no caps on size standards and instead SBA permitted its industry-specific analysis of the data to determine the appropriate size standard for the industry. If SBA feels caps are necessary, the commenter urged SBA to provide a sound economic analysis to justify the application of caps. The caps result in lower size standards than would otherwise be calculated, and the Methodology no longer aspires to find a true economically appropriate size standard, the commenter argued. The commenter asserted that arbitrary caps are inconsistent with the requirement that size standards vary from industry to industry according to differences among industries and SBA's policies of encouraging and strengthening competition in the economy. Because of the introduction of caps, SBA runs the risk of being perceived to favor the smallest small businesses at the expense of the larger small businesses, the commenter noted. The commenter urged SBA to let the data drive the results instead of policies.

SBA Response

SBA agrees with the industry association that, without the maximum caps, the calculated size standards would be extremely high, allowing, in some cases, extremely large companies with billions of dollars in revenues and tens of thousands of employees to qualify as small business. Capping calculated size standards at certain minimum and maximum levels is crucial for fulfilling the SBA's mission

to serve and protect the interests of American small businesses and ensuring that Federal small business assistance goes to small businesses most in need of such assistance. For this reason, in the Revised Methodology, SBA retains its policy of capping the calculated receipts-based size standards at \$47 million and calculated employee-based size standards at 1,500 employees. SBA has maintained its employee-based maximum size standard cap at the 1,500 employees despite the increased automation and resultant labor productivity growth. However, the receipts-based size standards have gradually increased over time due to inflationary adjustments, and the highest receipts-based size standard stands at \$47 million today.

Should SBA consider adjusting employee-based size standards for labor productivity growth or increased automation?

Four comments addressed this issue. SBA received a comment justifying the lack of SBA's adjustment to employee-based size standards for labor productivity growth and technical changes because it is difficult to measure and compare the productivity and technology levels across industries and over time.

Another comment argued that, without seeing a specific proposal, it is difficult to comment on whether SBA should consider adjusting employee-based size standards for labor productivity growth or increased automation. However, the commenter recommended proceeding cautiously, as small businesses might not have the necessary capital to take advantage of automation and robotics.

Another commenter argued that the rapid pace of technological advancement and its impact on labor productivity and automation necessitates adjustments to employee-based size standards and suggested that SBA incorporate considerations for labor productivity growth and automation into its Methodology. This adjustment would ensure that size standards remain relevant and that businesses utilizing technology to enhance productivity or automate processes are not unfairly classified as small due to efficiency gains, the commenter added.

SBA received a comment supporting the SBA's current approach of not adjusting employee-based size standards for labor productivity growth. By updating size standards every five years, those factors are already captured in SBA's analysis of the industry structure, the commenter added. The commenter argued that any separate adjustments

would simply double count the impact of the productivity changes that are already reflected in the industry data.

SBA Response

Of the four comments addressing this issue, three supported the SBA's current approach of not adjusting employee-based size standards for increased automation and labor productivity growth, even though the Agency adjusts monetary-based size standards for inflation. Just as firms in industries with monetary-based size standards may lose small business eligibility due to inflation, firms in industries with employee-based standards may gain eligibility due to improvement in labor productivity and technical change. There are three reasons for SBA for not adjusting employee-based size standards for productivity growth and technical change. First, there does not exist robust labor productivity growth data by 6-digit NAICS industry. Second, SBA agrees with one of the commenters supporting no labor productivity adjustment of employee-based size standards that the impact of changes in labor productivity are already reflected in the quinquennial Economic Census data that SBA uses to evaluate industry structure. Third, just as an adjustment to monetary-based size standards for inflation leads to increases in size standards, thereby allowing businesses to gain or maintain their small business status, an adjustment to employee-based size standards for labor productivity growth would lead to decreases in size standards, thereby causing currently small businesses to lose their small business status and eligibility for Federal small business assistance, which may run counter to the SBA's policy of not lowering size standards under distressed economic environment. For these reasons, in the Revised Methodology, SBA maintains its policy of not adjusting employee-based size standards for labor productivity growth.

Should SBA consider lowering its size standards generally?

Four comments addressed this issue. One commenter opposed lowering size standards arguing that many businesses have made investments based upon their ability to access small business set-aside markets and lowering size standards would unfairly penalize them.

Citing the ongoing decline in the number of small businesses participating in the Federal marketplace, one commenter opposed lowering size standards. The commenter argued that lowering size standards will not only exacerbate this situation but also harms small businesses and

deprives agencies of increased competition and the experienced small business vendor base. Instead of lowering size standards, the commenter added, SBA should look into raising size standards, thereby allowing more small businesses to remain in the Federal market longer. The commenter asserted that raising size standards would both expand the small business industrial base for Federal agencies and extend the runway for these firms as they grow and have a chance to successfully graduate from their status as small businesses. The commenter maintained that, by lowering size standards, SBA will decrease the pool of eligible offerors under the Rule of Two, and thus lowering size standards would lead to fewer small business set-asides overall due to the reduced applicability of the Rule of Two.

An industry association recommended that SBA should not lower size standards. The association did not believe that lowering size standards would support the Administration's and SBA's goals to reverse a downward trajectory of fewer small businesses receiving Federal prime contracts. The association maintained that lowering size standards generally may further squeeze successful small businesses, limit returns on the Government's investments in small business growth and deprive agencies of increased competition. To support its argument, the commenter cited the Government Accountability Office (GAO) finding that only 22% of graduating businesses remain mid-size and only three percent of graduating businesses break through mid-size status to large. The commenter maintained that contracting trends also do not support lowering size standards as individual set-aside contracts have increased in value such that small businesses may be catapulted beyond their size standards, often in a single contract or task order. These small businesses face a tough situation: unable to remain qualified as "small," they must survive in "full and open" competitions with larger companies.

A commenter representing the elevator industry believed that with increased inflation and raw materials costs, especially in construction-related industries with significant material outlays, broad-based lowering of size standards would be short-sighted and should not be enacted.

SBA Response

All four comments addressing this issue opposed lowering size standards, generally. SBA receives periodic comments from the public that its size

standards are too high in certain industries or for certain types of Federal contracting opportunities. The comments generally concern the competitive edge that large small businesses have over the "truly small businesses" (a phrase heard frequently from commentators). On the other hand, SBA also receives comments from larger small businesses that their size standards are too small to qualify for Federal contracting opportunities and other Federal small business assistance. This has always been a challenging issue, one that SBA has had to deal with over the years. SBA's size standards appear too large to the smallest of small businesses while larger small businesses often request even higher size standards. SBA examines four industry factors (average firm size, average assets size as a proxy of startup costs and entry barriers, 4-firm concentration ratio, and Gini coefficient) and small business participation in Federal contracting to determine if the existing industry size standards need to be adjusted. SBA considers analytical results, impacts of new size standards on small businesses, public feedback on proposed size standards, and the prevailing market conditions to decide on whether the size standard should be raised, lowered, or retained at the current level. SBA may lower calculated size standards if they are found to have enabled a dominant firm to qualify as small.

Should SBA lower size standards regardless of prevailing economic conditions when the analytical results support lowering them, or should it consider the prevailing economic environment when deciding on whether to revise size standards?

Three comments addressed this issue. One commenter supported the SBA's policy of not lowering size standards during periods of fluctuating economic conditions. The commenter argued that businesses do better when there is certainty in the rules, thereby allowing them to plan for the future.

An industry association recommended that if SBA were to consider lowering size standards, such action should not be tied to the prevailing economic conditions. Rather, any such reduction should be based on an assessment of fluctuations in contracting that cannot be attributed to a single factor or economic period. It noted that the prevailing economic conditions are only one factor to consider and only represent a snapshot in time, instead of market understanding over time.

SBA received a comment applauding SBA's effort to review size standards on a five-year basis and to raise standards

to counter the effects of inflation, thereby expanding opportunities for more small businesses to support Federal clients. Despite these efforts, however, the GAO and others have cited a decline in the number of small businesses supporting the Federal marketplace, the commenter noted. They also noted a significant drop in businesses out of the Federal market once they cross the “valley of death” into “other than small” business status, where businesses struggle to secure contract opportunities. Lowering size standards will only further exacerbate this situation, depriving agencies of both increased competition and skilled and experienced workforce. Instead, SBA should look into raising size standards to allow more small businesses to remain in the Federal marketplace longer, the commenter noted. The commenter stated that this would both expand the small business base for Federal agencies and improve the runway for these firms as they grow and ultimately graduate.

SBA Response

Prior SBA policy has been to consider the prevailing economic environment when deciding on whether to revise size standards. In response to the distressed economic environment in the aftermath of the 2007–2009 Great Recession, in the first five-year review of size standards under the Jobs Act, SBA adopted a policy of not lowering size standards even though the data supported lowering them for some industries. Similarly, in response to the COVID–19 pandemic and its impacts on small businesses and the overall economy, during the second five-year review of size standards under the Jobs Act, SBA adopted a similar policy of not lowering any size standards even though the analytical results supported lowering them. SBA will continue to consider the prevailing economic conditions and their impacts on small businesses in revising size standards as a secondary factor in its analysis.

Should SBA adopt the disparity ratio approach to evaluating small business participation in the Federal market, which will replace the Federal contracting factor the Agency used in the past? Should SBA adopt the results from the power analyses of the disparity ratios?

Four comments addressed this issue, all supporting the SBA’s new disparity approach to account for Federal contracting trends. One commenter supported the new disparity ratio approach to evaluating small business participation in the Federal market, arguing that this new approach would

better capture the entire spectrum of small business participation in Federal contracting. Another commenter also expressed strong support for the SBA’s proposed adoption of the disparity ratio approach to account for small business participation in the Federal market. The commenter added that the proposed approach promises a more equitable and accurate reflection of small business participation in the Federal market, thereby making size standards that are more aligned with actual market participation and potential and enhancing ability of small businesses to secure Federal contracts. Another commenter also supported SBA’s new disparity ratio approach to measure small businesses’ share of Federal contracting in relation to the broader industry.

An industry association recommended that SBA use the disparity ratio approach where it might lead to increased participation from under-represented industries. The association members believed the disparity ratio approach might, in some industries where small businesses are not well represented as prime contractors, help draw more contractors into the Federal space by increasing size standards. The industry association’s view is that power analyses should not be used because they do not consider the actual performance of small businesses.

SBA Response

Absent significant adverse comments, SBA is adopting the disparity ratio approach to measure the Federal contracting factor as proposed. In the previous Methodology, SBA only considered the small business share of Federal contract dollars relative to the small business share of total industry receipts. Under the disparity ratio approach, SBA is also considering the number of Federal contracts awarded to small businesses relative to their proportion in the population of firms that are ready, willing, and able to bid on and perform Federal contracts. Thus, the disparity ratio provides a more accurate representation of small business participation in the Federal market. Since only a very few industries were impacted by the power analyses, SBA has decided to not use the results from the power analyses, consistent with the industry association’s recommendation.

Should SBA continue using the Economic Census data to obtain the 20th percentile and 80th percentile values of industry factors for evaluating size standards for exceptions, or should it start using FPDS–NG and SAM data?

Three comments addressed this issue, with one supporting the SBA’s proposal and two opposing it. One commenter supported the use of FPDS–NG and SAM data for industry analysis for exception size standards. It makes sense that SBA should use the same consistent source of data throughout the analysis where possible, the commenter added.

Another commenter disagreed with the SBA’s proposal to use FPDS–NG and SAM data to obtain the 20th percentile and 80th percentile values of industry factors for evaluating size standards for the NAICS exceptions. The commenter contended that the use of FPDS–NG and SAM data would limit the SBA’s analysis to the subset of companies engaged in Federal contracting only. Many small businesses rely on these size standards for purposes other than Federal contracting, the commenter added. The commenter recommended continuing to use the Economic Census data to obtain the 20th percentile and 80th percentile values of industry factors for evaluating size standard exceptions.

Based on the input from its members, an industry association also recommended that SBA continue using Economic Census data because it captures firms not currently working in the Federal space and is therefore consistent with the intent of the Methodology. The association explained that if SBA were to rely on FPDS–NG and SAM data, the results would incorporate only a subset of firms working in a given industry that hold Federal contracts. Using Economic Census data paints a more accurate picture of firms operating in the various industries, in and out of Government, the commenter added.

SBA Response

The data from the Census Bureau’s Economic Census tabulation are limited to the six-digit NAICS industry level and therefore do not provide information on economic characteristics of firms at the subindustry level. Thus, SBA uses the FPDS–NG and SAM data to derive the industry factors for exceptions. To be consistent, SBA is proposing to adopt the FPDS–NG and SAM data to obtain the 20th percentile and 80th percentile values of industry factors for evaluating size standards for the NAICS exceptions, instead of using the percentiles from the Economic Census. SBA believes that using the FPDS–NG and SAM data to obtain the 20th percentile and 80th percentile values of industry factors for evaluating size standards for the exceptions, instead of using the percentiles from the Economic Census, will promote

consistency in its analysis of the exceptions by ensuring that the percentile values and factor values for each exception are in comparable terms. Specifically, SBA has found that for most industries, the average firm size of businesses participating in Federal contracting is generally much larger than the average firm size of businesses represented in the Economic Census. There are also inconsistencies in reporting between the SAM/FPDS-NG data and the Economic Census, which SBA will address by adopting the revised approach. Thus, SBA believes that using the FPDS-NG and SAM data to obtain the percentile values of industry factors for the exceptions will better reflect the varying economic characteristics of the underlying industries. The full results of SBA's impact analysis as well as a detailed description of the major changes to SBA's evaluation of size standards are included in the 2024 Revised Methodology.

Should size standards vary from program to program?

SBA received two comments addressing this issue, with both expressing support for the SBA's position of not varying the size standards from program to program. One commenter opposed size standards to vary from program to program because many small businesses participate in more than one SBA's program. The commenter argued that changing size standards from program to program would create substantial confusion.

An industry association recommended that, absent a clear benefit, size standards should not vary from program to program. The association believed that size standards need to be clearly understood by the acquisition community so that set-aside decisions and subcontracting goals can be realistically established. Adding additional sets of standards by program in addition to varying them from industry to industry would add multiple layers of complexity for small firms that may not have the resources to develop additional staff expertise in tracking the applicability of size standards for each program, especially for those involved in multiple programs, the commenter added.

SBA Response

Consistent with the above comments, for all industries except for Wholesale Trade and Retail Trade industries, where businesses for SBA's financial and other Federal non-procurement programs qualify under the industry-specific size standards and those for

Federal procurement qualify under the 500-employee nonmanufacturer size standard, SBA retains its policy of maintaining the uniform size standard for both procurement and non-procurement programs. SBA had, in the 1980s, established different size standards for different programs. The result had been that some firms were small for some programs and large for others. Such size standards were very confusing to users and caused unnecessary and unwanted complexity in their application. The statutory guidance encourages an industry-by-industry analysis and not a program-by-program analysis when developing small business size definitions. While the characteristics and needs of a particular SBA's program may necessitate the deviation from the uniform size standards, the Agency will continue its general policy of favoring one set of size standards for all programs. For example, SBA has established 14 special size standards for specific activities (commonly referred to as "exceptions") within certain industries for Federal procurement purposes. Additionally, for the SBA's SBIC, 7(a), and CDC/504 Programs, businesses can qualify either based on industry specific size standards for their primary industries or based on a tangible net worth and net income based alternative size standard.

Should size standards apply nationally or should they vary geographically?

Five comments addressed this issue, all opposing size standards varying geographically. One commenter asserted that size standards should apply nationally, not geographically, but did not provide reasons for its position. Another commenter also opposed geographically differing size standards. The commenter argued that the notion of geographically differing size standards is not reflective of the reality of the modern-day global economy, in which vendors and suppliers operate remotely and across multiple states and national boundaries. The commenter urged SBA to maintain uniform industry size standards across geographic regions.

An industry association recommended that size standards should apply nationally, rather than geographically. The association agreed with the SBA's position that application of Economic Census data to determine size standards geographically would be at a minimum cumbersome and time consuming, resulting in a complex set of size standards that would likely be unusable. The association maintained that adding in a geographic variable

would complicate the application of size standards for the reasons provided. For example, if applied at place of delivery or at multiple locations of delivery, how would the size standards differentiate between sizes of companies performing on that task order or between subcontractors and contractors? Application of size standards geographically would create more confusion than opportunity, the commenter added.

A commenter representing the elevator industry believed that trying to segment size standards geographically would lead to a host of unintended consequences that would render the size standards impossible to effectively implement. The commenter asked how the size standards would be applied when a contractor is headquartered in one geographic region (such as a state) and performs contracts in others. Another commenter agreed with the SBA's position that varying size standards geographically would lead to undue complexity and the resulting confusion would render geographically based size standards unusable.

SBA Response

The statute defines a small business concern as the one which is independently owned and operated and which is not dominant in its field of operation (15 U.S.C. 632 (a)(1)). The statute does not exclude from the definition those small businesses that might dominate their fields of operations within a specific geographic area. Whether a firm is "not dominant in its field of operation" is made at the national level.

The statute requires SBA to ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries (15 U.S.C. 632(a)(3)). However, the statute does not require SBA to vary the size standard from geography to geography to account for geographical differences in industrial characteristics.

If SBA were to establish size standards that would vary geographically, SBA would need to identify a proper unit of geography. Should it be the region, state, county, or other basis? Whatever basis SBA were to choose, SBA likely would need to vary each of the 1,000-plus industry-based size standards by geography. This could result in tens or even hundreds of thousands of size standards using geography-industry pairs. The public would then face the immense burden of reviewing, commenting on, and complying with those size standards.

Another challenge with geographically varying size standards would be determining the applicable size standard when the vendor's location is different from the location of contract performance. Which size standard would be applicable in determining the small business status of the vendor? Should it be the size standard that applies to the area where the vendor is located, or should it be the size standard applicable to the location of contract performance? If vendor location, firms with multiple locations would either be subject to multiple size standards or a complex series of regulations to determine which location sets the size standard. If location of contract performance, firms would compete on an uneven basis because they would be subject to different size standards.

Geographically varying size standards may inappropriately influence entrepreneurs' decisions on selecting business location. If size standards varied geographically, entrepreneurs would tend to be encouraged to move from places with lower size standards to places with higher size standards to receive the benefits of higher size standards. This may lead to potential disparities in entrepreneurship and business development among geographic regions. This might inadvertently suppress economic development in already-distressed regions as firms seek optimal locations based on regulatory compliance rather than economic forces.

SBA determines the size standards based on special tabulations of business data from the Economic Census, which is compiled and reported nationally. The same level of details of Economic Census data is not available for smaller geographical units. SBA is required to set size standards that would exclude firms that are "dominant in their field of operation," and that criteria is set nationally. As a result, in large part, the size standards are higher than they would be if the Agency were to look at smaller geographic areas because very few firms that are dominant locally are dominant nationally. Data limitations preclude an extensive analysis of businesses within specific industries on a geographical basis.

For the above reasons and commenter's views discussed above, SBA will continue to establish and apply the size standards at the national level, without considerations to geographical differences in industry characteristics.

Are there alternative approaches that SBA should consider for determining small business size standards?

Two comments addressed this issue. One commenter suggested that SBA should reconsider establishing a common size standard for closely-related NAICS codes, such as those under NAICS 5415, Computer Systems Design and Related Services. The commenter argued that, until the most recent revision, all 6-digit industries under NAICS 5415 had the same size standard because those NAICS codes are used interchangeably by agencies, resulting in confusion.

An elevator company suggested that SBA should consider irrefutable, publicly available data provided by industry participants and industry expertise in the context of determining the size standard for the elevator industry. With respect to the elevator industry, the commenter argued that elevator maintenance, repair and modernization companies are vastly different from elevator inspection companies, and it would be inappropriate to lump them into one category simply because they both relate to the elevator industry. The commenter argued that companies involved in maintenance, repair and modernization of elevators are dramatically different from those companies involved in inspection of elevators. Compared to the latter, the commenter noted, the former have significant barriers to entry and very high concentration of large companies that dominate the market. Elevator inspection companies, on the other hand, have very low barriers to entry, do not require licensed mechanics, and have dramatically lower revenue per employee, and higher competition within the industry, the commenter added. The commenter contended that equipment needed to perform elevator inspection contracts is less costly than that required to perform maintenance contracts.

SBA Response

The National Defense Authorization Act of Fiscal Year 2013 (NDAA 2013) (Pub. L. 112–239, section 1661, Jan. 2, 2013) amended the Small Business Act to prohibit SBA from limiting the number of size standards and to require SBA to assign specific size standards for each NAICS industry. This limits the SBA's ability to group NAICS industries to establish a common size standard. Additionally, according to section 3(a)(7) of the Small Business Act, SBA may establish or approve a single size standard for a grouping of 4-digit NAICS codes only the Agency makes publicly available, not later than the date on which such size standard is established or approved, a justification demonstrating that such size standard is

appropriate for each individual industry classification included in the grouping. However, the results from the second 5-year review of the size standards under the Jobs Act (85 FR 72484; November 13, 2020) did not support the same size standard for all industries in NAICS 5415. For example, calculated size standards for those industries varied from \$20.5 million for NAICS 541511, Custom Computer Programming Services, to \$32.5 million for NAICS 541513, Computer Facilities Management Services.

With respect to the comment regarding the size standard for the elevator industry, SBA encourages the commenter to submit this information as comment to the proposed rule reviewing the monetary-based size standards the Agency will issue as part of the forthcoming third 5-year review of size standards under the Jobs Act. As indicated elsewhere in this document, any concerns regarding the size standard(s) for a specific industry or group of industries are beyond the scope of the Methodology.

How have SBA's latest size standards revisions impacted competition in general and within a specific industry?

One company operating in the elevator industry noted that the elevator maintenance-related industry, usually classified under NAICS 238290, Other Building Equipment Contractors, has a revenue-based size standard of \$22 million, whereas elevator manufacturing industry, NAICS 333921, Elevator and Moving Stairway Manufacturing, has a size standard of 1,000 employees. The commenter argued that the \$22 million revenue size standard is a significant barrier to growth of elevator maintenance companies. The SBA current size standards have unintentional consequences for the elevator industry in terms of limiting competition, the commenter noted. The commenter argued that the current size standards for elevator related work have allowed multi-national, multi-billion elevator companies to dominate the Federal market. Elevator maintenance contracts are performed by highly trained and compensated personnel using expensive and sophisticated equipment, which leads to higher contract prices, causing elevator maintenance companies to perform fewer contracts before they exceed the revenue-based size standard, the commenter added. Thus, the commenter recommended that SBA should consider using an employee-based size standard of 1,000 employees for the elevator maintenance industry as revenue is not the best indicator of business size.

SBA Response

With respect to the comment regarding the size standard for the elevator industry, SBA encourages the commenter to submit this information as comment to the proposed rule reviewing the monetary-based size standards the Agency will issue as part of the forthcoming third 5-year review of size standards. As indicated elsewhere in this document, any concerns regarding the size standard(s) for a specific industry or group of industries are beyond the scope of the Methodology. Moreover, for industries with significant subcontracting, such as construction-related industries, SBA uses receipts, not employees, as a measure of business size for size standards purposes.

Are there alternative or additional factors or data sources that SBA should consider when establishing, reviewing, or revising size standards?

One commenter supported the omission from the Revised Methodology of the effects of industry dynamics, such as entry and exit of firms, mergers and acquisitions, and changes in market structure, on the size standards because it is impractical and unnecessary to account for these factors in the Methodology. The commenter maintained that SBA reviews and adjusts the size standards periodically, at least once every five years, to reflect the changes in the industry characteristics and market conditions. Therefore, the size standards are not static or fixed, but dynamic and flexible, and they can accommodate the variations and fluctuations in the industry dynamics over time, the commenter noted.

Another commenter maintained that one factor that SBA should consider when establishing, reviewing, or revising its size standards is the impact of a reduction in size standards on the viability of small businesses. The commenter proposed making a reduced size standard become effective 180 days after publication of the final rule in the **Federal Register**.

A comment from the elevator industry believed SBA should consider non-biased, irrefutable, and publicly available information provided to it by industry participants to supplement SBA determination of the size standard within a given industry. The commenter maintained that, while the Economic Census data provides a directionally accurate snapshot of certain industries, it is not a 100% accurate representation of the underlying facts related to companies' sizes within that industry. Additionally, certain industries are not

clearly represented within the NAICS manual at all, namely, the elevator industry, the commenter noted. The commenter recommended that SBA should create a new NAICS code for the elevator industry and establish a size standard of 1,000 employees, the same size standard that applies to the elevator manufacturing industry.

SBA Response

The commenter's statement that the Methodology omits the factors such as entry and exit of firms and mergers and acquisitions is not quite correct. As a proxy of startup costs and entry barriers, SBA evaluates the average assets size as one of the four industry factors when establishing, reviewing, and modifying size standards. Similarly, mergers and acquisitions may lead to affiliation, thereby affecting the calculation of business size for size standards purposes. As part of the regulatory impact analysis of the proposed and final rules, SBA is required to include a statement describing the impact of size standards changes (including decreases) on small businesses in terms of access to small business assistance. Similarly, as part of its decision on whether to revise a size standard, SBA examines, as a secondary factor, impacts of size standards changes on small business access to and eligibility for Federal assistance. In most cases, SBA allows the final rules to become effective 30 days from their publication in the **Federal Register**. Thus, assuming that the size standards revisions include both increases and decreases, it would be impractical to make a higher size standard effective 30 days from the date of publication of the final rule in the **Federal Register** and delay the effective date for a lower size standard to 180 days. Delaying the effective date for higher size standards to 180 days would prevent some larger small businesses from realizing the benefits of size standards increases. SBA always encourages industry participants to provide, as part of their comment to the proposed rules, the alternative industry data or facts pertaining to a specific industry's size standard. SBA will consider such data or facts very thoroughly and may even adjust the proposed size standard as a result.

Does SBA's current approach to establishing or modifying small business size standards make sense in the current economic environment?

Four comments addressed this issue. One commenter agreed that the SBA's current approach to establishing or modifying small business size standards makes sense in the current economic environment and supported the SBA's

policy of not lowering size standards during periods of fluctuating economic conditions.

Another commenter, a woman-owned small business (WOSB), operating under NAICS 236220, Commercial and Industrial Building Construction, expressed appreciation for revisions to size standards in response to the fluctuations in economic conditions due to the COVID-19 pandemic and believed that the Revised Methodology will provide further refinements to the considerations of industry factors and Federal market conditions.

An industry association asserted that the current approach is the most practical approach at this time. Establishing a different approach to small business size standards would be a complex challenge that should be undertaken with clear objectives and with sufficient time to conduct analyses and assess the potential results of alternative approaches, the commenter added.

A comment from the elevator company felt that the SBA's current approach does a very good job of accounting for inflation and other macroeconomic environment affecting small businesses. The periodic size standard increases to account for inflation have been handled expeditiously and been beneficial to all small businesses, the commenter added. However, the commenter felt the SBA should consider irrefutable publicly available information from industry participants relating to any given industry. SBA should consider such information to better support its effort to establish a correct size standard for an industry in question.

SBA Response

SBA agrees with the commenters that the Revised Methodology makes sense in the current economic environment. SBA will continue to consider the prevailing economic environment when deciding on whether the size standards should be revised or retained at the current levels. SBA is committed to complete the quinquennial reviews of size standards under the Jobs Act in a timely manner to ensure that size standards reflect current market conditions. Similarly, SBA is also committed to periodically assess the impacts of inflation on monetary-based size standards and make necessary adjustments.

3. Other Issues

Provide detailed data and calculated size standards.

SBA received three comments demanding that SBA provide the

underlying data involved in the calculations for the Methodology and calculated size standards under the Revised Methodology. One commenter asked SBA to provide a detailed table showing size standards under the current Methodology and those under the Revised Methodology to be better able to provide comments to proposed changes to the Methodology.

Another commenter asked if it is possible for SBA to provide access to the data used in the calculations in the white paper. Without this data it is impossible to make an assessment if the Methodology determines fair and reasonable size standards, the commenter argued. The problem with the Methodology is that it appears to use data that is not available to the public, the commenter added. Without access to this data, it is difficult to compare the results of the Methodology, and perhaps have the ability to look for and point out problems or areas for improvement in the Methodology.

Another commenter requested that SBA provide a detailed analysis of how proposed changes, especially the adoption of the disparity ratio approach and the utilization of the FPDS-NG and SAM data, will affect small businesses across various industries, especially an assessment of potential impacts on small business participation in Federal contracting.

SBA Response

SBA has provided a summary of calculated industry size standards under the 2019 Methodology and the 2024 Revised Methodology in Table 15 under the Impacts of Changes Methodology Section of the Revised Methodology. Of 392 industries averaging \$20 million or more in Federal contracting annually during fiscal years 2020–2022, based on the latest data available to SBA when the Revised Methodology was prepared, 159 or 40.5% of industries would see an increase to size standards under the 2019 Methodology, as compared to 169 or 43.1% of industries that would see an increase to size standards under the 2024 Revised Methodology. Similarly, 169 or 43.1% of industries under the 2019 Methodology and 167 or 42.6% of industries under the 2024 Revised Methodology would see a decrease to size standards. Sixty-four or 16.3% of industries under the 2019 Methodology and 56 or 14.3% of industries under the 2024 Revised Methodology would see no change to size standards. Thus, comparing the results from the 2019 Methodology and the 2024 Methodology, slightly more industries would see an increase to size standards under the 2024 Methodology and

slightly more industries would see no change to size standards under the 2019 Methodology. Thus, overall, the changes to size standards as the result of the changes in the Methodology would have a very minimal impact on number of businesses that qualify as small. Excluding Sectors 42 and 44–45, 97.77% of businesses would qualify as small under the calculated size standards under both Methodologies. That figure is 97.78% under the current size standards.

Inconsistency between general size standards and exceptions.

One commenter, referring to the size standards for the general NAICS 237990, Other Heavy and Civil Engineering Construction, and the Dredging subindustry (or “exception”) under that industry, stated that there exists inconsistency between size standards for general NAICS industries and size standards at the subindustry levels or “exceptions,” especially when the size standard for a general NAICS industry is lower than the size standard for a subindustry or exception within that industry. The commenter contended that this could create confusion or unfairness for businesses that operate in both the NAICS industry and the subindustry or exception, or that compete with businesses that do, by allowing them to qualify as small under the exception but not small under the general NAICS industry. It may also affect the accuracy and consistency of the data and statistics that SBA and other agencies collect and report on the small business sector, the commenter argued. The commenter suggested that SBA provide a clear rationale and a consistent rule for handling the cases of inconsistency between the size standards for general NAICS industries and their corresponding subindustry or exception size standards.

SBA Response

The Small Business Act requires that size standards vary from industry to industry to reflect differing characteristics among the various industries. Thus, it is not uncommon for a firm operating in multiple industries to be small in some industries and other than small in others. That also applies to size standards for the general NAICS industry size standards and the size standards at the subindustry levels or exceptions. Except for the Dredging exception that has a lower size standard than that for the general NAICS 237990, usually size standards at the subindustry levels (“exceptions”) are larger than those for the general industries. Thus, it is not unusual for companies operating both under general

NAICS industry and subindustry levels to be small under the exception size standards and other than small under the general NAICS size standards. It is logical for a firm to be other than small under the Dredging exception and to be small under the general NAICS 237990 because the characteristics of firms of that specific sublevel may be different from the characteristics of the firms that constitute the general level, of which there may be a much greater number. The subindustry categories are used solely for Federal procurement purposes and are not used by the Government to collect industry statistics.

Analytical Equations

One commenter stated that while the equations that SBA uses to calculate size standards, such as simple average, weighted average, linear transformation, and linear interpolation are simple and easy to implement, they may not capture the complexity and diversity of the industries and the market conditions.

1. *Weighted average:* The commenter argued that by assigning higher weights to larger firms, a weighted average may provide a more accurate and representative measure of the industry characteristics than a simple average, which treats all data equally, but it may also introduce some problems, such as data availability and reliability, and it may make the calculation and communication of the size standards more complex and less transparent. Without providing any facts and analysis, the commenter argued that the weighted averaged may not be consistent with the legislative intent and the SBA’s statutory mandate to consider the industry characteristics of all businesses in an industry.

SBA Response

SBA does not face any problem of data availability and reliability in calculating the weighted average firm size. The Economic Census special tabulation that SBA receives from the U.S. Census Bureau to examine industry structure contains the results for weighted average, along with other measures (such as simple average firm size, 4-firm concentration ratio, Gini coefficient, etc.), calculated based on actual firm-specific data. SBA used the weighted average firm size as one of the factors to evaluate industry structure in both the first and second five-year reviews of size standards under the Jobs Act but did not receive any adverse comments or complaints from the public or industry participants citing its complexity or lack of transparency. Therefore, SBA will continue using the

weighted average firm size as one of the factors to evaluate industry structure.

2. Linear transformation: The commenter suggested replacing a linear transformation of industry characteristics with a logarithmic transformation to reduce the skewness and outliers in the data and to improve the normality and homoscedasticity of the distribution. However, a logarithmic transformation may also complicate the calculation and communication of the size standards, and it may not be simpler and more transparent than a linear transformation, the commenter argued. Furthermore, the commenter added that a logarithmic transformation may affect the clarity and transparency of the size standards, as it may make the size standards less intuitive and more difficult to understand and verify by businesses and Federal agencies that use them. Therefore, the commenter recommended weighing the benefits and drawbacks of using a logarithmic transformation and compare it with the current method of using a linear transformation, which is simpler, transparent, consistent, and stable.

SBA Response

As maintained elsewhere, the special tabulation of the quinquennial Economic Census that SBA receives from the U.S. Census Bureau contains various measures of industry characteristics (e.g., simple average firm size, weighted average firm size, four-firm ratio, and Gini coefficient, etc.) that SBA evaluates in analyzing size standards. The Census Bureau calculates these measures from the original, raw firm-specific data without any transformation of such data. SBA does no transformation of the results provided by the Census Bureau. Thus, the potential problems with linear transformation that the commenter identified are nonissues. Moreover, as noted by the commenter, the logarithmic transformation has several drawbacks, including that it is complex, less transparent, difficult to understand, and unstable.

3. Linear interpolation: The commenter suggested using a nonlinear interpolation, such as a spline or a polynomial, instead of a linear interpolation to capture the potentially nonlinear relationships between industry characteristics and size standards. The commenter argued that an industry with a high degree of competition or innovation may have a more complex or dynamic relationship between the industry characteristics and the size standards, which may not be adequately captured by a linear interpolation. However, the commenter

noted that using a spline or a polynomial interpolation may introduce more uncertainty and variability in the results, and it may not be more stable and consistent than a linear interpolation. Additionally, a spline or a polynomial interpolation may impair the simplicity and clarity of the size standards, as it may make the calculation and communication of the size standards more sophisticated and less straightforward, the commenter noted.

SBA Response

The commenter recommended using a spline or nonlinear interpolation, instead of linear interpolation, to capture the potentially nonlinear relationships between industry factors and size standards. However, it contended that using a spline or a polynomial interpolation may introduce more uncertainty, complexity, inconsistency, variability, and instability in the results. We have found a linear interpolation to produce reasonable results that are more intuitive, more straightforward, and easier to explain to the stakeholders. Moreover, generally there is a positive correlation between industry factors and size standards.

Use of gross domestic product (GDP) price index.

One commenter supported the use of the GDP price index as the measure of inflation because it captures the overall changes in the prices of goods and services produced in the economy, which affect the costs and revenues of businesses in all industries. The commenter added that alternative measures of inflation, such as the Consumer Price Index (CPI) or the Producer Price Index (PPI), may not be suitable because they focus on specific segments of the economy, such as consumers or producers, and may not reflect the diversity and complexity of the business activities and transactions.

SBA Response

As part of the 2014 inflation adjustment (79 FR 33647; June 12, 2014), SBA reviewed various measures of inflation published by the Federal Government, including the GDP price index, the CPI, the PPI, the personal consumption expenditures (PCE) price index, and the unit labor cost for their appropriateness to use for adjusting monetary-based size standard for inflation. Based on that review, SBA determined that, being the most comprehensive measure of price movements for the overall economy, the GDP price index is the most appropriate measure of inflation for purposes of

adjusting size standards for inflation. Historically, SBA has used the GDP price index for adjusting size standards for inflation.

Inclusion of the 4-firm ratio.

One commenter stated that the application of the 4-firm concentration ratio to all industries is reasonable because it is a simple and widely used indicator of market structure and competition. It measures the share of the total industry revenue that is earned by the four largest firms in the industry, and it ranges from 0 to 100, where higher values indicate higher concentration and lower values indicate lower concentration. The 4-firm concentration ratio is also consistent with the SBA's statutory mandate to consider the degree of competition among businesses in an industry when setting the size standards.

SBA Response

Using the 4-firm concentration ratio SBA compares the degree of concentration within an industry to the degree of concentration of the other industries with the same measure of size standards. The 4-firm concentration ratio is widely used as a measure of industry concentration. Prior to the 2019 Methodology, SBA used the 4-firm concentration ratio only for the industries where its value was 40% or higher. Starting from the 2019 Methodology, SBA started using the 4-firm concentration ratio for all industries regardless of its magnitude. If a significantly higher share of economic activity within an industry is concentrated among the four largest firms compared to most other industries, all else being equal, SBA would set a size standard that is relatively higher than for most other industries. Conversely, if the market share of the four largest firms in an industry is appreciably lower than the similar share for most other industries, the industry will be assigned a size standard that is lower than those for most other industries.

Decreases to size standards.

Citing the information provided on page 56 of the Revised Methodology that under the disparity ratio approach, 167 or 42.6% of industries averaging \$20 million or more in Federal contracting would see a decrease on size standards, one commenter asked SBA to clarify whether it intends to decrease size standards for some industries based on proposed changes in the Methodology.

SBA Response

The question of whether SBA would increase, decrease, or retain the size standards is beyond the scope of the

Methodology. The Methodology merely provides the framework for reviewing and calculating new size standards, but it does not drive SBA's determination on whether to revise or retain size standards. That determination will be made through rulemakings with the considerations of the results from the latest available industry and Federal procurement data, comments to the proposed changes in size standards, impacts of proposed size standards changes on small business access to Federal small business assistance, the prevailing economic conditions and their impacts on small businesses, and Administration's and SBA's policies and programs.

Impact of the revised methodology.

One commenter asked if SBA has calculated the impacts of its proposed changes in the Revised Methodology on the size standards for each of NAICS 6-digit level industries? If so, what is the projected impact on NAICS 541330, Exception 1, Military and Aerospace Equipment and Military Weapons, the commenter asked.

SBA Response

As discussed elsewhere in this document, SBA provided in Table 13 of the Revised Methodology a summary of impacts of proposed revisions to the Methodology on the size standards for 6-digit NAICS industries averaging \$20 million or more in Federal contracting. SBA did not provide that information for the specific NAICS industries or subindustries because that would change when SBA updates the industry and Federal procurement data. The information on the changes in the size standard for a specific NAICS industry or subindustry would be provided in the proposed rules that Agency will publish in the near future as part of the third 5-year review of size standards under the Jobs Act.

Calculation of receipts under subcontracting.

One commenter noted that to perform complex Government contracts successfully, small business prime contractors must frequently subcontract significant portions of work to large businesses or other small businesses. The commenter argued that under the employee-based size standards, the number of subcontractor employees working on a contract is not counted as part of the small business prime contractor's employee total. However, under receipts-based size standards, the subcontractor's share of contract receipts is included in the small business prime contractor's total annual receipts despite the facts that these receipts, other than administrative costs,

are not part of the prime contractor's annual revenue, the commenter added. Has the SBA considered making the two standards consistent with each other by excluding subcontractor annual receipts from a small business prime contractor's annual receipts total, the commenter asked.

SBA Response

According to 13 CFR 121.104, receipts for size standards purposes means all revenue in whatever form received or accrued from whatever source, including from the sales of products or services, interest, dividends, rents, royalties, fees, or commissions, reduced by returns and allowances. Regarding the comment that SBA should modify its definition of receipts to allow for the exclusion of amounts paid to third-party subcontractors (usually referred to as "pass-throughs"), SBA disagrees. SBA does not allow for the exclusion of "pass-throughs" because they are part of the usual and customary costs of doing business. Accordingly, SBA considers "pass-throughs," and other similar factors, as secondary factors when it establishes small business size standards. Specifically, the Economic Census data that SBA uses in its size standards analysis includes all revenues received by companies, including the values of their subcontracts. If the "pass-throughs" were allowed to be excluded from the calculation of receipts, SBA would also have to revise its methodology to establish a lower size standard to reflect the size of the industry without them. Thus, SBA does not believe it is reasonable to exclude these costs from the calculation of receipts.

Calculation of receipts for joint ventures.

A commenter stated that to successfully bid on and perform complex Government contracts small businesses must occasionally enter into joint venture agreements with other small businesses in the same industry. The current regulations and proposed modifications do not adequately address how the division of contract receipts among joint ventures should be used to calculate an individual company's annual receipts for purposes of small business size standards calculations, the commenter argued. The commenter noted that the current regulations also do not adequately address how receipts allocated to subcontractors should be apportioned in calculating the annual receipts of the small business joint ventures. Has the SBA considered amending its size standards methodology and regulations to address

allocation of annual receipts, the commenter asked.

SBA Response

For size standards calculations, a concern must include in its receipts its proportionate share of joint venture receipts. Proportionate receipts do not include proceeds from transactions between the concern and its joint ventures (e.g., subcontracts from a joint venture entity to joint venture partners) already accounted for in the concern's tax return. In determining the number of employees, a concern must include in its total number of employees its proportionate share of individuals employed by the joint venture. For the calculation of receipts, the appropriate proportionate share is the same percentage of receipts or employees as the joint venture partner's percentage share of the work performed by the joint venture. For a populated joint venture (where work is performed by the joint venture entity itself and not by the individual joint venture partners) the appropriate share is the same percentage as the joint venture partner's percentage ownership share in the joint venture. For the calculation of employees, the appropriate share is the same percentage of employees as the joint venture partner's percentage ownership share in the joint venture, after first subtracting any joint venture employee already accounted for in one of the partner's employee counts. See 13 CFR 121.103(h)(3).

4. General and Industry Specific Size Standards

General size standards.

Without providing any facts or analysis, a comment from an advocacy organization for WOSBs argued that SBA's current industry size standards do not incentivize small business growth. The commenter maintained that under the current size standards, small businesses face risk of losing their small business status if their revenue exceeds a certain threshold due to a single high revenue generating contract. The commenter cited a testimony from a WOSB to the February 6, 2023, House Small Business Committee Hearing on size standards, arguing that her business has been teetering on the edge of its small business size standard, which puts her in a difficult position as she plans the future of her business. She testified to the Committee that if she lost her small business size status, she would have to lay off at least 30% of her staff of 95 people, the commenter added. The commenter contended that businesses that lose their small business status may lose opportunities to win

contracts, given that midsize businesses are set up to compete against much larger companies with more resources. Small business owners do not have many options if they are at risk of losing their status, the commenter noted. The commenter stated that they are forced to reduce or cap their revenue, sell off part of their business, or team up with another small firm to keep their status. In case of teaming up with another firm, small businesses only retain 49% of contracts they earned, the commenter argued.

SBA Response

While SBA recognizes challenges the larger small businesses close to exceeding size standards and mid-size firms that have already exceeded the size standards face in competing in the Federal market, deliberations of such issues are beyond the scope of the Revised Methodology. SBA notes that there will always be some businesses in the brink of exceeding the size standards regardless how high the size standards are. To address the concerns that midsize businesses face in the Federal market, SBA recently implemented the Congressional enactments to increase the averaging period for calculating annual receipts from 3 years to 5 years (Pub. L. 116–283) and averaging period for calculating the number of employees from 12 months to 24 months (Pub. L. 115–324). As advised elsewhere in this document, the commenters are advised to submit any concerns regarding the size standards for specific size standards when SBA issues for comment the proposed rule covering their industries.

Industry-specific size standards. NAICS 236220, Commercial and Institutional Building Construction.

Citing the lingering economic impacts from the COVID–19 pandemic and high post-pandemic inflation, a commenter proposed increasing the size standard for NAICS 236220, from the current \$45 million in average receipts to \$50 million. The commenter did not provide any industry analysis and facts supporting its proposal.

SBA Response

The latest industry and Federal contracting data that SBA used to prepare the proposed rule to review the size standards for industries in the construction sector (NAICS 23) under the Jobs Act supported a size standard of \$25.5 million size standard for NAICS 236220 (85 FR 62239; October 2, 2020). Because of the SBA's policy of not lowering any size standard in light of the impacts of the COVID–19 pandemic on small businesses and the overall

economy, in the final rule (87 FR 18607; March 31, 2022), SBA adopted the existing \$39.5 million existing size standard, which was later increased to \$45 million as part of inflationary adjustment in 2022 (87 FR 69118; November 17, 2022). As advised elsewhere in this document, the commenters are advised to submit any concerns regarding the size standards for specific industries when SBA issues for comment the proposed rule covering their industries.

NAICS 541330, Engineering Services.

Citing reasons such as the use of the qualifications-based selection process under the Brooks Act, which is said to be dominated by the largest firms, the high degree of concentration of the Federal market share among the top 10 largest companies, and the Federal Government's increasing reliance on limited competition contract vehicles (such as IDIQs and GWACs) to procure engineering services, the commenter recommended increasing the size standards for NAICS 541330 to \$39.5 million in average annual revenue. The commenter attached its comment it submitted to the proposed rule published as part of the second 5-year review of size standards under the Jobs Act and its March 27, 2021, letter to the SBA's Administrator urging the Agency to establish a \$39.5 million size standard for NAICS 541330.

SBA Response

As part of the second 5-year review of size standards under the Jobs Act, based on the latest available industry and Federal procurement data, SBA had proposed increasing the size standard for NAICS 541330 from \$16.5 million to \$22.5 million as part of the second 5-year review of size standards (85 FR 72584; November 13, 2020). Based on the considerations of public comments and industry data, SBA adopted \$22.5 million in the final rule (87 FR 18665; March 31, 2022), which SBA increased to \$25.5 million as part of adjustment of monetary based size standards for inflation in 2022 (87 FR 69118; November 17, 2022). The concerns regarding the size standards for specific industries are beyond the scope of the Revised Methodology. The Methodology merely provides an analytical framework for reviewing existing and calculating new size standards. SBA's actual decisions to change or modify size standards are implemented through rulemakings. SBA encourages the commenters to submit their concerns regarding the size standards for specific industries, including any relevant data and analysis, by commenting on the

forthcoming proposed rules reviewing size standards for those industries.

NAICS 336611, Ship Building and Repairing.

SBA received a comment from a small business concern operating under NAICS 336611 that currently has a size standard for 1,300 employees. The commenter stated that the ship building and repairing market is dominated by very large companies with tens of thousands of employees that receive funds from the Federal Government, enabling them to improve their facilities and equipment and to make ship building more efficient. Large businesses leverage these same efficiencies when competing against small businesses, creating an unfair competitive advantage, the commenter contended. The commenter asserted that with the size standard of 1,300 employees, the industry is currently very competitive. Large businesses constantly lobby the Federal Government to increase their market share at the expense of the market share of small businesses that lack resources and constituent base for lobbying, the commenter added. A business with 1,300 employees would have revenue in the range of \$300 million, which is certainly not a small business in the ship repair industry, the commenter argued. The commenter, based on above factors, urged that SBA should not increase the size standard for NAICS 336611 beyond 1,300 employees, as doing so would enable large businesses to compete against small businesses as small businesses.

SBA Response

The latest industry and Federal procurement data that was available for SBA to review the size standard for Manufacturing industries as part of the second 5-year review of size standards under the Jobs Act supported a size standard of 1,300 employees for NAICS 336611, an increase from 1,250 employees (87 FR 24752; April 26, 2022). Accordingly, in the final rule, SBA adopted 1,300 employees as the size standard for NAICS 336611 (88 FR 9970; February 15, 2023). As stated elsewhere, the concerns regarding the size standards for specific industries are beyond the scope of the Revised Methodology. The Methodology merely provides an analytical framework for reviewing existing and calculating new size standards. SBA's actual decisions to change or modify size standards are implemented through rulemakings. SBA encourages the commenters to submit their concerns regarding the size standards for specific industries, including any relevant data and

analysis, by commenting on the forthcoming proposed rules reviewing size standards for their industries.

Environmental remediation services (ERS) exception to NAICS 562910, Remediation Services.

A commenter stated that the ERS exception, first established in 1994 (59 FR 47236; September 15, 1994), is fundamentally different from most other exceptions. The commenter contended that all exceptions—except the ERS exception and the exceptions to Research and Development (R&D) NAICS codes—are derived from subsets of the primary NAICS industry from which the subindustry or exception originates. While the size standards for exceptions to R&D NAICS codes are derived by aligning the corresponding manufacturing size standards, the ERS exception, unlike all other exceptions, is not derived from the subset of the primary NAICS 562910, the commenter added. The commenter argued that such uniqueness of the ERS exception comes from the original formulation of the ERS industry, as reflected in Footnote 14 of the SBA's table of size standards which recognizes that no single industry dominates the scope of the ERS work. The commenter contended that the ERS exception is a superindustry instead of a subindustry. Some firms competing in ERS may designate the base NAICS 562910 as their primary industry, but others may not, the commenter noted.

The commenter expressed concerns about the SBA's approach to creating the ERS industry by trimming the largest ERS awardees whose primary activity is unrelated to ERS. The commenter expressed the opinion that excluding such firms is arbitrary and nonsensical within the meaning of Footnote 14. The commenter proposed to identify a primary industry for each ERS awardee and to exclude those which do not align with industries that SBA used to formulate the ERS industry originally. If this proposed solution is not acceptable to SBA and if SBA still decides to remove large companies from the dataset in future rulemakings, the commenter recommended that SBA provide a list of the specific firms removed from the dataset. This approach would provide greater transparency and would allow industry participants to comment on whether the removed companies were or were not significant players in the ERS market, the commenter argued. The commenter further argued that removing large companies, unknown to the public, from SBA's dataset, without providing opportunity for industry feedback on the propriety of specific exclusions, introduces opacity and arbitrariness that

ultimately undermines the credibility of SBA's Methodology. The industry cannot provide meaningful comment as to whether an excluded firm is an ERS competitor if the SBA is not transparent and does not identify the excluded firms, the commenter argued.

The commenter argued that large competitors in the ERS industry have a serious advantage over smaller businesses in terms of winning and executing work, even where only a small portion of their total revenue comes from ERS work. Large firms enjoy economies of scale that would give them a tremendous competitive advantage over a small business making roughly similar revenue. The commenter explained that many ERS awards are qualifications based, meaning that the company must demonstrate it has a superior performance history and workforce when considering the qualifications sought in the request for proposal. A large company with a more diverse performance history can leverage the relevant qualifications to win work.

The commenter maintained that to the extent competitions are instead based on price criteria, a large business performing a comparatively small amount of ERS work also has a disproportionate advantage over smaller companies. The commenter argued that a large company with a comparatively small ERS portfolio can spread the same ERS workload across a much larger workforce, using a more favorable labor mix, achieving greater labor utilization, and driving down indirect costs. These advantages have a direct impact on pricing, the commenter noted. Moreover, the large business can take advantage of greater corporate resources to hire, train, and deploy labor, further disadvantaging small businesses who must consider the total headcount impact of hiring to perform management and overhead tasks, the commenter added.

Excluding the largest businesses from the sample will have a deleterious effect on the viability of small businesses in the ERS industry, the commenter stated. The commenter noted that SBA's size standards provide small businesses a protected marketplace in which to grow and prepare for future open competition. However, setting size standards at an artificially low threshold prematurely thrusts successful ERS small businesses into the same marketplace occupied by their largest competitors. This will cause graduating ERS small businesses to suffer unequal and inferior protection when compared to other graduating small businesses. This outcome would appear to be

inconsistent with the statutory goal of the SBA to grow small businesses into the American marketplace.

SBA Response

SBA does not agree with the commenter that SBA has kept the size standard for the ERS exception artificially low. Between 2016 and 2023, the ERS size standard has doubled to 1,000 employees. Despite the majority of comments opposing any increase to the ERS size standard, in 2016, SBA increased it from 500 employees to 750 employees, as part of the first 5-year review of size standards under the Jobs Act (81 FR 4436; January 26, 2016). Again, despite the majority of comments opposing any increase to the ERS size standard, in 2023, SBA increased the ERS size standard from 750 employees to 1,000 employees, as part of the second 5-year review of size standards (88 FR 9970; February 15, 2023).

Without trimming the largest companies for which the ERS contract awards account for a minimal share of their total revenues, SBA is concerned that the data might result in a very high size standard that might hurt smaller ERS companies that need Federal assistance the most. Just as graduating mid-sized companies have a hard time competing on unrestricted Federal contracts with large companies with vast resources and an extensive performance history, smaller small ERS firms also face a competitive disadvantage in competing with larger, more experienced small businesses for set-aside Federal contracts.

As stated elsewhere, the industry data in the quinquennial Economic Census tabulations that SBA receives from the Census Bureau are limited to the 6-digit NAICS industry. Thus, the industry data in the special tabulation does not allow for the evaluation of the size standards at the subindustry levels or exceptions. Accordingly, SBA utilizes the FPDS-NG and SAM data to calculate industry factors at the subindustry levels. The results from the FPDS-NG/SAM data are then compared with industry benchmarks (such as 20th percentile and 80th percentile values of industry factors) from the Economic Census tabulation to compute the new size standards for the exceptions. In the Economic Census tabulation, the industry data are tallied by a primary NAICS industry. Thus, to make the FPDS-NG/SAM results consistent with the results from the Economic Census, SBA trims the firms, from both ends of the distribution, for which a specific exception under review is not their primary industry. Going forward, in the Revised Methodology, SBA will base the

20th percentile and 80th percentile values of industry factors for the exceptions also on the FPDS-NG and SAM data, thereby largely reducing the need of trimming firms for which a particular exception in question is not their primary industry. If the trimming is still warranted, SBA will try to be transparent regarding the firms being trimmed while protecting their privacy.

Recognizing that, by definition, the ERS exception includes activities from multiple industries, a new footnote (Footnote 54) has been added to the Revised Methodology, stating that to evaluate the ERS size standard SBA will identify identify firms receiving contracts in the various NAICS industries under the PSCs that correspond to the ERS exception.

Elevator size standard.

A commenter argued that there is no NAICS code that specifically applies to the elevator industry. In absence of a separate NAICS code for the elevator industry, the commenter provided a list of NAICS codes that Federal contracting officers use to classify elevator maintenance, repair, and modernization contracts:

- NAICS 811310—Commercial and Industrial Machinery & Equipment (size standard of \$12 million)
- NAICS 238290—Other Building Equipment Contractors (\$22 million)
- NAICS 236220—Commercial and Institutional Building Construction (\$45 million)
- NAICS 561210—Facility Support Services (\$47 million)
- NAICS 333921—Elevator and Moving Stairway Manufacturing (1,000 employees)

For an elevator modernization/construction contract, the commenter contended that contracting officers typically use either NAICS 238290 or NAICS 236220. Under this scenario, an elevator company can be awarded a modernization project as a small business under NAICS 236220 but would be unable to bid, as a small business, on the maintenance contract under NAICS 238290 because they are considered too “large” under that NAICS industry. The commenter argued that the fact that all elevator companies perform both modernization and maintenance tasks, but are deemed small enough to perform one, but too large to perform the other, is an oversight that should be corrected.

The commenter maintained that every elevator company in the country performs elevator maintenance, repair, modernization, and construction, and recommended that SBA lump all these activities together and create a unique

NAICS code for the elevator industry and establish an employee-based size standard of 1,000 employees. With an elevator-specific NAICS code, there would be no guesswork by contracting officers in choosing an appropriate NAICS code for elevator maintenance, repair, modernization and construction work, the commenter noted. Due to the lack of a single NAICS code representing the elevator industry, the commenter noted that elevator-related contracts (maintenance and modernization) are generally awarded to general contractors, who subsequently subcontract that work out to multi-national, multi-billion, foreign-owned conglomerates operating in the elevator industry. As much as 70–80% of contract value is performed by those conglomerates, the commenter argued.

The commenter proposed that SBA consider, in addition to the Economic Census data, publicly available alternative industry data and industry expertise in determining the size standard for the elevator industry. Based on the industry data the commenter has access to, the commenter provided estimates of various industry factors that SBA evaluates in establishing and reviewing size standards, including the 4-firm concentration ratio (70%) and Gini coefficient (0.90), arguing that these factors support a much higher size standard for the elevator industry. They also noted that generally the elevator industry has significant barriers to entry and higher average firm size due to industry dominance by the largest four firms. The companies that exceed the current size standard of the elevator-related industries cannot compete under full and open competition against the largest competitors that are more than 200 times larger than a small elevator company, the commenter argued.

SBA Response

As stated elsewhere in this document, the Small Business Act requires the size standards to vary from industry to industry to the extent necessary to reflect the differing characteristics among the various industries. When a company operates in closely related multiple industries (such as NAICS 236220 and NAICS 239290), it is not uncommon for it to be considered small in some industries and other than small (“large”) in others. A good example is a company operating both in NAICS 541310, Architectural Services, and in NAICS 541330, Engineering Services. NAICS 541310 has a size standard of \$12.5 million and NAICS 541330 has a size standard of \$25.5 million. Accordingly, the same company may qualify as small under NAICS 541330

but not under NAICS 541310. Thus, the issue of the elevator industry is not unique.

The SBA regulations allow small business general prime contractors to subcontract up to 85% of the value of work, excluding the cost of materials, to companies that are not similarly situated entities (*see* 13 CFR 125.6(a)(3)). Similarly, SBA regulations allow small business specialty trade prime contractors to subcontract up to 75% of the value of work, excluding the cost of materials, to companies that are not similarly situated (*see* 13 CFR 125.6(a)(4)).

SBA’s regulations in 13 CFR 21.406(b) require contracting officers to designate an appropriate NAICS code (along with applicable size standard) that best describes the principal purpose of the product or service being acquired. If it is believed that the contracting officer’s NAICS code designation or size standard is not appropriate, SBA’s regulations in 13 CFR 121.1102 allow the interested parties to appeal that NAICS code designation with the SBA’s Office of Hearings and Appeal (OHA). Procedures for appealing a NAICS code or size standard designation are set forth in 13 CFR 121.1103.

Regarding the commenter’s suggestion that SBA create a new NAICS code representing the elevator industry, SBA does not have authority to create or modify a NAICS code. In collaboration with the Statistical Agencies of the United States, Canada, and Mexico, every five years, the Economic Classification Policy Committee (ECPC) within the Office of Budget and Management (OMB) creates new NAICS codes or revise the existing codes. Any comment or supporting documentation for creating a new NAICS code for the elevator industry should be directed to the ECPC’s comment and notice process for the quinquennial NAICS revisions.⁹

With respect to the suggestion to establish a 1,000-employee size standard for the new NAICS code for the elevator industry, historically SBA has been using receipts, not employees, as a measure of business size for construction-related industries. In industries where subcontracting is high, such as construction-related industries, SBA prefers to use receipts as a measure of size standards. When a prime contractor subcontracts out a portion of a contract, the value of contract being subcontracted out is counted toward prime’s receipts, but subcontractor’s

⁹NAICS Update Process Fact Sheet on the NAICS website at https://www.census.gov/naics/reference_files_tools/NAICS_Update_Process_Fact_Sheet.pdf provides tentative schedules for considerations of changes to NAICS for 2027.

employees doing the work are not counted toward primes' employee count. Thus, an employee-based size standard may lead to excessive subcontracting in those industries.

The Small Business Act limits the SBA's ability to establish a common size standard for related industries, such as elevator maintenance, repair, modernization, and construction industries. The statute permits establishing a common size standard by grouping all industries within the NAICS 4-digit level provided that the data supports the same size standard for each of those industries in the group, which is not the case for industries related to elevator maintenance, repair, modernization, and construction.

As stated elsewhere in this document, the concerns regarding the size standards for specific industries are beyond the scope of the Revised Methodology. The Methodology merely provides an analytical framework for reviewing existing and calculating new size standards. SBA's actual decisions to change or modify size standards are implemented through rulemakings. SBA encourages the commenter to submit their concerns regarding the size standards for specific industries, including any relevant industry data and analysis, by commenting on the forthcoming proposed rules reviewing size standards for their industries.

ITVAR NAICS 541519 (Footnote 18).

An advocacy organization for small and mid-size companies submitted as comment the testimonies of two information technology value added resellers (ITVAR) firms provided to the House Small Business Committee Hearing on size standards, held on February 6, 2024.¹⁰ Both testimonies (commenters) outlined their success as a Federal ITVAR and challenges they face in competing on information technology (IT) procurement opportunities.

The commenters maintained that small business ITVARs play an important role in meeting the Government IT procurement needs in three ways: (1) obtaining IT equipment and supporting services from a single source; (2) acquiring multiple multivendor IT products from a single acquisition; and (3) customizing computer hardware or software. They pointed out that ITVARs provide cost-effective IT solutions to the Government

by serving as an intermediary between the Government and creators of IT hardware and software, usually known as the original equipment manufacturers (OEMs). Besides selling the IT hardware and software, ITVARs also provide the Government with beneficial value-added services, including, but not limited to, configuration consulting and design, systems integration, installation of multi-vendor computer equipment, customization of hardware or software, training, product technical support, maintenance, and end user support, they added. The commenters have identified the following challenges small business ITVARs face in the Federal marketplace and potential solutions to address them. These are summarized below even though these issues are outside the scope of the Revised Methodology.

Challenges

1. The changing landscape of the IT procurements.

The commenters explained that, in 2003, SBA created a new subindustry category or "exception" for ITVARs under NAICS 541519, Other Computer and Related Services, with a size standard of 150 employees (68 FR 74833; December 29, 2003).¹¹ For this, SBA created a new footnote (Footnote 18), which provides a definition of an ITVAR and describes the circumstances under which a procurement could properly be classified under the ITVAR exception and its 150-employee size standard, the commenters noted. When SBA first established the ITVAR exception, IT procurement market was vastly different than it is today, they argued. The commenters contended that selling to the Government then was much simpler and required fewer employees than it does now. They claimed that today Federal customers need much more complex IT solutions that include artificial intelligence (AI), robotics, cybersecurity, and cloud computing. As the focus of Government spending shifts more and more towards innovation and meeting its burgeoning technology needs, small businesses, including small ITVARs, are providing the Government with IT more than ever before, the commenters noted. The

current regulatory landscape includes a patchwork of rules and regulations specific to small businesses and the IT industry that have made it challenging, and in some cases impossible, for small business ITVARs to participate in the Federal market without potentially violating the law, they asserted.

SBA Response

The changing landscape with respect to IT procurements is not necessarily bad for the ITVAR contractors or the Government. With introduction of category management, strategic sourcing, and other initiatives in the Federal market, the changing Federal procurement landscape has touched most sectors and industries with a significant Federal spend. The changing IT landscape of the Federal market has led to improvement and modernization of how agencies purchase IT goods and services, resulting in creation of value, efficiency, and innovation of procurement activities, while reducing risks and costs. By adopting current best practices, agencies can secure cost savings and improve quality of products and services being acquired. SBA small business rules and regulations are intended to serve the interests of small businesses that need Federal assistance the most.

2. 15–50% value-added services requirement.

Footnote 18 requires an ITVAR classified under NAICS 541519 to provide multivendor hardware and software along with significant value-added services, the commenters asserted. They stated that Footnote 18 provides that an IT procurement classified under the ITVAR exception and its 150-employee size standard must consist of at least 15% and not more than 50% of these value-added services, as measured by the total contract price. However, much of the value-added services provided by ITVARs occur prior to contract award and/or are built into existing pricing and not separately charged, commenters contended. Commenters asserted that, under the current rule, measuring the percent of value-added services as compared to the total contract price, the 15–50% value-added requirement is unrealistic and will increase the costs to the Government. They argued that ITVARs generally do not charge separately for value-added services whose costs are incorporated into the company's overhead costs. As such, the value-added services often do not account for 15% of the total contract price, they noted.

¹⁰ Those testimonies are available in entirety at the following links: <https://www.congress.gov/118/meeting/house/116800/witnesses/HHRG-118-SM00-Wstate-MooreB-20230206.pdf>; <https://www.congress.gov/118/meeting/house/116800/witnesses/HHRG-118-SM00-Wstate-LambkeJ-20230206.pdf>.

¹¹ For Federal contracts that combine substantial services with the acquisition of computer hardware and software, in 2002, SBA proposed establishing a new ITVAR subindustry or "exception" category under NAICS 541519, Other Computer Related Services, with a size standard of 500 employees (67 FR 48419; July 24, 2002). SBA received a total of 291 comments, of which 276 or 95% opposed the proposed 500-employee size standard for the newly created ITVAR exception in support for a smaller size standard. In the final rule, SBA adopted 150 employees.

SBA Response

Footnote 18 provides that if the contract consists of less than 15% of value-added services, then it must be classified under a manufacturing NAICS industry. If the contract consists of more than 50% of value-added services, then it must be classified under the NAICS industry that best describes the predominate service of the procurement. If it is believed that the NAICS code contracting officers designate to a solicitation is not correct, SBA regulations in 13 CFR 121.1102 allow the interested parties to appeal the contracting officer's decision to SBA's Office of Hearings and Appeal (OHA).

3. *The nonmanufacturer rule (NMR) and waivers.*

The commenters noted that, under Footnote 18, an ITVAR contractor must comply with the NMR. They stated that this is a change to the regulation SBA made in 2016 (81 FR 4436; January 26, 2016). Prior to this, an ITVAR contractor was not subject to the NMR, they argued. The commenters maintained that specific to supply contracts, the NMR allows a small business to supply products it did not manufacture if certain requirements are met, including that the supplied products were manufactured by another small business. They stated that small businesses may supply products manufactured by any size business if the SBA grants a waiver of the NMR. In most cases, the Government requires the ITVARs to provide computer hardware and software manufactured or produced from large OEMs, they argued. Thus, applying the NMR to procurements of IT products presents several challenges for small business ITVARs and, in many cases, is inconsistent with what agencies specifically require in their solicitations, they contended. The commenters argued that while class waivers exist for some hardware, currently, there are no class waivers for software products. Thus, a small business ITVAR cannot participate in opportunities involving the purchase of commercial software manufactured by large businesses even where the Government specifically requires such software, they reasoned. Rather, small businesses can participate in such opportunities only when the contracting officer requests an individual waiver, the commenters claimed. Notably, it is not mandatory for the contracting officer to request an individual waiver, they noted. They contended that, in most cases, the contracting officer will choose not to seek a waiver, even if the acquisition is set up as a small business set-aside for product for which there is

no small business manufacturer. They declared that this practice flies in the face of established rules and sets up unwary ITVAR contractors to violate the NMR (and, potentially, the False Claims Act) simply for following the requirements set forth by the Government.

SBA Response

If a small business set-aside IT procurement classified under the ITVAR exception includes products for which there are no small businesses manufacturing the product being acquired, SBA regulations in 13 CFR 121.406(b)(5) allow the contracting officers, and in some cases the public, to request a waiver of the NMR from SBA. There are two types of waivers of the NMR: class waivers and individual waivers. SBA grants a class waiver only upon its determination that no small business manufacturer or processor of the product or class of products is available to participate in the Federal procurement market. SBA issues an individual waiver if the Agency determines that no small business manufacturer or processor reasonably can be expected to offer a product meeting the specifications (including period for performance) required by a particular solicitation.¹² The procedures for requesting and granting these waivers are set forth in 13 CFR 121.1204.

4. *Inappropriate use of NAICS.*

The comments stated that the Government uses the NAICS codes to identify the purpose of a procurement and to identify the size standard a business must meet to qualify as small for that procurement. When issuing solicitations, contracting officers must designate a single NAICS code that best describes the principal purpose of the product or service being acquired, they attested. They argued that, often, an IT procurement may be a mixed procurement, involving both products and services. However, the contracting officer still must assign a single NAICS code according to the component that accounts for the greatest percentage of contract value, they asserted. The commenters argued that this causes problems for ITVARs that provide both products and services. ITVARs offer computer hardware or software and/or services that reasonably can be classified either under a supply or a service NAICS code, they declared. They argued that the existing NAICS codes are not appropriate for small

business ITVARs. Establishments that primarily provide services are classified under a service NAICS code, they added. The commenters maintained that small business ITVARs primarily provide computer hardware, software, and related products (supplies) along with some services that cannot be classified under the service NAICS codes. Likewise, the supply codes cover establishments that manufacture a specific product, they argued. Commenters contended that since products ITVARs provide often are manufactured by other companies, small business ITVARs do not fit neatly under the supply NAICS codes either.

SBA Response

SBA's regulations in 13 CFR 121.402(b) require contracting officers to designate an appropriate NAICS code that best describes the principal purpose of the product or service being acquired. If it is believed that the contracting officer's NAICS code designation is not appropriate, SBA's regulations in 13 CFR 121.1103 allow the interested parties to appeal that NAICS code designation to the SBA's Office of Hearings and Appeal (OHA). As stated elsewhere in this document, the nonmanufacturer rule allows contractors to supply products that they did not manufacture or produce.

Recognizing that the ITVAR exception has led to misuse, inconsistency, and confusion with respect to designation of NAICS codes for ITVAR solicitations by contracting officers, in 2014, as part of the first 5-year review of size standards under the Jobs Act (79 FR 53646; September 10, 2014), SBA proposed eliminating the ITVAR exception (and Footnote 18) to address those issues. By definition, ITVAR contracts account for 15–50% of value-added services and 50–85% of computer hardware and software (supplies). Thus, by definition, the ITVAR exception is for contracts that are primarily for supplies, with some services. As stated in the 2014 proposed rule, if the ITVAR exception is eliminated, all ITVAR contracts would be reclassified under the employee-based size standard for the manufacturing industries or under the 500-employee NMR size standard. IT procurements with more than 50% of services will be appropriately classified under services NAICS codes. However, in response to overwhelming comments against eliminating the ITVAR exception, in the final rule, SBA retained the ITVAR exception along with 150 employees, but subjected the supply component of the ITVA contracts to manufacturing requirements

¹² SBA has granted several individual waivers for software products under NAICS 513210, Software Publishers.

and the NMR (81 FR 4436; January 26, 2016).

5. Increased compliance requirements.

With changes in IT procurement landscape, the burden placed on ITVARs has increased drastically as well, the commenters explained. They argued that numerous employees are needed for compliance. ITVARs are required to obtain a wider breadth of knowledge with multiple OEMs than an IT service company would, they contended. They claimed that small business ITVARs are not exempt from these requirements from the Government nor from the OEMs. They held that to stay under the 150-employee size standard, small business ITVARs must sacrifice hiring at the expense of obtaining and maintaining Government mandated certifications, or forgo obtaining required certifications with the OEMs, which hurts the portfolio of products they are able to offer and also negatively affects their pricing discounts and profitability. With an increased focus on secure supply chain and numerous certification requirements (such as International Organization for Standardization (ISO) certifications, cybersecurity maturity model certification (CMMC), supply chain risk management, ITAR, security clearances, affirmative action and others), ITVARs must now hire employees to manage compliance, the commenters contended. They argued that OEM partners also require ITVARs to hold advanced certifications to be authorized to sell their products. Government customers also require advanced OEM certifications to bid on certain procurements, they added. It is often difficult for small business ITVARs to navigate these issues particularly, where the Government has set aside a procurement based on an inappropriate NAICS code, the commenters noted.

SBA Response

Maintaining compliance is not unique to delivering IT goods and services to Government agencies under the ITVAR exception. Contractors providing goods and services in other industries are also required to ensure that they comply with applicable existing law and regulations. Larger small businesses are likely to maintain in-house specialized workforce dedicated to carry out compliance work, while smaller small business are likely to hire external consultants and attorneys. Achieving compliance with regulations, law and other requirements would reduce the ITVAR contractors' risks of violating law and facing fines, debarment, or

other penalties. Compliance with applicable law and regulations would also provide confidence to the Federal clients, thereby increasing the likelihood of winning Federal contracts. Requirements for increased knowledge, qualifications/certifications, and capabilities to participate in the delivery of IT products can not only enhance the quality of IT goods and services being procured by the Government by ensuring that they meet its specifications and standards, but also enhance contractors' ability to meet Government needs.

6. Industry consolidation and size standard.

The commenters stated that there is increased consolidation and acquisitions in the ITVAR industry. It is common for ITVARs, once they exceed 150 employees, to sell their businesses, they argued. The commenters contended that these ITVARs, who usually have years of experience in Government contracting and proven capabilities, are purchased by larger industry competitors or private equity firms. There has been a mass exodus of firms from the industry once they exceed the size standard, they asserted. They argued that this hurts the Federal agencies as they lose small businesses and qualified suppliers who are often replaced with less qualified and less capable suppliers. The unicorn in the ITVAR industry has become those companies with between 151 employees and 500 employees, they noted. They claimed that to go from successfully competing as a small business to competing with large companies, like CDW and IBM, is an improbable endeavor for a small ITVAR. The result is an erosion of the supplier base that has valuably served the Government, the commenters argued. Not only does the Government suffer under this scenario, but so do the employees and the communities where these businesses are located as the acquiring companies or private equity firms are headquartered in larger metropolitan areas, the commenters contended. They pointed out that increasing the employee size limit to 500 employees would insure there are ample small businesses that are qualified to meet the increasing demands of today's Government customers.

SBA Response

The commentary that small businesses, once they exceed their size standards, are acquired by large corporations or private equity firms is not unique to ITVAR firms. SBA frequently receives such concerns from businesses in other industries as well.

SBA believes that such concerns would remain regardless of how high the size standards are. For example, SBA's recent increases to size standards have not alleviated these concerns. SBA increased 604 size standards under the first 5-year review of size standards and 436 size standards under the second 5-year review of size standards. Additionally, SBA has periodically increased its monetary-based size standards for inflation. SBA also has increased the averaging periods for calculating annual receipts for size standards from 3 years to 5 years and for calculating the average number of employees for size standards from 12 months to 24 months, thereby extending the runway for small businesses to successfully transition from small business to mid-size or large business status in the Federal marketplace. With respect to the commenter's suggestion to increase the ITVAR size standard to 500 employees, SBA will review that size standard as part of the forthcoming third 5-year review of size standards under the Jobs Act and determine if it needs to be revised. The commenters are advised to submit their comments when SBA issues a proposed rule with the results of its analysis.

7. Limitations on subcontracting rule.

The commenters maintained that, for both supplies and services, the limitations on subcontracting rule ("LOSR") requires that a small business not subcontract more than 50% of the prime contract amount to businesses that are not "similarly situated." In contracts for mixed procurements (*i.e.*, both supplies and services), the LOSR applies only to subcontracts that correspond to the principal purpose of the prime contract, they argued. The commenters contended that the LOSR is problematic for small business ITVARs that resell to the end-user IT products (*e.g.*, hardware, computers, etc.) and/or services (*e.g.*, cloud, hardware/software maintenance, etc.) that mostly originate from other companies. Often, the products and services the Government requires under the ITVAR solicitation are provided only by large companies, and easily exceed 50% of the total contract amount, the commenters reasoned. Thus, the commenters argued, the LOSR has the effect of eliminating small business ITVAR participation in many Federal acquisitions for IT products and services although they are set-aside for small businesses.

SBA Response

In accordance with SBA's regulations in 13 CFR 125.6(a)(2), procurements of supplies from a nonmanufacturer of such supplies are exempt from the

LOS. In other words, the NMR supersedes the LOS. In the case of a contract for supplies from a nonmanufacturer, a small business will comply with all requirements at 13 CFR 121.406(b)(1) to qualify as a nonmanufacturer, including supplying the product of a domestic small business manufacturer or processor, unless a waiver is granted pursuant to SBA's regulations in 13 CFR 121.406(b)(5). If a waiver is granted, the offeror is not required to comply with the NMR requirements.

8. *Potential liability for small businesses.*

The commenters contended that the Government regularly issues solicitations under inappropriate NAICS codes, thereby inviting small business ITVARs to violate the Small Business Act and exposing them to risk of fines, debarment, or other penalties. There is little compliance oversight by the Government with respect to NAICS codes, they claimed. Rather, the onus has shifted to small business ITVARs to use scarce time and resources to police Government agencies via NAICS code protests, the commenters stated. They held that relying on protests to check this frequent misuse is unrealistic, costly, and unfair for small business ITVARs. Another issue facing small business ITVARs is misapplication of the ITVAR code, for example, as when the contract includes services that account for less than 15% of the total contract price, the commenters argued. They mentioned that, in this situation, small business ITVARs can choose to bid, knowing they will not provide value-added services that account for 15–50% of the total contract price as required by the ITVAR exception, and thus potentially setting themselves up for an allegation that they have violated the law or made a false certification. Or, the small business can forgo the opportunity altogether, while less risk-averse competitors are awarded the work, the commenters argued. Where a small business ITVAR contractor is not compliant with the SBA regulations, it is susceptible to size protests, potential suspension or debarment, or False Claims Act liability, they pointed out. Thus, simply by submitting a proposal where the business cannot comply with the NMR, or with the 15–50% service requirement under the ITVAR exception, a small business contractor could potentially expose itself to False Claims Act liability, suspension or debarment, a size protest by a competitor, contract termination, and loss of business, the commenters declared.

SBA Response

Pursuant to SBA's regulations in 13 CFR 121.402(b), Federal agencies are required to select a single NAICS code for an acquisition that best describes the principal purpose of the service or product being acquired. If businesses believe that the NAICS code selected by the contracting officer for the contract is inappropriate, pursuant to 13 CFR 121.1103, they can file a NAICS code appeal with the SBA's Office of Hearings and Appeals (OHA). However, because contractors do not have affirmative responsibility for ensuring that the NAICS code selected by a contracting officer is appropriate, they are not liable for bidding on or performing solicitations for which the NAICS code selected by the contracting officer is inappropriate. The determination on whether an ITVAR contract meets the 15–50% service requirement is made prior to the award and does not become the terms and conditions of the contract. Accordingly, small business ITVAR contractors may not be liable even though value-added services account for less than 15% or more than 50% of the contract value. However, when the NMR requirement falls under the terms and conditions of the contract, small ITVARs are bound to comply with the NMR unless there is a waiver.

9. *Software NAICS 513210 (Footnote 15).*

The commenters maintained that, in 2016, SBA promulgated a new rule relating to NAICS 513210, Software Publishers, providing that unmodified, commercially available software supplied in procurements under that NAICS code is an item of supply rather than a service, thus subjecting these items to the NMR (81 FR 34243; May 31, 2016). The commenters stated that, for this, the SBA created a new footnote (Footnote 15), which explains that NAICS 513210 is the proper NAICS code to use when the Government is purchasing COTS ("commercial-of-the-shelf") software, which is eligible for a waiver of the NMR. The Characterization of COTS software as a product subject to the NMR presents the added complication of seemingly conflicting size standards applicable to these procurements, the commenters reasoned. NAICS 513210, a services code, has a revenue-based size standard of \$47 million, while a company may also qualify as small under the NMR based on a size standard of 500 employees, they noted.

The commenters pointed out that one consequence of changing the classification for COTS software to a

supply was that the NMR then became applicable to procurements for this type of software, and waivers then could be sought. The 2016 rule amended the SBA's regulations that SBA may grant an individual waiver for the procurement of software, provided that the software meets certain conditions, the commenters noted. The commenters held that individual waivers may be requested by contracting officers and the public can request that SBA issue class waivers for software items. However, they argued that, in practice, contracting officers have been reluctant to request a contract specific waiver, and, to date, no class waivers for software have been granted.

Commenters contended that a class waiver for the Footnote 15 portion of NAICS 513210 would be appropriate for resolving many of the issues facing small business ITVARs for four reasons: (1) the COTS software procured under NAICS 513210 is overwhelmingly manufactured by large businesses that it obviates the purpose of the NMR; (2) the small business set-asides are almost universally in violation of the NMR; (3) these violations are almost forced by the Government's dual need for both large business software and small business credit, leading to improper solicitations; and (4) this situation invites small businesses to expose themselves to the risk of misrepresenting their size status.

The commenters pointed out that the Government regularly posts solicitations for acquisitions of COTS software manufactured by large businesses that are classified under NAICS 513210 and set-aside for small businesses. The NMR applies to these solicitations unless the contracting officer has obtained a waiver from SBA, the commenters argued. If a waiver is granted, the solicitation can be set-aside for small businesses, and the small business awardee can provide an end-product made by any size manufacturer, they added. In practice, waivers are rarely obtained, the commenters argued. They asserted that if the solicitations do not include a waiver of the NMR, any small business awardee must provide an end-product made by a small business manufacturer. In many instances, this is not possible because the Government often specifically requests items manufactured exclusively by large businesses, or because certain products are not manufactured by small businesses, the commenters argued. They contended that, without a waiver, any small business awardee that provides the required COTS software (manufactured by a large business) under a set-aside is violating the Small Business Act, opening itself to liability

under the False Claims Act for making false statements and certifications to the Government, and subjecting itself to a host of other negative consequences—all at the behest of the Government agency.

SBA Response

SBA grants a class waiver of the NMR for a class of products or supplies only upon the determination that no small business manufacturer or producer is available in the Federal market for such products or supplies. The procedures for requesting and granting class waivers are contained in 13 CFR 121.1204. Any interested person, business, association, or Federal agency may submit a request for a waiver for a particular class of products. Requests should be addressed to the Director, Office of Government Contracting, Small Business Administration, 409 3rd Street SW, Washington, DC 20416. Requests for a waiver of a class of products should include a statement of the class of products to be waived, the applicable NAICS code, and detailed information on the efforts made to identify small business manufacturers or processors for the class of products. If SBA decides that there are small business manufacturers or processors in the Federal procurement market, it will deny the request for waiver, issue notice of the denial, and provide the names, addresses, and telephone numbers of the sources found. If SBA does not initially confirm the existence of small business manufacturers or processors in the Federal market, it will: (i) publish notices in the Commerce Business Daily and the **Federal Register** seeking information on small business manufacturers or processors, announcing a notice of intent to waive the NMR for that class of products and affording the public a 15-day comment period; and (ii) if no small business sources are identified, publish a notice in the **Federal Register** stating that no small business sources were found and that a waiver of the NMR for that class of products has been granted. SBA may expedite the procedure for issuing a class waiver under emergency situations (see 13 CFR 121.1204(5)). SBA has granted several individual waivers for the COTS software under NAICS 513210. If commenters feel that SBA can reasonably issue a class waiver for this code, then an interested party should request one and provide the required documentation.

Proposed Solutions

The commenters declared that the current system for classifying and executing procurements involving ITVARs has serious flaws that should be

addressed. They stated that any comprehensive solution must: (1) create a new industry by recognizing what ITVARs actually do (*i.e.*, the type and mix of services and products they provide); (2) capture and account for how services currently are billed to the Government, and eliminate the 15–50% value-added requirement; (3) provide a realistic size standard that is not over- or under-inclusive; and (4) address the NMR requirements for COTS procurements.

1. *Creation of the new NAICS code.*

The commenters pointed out that, while there are a number of possible solutions, the most viable and sensible solution is to create a new NAICS code that accurately captures the core competency of the ITVAR, accompanied by creation of an appropriate SBA size standard and elimination of the ITVAR exception at Footnote 18. They contended that the new code should focus on the ITVAR's role as a consultant that provides pre-sales engineering and subject matter expertise on a variety of software and hardware products. Ideally, the Economic Classification Policy Committee (ECPC) within OMB will create a new, stand-alone NAICS code for ITVARs, they noted. Once established, the SBA should then revise its current size standard accordingly and eliminate Footnote 18 under NAICS 541519, the commenters added.

SBA Response

In 2014, because of inconsistencies, confusion and misuse surrounding the application of NAICS codes for ITVAR contracts, SBA proposed to eliminate the ITVAR exception, along with its 150-employee size standard and the accompanying footnote (Footnote 18) under NAICS 541519 (79 FR 53646; September 10, 2014). SBA received a total of 168 comments, of which 163 opposed the SBA's proposal. In response, SBA retained the 150-employee size standard and Footnote 18, while subjecting the supplies component of an ITVAR contract to the manufacturing performance requirements and the NMR.

Any documentation and information in support of the creation of a new NAICS for the ITVAR industry should be directed to the ECPC within OMB. As stated elsewhere in this document, in collaboration with Statistical Agencies from the U.S., Mexico and Canada, the ECPC, every 5 years, creates new NAICS codes or revises the existing ones. The NAICS website has established a factsheet regarding the time schedules for the 2027 NAICS revisions.

2. *Elimination of the 15–50% service requirement.*

The commenters contended that the SBA's size standard for the new NAICS code must not include a service requirement that is based on a percent of the total contract price, but it should be based on value-added services provided by a typical ITVAR. The commenters noted that the current ITVAR 15–50% services requirement ignores the reality in following ways: (1) the fixed cost of the component far exceeds the cost of the services and implementation of equipment, and (2) the provided services generally are not separately billed. The commenters stated that ITVARs provide valuable services to the Government, but the costs of those services are included in overhead costs, covered by narrow margins on the IT products, and not separately charged. Therefore, the current requirement that services account for 15–50% of the total contract price is unattainable and should be eliminated under the new size standard, the commenters argued.

SBA Response

The 15–50% service requirement provides that if the contract consists of less than 15% of value-added services, then it must be classified under a manufacturing NAICS industry. If the contract consists of more than 50% of value-added services, then it must be classified under the NAICS industry that best describes the predominate service of the procurement. SBA is concerned that eliminating the 15–50% requirement would lead the contracting officers to improperly apply the ITVAR exception, instead of the manufacturing NAICS code, to IT procurements where the value-added services account for less than 15% of the contract value. Similarly, the elimination of the 15–50% requirement would encourage the contracting officers to use the ITVAR exception, at the expense of small business services firms, for IT acquisitions that account for more than 50% of value-added services.

3. *Revision to the size standard.*

As soon as practicable, after the new NAICS code is established, SBA should revise its size standard to account for the new NAICS code and institute an appropriate employee-based size standard, the commenters argued. Recognizing that ITVARs typically operate on low margins even though their annual receipts may be high, the size standard should be based on employee count rather than annual revenue, the commenters reasoned. The commenters attested that a reasonable

size standard for the new code is 500 employees.

SBA Response

It should be noted that SBA proposed a 500-employee size standard when it first created the ITVAR exception (67 FR 48419; July 24, 2002). As discussed in detail in the final rule (68 FR 74833; December 29, 2003), of a total of 291 comments received, 276 or 95% of comments opposed the proposed 500-employee size standard for the ITVAR exception in support of a smaller size standard. Commenters argued that businesses with 500 employees are not small in the ITVAR industry, and that smaller IT businesses are not competitive against businesses with hundreds of employees. The commenters contended that, under the proposed 500-employee size standard, Federal agencies are more likely to award ITVAR contracts to the larger small businesses at the expense of much smaller businesses. Several comments considered a 500-employee ITVAR firm to be dominant in this field, and therefore does not meet the Small Business Act's statutory definition of a small business which excludes dominant businesses as small. Finally, the commenters argued that a vast majority of firms engaged in the ITVAR industry are much smaller than 500 employees. Commenters to the 2014 proposed rule (79 FR 53646; September 10, 2014) that proposed eliminating the ITVAR exception (along with Footnote 18) validated the above concerns.

4. Elimination of the NMR requirements.

With respect to qualifying as a small business under the new NAICS code, SBA should acknowledge that the NMR is explicitly inapplicable, the commenters argued. Because ITVARs, by definition, do not manufacture the products they resell, it is nonsensical to require them to comply with the NMR—particularly where solicitations overwhelmingly seek COTS items manufactured by large businesses, the commenters held. They maintained that both the ITVAR code (NAICS 541519, Footnote 18) and the COTS code (NAICS 513210, Footnote 15) require compliance with the NMR, but allow for waivers of the NMR. Rather than eliminating the NMR with respect to procurements using these codes, SBA opted to put the onus on agencies to seek waivers, they noted. In practice, this has not been a viable solution, as shown by how ineffective and underutilized the waiver has been to date, the commenter argued. Contracting officers have been reluctant to request contract specific waivers and, to date,

no class waivers for software have been granted, they added.

SBA Response

Considering the rapid pace of development in the IT industry, SBA believes that it is not unreasonable to assume that there will be new products purchased by the Federal Government using the ITVAR exception in the future that will be manufactured by small businesses. Thus, by eliminating the NMR for the ITVAR exception, SBA could disadvantage small firms who are currently offering, or plan to offer products to the Government. SBA also believes it would be inconsistent with the intent of the Small Business Act if ITVAR resellers could provide the supplies produced primarily by large OEMs, or other large manufacturers, without the NMR. SBA is concerned that without the compliance with the NMR, the ITVAR exception may allow small business ITVARs to simply serve as “pass throughs” for large OEMs and other large manufacturers. While SBA recognizes that the NMR may work better for some products than for others, it strongly believes that the rule must apply to all supply contracts equally. Thus, like all other products and supplies, the nonmanufacturer rule must also apply to IT products, including those purchased through the ITVAR exception.

5. Blanket waivers.

The commenters stated that a separate work-around involves obtaining waivers. One way to allow small businesses to supply software manufactured by large corporations is to secure an individual waiver issued for a vehicle that covers a full array of IT orders of a Government department, the commenters contended. They noted that, in 2020, the Department of Homeland Security (DHS) obtained an individual waiver from SBA for all the products and services to be procured under the FirstSource III. Under FirstSource III, any commercial IT product would be available, including products manufactured by large companies, they added. The commenters pointed out that, notably, FirstSource III will have two NAICS codes, NAICS 541519 (ITVAR) and NAICS 513210 (Software Publishers). To resolve the NMR issues, DHS is pursuing an individual contract level NMR waiver for FirstSource III, the commenters added. If SBA approves the waiver, there would be no need for individual waivers for each order under FirstSource III, the commenters reasoned. They attested that DHS's attempt to secure a blanket waiver for the FirstSource III contract signals the

Government's recognition of the need to change the rules to adapt to the evolving IT landscape. The commenters argued that a broader change is warranted for other types of IT procurements, particularly for those involving small business ITVARs.

SBA Response

As explained above, SBA's regulations in 13 CFR 121.1204(a) allow Federal agencies to request for class waivers of the NMR from SBA if they, based on market research, demonstrate that there are not small businesses that manufacture or produce a class of IT hardware and software. For example, in 2020, SBA granted a class waiver of the NMR for commercially available off-the-shelf laptops and tablet computers under NAICS 334111, Electronic Computer Manufacturing (85 FR 13692; March 9, 2020). Procedures for requesting individual waivers are laid out in 13 CFR 121.1204(b). SBA has granted several individual waivers for the COTS software under NAICS 513210 and computer hardware and software under NAICS 541519.

D. Public Forums

As mandated by section 1344 of the Jobs Act, SBA is required to hold not less than two public forums during its quinquennial review of size standards. SBA held two virtual public forums on size standards to update the public on the status of the ongoing five-year reviews of size standards under the Jobs Act and to consider public feedback on changes contained in the Revised Methodology. The two virtual public forums were held on January 23, 2024, and on January 25, 2024. Over the course of the two days, of 44 total participants, SBA received testimony from one commenter, mostly relating to the SBA's approach to evaluating the size standard for the ERS exception under NAICS 562910, Remediation Services. The comment received during the virtual public forums is included in the count of comments above.

The comment expressed general support for the SBA's Revised Methodology and its data-driven approach to size standards. The commenter argued, unlike other “exceptions” that are NAICS subindustry categories, the ERS exception is a superindustry category, because it consists of activities from several different NAICS industries. The commenter expressed concern over SBA's approach to creating the ERS industry by trimming the largest environmental companies for which the ERS work is not a primary source of their total revenues. The commenter

argued that large competitors in the ERS industry have a serious advantage over smaller businesses in terms of winning and executing work, even where only a small portion of their total revenue comes from ERS work. Large firms can leverage their vast resources, extensive experiences and economies of scale that give them a tremendous competitive advantage over a small business making roughly similar revenue. Thus, SBA should not trim such companies, the commenter noted. If SBA believes that trimming is necessary, it should provide a list of companies that were trimmed so that the public can comment on its analysis, the commenter added. The commenter also urged SBA to let the data drive the results rather than policies. The commenter also submitted a more detailed comment to www.regulations.gov, which has been summarized above.

SBA response: SBA has responded to the ERS concern above.

E. Conclusion

As discussed above, SBA proposed two changes to the Methodology: (1) adoption of the disparity ratio approach to account for the small business participation in the Federal market; and (2) use of the FPDS-NG and SAM data to calculate the 20th percentile and 80th percentile values of industry factors to evaluate the size standards at the subindustry levels, usually known as "exceptions."

SBA received four comments supporting the adoption of the disparity ratio approach to measure small business participation in the Federal market. SBA received three comments addressing the second issue, with one supporting the SBA's proposal to use FPDS-NG and SAM data to derive the 20th percentile and 80th percentile values of industry factors to evaluate exception size standards and two opposing it. As stated elsewhere, the data from the Census Bureau's Economic Census tabulation are limited to the six-digit NAICS industry level and therefore do not provide information on economic characteristics of firms at the subindustry level. Thus, SBA uses the FPDS-NG and SAM data to derive the industry factors for exceptions. Therefore, to be consistent, SBA is adopting FPDS-NG and SAM data to obtain the 20th percentile and 80th percentile values of industry factors for evaluating size standards for the NAICS exceptions, instead of using the percentiles from the Economic Census. As such, SBA is adopting both proposed changes in the Revised Methodology.

Several commenters submitted comments pertaining to size standards for specific industries, including the ITVAR exception to NAICS 541519, the ERS exception to 562910, Software Publishers (NAICS 513210), and a few other industries. Comments pertaining to specific size standards are beyond the scope of the Methodology. Those commenters have been advised to submit their comments when SBA issues proposed rules as part of the third 5-year review of size standards under the Small Business Jobs Act of 2010.

Isabella Casillas Guzman,
Administrator.

[FR Doc. 2024-20228 Filed 9-11-24; 8:45 am]

BILLING CODE 8026-09-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2024-1556; Airspace
Docket No. 24-ASW-12]

RIN 2120-AA66

Establishment of Class E Airspace; Langtry, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Langtry, TX. The FAA is proposing this action to support new public instrument procedures.

DATES: Effective date 0901 UTC, December 26, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at www.regulations.gov using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

FAA Order JO 7400.11H, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at www.faa.gov/air_traffic/publications/. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783.

FOR FURTHER INFORMATION CONTACT: Raul Garza Jr., Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222-5874.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace extending upward from 700 feet above the surface at 4M Ranch Airfield, Langtry, TX, to support instrument flight rule operations at this airport.

History

The FAA published an NPRM for Docket No. FAA 2024-1556 in the **Federal Register** (89 FR 46339; May 29, 2024), proposing to establish the Class E airspace at Langtry, TX. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was received. The commenter asked if the surrounding private airfields will also be considered for Class E airspace. The FAA only considers airports for Class E airspace establishment to support instrument flight rule operations at an airport.

Incorporation by Reference

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023 and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11H lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by establishing Class E airspace upward from 700 feet above the surface within a 7.3-mile radius of 4M Ranch Airfield, Langtry, TX.

This action supports new instrument procedures.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, “Environmental Impacts: Policies and Procedures,” paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

- 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p.389.

§ 71.1 [Amended]

- 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H,

Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASW TX E5 Langtry, TX [Establish]

4M Ranch Airfield, TX
(Lat 30°01′16″ N, long 101°34′23″ W)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of the 4M Ranch Airfield.

* * * * *

Issued in Fort Worth, Texas, on September 4, 2024.

Steven Phillips,

*Acting Manager, Operations Support Group,
ATO Central Service Center.*

[FR Doc. 2024–20319 Filed 9–11–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2024–0756]

Safety Zones; Fireworks Displays in the Fifth Coast Guard District—Philadelphia, PA

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for the Mexican Independence Day fireworks display on the Delaware River on September 15, 2024, to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within the Fifth Coast Guard District identifies the regulated area for this event in Philadelphia, PA. During the enforcement periods, the operator of any vessel in the regulated area must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

DATES: The regulation at 33 CFR 165.506, for Philadelphia, PA, will be enforced for the location identified in entry 10 of table 1 to paragraph (h)(1) from 7:45 p.m. through 8:30 p.m. on September 15, 2024.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, you may call or email Petty Officer Jonathan Loughheed, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division,

telephone: 215–271–4814, email: SecDelBayWWM@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a safety zone in 33 CFR 165.506 Entry No. 10 for the Delaware River adjacent to Penn’s Landing regulated area from 7:45 p.m. to 8:30 p.m. on September 15, 2024. This action is necessary to ensure safety of life on the navigable waters of the United States immediately prior to, during, and immediately after fireworks displays. Our regulation for safety zones of fireworks displays within the Fifth Coast Guard District, table 1 to paragraph (h)(1) to 33 CFR 165.506, entry 10 specifies the location of the regulated area as all waters of the Delaware River adjacent to Penn’s Landing, Philadelphia, PA, within a 300-yard radius of the fireworks barge position. On September 15, 2024 the approximate position will be 39°56′53.8″ N, 75°08′17.4″ W. During the enforcement period, as reflected in § 165.506(d), vessels may not enter, remain in, or transit through the safety zone unless authorized by the Captain of the Port or designated Coast Guard patrol personnel on-scene.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners, marine information broadcasts, and Broadcast Notice to Mariners.

Dated: September 3, 2024.

Kate F. Higgins-Bloom,

Captain, U.S. Coast Guard, Captain of the Port, Sector Delaware Bay.

[FR Doc. 2024–20630 Filed 9–11–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0824]

RIN 1625–AA00

Safety Zone; Kentucky River, Frankfort, KY

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule and request for comments.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Kentucky River extending from mile marker (MM) 65.5 to MM 66 near Frankfort, KY. This safety zone is needed to protect life, vessels, and the marine environment

due to stability concerns of the Broadway Bridge near MM 65.5. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative.

DATES: This rule is effective without actual notice from September 12, 2024 through December 6, 2024. For the purposes of enforcement, actual notice will be used from September 7, 2024 until September 12, 2024. If the COTP determines that the safety zone is no longer needed, they may end enforcement earlier through local notice. Comments and related material must be received by the Coast Guard on or before October 15, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2024–0824 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Petty Officer Bryan Crane, Sector Ohio Valley Waterways Division, U.S. Coast Guard; telephone 502–779–5400, email SECOHV-WWM@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this interim temporary rule under the authority in 5 U.S.C. 553(b)(B). This statutory provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” The Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest. On August 5, 2024, a 50-foot section of concrete walkway from the Broadway Bridge near MM 65.5 fell into the river, and continues to deteriorate, causing a hazard to navigation. The safety zone must be established quickly to protect people and vessels from the concerns of further falling debris. Insufficient time exists to provide a

reasonable comment period and then consider those comments before issuing the rule. This safety zone may include closures or navigation restrictions and requirements that are vital to maintaining safe navigation on the Kentucky River during response efforts and the hazards of falling debris. Therefore, delaying the effective date for this emergency safety zone to complete the NPRM process would also be contrary to the public interest as it would delay the safety measures vital to safe navigation.

Also, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to protect personnel, vessels, and the marine environment from potential hazards created by the unstable bridge and falling debris.

Although this regulation is published as an interim rule without prior notice, public comment is nevertheless desirable to ensure that the regulation is both workable and reasonable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under **ADDRESSES** in this preamble. Commenters should include their names and addresses, identify the docket number for the regulation, and give reasons for their comments. If the Coast Guard determines that changes to the temporary interim rule are necessary, we will publish a temporary final rule or other appropriate document.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this temporary interim rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with falling debris from the Broadway Bridge, as is currently occurring, along with repairs and potential demolition activities beginning immediately, will be a safety concern for anyone within MM 65.5 to MM 66 on the Kentucky River. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the threat of continued falling debris exists and repairs or demolition activities exist.

IV. Discussion of the Rule

This temporary interim rule establishes a safety zone for all navigable waters on the Kentucky River from Mile Marker (MM) 65.5 through MM 66, extending the entire width of

the Kentucky River. Transit into and through this area is prohibited for all traffic beginning September 7, 2024 and will continue through December 6, 2024. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the threat of continued falling debris exists and repairs or demolition activities exist. The COTP will terminate the enforcement of this safety zone before December 6, 2024 if the bridge has been demolished or there is no longer a hazard. Entry into this safety zone is prohibited unless specifically authorized by the COTP or their designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Ohio Valley.

The Coast Guard will notify the public and local mariners of this safety zone through appropriate means, which may include, but are not limited to, publication in the **Federal Register**, the Local Notice to Mariners, and Broadcast Notice to Mariners via marine Channel 16 (VHF–FM) in advance of any enforcement.

Requests for entry will be considered and reviewed on a case-by-case basis. The COTP may be contacted by telephone at 502–779–5422 or can be reached by VHF–FM channel 16. Persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and

duration of the safety zone. COTP will end the safety zone as soon as the hazard has been removed. This safety zone will restrict vessel traffic from entering or transiting within a 0.5 mile area of navigable waterways on the Kentucky River between MMs 65.5 and 66. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about enforcement of the zone, and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on a substantial number of small entities.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves This rule involves a safety zone lasting 24 hours a day for 90 days that will prohibit entry within a half mile stretch of the Kentucky River. It is categorically excluded from further review under paragraph L60a of Appendix A, Table 1

of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

VI. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG–2024–0824 in the search box and click “Search.” Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Viewing material in the docket. To view documents mentioned in this rule as being available in the docket, find the docket as described in the previous paragraph, and then select “Supporting & Related Material” in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of this rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you

have provided. For more information about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records Notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

- 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

- 2. Add § 165.T08–0824 to read as follows:

§ 165.T08–0824 Safety Zone; Kentucky River, Frankfort, KY.

(a) *Location.* The following area is a safety zone: All navigable waters of the Kentucky River from Mile Marker (MM) 65.5 to MM 66, extending the entire width of the river.

(b) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Ohio Valley.

(2) Vessels requiring entry into this safety zone must request permission from the COTP or a designated representative. To seek entry into the safety zone, contact the COTP or the COTP's representative by telephone at 502–779–5422 or on VHF–FM channel 16.

(3) Persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

(c) *Enforcement period.* This section will be enforced 24 hours a day from September 7, 2024 and will continue through December 6, 2024 or until the bridge is demolished or the hazard has been mitigated, whichever occurs first.

Dated: September 6, 2024.

Heather. R. Mattern,

Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.

[FR Doc. 2024–20696 Filed 9–11–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2024–0776]

Safety Zones; Fireworks Displays in the Fifth Coast Guard District—Philadelphia, PA

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for the Cooper Foundation Gala fireworks display on the Delaware River on September 27, 2024, to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within the Fifth Coast Guard District identifies the regulated area for this event in Philadelphia, PA. During the enforcement period, the operator of any vessel in the regulated area must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

DATES: The regulations in 33 CFR 165.506, for Philadelphia, PA, will be enforced for the location identified in entry 10 of table 1 to paragraph (h)(1) from 8:30 p.m. through 9 p.m. on September 27, 2024.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, you may call or email Petty Officer Jonathan Loughheed, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division, telephone: 215–271–4814, email: SecDelBayWWM@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a safety zone for the Delaware River, Philadelphia, PA safety zone from 8:30 p.m. to 9 p.m. on September 27, 2024. This action is necessary to ensure safety of life on the navigable waters of the United States immediately prior to, during, and immediately after fireworks displays. Our regulation for safety zones of fireworks displays within the Fifth Coast Guard District, table 1 to paragraph (h)(1) to 33 CFR 165.506, entry 10 specifies the location of the regulated area as all waters of the

Delaware River adjacent to Penn's Landing, Philadelphia, PA, within a 500-foot radius of the fireworks barge position. On September 27, 2024, the approximate position will be 39°56'53.65" N, 75°08'03.43" W. During the enforcement period, as reflected in § 165.506(d), vessels may not enter, remain in, or transit through the safety zone unless authorized by the Captain of the Port or designated Coast Guard patrol personnel on-scene.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners, marine information broadcasts, and Broadcast Notice to Mariners.

Dated: Sept. 3, 2024.

Kate F. Higgins-Bloom,

Captain, U.S. Coast Guard, Captain of the Port, Sector Delaware Bay.

[FR Doc. 2024–20629 Filed 9–11–24; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2022–0730; FRL–9327.1–01–OAR]

RIN 2060–AW29

New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correcting amendments.

SUMMARY: The Environmental Protection Agency (EPA) is making two corrections to the final action that appeared in the **Federal Register** on May 16, 2024. The first correction allows the Office of Federal Register editors to codify and add paragraphs inadvertently removed from that final action in a recent correction published in the **Federal Register** on July 5, 2024. This correction does not alter or change the content or text of any regulatory provision in that final action. The second correction moves the placement of 3 explanatory notes in the regulatory text; this correction does not change the content of the explanatory notes.

DATES: Effective September 12, 2024.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Bouchard, Sector Policies and

Programs Division, Mail Drop: E143-01, Environmental Protection Agency, 109 T.W. Alexander Drive, P.O. Box 12055, RTP, North Carolina 27711; telephone number: (919) 541-4036; and email address: *bouchard.andrew@epa.gov*.

SUPPLEMENTARY INFORMATION: This is the second set of corrections made to the published final action 89 FR 42932 (May 16, 2024) (“Final Action”). The first set of corrections was published in the **Federal Register** 89 FR 55522 (July 5, 2024). The EPA is making 2 corrections in this action. First, the EPA is correcting 40 CFR 60.482-1a, which was inadvertently changed in the July 5, 2024, notice. In that first correction notice, the EPA revised instruction 12 to facilitate publication of 40 CFR 60.482-1a, as amended in the May 16, 2024, Final Action, in the Code of Federal Regulation. However, by stating that it was “revising paragraph (e)” instead of “revising paragraph (e) introductory text,” the revised instruction 12 erroneously removed paragraphs (e)(1) through (3) of 40 CFR 60.482-1a. We are correcting this error and reinstating 40 CFR 60.482-1a(e)(1) through (3). Second, the EPA is making a correction to the Final Action by moving the placement of the “Note” within 40 CFR 60.610, 60.660, and 60.700 to the end of each regulatory section in order to clarify that the Note applies to the entire section. These regulatory notes, which were previously promulgated, appeared at the end of the regulatory sections and thereby applied to the entire regulatory

sections. However, in adding a new paragraph (e) in each of these 3 sections, the 2024 Final Action inadvertently placed the new paragraph (e) after the explanatory note in each of these sections. We are correcting this error by moving the explanatory note back to the end of each of these 3 sections, as they appeared prior to the 2024 Final Action. This correction does not change the content or text of the of the explanatory notes.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Joseph Goffman,
Assistant Administrator.

For the reasons stated in the preamble, the EPA amends title 40, chapter I, part 60 of the Code of Federal Regulations by making the following correcting amendments:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

- 1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401 *et. seq.*

- 2. Amend § 60.482-1a by adding paragraphs (e)(1) through (3) to read as follows:

§ 60.482-1a Standards: General

* * * * *

(e) * * *

(1) The equipment is in VOC service only during startup and shutdown, excluding startup and shutdown between batches of the same campaign for a batch process.

(2) The equipment is in VOC service only during process malfunctions or other emergencies.

(3) The equipment is backup equipment that is in VOC service only when the primary equipment is out of service.

* * * * *

§ 60.610 [Amended]

- 3. Amend § 60.610 by redesignating the note following paragraph (d)(4) as “Note 1 to § 60.610” and moving it to the end of the section.

§ 60.660 [Amended]

- 4. Amend § 60.660 by redesignating the note following paragraph (d)(4) as “Note 1 to § 60.660” and moving it to the end of the section.

§ 60.700 [Amended]

- 5. Amend § 60.700 by redesignating the note following paragraph (d)(4) as “Note 1 to § 60.700” and moving it to the end of the section.

[FR Doc. 2024-20646 Filed 9-11-24; 8:45 am]

BILLING CODE 6560-50-P

Proposed Rules

Federal Register

Vol. 89, No. 177

Thursday, September 12, 2024

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

6 CFR Part 37

[Docket No. TSA–2023–0003]

RIN 1652–AA77

Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes; Phased Approach for Card-Based Enforcement

AGENCY: Transportation Security Administration (TSA), Department of Homeland Security (DHS).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposed rule would ensure that Federal agencies have appropriate flexibility to implement the card-based enforcement provisions of the REAL ID regulations after the May 7, 2025, enforcement deadline by explicitly permitting agencies to implement card-based enforcement in phases. This rulemaking proposes that agencies may implement the card-based enforcement provisions through a phased enforcement plan if they determine it is appropriate upon consideration of relevant factors including security, operational feasibility, and public impact. The proposed rule would also require agencies to coordinate their plans with DHS, make the plans publicly available, and achieve full enforcement by May 5, 2027.

DATES: Interested persons are invited to submit comments on or before October 15, 2024.

ADDRESSES:

Comments: You may submit comments, identified by the TSA docket number to this rulemaking, to the Federal Docket Management System (FDMS), a government-wide, electronic docket management system. To avoid duplication, please use only one of the following methods:

- *Electronic Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the online instructions for submitting comments.
 - *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. The Department of Transportation (DOT), which maintains and processes TSA's official regulatory dockets, will scan the submission and post it to FDMS.
 - *Fax:* (202) 493–2251.
- See the **SUPPLEMENTARY INFORMATION** section for format and other information about comment submissions.

FOR FURTHER INFORMATION CONTACT:

George Petersen, Senior Program Manager, REAL ID Program, Enrollment Services and Vetting Programs, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598; telephone: (571) 227–2215; email: george.petersen@tsa.dhs.gov.

Please do not submit comments to these addresses.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

DHS invites interested persons to participate in this NPRM by submitting written comments, including relevant data. Comments that will provide the most assistance to DHS will reference a specific portion of this proposed rule, explain the reason for any suggestion or recommended change, and include data, information, or authority that supports such suggestion or recommended change.

Submitting Comments

DHS will review all comments received on this proposed rule, but may choose not to post off-topic, inappropriate, or duplicative comments. To submit a comment:

- Go to <https://www.regulations.gov> and follow the instructions for submitting comments for docket number TSA–2023–0003. If your material cannot be submitted using <https://www.regulations.gov>, contact the persons listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternative instructions.
- All submissions received must include the agency name and docket number for this rulemaking.

- Comments posted to <https://www.regulations.gov> are posted without change and will include any personal information provided. For more information about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Abbreviations and Terms Used in This Document

DHS—U.S. Department of Homeland Security
DL/IDs—Driver's Licenses and Identification Cards
NPRM—Notice of Proposed Rulemaking
TSA—Transportation Security Administration

Table of Contents

- I. Executive Summary
 - A. Purpose of the Regulatory Action
 - B. Overview of the Proposed Rule
- II. Background
 - A. The REAL ID Act and Implementing Regulations
 - B. Progress Towards Full Implementation
 - C. Factors Impacting REAL ID Adoption Rates
- III. Summary of the Proposed Rule
 - A. Phased Enforcement Plans
 - B. Consideration of Further Extending the Card-Based Enforcement Deadline
 - C. Broad DHS Approach
 - D. Phased Enforcement Guidance
- IV. Regulatory Analyses
 - A. Paperwork Reduction Act
 - B. Economic Impact Analyses
 - C. Executive Order 13132 (Federalism)
 - D. Executive Order 13175 (Tribal Consultation)
 - E. Environmental Analysis
 - F. Energy Impact Analysis

I. Executive Summary

A. Purpose of the Regulatory Action

Secure driver's licenses and identification documents are a vital component of our national security framework. The REAL ID Act,¹ passed by Congress in 2005, enacted the 9/11 Commission's recommendation that the Federal Government “set standards for the issuance of . . . sources of identification, such as drivers licenses.”² The requirements of the

¹ Public Law 109–13, 119 Stat. 231, 302 (May 11, 2005) (codified at 49 U.S.C. 30301 note).

² The 9/11 Commission Report, Final Report of the National Commission on Terrorist Attacks upon the United States (July 2004) (9/11 Commission Report), p. 390, available at <https://www.govinfo.gov/app/details/GPO-911REPORT> (last visited April 16, 2024).

REAL ID Act and its implementing regulations set minimum security standards for the issuance of DL/IDs, which are designed to improve the reliability of those State-issued documents. These requirements allow Federal agencies that accept State-issued DL/IDs for official purposes to determine with greater accuracy whether individuals presenting a DL/ID are who they say they are.

Pursuant to the current REAL ID regulations, after REAL ID card-based enforcement begins on May 7, 2025, Federal agencies may only accept State-issued driver's licenses and identification cards (DL/IDs) for official purposes, as defined in the REAL ID Act and regulation, if that DL/ID is issued in accordance with REAL ID requirements by a REAL ID-compliant State.³ In order to fully realize the enhanced security provided by the REAL ID requirements, DHS is committed to beginning card-based enforcement on May 7, 2025. However, as of January 2024, only approximately 56 percent of DL/IDs in circulation nationally are REAL ID-compliant.⁴ In 34 States,⁵ less than 60 percent of DL/IDs in circulation are REAL ID-compliant, and in 22 States less than 40 percent are REAL ID-compliant.⁶ Further, because of the history of extensions related to REAL ID enforcement, DHS believes that the public may continue to expect that additional extensions are likely and not feel urgency to obtain a REAL ID. DHS believes this pattern is likely to delay increased adoption in many States despite best efforts to inform the public, potentially leading to last-minute surges in demand for REAL IDs leading up to the deadline.

DHS believes this surge could overwhelm States and result in backlogs and delays in REAL ID issuance. In light of this, DHS anticipates that a significant number of individuals seeking to use their DL/ID for a REAL ID official purposes on and after May 7, 2025, may not have a compliant DL/ID. DHS recognizes that this could result in a situation where individuals are unable to present a compliant DL/ID to access a Federal facility or board a federally

regulated commercial aircraft on a large scale. For some agencies, this scenario may raise serious concerns related to security, agency operations, and potential impact to the public. While these concerns are especially acute in an airport security environment, DHS anticipates that other Federal agencies that operate facilities visited frequently by the general public⁷ may also face similar concerns. This proposed rule recognizes these concerns and would provide flexibility by permitting agencies to, for a period of up to 2 years, implement REAL ID card-based enforcement using a phased approach tailored to their specific operations.

DHS believes that this approach will be more effective at achieving full enforcement than further extensions of the enforcement deadline. By demonstrating that the government is preparing for and planning to begin enforcement, the proposed rule reiterates for the public that REAL ID card-based enforcement will start on May 7, 2025, and provides an opportunity for States and the public to prepare for full enforcement. After May 7, 2025, when agencies begin full enforcement or implement a phased enforcement plan, as appropriate, the public will be further incentivized to obtain a REAL ID as they anticipate consequences for presenting a non-compliant DL/ID. At the same time, the proposed rule is intended to allow a transition to full enforcement that mitigates the potential negative impact to agencies and the public if full enforcement began immediately on the card-based enforcement date. Given the current percentage of REAL ID-compliant DL/IDs that have been issued (as a percentage of all DL/IDs), the challenges many States are experiencing as they seek to increase adoption of compliant DL/ID, and the resulting concerns of Federal agencies, the proposed rule would provide important flexibility to agencies to ensure a smooth transition to card-based enforcement. The proposed rule balances the increased security benefits of beginning card-based enforcement with an understanding of the significant risks that some Federal agencies may

experience as a result of the transition to full enforcement.⁸

B. Overview of the Proposed Rule

Under current regulations, Federal agencies may not accept non-compliant DL/IDs for REAL ID official purposes when card-based enforcement is required on May 7, 2025. While Federal agencies would still be required to commence REAL ID card-based enforcement on May 7, 2025, this proposed rule would provide agencies, for a period of up to 2 years, flexibility to determine that a phased approach to card-based enforcement is appropriate after considering relevant factors including security, operational feasibility, and impact to the public offered by their agency. The proposed rule seeks to provide an enforcement approach that allows agencies to maximize security gains in contexts where a swift transition to full enforcement poses little risk, while minimizing the risks in contexts where large numbers of individuals seeking to use noncompliant DL/IDs raises serious concerns.

To ensure that agencies' phased enforcement plans consistently and appropriately advance the objectives of the REAL ID regulations, this proposed rule would require agencies to coordinate their phased enforcement plans with DHS and begin full enforcement no later than May 5, 2027. To ensure transparency and public visibility, the proposed rule would require agencies that use a phased enforcement plan to make their plan publicly available on their web page and require DHS to make publicly available a list of agencies that have coordinated phased enforcement plans with DHS. Finally, the proposed rule's preamble provides guidance to Federal agencies on types of phased enforcement plans that agencies may consider.

II. Background

A. The REAL ID Act and Implementing Regulations

All but one of the September 11, 2001, terrorist hijackers acquired some form of identification document, some by fraud, and used these forms of identification to assist them in boarding commercial flights, renting cars, and other necessary activities leading up to the attacks.⁹ Consequently, the 9/11 Commission recommended that the Federal Government set standards for the issuance of more secure sources of

³ 6 CFR 37.5(b).

⁴ Based on REAL ID issuance data, as of January 2024, voluntarily submitted monthly to DHS by the compliant states.

⁵ DHS uses "states" and "licensing jurisdictions" interchangeably throughout this document to refer collectively to the 56 different U.S. jurisdictions that issue DL/IDs that are governed by the REAL ID regulations. These jurisdictions are the 50 states, the District of Columbia, and the territories of Puerto Rico, U.S. Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa. 6 CFR 37.3.

⁶ See *supra* note 3.

⁷ The requirements of the REAL ID Act and regulation apply only in contexts where individuals are required to present an identification document to Federal agencies for official purposes. See REAL ID Act of 2005 Implementation: An Interagency Security Committee Guide (2019), p. 4–7, available at <https://www.cisa.gov/resources-tools/resources/isc-guide-real-id-act-2005-implementation> (last visited April 19, 2024).

⁸ "Full enforcement" or "full card-based enforcement" means that an agency only accepts REAL ID-compliant DL/IDs for official purposes.

⁹ *Id.*

identification for use in, among other activities, boarding aircraft and accessing vulnerable facilities.¹⁰

The REAL ID Act of 2005 (the REAL ID Act) addressed the 9/11 Commission's recommendation that the Federal Government "set standards for the issuance of . . . sources of identification, such as drivers licenses."¹¹ The REAL ID Act sets minimum security requirements for the issuance and production of DL/IDs issued by the States, territories, and the District of Columbia in order for Federal agencies to accept these documents for official purposes.¹² Official purposes include: (1) accessing Federal facilities, (2) boarding federally regulated commercial aircraft, (3) entering nuclear power plants, and (4) any other purposes that the Secretary of Homeland Security shall determine.¹³

On January 29, 2008, DHS published a final rule implementing the REAL ID Act's requirements.¹⁴ The regulations include both a deadline for State compliance with the REAL ID requirements and a separate deadline after which individuals must present a REAL ID-compliant license or identification card in order for Federal agencies to accept the document for official purposes.¹⁵ DHS refers to these deadlines as "state-based" and "card-based" enforcement, respectively. Under existing regulations, card-based enforcement is scheduled to begin on May 7, 2025.¹⁶ On this date, Federal agencies may not accept for official purposes a license or identification card issued by a State unless that license or card was issued in accordance with the REAL ID standards by a REAL ID-compliant jurisdiction.

In addition to compliant licenses and identification cards, States may issue noncompliant licenses and identification cards, which will not be acceptable by Federal agencies for official purposes after the card-based deadline, to individuals who are unable or unwilling to present the documents and information necessary to obtain a REAL ID-compliant license or card. These noncompliant licenses and cards must (1) clearly state that the card is not

acceptable for official purposes, and (2) have a unique design or color indicator that clearly distinguishes them from compliant licenses and identification cards.¹⁷ The REAL ID regulations authorize, but do not require, Federal agencies to accept these noncompliant cards until card-based enforcement begins.¹⁸

B. Progress Towards Full Implementation

Since its enactment in 2005, DHS has worked with the States to implement the requirements of the REAL ID Act. DHS has provided funding, technical assistance, outreach, and engagement. DHS has awarded over \$263 million in grant funding to assist in enhancements to drivers' license security programs.¹⁹ These efforts have yielded significant progress towards full REAL ID implementation. All 56 licensing jurisdictions subject to REAL ID have achieved REAL ID certification. DHS also completed one phase of a nationwide REAL ID advertising campaign ("Be Your REAL ID Self") and produced an advertising toolkit available for free to all DHS stakeholders. DHS continues to work with stakeholders to reach full implementation of the REAL ID Act and regulations.

Considering the impact of the COVID-19 pandemic on State and local government operations and the desire to reduce further spread by encouraging continued social distancing, DHS extended the card-based enforcement deadline three times during the pandemic. In April 2020, DHS issued a final rule extending the REAL ID card-based enforcement date for 1 year until October 1, 2021;²⁰ in May 2021, DHS further extended the card-based enforcement date until May 3, 2023, through the issuance of an interim final rule (IFR) requesting comments;²¹ and,

on March 9, 2023, DHS issued a final rule finalizing the May 2021 IFR and extending the card-based enforcement deadline to May 7, 2025.²²

C. Factors Impacting REAL ID Adoption Rates

The U.S. has 56 different jurisdictions that issue DL/IDs and are subject to REAL ID requirements, including the 50 States, the District of Columbia, and the territories of Puerto Rico, U.S. Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa. All but five States offer their residents the option to obtain a noncompliant DL/ID for various reasons including State privacy requirements, implementation costs to the State and residents, and to provide the opportunity to obtain a DL/ID to residents who may not be able to obtain a REAL ID-compliant DL/ID.²³

Based on REAL ID data compiled by compliant licensing jurisdictions, as of January 2024, DHS estimates that compliant States, territories, and the District of Columbia have issued approximately 162 million REAL ID-compliant DL/ID, which represent approximately 56 percent of the population possessing a State-issued DL/ID.²⁴ Data from the States also indicates that the States have approximately 110 million noncompliant marked DL/IDs and approximately 14 million legacy licenses without any markings (issued before a State's REAL ID compliance determination) still in circulation.

There are a number of factors that impact the REAL ID adoption rate in any given State resulting in significant variability in adoption rates from State to State. These factors include: (1) the date a State became REAL ID certified and began issuing REAL ID-compliant DL/IDs, (2) whether the State offers a noncompliant DL/ID, (3) the number of legacy cards (DL/IDs issued before a State became REAL ID certified) still in circulation, (4) the validity period of DL/IDs issued by a State, (5) the disruption to Department of Motor Vehicles (DMV) operations and ability to provide services during the COVID-19 pandemic, and (6) State resource constraints, including budgetary and staffing constraints.

²² 88 FR 14473.

²³ The five states that only offer REAL ID-compliant DL/IDs are Florida, Georgia, Mississippi, Texas, and Wyoming.

²⁴ DHS began to collect data voluntarily submitted by licensing jurisdictions including the total number of DL/IDs, number of REAL IDs, number of non-compliant cards, and number of "legacy" cards in July 2019. Beginning in October 2019, DHS began to receive the data on a monthly basis.

¹⁷ 6 CFR 37.71; REAL ID Act sec. 202(d)(11).

¹⁸ See 86 FR 23237 (May 3, 2021) (codified at 6 CFR 37.5(c)) (clarifying that the deadline by which Federal agencies may no longer accept noncompliant driver's licenses and identification cards for official purposes applies to all noncompliant cards, including state-issued driver's licenses and identification cards marked to indicate that they may not be used for official Federal purposes), and 88 FR 14473 (extending the deadline by which Federal agencies may continue to accept noncompliant cards for official purposes until May 7, 2025).

¹⁹ Secure Identification State Progress Report-Fiscal Year 2012 Report to Congress.

²⁰ 85 FR 23205 (Apr. 27, 2020).

²¹ 86 FR 23237 (May 3, 2021). DHS received one comment in response to the IFR. See, <https://www.regulations.gov/comment/DHS-2021-0019-0002>. The commenter supported the extension until May 3, 2023, stating that "state agencies have either closed offices, shortened operating hours, or greatly limited occupancy in offices." *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Public Law 109-13, Div. B, title II, sections 201 to 207, May 11, 2005, as amended (codified at 49 U.S.C. 30301 note).

¹³ *Id.* at section 201.

¹⁴ See 73 FR 5272 (Jan. 29, 2008) (codified as amended at 6 CFR part 37).

¹⁵ 6 CFR 37.51(a) and 37.5.

¹⁶ 6 CFR 37.5(b); 88 FR 14473 (Mar. 9, 2023) (extending the REAL ID card-based enforcement deadline from May 3, 2023, to May 7, 2025).

Generally, States that have become REAL ID certified more recently are more likely to have a lower REAL ID adoption rate than States that were certified earlier, as their populations have had less time to obtain a REAL ID-compliant DL/ID. While some licensing jurisdictions have been issuing REAL ID-compliant cards for many years and have high adoption rates, nearly half (27) of the jurisdictions have only been certified since 2018. States that issue cards with longer validity periods generally have lower adoption rates than States that issue cards with shorter validity periods, as it takes longer for legacy cards to cycle through their validity period. REAL ID adoption rates are also influenced by whether a State offers its population the option to receive a noncompliant card. There are many reasons States choose to offer residents the option to obtain a noncompliant card when an individual's DL/ID is due for renewal, including the ability to meet eligibility requirements for a compliant DL/ID, potential greater monetary and time costs associated with obtaining a compliant DL/ID, and the convenience of renewing a legacy or existing noncompliant DL/ID online instead of travelling in person to the DMV (this became particularly relevant during the extended COVID-19 pandemic). In States that offer noncompliant cards, a substantial number of individuals choose to obtain a noncompliant card, rather than a compliant DL/ID, when they seek to renew an existing legacy or noncompliant DL/ID. DHS understands that individuals may choose to obtain a noncompliant card for a number of reasons including lower monetary costs, reduced time burden of collecting necessary documents, and avoiding in-person visits to physical DMV locations.

As a result of the COVID-19 pandemic, most State licensing agencies were forced to close branches or operate at a reduced capacity for extended periods of time, limiting the ability of their residents to obtain REAL ID-compliant DL/IDs. The impact of pandemic-related mitigation measures on REAL ID adoption was accentuated by two additional factors. First, 27 jurisdictions were certified between 2018 and 2022, meaning they had very little or no time to issue REAL ID-compliant DL/IDs prior to the mitigation measures implemented during the pandemic. As a result, these States had only issued a relatively low number of REAL ID-compliant DL/IDs when adoption rates started falling during, and continuing after, the pandemic. The combination of low numbers of

compliant DL/IDs issued pre-pandemic and the decreased rate of adoption during the pandemic suggests that the current number of compliant DL/IDs issued in these States is unlikely to be significantly higher than the pre-pandemic number. Second, REAL ID-compliant DL/IDs cannot be issued without the physical presence of the applicant, but during the pandemic many States extended license expiration dates and offered individuals the ability to obtain noncompliant DL/IDs without an in-person visit to the DMV (through an online or mail process, for example). To avoid visiting the DMV for many individuals who might have otherwise obtained a REAL ID likely chose to obtain a noncompliant card instead.

DHS observed widespread decreases in REAL ID adoption rates coupled with significant increases in noncompliant card issuance rates during, and immediately after, the pandemic. This trend resulted in reduced adoption rates. Prior to the pandemic, the national REAL ID adoption rate was approximately 2.5 percent per month, however, this rate dropped to less than 0.5 percent in April and May of 2020. As of January 2024, the national adoption rate has not reached its pre-pandemic level and continues to stand at approximately 0.56 percent per month. As detailed in the regulatory analyses (section IV(b)(2)(e) *Adoption of REAL ID-Compliant DL/IDs*), DHS estimates that only about 61.2 percent of DL/IDs in circulation would be REAL ID-compliant by the card-based enforcement deadline of May 7, 2025.²⁵

The significant increase in the issuance of noncompliant cards to individuals renewing existing noncompliant and legacy DL/IDs will also likely continue to depress adoption rates for several years. All States provide their residents with the opportunity to obtain a REAL ID-compliant DL/ID when their current DL/ID comes up for renewal or if they are seeking their first driver's license in the State. Depending on the State, DL/IDs may be valid anywhere from 3 to 8 years. Because REAL ID adoption has been strongly tied to the renewal cycle and period of validity of existing DL/IDs, DHS expected adoption rates to rise as residents in States with long validity periods needed to renew their DL/IDs. However, the significant increase in

issuance of noncompliant DL/IDs during the pandemic in States where this option was offered as a less burdensome alternative for individuals to renew their DL/IDs disrupted this expected effect, as a substantial number of individuals chose to obtain a noncompliant DL/ID rather than a compliant DL/ID. The impact of the pandemic is then two-fold; it not only drove down adoption rates by limiting opportunities for individuals to obtain a compliant DL/ID, but also delayed the strongest catalyst for REAL ID adoption, the renewal of a legacy DL/ID. As a result, many individuals have been issued noncompliant DL/IDs with full validity periods, and thus would not be incentivized to obtain a REAL ID based upon renewal until their noncompliant DL/ID expires, which depending on the State validity period could be years away.

III. Summary of Proposed Rule

A. Phased Enforcement Plans

DHS believes that beginning card-based enforcement on May 7, 2025, is the most effective path to achieve full implementation of the REAL ID Act and regulations. The requirements of the REAL ID Act and regulations provide significant security benefits by improving the accuracy of identity verification processes.²⁶ Beginning card-based enforcement will accelerate the timeline for full realization of these increased security standards. The most recent card-based enforcement extension until May 7, 2025, was intended to provide sufficient time for individuals to obtain a REAL ID and for DMVs across the country to fully accommodate the demand for REAL ID-compliant DL/IDs. This proposed rule recognizes the importance of retaining the May 7, 2025, deadline to begin enforcement while recognizing that for some agencies an immediate transition to full enforcement may not be appropriate in light of relevant factors.

Today, the REAL ID adoption rate continues to remain well below the pre-pandemic rate. DHS recognizes that without a significant increase in the adoption rate leading up to the May 7, 2025, deadline millions of noncompliant cards will still be in circulation on that date. Even assuming a substantial increase in the adoption rate, it is difficult to predict the number of people who will seek to use non-

²⁵ Over the last twelve months, between January 2023 and January 2024, the national compounded monthly growth rate for the adoption of REAL IDs was 0.56 percent. DHS applied the 0.56 compounded growth rate over the next 16 months to forecast the percentage of REAL IDs in circulation by May 2025, relative to all DL/IDs in circulation.

²⁶ See 73 FR 5325–5326, and accompanying Regulatory Evaluation, Department of Homeland Security, January 17, 2008, Regulatory Evaluation, Docket Number DHS–2006–0030; 9 H.R. Rep. No. 109–72, 176–185 (2005) available at <https://www.congress.gov/109/crpt/hrpt72/CRPT-109hrpt72.pdf> (last visited June 17, 2024).

REAL ID-compliant IDs for Federal official purposes when enforcement begins on May 7, 2025. The population-wide adoption rate will likely differ from the adoption rate of specific populations who will need to present a REAL ID for official purposes including boarding federally-regulated commercial aircraft or entering a Federal facility. The adoption rate is also likely to differ across geographic areas with certain regions having relatively higher or lower concentrations of individuals without a REAL ID-compliant DL/ID.

DHS also acknowledges the possible risks to Federal agencies and public impact should a significant number of individuals seek to use non-REAL ID-compliant DL/IDs for REAL ID official purposes when enforcement begins. In some cases, this may impact how agencies provide certain services or conduct business with the public. If many individuals seek to use noncompliant DL/IDs at the same location, this could result in significant backlogs at access points to Federal facilities and TSA security checkpoints with the potential to result in significant negative downstream outcomes and poor customer experience. In TSA's example, if a large number of individuals arrived at an airport security checkpoint with noncompliant DL/IDs,²⁷ they would not be able use that DL/ID to proceed through screening, potentially resulting in missed flights. Additionally, long lines, confusion, and frustrated travelers at the checkpoint may significantly increase security risks both to passengers and TSA personnel by drawing the resources and attention of TSA personnel away from other passengers, including those known to pose an elevated risk. Although DHS is most engaged with the REAL ID official purpose of boarding federally-regulated commercial aircraft and TSA's operations, other Federal agencies may also experience an impact if they begin full enforcement May 7, 2025.

Given that approximately 56 percent of DL/IDs in circulation are REAL ID-compliant as of January 2024 and the low current adoption rates, there is a real possibility of disruptions like those described above that could occur if all agencies begin full enforcement on May 7, 2025. Using the compounded monthly growth rate for the last 12 months (0.56 percent), DHS estimates that 61.2 percent of REAL IDs, relative

to all DL/IDs in circulation, would be REAL ID-compliant.²⁸ Additionally, even if population-wide adoption rates are significantly higher than they are currently, these outcomes may nonetheless unfold if adoption rates remain low in specific States or amongst specific groups of individuals. Operational disruptions could still occur at locations in areas that have a high concentration of individuals without REAL IDs or during times of the year when large numbers of people who do not fly frequently, and who may not possess a REAL ID or other acceptable form of identification, seek to travel. DHS anticipates that other agencies that operate facilities nationwide or experience significant shifts in the number of individuals presenting identification for official purposes throughout the year may have similar concerns about the possibility of disruption based on the current trend in REAL ID adoption rates.

Recognizing these challenges and the uncertainty in the number of individuals Federal agencies may encounter who do not have a REAL ID or other acceptable identification on May 7, 2025, Federal agencies would benefit from added flexibility to implement enforcement of the REAL ID regulations in a manner that takes into account relevant factors including security, operational feasibility, and public impact. This proposed rule would permit agencies to make a determination that phased enforcement is appropriate, in consideration of these factors. The rulemaking would allow individual agencies to use their own expertise to structure enforcement plans in such a manner that will lead to successful enforcement of the REAL ID regulations while mitigating potential risks of immediately transitioning to full enforcement on May 7, 2025.

The ability to implement the card-based requirements under a phased approach after the deadline, for a two-year period, would allow Federal agencies to start card-based enforcement in a manner that reduces potential disruption to operations, reduces negative public impact, and supports a smooth transition to full card-based enforcement and the increased security benefits of REAL ID. For example, agencies would have the ability to begin enforcement by issuing warning notices or through progressive consequences if they determine that those measures would most effectively mitigate the risks of an immediate transition to full

enforcement. Without this flexibility, and especially if the adoption rate remains low leading up to May 7, 2025, DHS believes Federal agencies could face a serious risk of operational disruption, negative public impact, and potential security vulnerabilities.

Further, implementation of card-based enforcement through a phased approach is consistent with DHS' approach to State-based enforcement.²⁹ Beginning in January 2013, DHS incrementally enforced the State-based regulatory deadline prohibiting agencies from accepting licenses and cards issued by States that were not compliant with the REAL ID standards. The enforcement schedule began with DHS headquarters and other Federal facilities in 2014 with the final phase, boarding a Federally regulated commercial aircraft, going into effect in 2018.³⁰ This phased enforcement period allowed States to continue to build the infrastructure and institutional capacity to issue REAL ID-compliant DL/IDs before enforcement began in the most impactful context (boarding federally regulated commercial aircraft).

DHS' approach to State-based enforcement demonstrated that phased enforcement can be effective in achieving compliance with REAL ID requirements. This proposed rule would provide Federal agencies the flexibility to determine whether a phased plan to implement the REAL ID card-based enforcement requirements beginning on May 7, 2025, is appropriate for its particular circumstances. Such flexibility would allow agencies to begin card-based enforcement as part of measured, responsible, and achievable plan leading to full enforcement of the REAL ID regulations.

Additionally, permitting agencies to begin enforcement using a phased approach may facilitate increased adoption of REAL ID-compliant DL/IDs. It would allow agencies to reiterate that further extensions of the May 7, 2025, enforcement deadline are unlikely by demonstrating that the government is planning and preparing to begin enforcement. DHS anticipates that agencies announcing concrete plans for commencing enforcement on May 7, 2025, could likely incentivize individuals to obtain a REAL ID-

²⁷ Although a segment of the population may not possess a REAL ID, they may have other forms of identification acceptable for official purposes (e.g., a U.S. passport, U.S. passport card, or military identification). TSA's acceptable ID list is available at <https://www.tsa.gov/travel/security-screening/identification>.

²⁸ DHS calculates the compounded monthly growth rate for the last 12 months in section IV(b)(2)(e) *Adoption of REAL ID-Compliant DL/IDs*.

²⁹ DHS Releases Phased Enforcement Schedule for REAL ID (Dec. 20, 2013), available at <https://www.dhs.gov/news/2013/12/20/dhs-releases-phased-enforcement-schedule-real-id>.

³⁰ TSA to Notify Travelers of Upcoming 2018 REAL ID Airport Enforcement—Signs at Airports to Inform Travelers of ID Requirements at Security Checkpoints (Dec. 12, 2016), available at <https://www.dhs.gov/news/2016/12/12/tsa-notify-travelers-upcoming-2018-real-id-airport-enforcement>.

compliant DL/ID and result in increased demand at State DMVs. Increased demand leading up to and after the deadline may outpace the ability of licensing jurisdictions to meet that demand. The TSA REAL ID Program has been working with States in preparation for the beginning of REAL ID enforcement. During this engagement, some States have expressed concern with ability to meet potential demand.³¹ Using a phased approach may also allow agencies to provide licensing jurisdictions the opportunity to make adjustments to alleviate potential backlogs.

This proposed rule also recognizes that individual Federal agencies are in the best position to determine how to ensure successful implementation of the REAL ID requirements within their operational context. In making a determination of whether phased enforcement instead of an immediate transition to full enforcement is appropriate, agencies must, at a minimum, consider three relevant factors that will inform their decision. DHS identified the three factors it believes are most likely to impact efficient and successful implementation of card-based enforcement: security, operational feasibility, and public impact.

In considering security, agencies should weigh both the security benefits that card-based enforcement provides as well as potential security vulnerabilities that an immediate transition to full enforcement might create. For many agencies, DHS anticipates that the increased security provided by card-based enforcement weigh in favor of an immediate transition to full enforcement. However, in certain contexts, an immediate transition to full enforcement may result in security vulnerabilities. For example, no longer accepting noncompliant DL/IDs may lead to long lines and crowding at access points to Federal facilities or airport security checkpoints³² creating soft targets for terrorists or violent extremists.³³ Additionally, an

atmosphere of confusion and frustrated individuals who are denied access risks distracting security personnel from correctly executing their procedures. Agencies should take a holistic approach in evaluating the security implications of transitioning to full card-based enforcement.

Regarding operational feasibility, agencies should consider any implications that transitioning to full enforcement may have on their ability to continue effectively carrying out operations in support of their mission. DHS anticipates that in many cases, immediately transitioning to full enforcement would have little to no impact on agencies' ability to execute their missions and would enhance security. Agencies may have limited interactions with the public that necessitate members of the public seeking to access Federal facilities that require proof of identity for entry. In cases where agencies currently interact with members of the public at such facilities, agencies may be able to easily adjust the manner in which they interact with the public or provide a service to alleviate the need for individuals to use their DL/ID for a REAL ID official purpose. For example, agencies may be able to hold meetings in facilities that do not require the presentation of identification documents or hold virtual meetings. For certain agencies whose missions include operations requiring frequent use of identification documents for a REAL ID official purpose, an immediate transition to full enforcement may challenge an agency's ability to effectively carry out its mission if a significant number of individuals seek to use noncompliant DL/IDs after the May 7, 2025, deadline. For these agencies, implementing card-based enforcement through a phased approach would allow the opportunity to observe changes in the number of noncompliant cards they encounter after the deadline and transition to full enforcement in a manner that ensures continuity of operations.

Finally, agencies should assess whether an immediate transition to full enforcement would negatively impact the public and the provision of services to the public. The requirements of the REAL ID Act and regulation apply only in contexts where individuals must present an identification document to Federal agencies for REAL ID official purposes.³⁴ Card-based enforcement

should not impact access to Federal facilities that do not require identification (for example, public areas of the Smithsonian museums). Card-based enforcement also should not impact public services that require identification for purposes other than an official purpose as defined by the Act and regulation (for example, applying for or receiving Federal benefits is not a REAL ID official purpose). However, in cases where a government function impacting the public does involve a REAL ID official purpose (for example, boarding a federally-regulated commercial aircraft or providing a public service that necessitates members of the public accessing a Federal facility that requires proof of identity for entry), agencies should consider the extent to which an immediate transition to full enforcement would impact their ability to provide that service.

In addition to these factors, agencies may consider other factors they deem relevant and necessary to make their determination. Agencies' consideration of all relevant factors will be informed by changes in the adoption rate leading up to the card-based enforcement deadline. Certain factors may be given more or less weight depending on the number of REAL ID noncompliant DL/IDs agencies are likely to encounter on and after the deadline. For agencies that determine that beginning full card-based enforcement on May 7, 2025, would not pose significant risks after considering security, operational feasibility, public impact, and other relevant factors, the proposed rule maintains the current regulatory default of an immediate transition to full enforcement. Agencies that determine that commencing full card-based enforcement on May 7, 2025, is not appropriate after considering the relevant factors, may utilize a phased approach that would allow them to facilitate continued secure and orderly operations and minimize impacts to the public while implementing enforcement phases that lead to full REAL ID enforcement. This flexibility would allow these agencies to maintain operational efficiency; reduce security risks born from long lines, incidents, and distractions caused by additional identity verification procedures or turning away individuals who do not have acceptable identification; decrease potential public backlash to security personnel enforcing REAL ID; and limit potential negative impacts to the public.

Should an agency determine that phased enforcement is appropriate, DHS

³¹ For example, Oregon has recently approved an increase in DMV staff dedicated to issuing REAL ID-compliant DL/IDs in anticipation of the May 7, 2025, deadline. Oregon Department of Transportation (ODOT), ODOT Operational Report to the Oregon Transportation Commission (March 5, 2024), available at https://www.oregon.gov/odot/Get-Involved/OTCSupportMaterials/Agenda_F_Operational_Report_PACKET.pdf (last visited April 17, 2024).

³² The requirements of the REAL ID Act and regulations specifically apply to Federal agencies accepting DL/IDs for official purposes.

³³ See U.S. Department of Homeland Security Soft Targets and Crowded Places Security Plan Overview, 5-6 (May 2018), available at https://www.cisa.gov/sites/default/files/publications/DHS-Soft-Target-Crowded-Place-Security-Plan-Overview-052018-508_0.pdf (last visited April 18, 2024).

³⁴ See REAL ID Act of 2005 Implementation: An Interagency Security Committee Guide (2019), p. 4—

7, available at <https://www.cisa.gov/resources-tools/resources/isc-guide-real-id-act-2005-implementation>.

also recognizes that the individual agency is best positioned to structure its enforcement plan to account for its particular operational setting. The proposed rule would allow agencies to develop a phased enforcement best suited to ensuring a successful transition to phased enforcement in their specific context. Although this proposed rule does not prescribe the form that phased enforcement plans must take in incrementally implementing enforcement of the requirements, DHS does provide some options that agencies may consider.³⁵ For example, agencies' plans may include an initial phase during which warning notices are issued and/or a phase involving progressive enforcement measures—like a “three-strikes” system or other methods—that enable agencies to begin enforcement without immediately denying access to individuals with noncompliant identification on the card-based enforcement deadline.

In order to ensure that agencies' enforcement plans appropriately advance the objectives of the REAL ID regulations and maintain consistent progress towards full enforcement, the plans must be coordinated with DHS. The REAL ID Act charges DHS with authority to implement the Act's requirements.³⁶ Requiring agencies that make a determination to implement the REAL ID regulations through a phased enforcement plan to coordinate their plan with DHS ensures consistency, as appropriate, and DHS oversight of successful implementation of the Act and regulatory requirements. Agencies seeking to use a phased enforcement plan would be required to coordinate with DHS through the TSA REAL ID Program Office.³⁷ DHS expects and strongly encourages agencies to make a determination on whether a phased enforcement plan is appropriate and, where appropriate, develop their plan in advance of the May 7, 2025, deadline. However, DHS recognizes that agencies may seek to begin full enforcement on the deadline and encounter unanticipated challenges or agencies may encounter unforeseen issues in implementing the plan they developed. In such cases, agencies may coordinate

a new or modified phased enforcement plan with DHS after the enforcement deadline. Additional information regarding how agencies should coordinate with DHS will be provided on the DHS REAL ID web page.³⁸

DHS acknowledges the potential for some confusion resulting from the possibility of various agencies implementing different phased enforcement plans. This proposed rule seeks to mitigate that potential confusion by (1) requiring agencies using a phased approach to make their plan publicly available on their web page, and (2) requiring DHS to post a list of agencies that have coordinated phased enforcement plans with DHS on the DHS REAL ID web page³⁹ to provide public notice of the agencies implementing phased approaches. Agencies should also clearly provide their policies for access control, including other acceptable forms of identification. Ultimately, even with the risk of some confusion, DHS believes this approach is preferable to full enforcement on May 7, 2025, with the potential to cause significant disruption or another extension of the deadline, which is unlikely to incentivize increased REAL ID adoption.

The proposed rule also would require that any agency that chooses to implement card-based enforcement under a phased approach must fully enforce the card-based requirements no later than May 5, 2027. On and after that date, agencies may not accept noncompliant marked DL/IDs or legacy DL/IDs for official purposes. As mentioned above, DHS anticipates that shortly before, and as REAL ID card-based enforcement begins on May 7, 2025, individuals' urgency to obtain a compliant DL/ID will likely increase as they realize that they will need a compliant DL/ID when they seek to use their DL/ID for REAL ID official purposes. In States with low adoption rates, large numbers of individuals may rapidly seek to obtain REAL ID-compliant DL/IDs. This potential rapid increase in demand may challenge the capacity of licensing jurisdictions and may create backlogs in issuance of REAL ID-compliant cards. The two-year window during which agencies may implement enforcement in phases is designed, in part, to provide States sufficient additional time to meet increases in demand for REAL ID-compliant cards. Agencies who decide to use a phased enforcement plan may choose to implement plans that reach full enforcement in less than 2 years,

but all phased plans must conclude, reaching full card-based enforcement, no later than May 5, 2027.

DHS chose a two-year period during which agencies may implement phased enforcement plans to balance delay in fully realizing the security benefits of REAL ID with allowing sufficient time for Federal agencies to encourage greater adoption rates and limit negative enforcement impacts, where appropriate, and for States to meet the increased demand as individuals seek to obtain compliant DL/IDs. DHS also considered phased enforcement periods of one, three, four, or five years' duration. DHS chose 2 years as it believes this time period provides sufficient opportunity for individuals to obtain a compliant DL/IDs, while maintaining an impending need (incentive) to do so, and for States to process them (e.g., time to budget any short term ramp up that may be necessary) but also requests public comment on the length of the phased enforcement period.

DHS did not select 1 year because DHS believes this timeframe would not provide enough time for the anticipated effects of the enforcement deadline and phased enforcement plans to be realized and reflected in adoption rates. Many individuals may only seek to use their DL/ID for official purposes once or twice a year (for example, boarding a commercial flight to travel for a holiday or vacation). In a one-year phased enforcement period, individuals who learn of the need to obtain a REAL ID-compliant DL/ID towards the end of that one-year period—possibly through a warning notice as part of an agency's phased enforcement plan—may not have sufficient time to obtain a compliant DL/ID before full enforcement begins. Additionally, if increased demand for compliant DL/IDs leading up to and right after the deadline results in backlogs at State DMVs, DHS believes 1 year may not be sufficient time for States to make any necessary adjustments to process potential backlogs. Although a one-year phased enforcement period would provide a shorter delay in obtaining the full security benefits of REAL ID as described in the 2008 rule,⁴⁰ DHS does

³⁵ More detailed discussion of these options is provided in section D. below.

³⁶ 49 U.S.C. 30301 note; 73 FR 5271.

³⁷ On December 29, 2022, the Consolidated Appropriations Act, 2023 (Pub. L. 117–328), was signed into law, authorizing the transfer of the REAL ID Program from the DHS Office of Strategy, Policy, and Plans to TSA. On May 22, 2023, the Secretary of Homeland Security approved a delegation formally vesting in TSA the authority to manage, administer, and coordinate DHS actions necessary for implementation of the REAL ID Act.

³⁸ <https://www.dhs.gov/real-id>.

³⁹ *Id.*

⁴⁰ The regulatory evaluation for the Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes Final Rule identifies the primary benefit of REAL ID as improving security and lessening the vulnerability of Federal buildings, nuclear facilities, and aircraft to terrorist attacks. Department of Homeland Security, January 17, 2008, Regulatory Evaluation, Docket Number DHS–2006–0030. <https://www.regulations.gov/document/DHS-2006-0030-10704>. pgs. 129–130.

not believe it is a long enough period for individuals and States to both apprehend the need for action as a result of card-based enforcement and take action to obtain or make adjustments needed to issue REAL ID-compliant DL/IDs.

DHS did not select three, four, or five years because DHS believes a time period longer than 2 years would further delay the security benefits of REAL ID and is unlikely to provide the same incentive for individuals to obtain a compliant DL/ID. DHS believes that 2 years after the card-based enforcement deadline is a sufficient amount of time for individuals to obtain and States to provide REAL ID-compliant DL/IDs to any eligible individual who seeks to obtain one. DHS believes that allowing more time for phased enforcement beyond 2 years is unlikely to offer a meaningful additional opportunity for individuals and States to take necessary action and could further delay the security benefits of REAL ID. Additionally, allowing for phased enforcement for more than 2 years may discourage individuals and States from prioritizing necessary action.

Finally, to avoid any confusion about the ability of Federal agencies to continue to accept noncompliant marked DL/IDs issued under § 37.71, the proposed rule would clarify that Federal agencies may continue to accept these licenses past May 7, 2025, if they are doing so pursuant to an enforcement plan coordinated with DHS. Although some agencies may accept noncompliant marked DL/IDs for official purposes as part of a phased enforcement plan, other agencies may choose not to accept noncompliant marked DL/IDs as part of their phased enforcement plan, may determine that phased enforcement is not appropriate, or currently do not accept noncompliant marked DL/IDs for official purposes.⁴¹ Individuals who need to visit a Federal facility should check in advance whether the agency requires identification for access purposes and, if they do, review the agency's access control policies.

B. Consideration of Further Extending the Card-Based Enforcement Deadline

As an alternative to the approach this rule proposes, DHS also considered further extending the REAL ID card-based enforcement deadline to allow for more time for the adoption rate to increase. However, DHS believes that

maintaining the deadline of May 7, 2025, while providing agencies the flexibility to make a determination that phased enforcement is appropriate will allow for a faster and smoother transition to full card-based enforcement than another extension of the deadline.

DHS prefers the approach proposed in this rule rather than an extension for several reasons. First, by maintaining the current deadline, agencies that do not determine that phased enforcement is appropriate will immediately transition to full card-based enforcement on May 7, 2025. This allows the security benefits of REAL ID to be fully realized in contexts where full enforcement poses little risk of creating other security risks, interfering with operational feasibility, or disrupting public services. If the deadline is extended, agencies that could immediately transition to full enforcement are unlikely to do so before the new deadline, delaying security benefits that would otherwise be available. DHS expects that a significant number of agencies will begin full enforcement on the deadline because doing so is appropriate within their operational context.

Second, DHS believes that the approach provided by this rulemaking is likely to have a positive impact on the REAL ID adoption rate, but that an extension would not incentivize an increase in demand for REAL ID-compliant DL/IDs. Because of the history of extensions related to REAL ID enforcement, DHS expects that there is some confusion, lack of awareness, and apathy associated with the May 7, 2025, deadline. Given the prior history, DHS believes that the public may continue to expect that additional extensions are likely and not feel urgency to obtain a REAL ID until DHS demonstrates that another extension is unlikely. Further, since the most recent extension in March 2023, DHS has observed the rate of growth in adoption of compliant DL/IDs remains very low (0.56 percent).⁴² As a result, DHS believes that further extensions of the card-based enforcement date are not an effective means of incentivizing changed behavior.

Instead, DHS expects that allowing agencies to enforce the May 7, 2025, deadline through a phased approach will incentivize increased demand for REAL IDs in at least two ways. First, it will incentivize increased adoption rates as the deadline approaches. In part due to concerns related to low adoption rates, DHS has previously extended the

card-based deadline several months before the enforcement date, limiting the effect of urgency to obtain a compliant DL/ID related to the deadline. As the deadline approaches, and DHS does not issue an extension, DHS expects individuals that were otherwise relying on another extension to obtain a compliant DL/ID.

Second, DHS expects individuals who may not be aware of the deadline to be incentivized to obtain a compliant DL/ID when they experience the consequences of enforcement. During the phased enforcement period individuals will experience varying levels of consequences including warning notices and progressive enforcement (as part of a phased enforcement plan), or full enforcement (where agencies transition to full enforcement on the deadline). These consequences will incentivize individuals who experience them to obtain a REAL ID. Further, because the individuals who most frequently use their DL/ID for REAL ID purposes will be the most likely to experience consequences, DHS expects that phased enforcement will especially incentivize increased adoption amongst this population. This will in turn lessen the likelihood of disruption when agencies transition to full enforcement because the individuals who most often use State-issued DL/IDs for REAL ID official purposes will have been motivated to obtain a REAL ID during the phased enforcement period. Additionally, individuals may share their experience with personal contacts, potentially incentivizing others to obtain a compliant DL/ID. DHS expects that as awareness that REAL ID is being enforced becomes widespread, individuals who intend to use their DL/ID for official purposes will be motivated to obtain a compliant DL/ID.

C. Broad DHS Approach

This proposed rule represents one aspect of DHS' broad approach towards transitioning to enforcement of the REAL ID requirements on May 7, 2025. Although this proposed rulemaking is critical to providing agencies with the necessary flexibility to ensure a smooth transition to full card-based enforcement, DHS is engaged in a number of efforts to improve adoption rates. This layered approach includes heavy engagement with States that have low REAL ID adoption rates, a public advertising campaign raising awareness of upcoming REAL ID enforcement and the benefits of obtaining a REAL ID,⁴³

⁴³ DHS Launches "Be Your REAL ID Self" Public Awareness Campaign, January 15, 2021, <https://>

⁴¹ For example, the U.S. Department of Defense (DoD) recently finalized an update to its DoD-Wide installation security policy and is in the process of no longer accepting noncompliant marked cards across all of its facilities and installations.

⁴² *Supra* note 26.

and engagement with the travel industry. This proposed rule, in combination with these other efforts, works to lay the necessary foundation for transitioning the nation to enforcement of REAL ID requirements on May 7, 2025.

D. Phased Enforcement Guidance

Under this proposed rule, agencies would have broad discretion to determine the structure of their phased enforcement plan so long as they comply with the requirements in the rule to:

(1) Make a determination that a phased enforcement plan is appropriate in consideration of relevant factors including security, operational feasibility, and public impact;

(2) Coordinate the phased enforcement plan with DHS;

(3) Make the phased enforcement plan publicly available on the agency's web page; and

(4) Achieve full enforcement of the card-based REAL ID requirements no later than May 5, 2027.

The required coordination with DHS will provide DHS with visibility on government-wide implementation of REAL ID as well as allow DHS to serve in liaison role between agencies where there may be overlapping equities. During the coordination process, DHS seek to provide agencies guidance on how best to use their phased plan to transition to full enforcement. DHS may offer feedback or suggestions related to an agency's plan during this process. However, as long as agencies comply with the proposed requirements in this rule, they would have broad discretion to structure their plans.

As guidance to Federal agencies and to promote consistency, DHS provides the below discussion and examples of enforcement models as options agencies may consider if they determine that a phased approach to REAL ID card-based enforcement on May 7, 2025, is appropriate. DHS anticipates that informed compliance would be the enforcement model best suited for most agencies that determine phased enforcement is appropriate. Federal agencies that do not make a determination that phased enforcement is appropriate and do not coordinate a phased enforcement plan with DHS must begin full card-based enforcement on May 7, 2025. Under full card-based enforcement, Federal agencies may only accept a State-issued DL/ID for official purposes if that DL/ID is issued in

accordance with REAL ID requirements by a REAL ID-compliant State.

Informed Compliance Model. Under an informed compliance model, agencies would provide written and verbal notice to any individual that seeks to use a valid, unexpired, noncompliant DL/ID for an official purpose on or after the card-based enforcement date of May 7, 2025. Individuals would then be permitted to continue the process for accessing a Federal facility or boarding a commercial aircraft. The written notice agencies provide should inform the individual that their DL/ID is noncompliant with REAL ID requirements, that they should contact their DMV for further information regarding obtaining a REAL ID, the date on which the agency will either begin fully enforcing REAL ID requirements or will proceed to a subsequent enforcement phase, and what to expect if the individual presents a noncompliant DL/ID and no other acceptable form of identification after that date. An accompanying verbal notice should briefly summarize the written notification and, at a minimum, inform the individual they are not in compliance with REAL ID requirements and direct the individual to reference the written notice. Under this model, agencies would not maintain a record of individuals who have presented a noncompliant DL/ID and have been issued a notice. Individuals who present an alternate acceptable form of identification (for example, a passport at the TSA checkpoint) would not receive a noncompliance notification. Under this model, agencies would continue to employ existing security and identity verification processes to confirm the authenticity and validity of the noncompliant DL/ID presented.

DHS has previously utilized an informed compliance model to balance the need to begin enforcement of an identity verification-related mandate while minimizing the impact of enforcement on commerce. DHS effectively employed Informed Compliance as an enforcement mechanism for 6 months after it began enforcing the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).⁴⁴ SAFETEA-LU mandated that all foreign commercial hazardous materials (hazmat) licensed drivers were required to pass a background check that was comparable to that required under the USA PATRIOT Act for U.S. commercial

hazmat drivers. DHS determined that the background check required to obtain the U.S. Customs and Border Protection Free and Secure Trade (FAST) card was comparable to that required for U.S. licensed commercial drivers. However, DHS estimated that at the start of enforcement, a large number of drivers would not have accomplished the background check process, and there was risk of significant impact to cross-border commerce. DHS implemented a 6-month period of Informed Compliance at the start of enforcement. At border checkpoints, foreign commercial drivers who did not have the FAST background check were provided a written notice that they were not in compliance and had until a final enforcement date to achieve compliance, but were allowed to drive in the United States in the interim. After the period of Informed Compliance, drivers without the appropriate background check were not allowed into the United States.

Informed Compliance with Limits. Under an Informed Compliance with Limits model, agencies would limit the number of times an individual may present a noncompliant DL/ID for an official purpose. Once an individual exceeds the prescribed number of allowable attempts, they would be denied the ability to use their noncompliant DL/ID for the REAL ID official purpose (e.g., use the noncompliant DL/ID for purposes of accessing a Federal facility) if they have no other acceptable form of identification. Employing this model would likely create significant requirements and obligations for the agency. Specifically:

1. The agency would collect personally identifiable information (PII), including name, DL/ID State, and DL/ID number, as well as other information necessary to identify and communicate reliably with the individual. This PII would need to be collected, maintained, and used in accordance with all applicable Federal guidelines and requirements related to collection of PII. This may require agencies to obtain an Office of Management and Budget (OMB)-approved Paperwork Reduction Act (PRA) information collection and prepare a Privacy Impact Analysis, System of Record Notice, and other documentation for collection, storage, and use of PII.

2. The individual would attest that the PII provided is theirs and accurate.

3. The agency would need to be able to demonstrate that they delivered a notification of noncompliance to the individual (i.e., email, text, or other record of transmittal to address acknowledged by individuals).

www.dhs.gov/real-id/news/2021/01/15/dhs-launches-be-your-real-id-self-public-awareness-campaign.

⁴⁴ Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law 109–59, August 10, 2005.

4. The agency would need to obtain the individual's acknowledgement of receipt of the noncompliance notification at the time the individual presents the noncompliant DL/ID.

5. The agency would need to develop a system to track the number of instances the individual presented a noncompliant DL/ID and no other acceptable ID (violations).

6. The agency would need to determine a limit on the number of times an individual may be authorized access after presenting a noncompliant DL/ID and no other acceptable form of identification.

7. The agency would need to define an appropriate period of time (in days/weeks) during which the individual may continue to use a noncompliant DL/ID for purposes of accessing the agency, after which the applicant would be given another notification of noncompliance if they again presented a noncompliant DL/ID (in other words, how long individuals may continue to use their noncompliant DL/ID on the same "strike" before incurring a subsequent "strike").

Agencies would need to choose an appropriate time period during which individuals can continue to use the noncompliant DL/ID without it being treated as an additional instance of noncompliance ("strike"). Agencies should choose a time period appropriate to their operations. For agencies where the identity verification for official purposes is rare or isolated, it may be appropriate to treat each time an individual presents a noncompliant DL/ID as an instance of noncompliance. However, DHS believes that in certain cases individuals may need to use their DL/ID for a REAL ID official purpose for multiple instances within a short period of time (e.g., boarding a return flight from a destination or returning to a Federal facility to follow-up on the purpose of the initial visit). Individuals may not be able to obtain a REAL ID in between such related instances, so in these cases agencies may choose a time period that allows for multiple uses of a noncompliant DL/ID as part of the same instance of noncompliance. After the allotted time period expires, the presentation of a noncompliant DL/ID would be treated as another instance of noncompliance.

Agencies employing an Informed Compliance with Limitations model should provide individuals who present a noncompliant DL/ID with specific notice whenever an instance is being counted towards that individual's limit. The notice should reference the agency's overall policy and how the particular instance would affect the

individual in the future. Agencies may choose to adopt different nomenclature for initial and subsequent instances of an individual presenting a noncompliant DL/ID. DHS recommends that the language and consequences of subsequent notifications under this model should progress in seriousness. For example, assume an agency chooses to permit access on the first two instances of noncompliance and deny access on the third (and any subsequent instance). Agencies may choose to refer to the notice issued to an individual presenting a noncompliant card for the first time as a "warning" and a notice issued on a subsequent instance counting against that individual's limit as "counseling." Upon the third instance, the individual would be issued a "final" notification that their State-issued DL/ID is noncompliant and can no longer be used for the REAL ID official purpose. The Federal agency would deny access to the individual at that time and on all future instances unless the individual obtains a REAL ID or presents an alternative, acceptable form of identification.

DHS acknowledges that an Informed Compliance with Limitations enforcement plan would likely demand significant agency resources. DHS expects many agencies to begin full enforcement on the May 7, 2025, deadline. Of the agencies that do determine a phased approach is appropriate, DHS expects most will use a simple plan that provides a time-limited warning period (i.e., "Informed Compliance"). Given the resources required, including the need for secure systems, DHS expects very few agencies to choose an enforcement plan that tracks individual instances of noncompliance.

Additional Considerations. Agencies may determine to implement a phased approach that employs one of these models followed by full enforcement. For example, an agency may choose to begin enforcement with an Informed Compliance Phase or Informed Compliance with Limits Phase for a set period of time (e.g., 3 months, 6 months, 1 year) followed by a transition to full enforcement at the end of that period. Alternatively, agencies may develop a plan that combines both models before transitioning to full enforcement. For example, an agency may begin enforcement with an initial Informed Compliance Phase for a set period of time, followed by an Informed Compliance with Limits Phase for an additional period of time, before beginning full enforcement. Agencies would have the flexibility to determine

the model(s) and timing that best suit their operational environment.

Although DHS believes the models discussed above are likely to be the most common and effective, they are not exclusive. Agencies may develop plans based on other models. However, all phased enforcement plans, whether based on the above models or a different model must be coordinated with DHS and must conclude, and agencies must fully enforce REAL ID card-based requirements, no later than May 5, 2027. For agencies that make a determination that phased enforcement is appropriate, the same factors that they considered to make that determination should inform their determination of how to structure their plan.

Finally, although REAL ID adoption rates should inform agencies when developing their enforcement plans, agencies' plans should be consistent across all States and territories. In other words, agencies should have a consistent national policy and individuals should not be subject to different consequences based on the adoption rate of a particular jurisdiction. To reduce the potential for confusion, ensure fair and equitable treatment of residents of all States, and ensure operational consistency, agencies that have operations or facilities spanning multiple States and territories should have one plan for all their facilities. Agencies' plans may make distinctions based on the types of facilities they operate (e.g., agencies may wish to begin full enforcement at certain types of facilities but use a phased approach at another type of facility) as long as the same policies apply to the same types of facilities nationwide and treat all DL/ID holders similarly. For example, agencies may choose to begin full enforcement at their headquarters facility while implementing a phased approach at field offices where the public more frequently seeks to use DL/IDs for official purposes, but (in this example) the same phased enforcement policy should apply to all field offices no matter where they are located. Agencies should provide information regarding their plans on their website and take other appropriate measures to inform the public and provide notice regarding their plan.

DHS acknowledges that some agencies may maintain offices in or conduct operations out of leased facilities or multi-tenant facilities where the agency does not have direct control over the access control policies of the facility. Agencies leasing space in their facilities to other agencies and lead tenants as part of facility security

committees determining physical security polices for multi-tenant facilities should develop plans that take into account the operations of tenant agencies and potential public impact associated with those operations when developing phased enforcement plans. As previously discussed, agencies may make distinctions based on the types of facilities they operate. Depending on the context, it may be appropriate for an agency developing a phased enforcement plan to draw a distinction between facilities that are shared by with agencies and facilities that are used solely by the agency developing the plan.

IV. Regulatory Analyses

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that DHS consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of 44 U.S.C. 3507(d), obtain approval from the OMB for each collection of information it conducts, sponsors, or requires through regulations. This proposed rule itself does not directly call for new collection of information under the PRA as the rulemaking relates to Federal agency submission of phased enforcement plans which are not covered under the PRA. However, agencies that utilize a phased enforcement plan, depending on the requirements associated with their respective plan, may need to submit or

modify an OMB information collection request.

B. Economic Impact Analyses

1. Regulatory Impact Analysis Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order (E.O.) 12866 of October 4, 1993 (Regulatory Planning and Review),⁴⁵ as supplemented by E.O. 13563 of January 21, 2011 (Improving Regulation and Regulatory Review),⁴⁶ and E.O. 14094 of April 6, 2023 (Modernizing Regulatory Review)⁴⁷ directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (RFA) requires agencies to consider the economic impact of regulatory changes on small entities.⁴⁸ Third, the Unfunded Mandates Reform Act of 1995 (UMRA) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of \$100 million (\$183 million in 2023 dollars) or more annually (adjusted for inflation).⁴⁹

2. Executive Orders 12866, 13563, and 14094 Assessment

Under the requirements of E.O. 12866, as amended by E.O. 14094, agencies must assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, select regulatory approaches that maximize net benefits

(including potential economic, environmental, public health and safety effects, distributive impacts, and equity). These requirements were supplemented by E.O. 13563, which emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

DHS summarizes the findings:

- In accordance with E.O. 12866, the Office of Management and Budget (OMB) has designated this rulemaking a “significant regulatory action” as defined under section 3(f) of E.O. 12866, as amended by E.O. 14094 but not significant under section 3(f)(1). Accordingly, the proposed rule has been reviewed by OMB.

- The Secretary, pursuant to 5 U.S.C. 605(b), certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule would only be applicable to Federal Government agencies, who under the RFA are not considered small entities.

- This proposed rule is not likely to result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of \$100 million (\$183 million in 2023 dollars) or more annually (adjusted for inflation) such that a written statement would not be required under UMRA.

a. OMB A–4 Statement

The OMB A–4 Accounting Statement presents the annualized costs and benefits, as well as the qualitative benefits of the proposed rule.

TABLE 1—OMB CIRCULAR A–4 ACCOUNTING STATEMENT
[\$ millions]

Category	Estimates			Units			Notes
	Primary	Low	High	Year dollar	Discount rate (%)	Time horizon (years)	
Benefits							
Annualized Monetized	N/A	N/A	N/A	N/A	2	N/A	Not Quantified.
Annualized Quantified, But Non-Monetized	N/A	N/A	N/A	N/A	2	N/A	Not Quantified.
Unquantified	The proposed rule would provide Federal agencies flexibility to decide whether to enforce the REAL ID card-based regulations in a phased manner that may reduce security vulnerabilities, operational disruption and public impact related to official Federal purposes. A phased approach would not unnecessarily delay REAL ID enforcement for those Federal agencies ready to fully implement on the card-based enforcement deadline. A phased approach would also allow individuals more time to obtain a REAL ID and may help mitigate potential application backlogs at State licensing agencies. Furthermore, a phased approach may reduce potential queuing and associated delays at access points.						

⁴⁵ 58 FR 51735 (Oct. 4, 1993).

⁴⁶ 76 FR 3821 (Jan. 21, 2011).

⁴⁷ 88 FR 21879 (Apr. 11, 2023).

⁴⁸ Public Law 96–354, 94 Stat. 1164 (Sept. 19, 1980) (codified at 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)).

⁴⁹ Public Law 104–4, 109 Stat. 66 (Mar. 22, 1995) (codified at 2 U.S.C. 1181–1538).

TABLE 1—OMB CIRCULAR A-4 ACCOUNTING STATEMENT—Continued
[\$ millions]

Category	Estimates			Units			Notes
	Primary	Low	High	Year dollar	Discount rate (%)	Time horizon (years)	
Costs							
Annualized Monetized	\$0.87	N/A	N/A	2023	2	2	Not Quantified.
Annualized Quantified, But Non-Monetized	N/A	N/A	N/A	N/A	2	N/A	
Unquantified	Full security benefits associated with REAL ID rule would not be realized, as a result of agencies implementing a phased approach, until full enforcement occurs. Federal agencies would also incur costs related to plan implementation, including, but not limited to training personnel on the policies of the plan, and efforts to inform individuals of the new identity verification policies related to plans. Individuals may also incur costs to become aware of phased enforcement plans and respond accordingly.						
Transfers							
Annualized Monetized Federal Budgetary Transfers	N/A	N/A	N/A	N/A	2	N/A	Not Quantified.
From/To	From:			To:			
Other Annualized Monetized Transfers	N/A	N/A	N/A	N/A	2	N/A	Not Quantified.
From/To	From:			To:			
Net Benefits							
Annualized Monetized Net Benefits	N/A	N/A	N/A	N/A	2	N/A	Not Quantified.
Effects							
State, Local, and/or Tribal Government	None						
Small Business	None.						
Wages	None.						
Growth	Not measured.						

b. Need for Regulation

In January 2008, DHS published the Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes Final Rule to implement the requirements of the Act. Since the publication of the original Final Rule, DHS extended the original compliance date multiple times in response to challenges in REAL ID adoption, including but not limited to, the COVID-19 pandemic. In accordance with the Final Rule published in March 2023, Federal agencies are required to commence card-based enforcement on May 7, 2025, at which point Federal agencies may not accept for official purposes a license or identification card issued by a State unless that license or card was issued in accordance with the REAL ID standards by a REAL ID-compliant jurisdiction.⁵⁰

DHS does not intend to extend the card-based enforcement deadline further and intends to commence enforcement of the REAL ID card-based requirements on May 7, 2025. However, based on current adoption rates of REAL ID-

compliant DL/IDs and the projected number of compliant DL/IDs in circulation by the card-based enforcement date (discussed in the succeeding section), DHS believes this proposed rulemaking is necessary to provide flexibility to mitigate potential risks related to security, operational feasibility, and public impact.

Without the flexibility the proposed rule permits, agencies may be faced with serious concerns that immediate implementation of full enforcement may create including security vulnerabilities, operational challenges, and disruption of government services. For instance, there could be cases where an agency needs to conduct work with a subject-matter expert or specialist that does not have REAL ID-compliant identification and is therefore unable to access the Federal facility. Barring a phased enforcement plan, the agency may need to come up with alternate accommodations, which could include holding meetings or presentations offsite or standing up a virtual option. These options may result in additional costs that would otherwise not be incurred if the agency was operating under a phased enforcement plan. Additionally, absent a phased

enforcement plan, individuals without a REAL ID-compliant DL/ID or acceptable alternative would be unable to board federally regulated aircraft upon card-based enforcement. This represents a large use case for REAL ID. These individuals would not be able to use their noncompliant DL/ID to access the security checkpoint which could result in backlogs and other negative outcomes on travel (e.g., delayed or missed flights). This may also have a potential impact on the customer experience and air travel. Long lines, confusion, and frustrated travelers at the checkpoint may also increase security risks.⁵¹ Given the current level of REAL ID adoption across various States, the start of card-based enforcement may also create an increased demand on States to issue

⁵⁰ See 88 FR 14473 (Mar. 9, 2023), codified at 6 CFR 37.5.

⁵¹ The requirements of the REAL ID Act and regulations specifically apply to Federal agencies accepting DL/IDs for official purposes. To the extent air carriers also require individuals to present a compliant DL/ID for check-in or to drop off luggage, lines and crowding may also occur at ticket counters and baggage drop-off locations at airports. See U.S. Department of Homeland Security. "Soft Targets and Crowded Places Security Plan Overview". (May 2018). Available at https://www.cisa.gov/sites/default/files/publications/DHS-Soft-Target-Crowded-Place-Security-Plan-Overview-052018-508_0.pdf. Accessed on Apr. 17, 2024.

REAL IDs, which could result in strained resources and a potential delay of application processing time or backlog. Additional disruptive impacts to those who currently rely upon non-REAL ID-compliant DL/IDs for official Federal purposes may also occur.

Federal agencies that determine an immediate transition to full enforcement would raise concerns related to security, operational feasibility, or negatively impact the public, would benefit from phased enforcement, and would be able to implement a phased enforcement plan, coordinated with DHS, to provide a smoother transition to full card-based enforcement.⁵² This proposed rule would also enable these agencies to minimize negative impact to individuals who do not have REAL ID-compliant DL/IDs and provide States time to issue and individuals time to obtain REAL ID-compliant DL/IDs during initial phases of enforcement.

TSA requests comments on the assumptions and estimates presented within this economic impact analysis. Comments that will provide the most assistance to TSA will reference a specific portion of this proposed rule, explain the reason for any suggestion or recommended change, and include data, information, or authority that supports such suggestion or recommended change.

c. Baseline Summary

The baseline represents DHS' best assessment of what the world would be like absent this regulatory action.⁵³

In January 2008, DHS published the Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes Final Rule to implement the requirements of the REAL ID Act of 2005.⁵⁴ Since the publication of the Final Rule in 2008, DHS has delayed the card-based enforcement date for REAL ID multiple times due to various challenges that have prevented full enforcement

including, most recently, the COVID-19 pandemic. The last extension was issued in March 2023, when DHS extended the card-based enforcement date from May 3, 2023, to May 7, 2025.

Absent this regulatory action, beginning on that date, all Federal agencies would be prohibited from accepting non-REAL ID-compliant State-issued DL/IDs for REAL ID official purposes.⁵⁵ If an individual does not have a REAL ID-compliant DL/ID, the individual may use another acceptable form of identification as determined by individual agencies' identity verification and access policies.⁵⁶ In accordance with the 2008 Final Rule, enforcement on the card-based enforcement date would be applied unilaterally, across all respective agency locations in the United States and its territories including, accessing Federal facilities, boarding federally regulated commercial aircrafts (*i.e.*, TSA airport security checkpoints), and entering nuclear power plants.

DHS estimates that by the card-based enforcement date, approximately between 61 and 66 percent of all State-issued DL/IDs would be REAL ID-compliant based on adoption data provided by States, to DHS, through January 2024.⁵⁷ The lower-end values represent a monthly adoption rate similar to current rates through card-based enforcement. However, DHS expects that the adoption rate may also increase ahead of the card-based enforcement date as a result of both natural adoption prior to enforcement and efforts by DHS to drive awareness and action. Ahead of the card-based enforcement deadline, DHS plans to launch additional phases of its public service campaign "Be Your REAL ID Self", which in part, provides toolkits for government and industry partners. To account for this increased rate of

adoption, DHS uses a Compounded Monthly Growth Rate of 1.03 percent (compared to a current 0.56 percent CMGR) for its higher-end value of 66 percent of REAL ID compliant DL/IDs by the card-based enforcement date.

As a result, approximately between 34 percent and 39 percent of DL/IDs in circulation would be non-compliant (either legacy or non-compliant marked DL/IDs). Individuals with non-REAL ID-compliant DL/IDs would not be permitted to use those DL/IDs to access Federal facilities nationwide, including the security checkpoint at airports, unless they are able to present an approved alternate form of identification such as a passport.⁵⁸

d. Adoption of REAL ID-Compliant DL/IDs

Prior to the onset of the COVID-19 pandemic in the United States in October 2019, DHS estimated that approximately 33 percent, or 90.9 million of the 274.8 million DL/IDs in circulation, were REAL ID-compliant.⁵⁹ In April 2020, DHS issued an amended final rule to further delay the card-based enforcement date from October 1, 2020, to October 1, 2021. DHS noted that the COVID-19 pandemic had caused significant disruption citing that State and local government offices, including the DMV, have restricted all but the most essential services, and that in some cases, had been temporarily closed to the public. In October 2020, national REAL ID compliance was approximately

⁵⁸ In 2008, DHS issued the Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes Final Rule. In the Regulatory Evaluation for the Final Rule, DHS noted that 25 percent of the population already held a valid passport and that in a few years' time the Department of State anticipated that the figure would increase to approximately 33 percent. As of 2023, the Department of State reports that 160,668,889 valid passports (including passport books) are in circulation. (<https://travel.state.gov/content/travel/en/about-us/reports-and-statistics.html>). Over the 10-year period of 2014 to 2023, approximately 13.24 percent of passports issued were passport cards. The Department of State notes that one customer may also have both a passport book and card which counts as two valid passports. To prevent double counting for individuals that hold both a passport book and a passport card, DHS multiplies 160,668,889 by 1 minus 13.24 percent to estimate 139,396,328 passports. Using the Census Bureau's projected population for 2023, DHS estimates that approximately 41 percent of the population has a passport. DHS acknowledges that some percentage of individuals with REAL-ID compliant DL/IDs may also hold a passport and thus there is uncertainty with how many individuals with non-compliant IDs would be able to use a passport as an alternate form of identification.

⁵⁹ DHS began to collect data from the states including, total number of DL/IDs, number of REAL IDs, number of non-compliant cards, and number of "legacy" cards in July 2019. Monthly reporting subsequently began in October 2019.

⁵² Card-based enforcement should not impact access to Federal facilities that do not require identification (*e.g.*, public areas of the Smithsonian). Card-based enforcement also should not impact public services that require identification for purposes other than an official purpose as defined by the Act and regulation (*e.g.*, applying for or receiving Federal benefits is not a REAL ID official purpose). However, in cases where provision of a public service does involve a REAL ID official purpose, agencies should consider the extent to which an immediate transition to full enforcement would impact their ability to provide that service.

⁵³ Office of Information and Regulatory Affairs. Circular No. A-4. November 9, 2023. <https://www.whitehouse.gov/wp-content/uploads/2023/11/CircularA-4.pdf>. Accessed February 12, 2024.

⁵⁴ 73 FR 5272, codified at 6 CFR part 37.

⁵⁵ The Act does not require individuals to present identification where it is not currently required to access a Federal facility (such as to enter the public areas of the Smithsonian).

⁵⁶ Alternate acceptable forms of identification may include, and are not limited to, Enhanced Driver's Licenses (EDL), U.S. passports, and passport cards.

⁵⁷ In section IV(B)(2)(d)(4), Forecast of REAL ID Compliance Under Phased Enforcement, DHS estimates 61.2 percent of REAL ID Compliant DL/IDs by applying a 0.56 percent compounded monthly growth rate which represents the adoption of REAL IDs between January 2023 and January 2024. This represents a lower-end forecast where DHS assumes the monthly adoption rate of REAL IDs remains unchanged leading up to the card-based enforcement date of May 7, 2025. DHS also presents a high-end forecast of 66.0 percent of REAL ID compliant DL/IDs that uses a compounded monthly growth rate of 1.03 percent and represents the adoption of REAL IDs between January 2020 and January 2024 which captures periods of high and low adoption of REAL IDs.

41 percent.⁶⁰ Three years later, in October 2023, the national REAL ID compliance rate increased to approximately 56 percent.⁶¹ Although there has been a modest increase in the number of compliant REAL IDs, the overall percentage as of January 2024 remains unchanged at 56 percent, with the remaining 44 percent of State-issued DL/IDs being noncompliant.⁶²

However, individual State compliance includes a wider range of rates. Table 2 presents REAL ID compliance over time based on the 56 licensing jurisdictions percentage of REAL IDs issued relative to the total number of IDs in circulation for each jurisdiction. As shown in the table, State compliance rates have generally increased over time. For instance, the number of licensing jurisdictions where the percentage of

REAL IDs, relative to all DL/IDs in circulation, is greater than 75 percent has increased from eight jurisdictions in October 2019 to 17 in January 2024. Similarly, the number of licensing jurisdictions where the percentage of REAL IDs, relative to all DL/IDs in circulation, is less than 25 percent has decreased from 31 in October 2019 to 9 in January 2024.

TABLE 2—REAL ID COMPLIANCE OVER TIME

Range (REAL IDs as a percentage of total IDs in circulation by jurisdiction)	Number of licensing jurisdictions			
	October 2019	October 2020	October 2023	January 2024
0%–24%	31	22	12	9
25%–49%	11	15	16	18
50%–74%	6	9	12	12
75%–100%	8	10	16	17

1. Compounded Monthly Growth Rates (CMGR)

DHS began receiving monthly data on the number of REAL IDs for each of the 56 licensing jurisdictions in October 2019 (and has monthly data through early 2024). Using this data, DHS calculates the growth, or increase, in number of REAL IDs month over month, relative to the total number of DL/IDs in circulation. Using the historic adoption data, DHS calculates CMGRs which represents growth over various intervals of time. In subsequent sections, DHS uses CMGRs to forecast REAL ID compliance.

In the first 6 months that DHS began to receive monthly data, between October 2019 and March 2020, the CMGR of REAL IDs was approximately 2.5 percent. Between April and May of 2020, the CMGR of REAL IDs had decreased to 0.5 percent. The CMGR later increased to approximately 2.0 percent between June 2020 and October 2020. Over the next 3 years, the CMGR of REAL IDs was 1.3 percent between October 2020 and September 2021, 0.9 percent between October 2021 and September 2022, and 0.8 percent between October 2022 and September 2023. Over the 12-month period, between January 2023 and January 2024,

the national CMGR for the adoption of REAL IDs was 0.56 percent.⁶³

2. Projection of Total Number of DL/IDs

DHS leverages monthly data received from the 56 licensing jurisdictions to estimate the total number of DL/IDs in future months. The report provides DHS with the total number of DL/IDs in circulation, including the proportions of REAL-ID compliant, “legacy” cards, and non-compliant cards. Based on the January 2024 data from the licensing jurisdictions, there were 287,321,596 DL/IDs in circulation.

DHS uses this value as a starting overall DL/ID population. Next, DHS leverages the U.S. Census Bureau’s Monthly Population Estimates for the United States to estimate the total U.S. population and proportion with a DL/ID. DHS first estimates the total population using Census Bureau annual population data to calculate a compound annual growth rate (CAGR) of 0.60 percent in the U.S. population from 2012 to 2022.⁶⁴ DHS divides the CAGR of 0.60 percent by 12 to calculate a simple compound monthly growth rate (CMGR) of 0.05 percent. DHS then uses Census Bureau monthly population estimates through December 2023, and applies the simple CMGR of 0.05 percent to forecast the population for each month through October 2027.⁶⁵

DHS estimates a total population of 355,966,451 in January 2024.

Last, DHS divides the total number of DL/IDs by the total population. As of January 2024, 85.5 percent of the population held a driver’s license or identification card.⁶⁶ DHS assumes this proportion of the population holds true through October 2027 (some portion of the adult population may not need a DL/ID, along with most of the population under the legal driving age). DHS multiplies the 85.5 percent proportion by the projected population each month to estimate the total number of DL/IDs in circulation.

3. Forecast of REAL ID Compliance Under Status Quo

If full card-based enforcement, absent phased enforcement, were to take place on May 7, 2025, DHS assumes that the adoption of REAL ID-compliant DL/IDs would spike leading up to, and continuing for a period of time past, the card-based enforcement date as individuals, who may otherwise have held off on acquiring a REAL ID-compliant DL/IDs, would take steps to ensure they would not be turned away from Federal facilities where a REAL ID would be required for official purposes.

DHS assumes such a spike would be similar to a 23 percent increase that the Department of State experienced after

⁶⁰ 41.08 Percent of REAL ID-compliant IDs in October 2020 = 112,807,718 REAL IDs ÷ 274,611,013 Total IDs in Circulation.

⁶¹ 56.11 Percent of REAL ID-compliant IDs in October 2023 = 160,039,272 REAL IDs ÷ 285,246,641 Total IDs in Circulation.

⁶² 56.42 Percent of REAL ID-compliant IDs in January 2024 = 162,111,658 REAL IDs ÷ 287,321,596 Total IDs in Circulation.

⁶³ 0.56 percent CMGR (January 2023 through January 2024) = ((162,111,658 REAL IDs in January 2024 ÷ 151,652,714 REAL IDs in January 2023) ^ (1 ÷ 12)) – 1).

⁶⁴ U.S. Census Bureau. (December 2019). Annual Estimates of the Resident Population for the United States: April 1, 2010, to July 1, 2019 (NST–EST2019–01). Retrieved from <https://www.census.gov/data/tables/time-series/demo/popest/2010s-national-total.html>. Accessed on May 12, 2023.

⁶⁵ U.S. Census Bureau. (December 2023). Monthly Population Estimates for the United States: April 1, 2020, to December 1, 2024 (NA–EST2023–POP). Retrieved from <https://www.census.gov/data/tables/time-series/demo/popest/2020s-national-total.html>. Accessed on January 4, 2024.

⁶⁶ 85.5 percent of the population as DL/ID holders in January 2024 = 287,321,596 (DL/IDs in circulation as of January 2024) ÷ 355,966,451 (total population in January 2024).

implementation of the first phase of the Western Hemisphere Travel Initiative (WHTI).⁶⁷ Specifically, in fiscal year 2007, the Department of State experienced an influx of passport applications prior to, and after, the implementation of its first phase of the WHTI, which established new document requirements for travelers entering the United States from within the Western Hemisphere at airports of entry. At the time, the Department of State forecasted it would receive approximately 15 million passport applications in the 2007 fiscal year, however, it ended up receiving approximately 18.6 million passport applications, an approximate 23 percent increase over the original estimate.⁶⁸

As aforementioned, in January 2024, 56.42 percent or 162.1 million of the 287.3 total IDs in circulation are REAL ID-compliant. Based on the data range of January 2023 through January 2024, DHS expects that through April 2024, the 0.56 percent CMGR for the adoption of REAL IDs to remain unchanged,⁶⁹ bringing the percentage of REAL IDs relative to all IDs in circulation to 57.3 percent. In the year leading up to the card-based enforcement deadline, DHS considers a similar situation as the influx of passports leading up to, and through, the implementation of WHTI, and applies a 23 percent increase in the adoption of REAL IDs (equivalent to a CMGR of 1.61 percent).⁷⁰ Using this methodology, by May 2025, approximately 70 percent or 202.7 million of the total 289.6 million IDs in circulation would be REAL-ID

compliant.⁷¹ ⁷² DHS requests public comment on the assumptions related to the forecast of REAL ID compliance under the status quo, including the estimate and duration of the spike in REAL ID compliance.

Following the card-based enforcement date, DHS expects the spike to remain in place for approximately 4 to 5 months as individuals work to secure appointments with their local DMV.⁷³ DHS applies the 1.61 percent CMGR to estimate the percentage of REAL IDs in October 2025. DHS estimates approximately 75 percent of DL/IDs in circulation would be REAL ID-compliant.⁷⁴

To forecast beyond October 2025, under the status quo of full enforcement beginning May 2025, DHS assumes a 50-percent decrease of the initial spike in the adoption of REAL IDs between October 2025 and October 2026 but requests public comment on the duration and level of decrease in the months following card-based enforcement.⁷⁵ DHS estimates that by

⁷¹ 70.00 Percent of REAL IDs in May 2025 = $202,749,772 \text{ REAL IDs in May 2025} \div 289,641,636 \text{ IDs in Circulation in May 2025}$.

⁷² Under the status quo, which would result in full, and immediate, card-based enforcement on May 7, 2025, DHS estimates a 23 percent increase in the adoption of REAL IDs in the year leading up to card-based enforcement, adopted based on the implementation of WHTI. Absent this influx, and under Phased Enforcement beginning May 7, 2025, DHS evaluates two scenarios in section IV(B)(2)(d)(4), Forecast of REAL ID Compliance Under Phased Enforcement. First, a lower estimate which assumes no changes to the 0.56 percent CMGR which results in 61.2 percent of all DL/IDs in May 2025 being REAL ID compliant. Second, a higher estimate which uses a 1.03 percent CMGR resulting in 66 percent of all REAL DL/IDs being REAL ID compliant in May 2025.

⁷³ The WHTI was implemented in two phases with the second impacting land and seaports beginning at the end of January 2008 (2008 fiscal year). As such, following the initial spike in passport applications within fiscal year 2007, the Department of State also issued a higher than historical number of passports in fiscal year 2008 despite the total number of passports issued being lower than the preceding year. (Department of State, Reports and Statistics. U.S. Passports Issued Per Fiscal Year (1996–2023). Retrieved from <https://travel.state.gov/content/travel/en/about-us/reports-and-statistics.html>. Accessed on March 15, 2024.) Absent the proposed rule, following the card-based enforcement date, full enforcement would begin so there would be no similar resurgence as seen with WHTI implementation. However, a similar spike may be seen with the implementation of the phased enforcement rule. Under which, following the initial spike, there would likely be a decrease in adoption rates, before a second spike leading up to the May 2027 full compliance date.

⁷⁴ 75.09 Percent of REAL IDs Compliant in October 2025 = $218,052,964 \text{ REAL IDs in October 2025} \div 290,370,483 \text{ IDs in Circulation in October 2025}$.

⁷⁵ 11.5 Percent Increase in REAL IDs (One Year After Card-Based Enforcement) = $(23 \text{ Percent Initial Surge} \div 2) \times 100$. Equivalent to a 0.91 Percent CMGR. $0.91 \text{ Percent CMGR} = ((243,121,919 \text{ REAL IDs in October 2026} \div 218,052,964 \text{ REAL IDs in October 2025}) \wedge (1 \div 12) - 1)$.

October 2026, one and a half years after the card-based enforcement deadline, approximately 83 percent of DL/IDs in circulation would be REAL ID-compliant.⁷⁶ Subsequently, to estimate the percentage of REAL IDs relative to all DL/IDs in circulation, 2 years after the card-based enforcement date, DHS assumes an additional 50-percent decrease in the adoption of REAL IDs between October 2026 and October 2027.⁷⁷ Under this assumption, DHS estimates that approximately 87 percent of DL/IDs would be REAL ID-compliant by October 2027.⁷⁸

DHS assumes that once the percentage of REAL IDs, relative to all DL/IDs in circulation reach a natural adoption threshold or equilibrium⁷⁹ (with all those who want/need a REAL ID largely have them or an alternate form of identification), which DHS currently assumes as 75 percent, the increase in the proportional value over subsequent months and years would be minimal.⁸⁰ In 2008, DHS issued the Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes Final Rule. The NPRM included DHS's previous assumption that 100 percent of the population that hold DL/IDs would seek to obtain a REAL ID. However, in the 2008 Final Rule, the assumption was revised to 75 percent.⁸¹ DHS noted that

⁷⁶ In the Regulatory Evaluation for the 2008 Final Rule, DHS assumed 75 percent of the population that hold DL/IDs would seek to obtain a REAL ID. DHS describes this assumption further in the subsequent section, however, the 83 percent compliance rate by October 2026, roughly over one-and-a-half-years post card-based enforcement exceeds the 75 percent assumption. DHS notes that the adoption rate for REAL ID may decrease when REAL ID reaches a natural adoption threshold.

⁷⁷ $5.75 \text{ Percent Increase in REAL IDs} = (11.5 \text{ Percent Initial Surge} \div 2) \times 100$. Equivalent to a 0.47 Percent CMGR. $0.47 \text{ Percent CMGR} = ((257,101,923 \text{ REAL IDs in October 2027} \div 243,121,919 \text{ REAL IDs in October 2026}) \wedge (1 \div 12) - 1)$.

⁷⁸ *Supra* note 76.

⁷⁹ The natural adoption threshold or equilibrium is the estimated proportion at which TSA assumes most people who want a REAL ID largely have them, and it is unlikely to change much in the absence of any changes in conditions. This accounts for some portion of the population that chooses not to obtain a REAL ID (as States continue to offer non-compliant DL/IDs).

⁸⁰ DHS anticipates future renewal surges associated with existing REAL-ID holders, and additional initial adoptions associated with population growth.

⁸¹ In 2008, DHS noted that approximately 25 percent of the population held a valid passport. Furthermore, DHS noted that 20 percent of the population has never flown on a commercial plane, and 47 percent flies rarely or never. Combining the two groups, at least 40 percent of the population would not need to obtain a REAL ID. However, DHS assumed some proportion of the combined grouping would obtain a REAL ID regardless, reducing the estimate to 25 percent. Subtracting this 25 percent estimate from the initial 100 percent assumption results in 75 percent that would obtain a REAL ID.

⁶⁷ The populations affected by WHTI and REAL ID, while not exact, are similar in the sense that both initiatives affect identity documentation required by the traveling public and are not intended to represent the population of those who are obtaining government services. DHS believes WHTI represents a situation similar enough to REAL ID to serve as a proxy absent better information, but also requests public comment on this estimate.

⁶⁸ Government Accountability Office (GAO). (July 2008). State Department: Comprehensive Strategy Needed to Improve Passport Operations. GAO-08-891, page 16. Retrieved from <https://www.gao.gov/assets/gao-08-891.pdf>. Accessed on March 15, 2024.

⁶⁹ See footnote 63.

⁷⁰ Based upon the WHTI scenario, DHS assumes a 23 percent increase to the total number of REAL IDs in April 2024 (164,837,213 REAL IDs), approximately one-year prior to card based enforcement. TSA assumes the 23 percent increase will be spread across the 13 months leading up to card-based enforcement on May 7, 2025.

$202,749,772 \text{ REAL IDs in May 2025} = 164,837,213 \text{ REAL IDs in April 2024} \times (1 + 23 \text{ Percent})$. Since the 23 percent increase is spread out over the year leading up to the card-base enforcement date, DHS uses the resulting number of REAL IDs in May 2025 to calculate a 1.61 Percent CMGR. $1.61 \text{ Percent CMGR} = (202,749,772 \text{ REAL IDs in May 2025} \div 164,837,213 \text{ REAL IDs in April 2024}) \wedge (1 \div 13) - 1$.

the 100 percent assumption was unrealistic if States do not require all applicants to obtain REAL IDs. DHS further cited, that if States offer a choice of either compliant or non-compliant licenses to applicants, that some portion of the population would choose to receive non-compliant licenses because they may not need a REAL ID for [Federal] official purposes or they may already possess a compliant alternate form of identification.⁸² While DHS maintains the 75 percent assumption from the 2008 Final Rule, DHS acknowledges the uncertainty and that the natural threshold for REAL ID compliance may be above or below 75 percent.

In subsequent sections, DHS refers to the 75 percent assumption as the 75 percent threshold. The threshold represents an assumed natural point where REAL ID adoption would slow and essentially not grow in proportion

as all those willing to get a REAL ID have done so. While DHS assumed this value to be approximately 75 percent, the actual rate could be higher or lower.⁸³

4. Forecast of REAL ID Compliance Under Phased Enforcement

To estimate the percentage of REAL ID-compliant DL/IDs by the card-based enforcement date, May 7, 2025, DHS uses the 0.56 percent CMGR estimated from January 2023 to January 2024.⁸⁴ Next, DHS applies the 0.56 CMGR over the next 16 months to forecast the percentage of REAL IDs in circulation by May 2025, relative to all IDs in circulation.⁸⁵ Using this methodology, DHS estimates that approximately 61 percent of all IDs in circulation would be REAL ID-compliant by the card-based enforcement date.

The aforementioned methodology assumes that the next 16 months would

be similar to the trends seen over the last year.⁸⁶ Accordingly, DHS provides an alternate forecast on the percentage of REAL ID-compliant DL/IDs in May 2025 using the 1.03 percent CMGR for the adoption of REAL ID over last 4-years.⁸⁷ DHS applies the 1.03 percent CMGR over the 16 months between January 2024 and May 2025 to forecast that approximately 66 percent of IDs in circulation by May 2025 would be REAL ID-compliant by the card-based enforcement date.

Using the aforementioned CMGRs, 0.56 percent and 1.03 percent, DHS estimates that approximately 61 percent (lower-end of forecast) and 66 (upper-end of forecast) of all DL/IDs in circulation by May 2025 would be REAL ID-compliant, respectively. Table 3 reflects the forecasted number of REAL IDs using the two CMGR described in this section.

TABLE 3—FORECASTED NUMBER, AND PERCENTAGE OF, REAL IDs IN MAY 2025

	Last 12 month trend (0.56 percent CMGR)	Last 4 year trend (1.03 percent CMGR)
Approx. IDs in Circulation	289,641,636	
Forecasted Number of REAL IDs	177,187,465	191,027,256
REAL IDs as a Percentage of All IDs	61.2%	66.0%

As shown in table 3, under both the 0.56 percent CMGR and the 1.03 percent CMGR, the forecasted percentage of REAL IDs relative to all DL/IDs in circulation for May 2025, 61.2 percent and 66.0 percent, respectively, falls below the 2008 assumption that 75 percent of all holders would seek to obtain a REAL ID. In table 4, DHS illustrates the breakdown of how many DL/IDs would need to be REAL ID-compliant by the card-based enforcement date to meet the 75 percent

threshold. Applying the 75 percent assumption from the 2008 Rule results in approximately 217.2 million of the 289.6 million IDs in circulation, in May 2025, would be REAL ID-compliant. As shown, in addition to the 25 percent of DL/IDs in circulation that DHS assumes would be non-compliant, an additional 40.0 million and 26.2 million DL/IDs that would have been assumed to be REAL ID-compliant, respectively, would not be able to be used for official purposes beginning May 7, 2025.

Next, DHS estimates the CMGR needed to reach the 75 percent of REAL ID-compliant licenses and identification cards by the card-based enforcement date using the January 2024 national compliance rate for REAL ID of 56 percent. In the sixteen months between January 2024 and May 2025, the average monthly CMGR for the adoption of REAL ID would need to increase to 1.85 percent.⁸⁸

TABLE 4—NUMBER OF REAL IDs IN MAY 2025 TO ACHIEVE 75 PERCENT THRESHOLD

	Last 12 month trend (0.56 percent CMGR)	Last 4 year trend (1.03 percent CMGR)	75% Assumption (1.85 percent CMGR)
Approx. IDs in Circulation	289,641,636		
Number of REAL IDs Needed to Achieve 75% Threshold	217,231,227 (75.0%)		
DHS Forecasted REAL IDs	177,187,465 (61.2%)	191,027,256 (66.0%)	217,231,227

⁸² Department of Homeland Security. April 28, 2008. Regulatory Evaluation for REAL ID Program. Docket DHS-2006-0030. <https://www.regulations.gov/document/DHS-2006-0030-10704>.

⁸³ DHS believes there is a greater likelihood of the actual REAL ID threshold being greater than 75 percent rather than lower than 75 percent.

⁸⁴ *Supra* note 76.

⁸⁵ 16 months between January 2024 and May 2025 (card-based enforcement begins).

⁸⁶ DHS acknowledges that there is a level of uncertainty with compliance rates. For instance, closer to the card-based enforcement date, the adoption rate may increase. Furthermore, the proposed rule, and by extent, subsequent phased enforcement plans adopted by some agencies may provide individuals additional time to become compliant and thus result in lower or stagnant adoption rates.

⁸⁷ 1.03 percent CMGR (January 2020 through January 2024) = ((162,111,658 REAL IDs in January

2024 ÷ 99,076,573 REAL IDs in January 2020) ^ (1 + 48) - 1). DHS uses the last 4 years of data reported by all licensing jurisdictions to represent a more comprehensive timeframe, capturing periods of high and low adoption of REAL IDs.

⁸⁸ 1.85 percent CMGR = ((217,231,227 REAL IDs to Achieve 75 Percent Threshold in May 2025 + 162,111,658 REAL IDs in January 2024) ^ (1 + 16) - 1).

TABLE 4—NUMBER OF REAL IDs IN MAY 2025 TO ACHIEVE 75 PERCENT THRESHOLD—Continued

	Last 12 month trend (0.56 percent CMGR)	Last 4 year trend (1.03 percent CMGR)	75% Assumption (1.85 percent CMGR)
Difference Between Threshold and Forecasted	40,043,762 (13.8%)	26,203,971 (9.0%)	0 (0.0%)

Next, DHS uses two scenarios to forecast the national compliance rate following the card-based enforcement date. First, DHS assumes the 61.2 percent and 66.0 percent REAL ID adoption trends presented in table 3 remain unchanged after the start of card-based enforcement. Under this scenario, two years after card-based enforcement, in May 2027, which is when phased approach plans would need to commence full enforcement by, the national REAL ID rate would be 69.1 percent and 83.4 percent.⁸⁹

Following the card-based enforcement date, DHS expects a change in the rate of adoption. Phased enforcement plans could result in REAL ID compliance being spread over time compared to continued increases in compliance if full card-based enforcement went into effect across all agencies. Phased enforcement may also incentivize some portion of the public to obtain a REAL ID as DHS begins card-based enforcement in May 2025 without further extensions and as non-compliant DL/ID holders attempt to use non-compliant identification for official purposes during the period of phased enforcement. For this second scenario, DHS uses the midpoint of the two CMGRs (0.56 percent and 1.03 percent) used to estimate the national REAL ID rate in May 2025 to estimate the national REAL ID rate after the card-based enforcement date. Using this methodology, DHS calculates a 0.79 percent CMGR which would likely

capture a balance between potential high and low adoption rates for REAL IDs.⁹⁰ Next, DHS applies the 0.79 percent CMGR to the 61.2 percent and 66.0 percent estimates for May 2025. Two years after the commencement of card-based enforcement, by May 2027, DHS estimates approximately 73.1 percent and 78.8 percent of DL/IDs issued would be REAL ID-compliant, respectively.⁹¹ Depending on the scenario, the 75 percent threshold may be reached as early as July 2026. However, under a lower CMGR, in which the CMGR stays at 0.56 percent, the 75 percent threshold may not be reached until October 2028.

5. Summary of REAL ID Compliance

Table 5 describes the proportion of all DL/IDs that are REAL ID-compliant under the baseline scenario and phased enforcement at 6-month intervals leading up to, and after, the card-based enforcement date. In the baseline scenario, as discussed in section IV.B.2.d.3, DHS assumes a spike in REAL ID compliance in the year leading up to the card-based enforcement date (1.61 percent CMGR). DHS then assumes a reduction in the CMGR to 0.91 percent from October 2025 to October 2026 and to 0.47 percent after October 2026. This accounts for anticipated increases leading up to and through enforcement including natural adoption prior to a deadline, additional informational campaigns, and increased incentives for those without REAL ID compliant DL/IDs that would be denied

when using non-compliant DL/IDs for official purposes.

DHS also presents two phased enforcement scenarios that each include a lower and upper bound range, as discussed in section IV.B.2.d.4. Under the first phased enforcement scenario, DHS assumes trend growth rates remain the same before and after the card-based enforcement date (0.56 percent CMGR for the lower bound estimate, 1.03 percent CMGR for the upper bound estimate). This scenario assumes no change in identified trends leading up or after enforcement where the lower value represents current adoption rates (unchanged) and the higher value accounts for enforcement and phased enforcement impacts on adoption rates. Under the second phased enforcement scenario, DHS assumes the 0.56 percent CMGR for the lower bound estimate and 1.03 percent CMGR for the upper bound estimate up to the card-based enforcement date. After the card-based enforcement date, DHS assumes a change in the CMGR to 0.79 percent, the midpoint of the lower bound and upper bound trend rates to represent possible changes in behavior post enforcement date. Specifically, that in the lower end, more individuals will get REAL DL/IDs and on the higher end, less will seek REAL DL/IDs. However, DHS acknowledges there is a level of uncertainty with such adoption rates and seeks public comment on anticipated adoption and compliance rate impacts.

TABLE 5—REAL ID COMPLIANCE BY SCENARIO

Month	Baseline	Phased enforcement scenario 1 (constant rates)		Phased enforcement scenario 2 (post enforcement change)	
		Lower bound (%)	Upper bound (%)	Lower bound (%)	Upper bound (%)
May 24	58.2	57.6	58.7	57.6	58.7
Nov 24	63.8	59.3	62.2	59.3	62.2
May 25	70.0	61.2	66.0	61.2	66.0
Nov 25	75.7	63.1	69.9	64.0	69.0
May 26	79.7	65.0	74.1	66.9	72.1
Nov 26	83.6	67.0	78.6	69.9	75.4

⁸⁹ The 83.4 percent compliance rate by May 2027, 2 years after the card-based enforcement deadline, exceeds the 75 percent assumption from the 2008 Regulatory Evaluation. DHS notes that the adoption rate for REAL ID may dampen as it approaches or starts to exceed 75 percent of the population.

⁹⁰ 0.79 Percent CMGR = (0.557 Percent CMGR (Last Twelve Months) + 1.031 Percent CMGR (Last 48 Months)) ÷ 2.

⁹¹ In the Regulatory Evaluation for the 2008 Final Rule, DHS assumed 75 percent of the population that hold DL/IDs would seek to obtain a REAL ID.

However, the 78.8 percent compliance rate by May 2027, roughly 2 years post card-based enforcement exceeds the 75 percent assumption. DHS notes that the adoption rate for REAL ID may decrease when REAL ID reaches a natural adoption threshold.

TABLE 5—REAL ID COMPLIANCE BY SCENARIO—Continued

Month	Baseline	Phased enforcement scenario 1 (constant rates)		Phased enforcement scenario 2 (post enforcement change)	
		Lower bound (%)	Upper bound (%)	Lower bound (%)	Upper bound (%)
May 27	85.7	69.1	83.4	73.1	78.8

The baseline and phased enforcement scenarios present different trade-offs. Under the baseline scenario, the REAL ID compliance rate grows and increases more quickly as a result of more rapid surges in adoption. Such a surge in application for REAL IDs, may lead to potential backlogs at State DMVs and provide individuals reduced options after the enforcement date (e.g., denied DL/ID use for official purpose). This may serve as a strong motivator but may also have negative consequences (e.g., not allowed to board a commercial flight for a critical matter).

Under a phased approach, DHS forecasts a slower adoption of REAL ID, as compared to the baseline, with compliance increases being spread over the two-year phased enforcement period. This approach provides individuals more time to obtain a REAL compliant DL/ID and allows individuals who possess non-compliant DL/IDs to use such DL/IDs for official purposes while also creating opportunities for enforcement mechanisms (e.g., warnings) that may serve to incentivize the public to obtain a REAL ID without, or reduced, negative consequences.

DHS notes that differences in compliance rates between the baseline and scenarios could have large impacts. For example, TSA screens approximately 2.5 million passengers a day.⁹² If one percent of those passengers were to present a noncompliant DL/ID at a checkpoint, it would result in 25,000 passengers being unable to use the noncompliant DL/ID at the checkpoint in just a single day. If this was extrapolated out a week the number increases to 175,000, then 750,000 in a month and 2,250,000 in three months all of which may result in operational and security concerns. DHS recognizes TSA is a large use case, but impacts on a smaller scale could also apply to other Federal agencies. In any scenario, DHS believes a phased enforcement approach would help reduce challenges that large numbers of non-compliant DL/ID

holders could present compared to full and immediate enforcement under the baseline.

a. Phased Enforcement Population

Under the REAL ID Act and regulations, on and after the card-based enforcement date, Federal agencies are prohibited from accepting non-REAL ID-compliant DL/IDs for official purposes. The rulemaking would allow Federal agencies to implement the card-based enforcement requirement of the REAL ID Act and regulations under a phased approach if the agency determines a significant security or operational risk, or if public services offered by the agency would be impacted with full enforcement. Federal agencies that opt to do so must coordinate a plan with DHS. After coordination of a plan with DHS, a Federal agency may continue to accept non-REAL ID-compliant licenses and IDs on and after May 7, 2025, as part of a phased enforcement plan. To ensure that agencies' enforcement plans appropriately advance the objectives of the REAL ID regulations, this proposed rule would require agencies' plans to include measures for full card-based enforcement by May 5, 2027.

Based on agency information in the **Federal Register**, DHS estimates there are 434 Federal agencies, including cabinet-level departments, who may require REAL IDs for official Federal purposes.⁹³ To estimate the number of Federal agencies that would submit a phased enforcement plan under this rulemaking, DHS considers three factors; (1) agencies that are on track to not accept noncompliant marked cards on, or before, the card-based enforcement date; (2) agencies that do not *typically* require forms of identification for official purposes (e.g., to be presented for entry); and (3) DHS' monthly engagements with Federal stakeholders.

Agencies on Track To Not Accept Noncompliant Marked Cards on or Before the Card-Based Enforcement Date

First, each Federal agency has the authority to set its own minimum security access requirements and, if desired, can decide not to accept noncompliant marked cards before the card-based enforcement date. For example, the U.S. Department of Defense (DoD) finalized an update to its DoD-wide installation security policy and is in the process of no longer accepting noncompliant marked cards across all of its facilities and installations.⁹⁴ DHS assumes Federal agencies on track to implement enforcement by the effective date, are more likely to not pursue a phased enforcement plan.

Agencies That Do Not, or Do Not Typically, Require Forms of Identification To Be Displayed for Entry

Each facility makes a risk-based decision to determine if a form of identification is needed for entry, and if so, which forms would be accepted. For instance, an agency may require identification as part of their overall security strategy including, but not limited to, checking the individual against a checklist, or to verify that the individual is on an invitation or approved visitors list. If an agency only requires an individual to present a form of identification solely to record the individual's presence as opposed to for screening and access purposes, the requirements under the REAL ID Act of 2005 would not apply.

There are agencies that do not typically require forms of identification for official purposes or only experience of low volume of such interactions. A key factor in an agency's consideration may be the number of individuals that enter, or pass through, the Federal facility in a given day. For some Federal agencies, access to certain areas of the facility is presently granted without the

⁹² Transportation Security Administration. (n.d.). TSA checkpoint travel numbers (current year versus prior year/same weekday). Passenger Volumes. Retrieved from: <https://www.tsa.gov/travel/passenger-volumes>. Accessed on August 1, 2024.

⁹³ **Federal Register**. Retrieved from <https://www.federalregister.gov/agencies>. Accessed on May 10, 2023.

⁹⁴ DoD will continue to accept state-issued noncompliant unmarked "legacy" cards until the May 7, 2025, deadline. Department of Homeland Security. REAL ID Frequently Asked Questions. Retrieved from <https://www.dhs.gov/real-id/real-id-faqs>. Accessed on August 2nd, 2024.

need for an individual to present a form of identification for entry. For instance, the public areas of the Smithsonian and the National Park Service (NPS). While the Smithsonian and NPS would still be required to enforce REAL ID requirements on the card-based enforcement date, the enforcement would be limited to the individuals attempting to access the non-public areas. Presumably, as the number of individuals to this restricted entry area are significantly fewer than the daily number of visitors to Smithsonian facilities and National Parks, agencies like the Smithsonian and NPS may not need to submit phased enforcement plans due to limited security or operational risks.

DHS' Monthly Engagements With Federal Stakeholders

In Fall 2023 and the first quarter of 2024, DHS began hosting monthly stakeholder engagement sessions with Federal agencies. During these sessions, DHS briefed agencies regarding the card-based enforcement date and the proposed rulemaking to allow agencies the option for a phased approach if they determine such a plan is appropriate. Through hosting the sessions, DHS was able to establish a greater understanding, across the Government, on which agencies may consider a phased approach based on security, operational, or public impact risks associated with full enforcement. For instance, some agencies noted that they would follow guidance put forth by their cabinet-level department. Of the sample of agencies invited,

approximately 63 percent attended one or more stakeholder meetings. Based on feedback from agencies and recurring attendance over months, DHS assumes that 50 percent of agencies that attended one or more meetings would pursue a phased enforcement plan.

Based on these three factors, DHS assumes that of the 434 Federal agencies, 96 percent would not submit a phased enforcement plan. As such, these agencies would join the Department of Defense and begin full card-based enforcement on May 7, 2025. While individuals would need to present a REAL-ID compliant identification or an approved alternate identification for official purposes from that date forth; based on engagements with DHS subject matter experts (SMEs) and Federal agencies, the vast majority of agencies do not handle a significant volume, on a daily basis, of individuals required to present REAL ID for official Federal purposes.⁹⁵

DHS assumes that the remaining 4 percent of Federal agencies would develop and coordinate phased enforcement plans with DHS. The majority of such plans are anticipated to represent a low-to-medium use case (e.g., visitor access to a facility) with TSA representing a high-use case given the volume of individuals boarding federally regulated commercial aircraft per day.⁹⁶

b. Cost of the Proposed Rule

The following summarizes the estimated costs of the proposed rule over a 2-year period of analysis. Specifically, impacts are evaluated

between 2024 and 2025 to align with agency efforts to develop a phased enforcement plan prior to the current card-based enforcement date.

Federal agencies would incur costs to familiarize themselves with the proposed rule, assess whether to implement a phased enforcement plan, and if so, develop a plan. DHS, as the agency administering the REAL ID program, would incur costs to coordinate with Federal agencies that voluntarily implement a phased enforcement plan.

Compensation Rates

DHS estimates the labor-related costs for DHS and other Federal agencies. First, DHS uses the GS, step 3 wage scale for the Washington DC metro area to represent the annual wage for each GS level.⁹⁷ For Senior Executive Service (SES) employees, DHS uses the midpoint of the range of basic pay as the estimate for the SES annual wage.⁹⁸

DHS then multiplies annual wages for each GS level and SES by a compensation factor that represents fully loaded compensation rates. The compensation factor is the sum of all annual compensation which includes wages and internal DHS data on awards, bonuses, personnel benefits, and transit benefits, divided by the annual wage.

DHS calculates a compensation rate per hour by dividing the annual fully loaded compensation rates by 2,087, which represents the number of annual work hours.⁹⁹ Table 6 summarizes the compensation rates per hour for the relevant labor categories DHS uses in the analysis.

TABLE 6—COMPENSATION RATES PER HOUR

Labor category	Annual wage	Compensation factor ¹⁰⁰	Annual compensation rate	Compensation rate per hour
	a	b	c = a × b	d = c ÷ 2,087
GS-13	\$119,482	1.353	\$161,673	\$77.47
GS-14	141,192	1.349	190,482	91.27
GS-15	166,079	1.346	223,507	107.09

⁹⁵ DHS notes that most Federal employees and contractors have existing access to their respective facilities via employee identification/access cards and would not require separate submission of a REAL ID for access.

⁹⁶ TSA presents a unique and the largest use case for REAL ID enforcement. Each day, the agency screens over two million passengers at airport security checkpoints across the United States and its territories.

TSA Checkpoint Travel Numbers (Current Year Versus Prior Year(s)/Same Weekday). <https://www.tsa.gov/travel/passenger-volumes>. Accessed August 18, 2023.

⁹⁷ Salary Table No. 2023-DCB, Pay & Leave: Salaries & Wages, Office of Personnel Management, <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/23Tables/html/>

DCB.aspx. DHS typically uses the DHS Modular Cost Model (not publicly available) which leverages DC-area locality, Step 3, for budgeting to assist with calculating benefits, and other forms of compensation for Federal employees. DHS uses Step 3 for wages to align with DHS Modular Cost Model.

⁹⁸ The basic pay for SES employees in 2023 ranged from \$141,022 to \$212,200 with a midpoint of \$176,561. Salary Table No. 2023-ES, Pay & Leave: Salaries & Wages, Office of Personnel Management, www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/23Tables/exec/html/ES.aspx.

⁹⁹ OPM changed the 2,080 work hours to 2,087 by amending 5 U.S.C. 5504(b), the latter is assumed to capture year-to-year fluctuations in work hours. Source: Consolidated Omnibus Budget

Reconciliation Act of 1985 (Pub. Law 99-272, April 7, 1986).

TABLE 6—COMPENSATION RATES PER HOUR—Continued

Labor category	Annual wage a	Compensation factor ¹⁰⁰ b	Annual compensation rate c = a × b	Compensation rate per hour d = c ÷ 2,087
SES	176,561	1.345	237,416	113.76

Note: Calculation may not be exact due to rounding.

DHS Costs

DHS would incur costs related to coordinating with Federal agencies on their phased enforcement plans to address any potential concerns ahead of the REAL ID card-based enforcement date. This includes the cost to develop guidance for agencies on phased enforcement and time to review and coordinate with agencies on their plans. Furthermore, DHS must publish the list of agencies that have coordinated phased enforcement plans.

DHS would develop guidance to inform Federal agencies that they may implement REAL ID card-based enforcement using a phased approach, how to do so, and the level of coordination necessary with DHS. DHS consulted with internal SMEs who estimate a range to develop guidance between 60 to 100 hours. DHS uses the midpoint of this range, 80 hours, to calculate the cost to develop guidance. DHS assumes this time would be split between GS–13, GS–14, and GS–15 employees, with a respective burden of 45 percent, 45 percent, and 10 percent. DHS calculates a weighted average guidance development compensation rate of \$86.64 per hour by summing the product of the compensation rates and the proportion of burdens for the respective groups of employees contributing to the efforts.¹⁰¹ DHS estimates a \$6,931 guidance

development cost by multiplying the 80-hour burden and the weighted average guidance development compensation rate of \$86.64 per hour.

DHS coordination would also include reviewing phased enforcement plans to ensure compliance with the REAL ID Act and regulations (but would not include approval of plans). DHS consulted with internal SMEs who estimate a range to coordinate and review plans between 8 and 24 hours per plan.¹⁰² DHS uses the midpoint of the range, 16 hours per plan, to calculate DHS coordination costs. DHS assumes this time would be split between GS–13 and GS–14 employees, with a respective burden of 50 percent and 50 percent. DHS estimates a weighted average coordination compensation of \$84.37 per hour by summing the product of the compensation rates and the proportion of burdens for the respective groups of employees contributing to the efforts.¹⁰³ DHS estimates the coordination cost by multiplying the 18 agencies that would develop plans, the 16-hour time burden, and weighted average coordination compensation rate of \$84.37 per hour for a total coordination cost of \$24,298.¹⁰⁴

DHS would also incur costs to make publicly available a list of agencies that have coordinated phased enforcement plans with DHS. DHS assumes it would publish the list of agencies on a web

page on DHS's REAL ID website in year two of the analysis, just prior to the card-based enforcement date. DHS SMEs estimate it would take 16 hours to create, review, approve, and publish content on its existing REAL ID website. DHS assumes this time would be split between GS–13 and GS–14 employees, with a respective burden of 50 percent and 50 percent. DHS estimates a weighted average publishing compensation of \$84.37 per hour by summing the product of the compensation rates and the proportion of burdens for the respective groups of employees contributing to the efforts.¹⁰⁵ DHS calculates a publishing cost of \$1,350 by multiplying the 16-hour burden and weighted average publishing compensation rate of \$84.37 per hour. DHS assumes incremental maintenance costs for this one web page would be minimal because DHS would already maintain the DHS REAL ID website. Furthermore, DHS would not need to update the website content frequently because all Federal agencies that voluntarily implement a phased enforcement plan would need to do so by May 7, 2025.

DHS estimates the 2-year total cost for phased enforcement coordination to be \$0.033 million undiscounted and \$0.031 million discounted at 2 percent. Table 7 describes the total costs of the proposed rule to DHS.

TABLE 7—TOTAL COST TO DHS
[\$ Actual dollars, 2023 dollars]

Year	Cost to develop guidance a	Cost to coordinate b	Cost to publish list c	Total cost	
				Undiscounted	Discounted at 2%
				d = a + b + c	
2024: 1	\$6,931	\$0	\$0	\$6,931	\$6,795

¹⁰⁰ Compensation factors for the different GS levels and SES vary because DHS calculates some benefits as a percentage of wages and other benefits are static amounts that are equal for all GS levels and SES.

¹⁰¹ \$86.64 guidance development compensation per hour = (45 percent GS–13 burden × \$77.47 GS–13 compensation per hour) + (45 percent GS–14 burden × \$91.27 GS–14 compensation per hour) +

(10 percent GS–15 burden × \$107.09 GS–15 compensation per hour).

¹⁰² Phased Enforcement Plan coordination and review time estimate is less than it would take for a formal approval.

¹⁰³ \$84.37 coordination compensation per hour = (50 percent GS–13 burden × \$77.47 GS–13 compensation per hour) + (50 percent GS–14 burden × \$91.27 GS–14 compensation per hour).

¹⁰⁴ DHS assumes 4 percent of the 434 Federal agencies would submit phased enforcement plans, or about 18 agencies (see Phased Enforcement Population). DHS coordination cost = 18 agencies × 16 hours × \$84.37 = \$24,298.

¹⁰⁵ \$84.37 weighted average publishing compensation per hour = (50 percent GS–13 burden × \$77.47 GS–13 compensation per hour) + (50 percent GS–14 burden × \$91.27 GS–14 compensation per hour).

TABLE 7—TOTAL COST TO DHS—Continued
[\$ Actual dollars, 2023 dollars]

Year	Cost to develop guidance	Cost to coordinate	Cost to publish list	Total cost	
				Undiscounted	Discounted at 2%
	a	b	c	d = a + b + c	
2025: 2	0	24,298	1,350	25,648	24,652
Total	6,931	24,298	1,350	32,579	31,447

Note: Totals may not add due to rounding.

Federal Agency Costs

All Federal agencies would need to familiarize themselves with the proposed rule and phased enforcement concept and determine if a phased enforcement plan is necessary. DHS assumes at least one attorney and one manager at the GS-14 and GS-15 levels within each agency would review the proposed rule. DHS estimates that each person reviewing the rulemaking would spend an average of 1.1 hours.¹⁰⁶ DHS calculates a weighted average familiarization compensation rate of \$99.18 per hour by summing the product of the compensation rates and the proportion of burdens for the respective groups of employees contributing to the efforts.¹⁰⁷ DHS estimates the cost for all Federal agencies to familiarize themselves with phased enforcement by multiplying the 434 Federal agencies, the two employees per agency reviewing the rulemaking, the 1.1 hours familiarization burden and the weighted average familiarization compensation rate of \$99.18 per hour for an initial familiarization cost of \$94,145.¹⁰⁸

In addition to familiarization, all Federal agencies would need to

determine if based on their specific environment, developing and coordinating a phased enforcement plan is necessary. DHS SMEs estimate Federal agencies would spend, on average, between 10 to 40 hours to make a determination. DHS uses the midpoint of the range, 25 hours, to calculate the cost to make a determination. DHS assumes this time would be split between a GS-15 and SES, with a respective burden of 50 percent and 50 percent. DHS calculates a weighted average plan determination compensation of \$110.43 per hour by summing the product of the compensation rates and the proportion of burdens for the respective groups of employees contributing to the efforts.¹⁰⁹ DHS estimates the cost for all Federal agencies to determine a need for a phased enforcement plan by multiplying the 434 Federal agencies, the 25-hour burden, and the plan determination compensation rate of \$110.43 per hour. This plan determination cost is \$1.20 million.¹¹⁰

Federal agencies that develop phased enforcement plans would incur costs to develop and coordinate their respective plans with DHS. DHS assumes plan

development and coordination would also include preparing briefing materials for the public and updating the agency's website to inform the public of the phased enforcement plan and policies. DHS SMEs estimate Federal agencies would spend, on average, between 150 and 300 hours to develop plans. DHS uses the midpoint of the range, 225 hours, to calculate the cost to develop plans. DHS assumes this time would be split between GS-14, GS-15, and SES employees, with a respective burden of 45 percent, 45 percent, and 10 percent. DHS estimates a weighted average plan development compensation of \$100.64 per hour by summing the product of the compensation rates and the proportion of burdens for the respective groups of employees contributing to the efforts.¹¹¹ DHS multiplies the 18 agencies that develop plans,¹¹² the 225-hour development time burden, and the plan development compensation rate of \$100.64 per hour to calculate a plan development cost of \$407,594.¹¹³

Table 8 presents the total Federal cost estimates over the 2-year period of analysis which equates to \$1.70 million undiscounted and \$1.67 million discounted at 2 percent.

¹⁰⁶ DHS estimates a familiarization cost and time burden based on the time required to read all of the words in the notice of proposed rulemaking. DHS also assumes that individuals responsible for reviewing the proposed rule read at a rate of 238 words per minute. 1.09 familiarization time burden = 15,616 words in NPRM ÷ 238 words per minute ÷ 60 minutes.

Brysbaert, Marc. "How many words do we read per minute? A review and meta-analysis of reading rate." *Journal of Memory and Language*, Aug. 2019.

¹⁰⁷ DHS estimates one GS-14 and one GS-15 employee would spend an equal amount of time to review the proposed rule (i.e., a 50 percent burden for the GS-14 level and 50 percent burden for the GS-15 level). \$99.18 weighted average

familiarization compensation per hour = (50 percent GS-14 burden × \$91.27 GS-14 compensation per hour) + (50 percent GS-15 burden × \$107.09 GS-15 compensation per hour).

¹⁰⁸ Note: Calculation may not be exact due to rounding.

¹⁰⁹ DHS assumes the burden to make a plan determination is split with 50 percent of the effort by GS-15 employees and 50 percent by SES employees because the determination would be made by senior level employees. \$110.43 weighted average plan determination compensation per hour = (50 percent GS-15 burden × \$107.09 GS-15 compensation per hour) + (50 percent SES burden × \$113.76 SES compensation per hour).

¹¹⁰ Note: Calculation may not be exact due to rounding.

¹¹¹ \$100.64 weighted average plan development compensation per hour = (45 percent GS-14 burden × \$91.27 GS-14 compensation per hour) + (45 percent GS-15 burden × \$107.09 GS-15 compensation per hour) + (10 percent SES burden × \$113.76 SES compensation per hour).

¹¹² DHS assumes 4 percent of the 434 Federal agencies would submit phased enforcement plans, or about 18 agencies (see Phased Enforcement Population).

¹¹³ Note: Calculation may not be exact due to rounding.

TABLE 8—TOTAL QUANTIFIED COST TO FEDERAL AGENCIES
[\$ Actual dollars, 2023 dollars]

Year	Familiarization cost	Plan determination cost	Plan development cost	Total cost to Federal agencies	
				Undiscounted	Discounted at 2%
	a	b	c	d = a + b + c	
2024: 1	\$94,145	\$1,198,136	\$407,594	\$1,699,874	\$1,666,543
2025: 2	0	0	0	0	0
Total	94,145	1,198,136	407,594	1,699,874	1,666,543

Note: Totals may not add due to rounding.

Unquantified Costs

The proposed rule would also include non-quantified impacts and costs to affected entities. Such impacts are difficult to quantify largely due to a high degree of uncertainty. One such impact is the delay of benefits from the original rule by implementing the card-based enforcement requirement of the REAL ID rule in a phased manner. Full security benefits associated with the REAL ID rule would not be realized, as a result of agencies implementing a phased approach, until full enforcement occurs. As the benefits associated with the 2008 rule are difficult to quantify, so too is the quantification of their delay.¹¹⁴ Nonetheless, this proposed rule would have less unrealized or

delayed security benefits compared to an extension of the full compliance date. Federal agencies that voluntarily implement card-based enforcement in a phased approach would incur costs related to plan implementation. However, DHS assumes there would be a high degree of variability among such plans, and agencies would have discretion to determine what aspects to include in a phased enforcement plan. Nonetheless, Federal agencies would likely incur costs related to training necessary personnel on the processes and procedures of phased enforcement plans. Federal agencies would also likely incur costs to inform the public or appropriate stakeholders impacted about the new identity verification

procedures related to the agencies' phased enforcement plans (e.g., awareness campaign through media, signage at access points, and/or providing notices for individuals with non-compliant identification). Such costs may extend through agencies' phased enforcement plans, beyond years one and two of this analysis. Individuals may also incur costs to become aware of phased enforcement plans and respond accordingly.

Total Cost of Phased Enforcement Rule

Table 9 presents the two-year total cost of the phased enforcement proposed rule. DHS estimates the total cost of the proposed rule to be \$1.73 million undiscounted and \$1.70 million discounted at 2 percent.

TABLE 9—TOTAL COST OF PHASED ENFORCEMENT RULE
[Actual dollars, 2023 dollars]

Year	Cost to DHS	Cost to Federal agencies	Total cost	
			Undiscounted	Discounted at 2%
	a	b	c = a + b	
2024: 1	\$6,931	\$1,699,874	\$1,706,805	\$1,673,339
2025: 2	25,648	0	25,648	24,652
Total	32,579	1,699,874	1,732,453	1,697,991
Annualized				874,549

Note: Totals may not add due to rounding.

a. Benefits of the Proposed Rule

Phased enforcement provides Federal agencies the flexibility on how to start enforcing REAL ID card-based enforcement requirements in a manner that may reduce operational disruption, security risk, and public impact. This is especially relevant for Federal agencies that process large numbers of individuals and require identification

for access purposes. Phased enforcement provides Federal agencies more time to implement strategies to engage stakeholders and encourage REAL ID adoption. It can also provide time for agencies to develop alternative means to ensure continued operations for services or activities that require use of REAL ID for official purposes. Allowance of a phased approach would not unnecessarily delay REAL ID

enforcement for those Federal agencies ready to fully implement while also allowing more time for those Federal agencies who they themselves, or their stakeholders, would benefit from more time to implement.

Phased Enforcement of the card-based requirement would provide the public more time to obtain REAL-ID compliant DL/IDs. This may mitigate a potential backlog of applications for States with

¹¹⁴ In GAO Report 12–893 (Driver’s License Security), GAO highlights the steps taken by States to detect counterfeit documents and identity thefts,

many of the same requirements of the REAL ID Act. For instance, the verification of Social Security as well as the use of SAVE have helped reduced the

number of fraudulent licenses issued. Retrieved from <https://www.gao.gov/assets/gao-12-893.pdf>. Accessed on August 28, 2024.

lower compliance rates.¹¹⁵ The percentage of DL/IDs that are REAL ID-compliant lags well behind the national average in some States and those States may otherwise experience a surge in REAL ID applications in the absence of phased enforcement. States may thus be able to avoid an increase in processing times and costs related to measures to alleviate backlogs in applications, such as longer operating hours, increasing staff, and overtime pay. States and their DMVs may also be able to smooth out their operational needs, as the phased enforcement approach may mitigate a surge in REAL ID applications prior to full enforcement.

A higher proportion of individuals with compliant identification also reduces potential queuing and associated delays. For example, if an individual presents valid, non-REAL ID-compliant identification at an access point, security or screening workforce may require additional time to confirm the individual's identity, and/or explain the requirements of REAL ID and thus delay the individual, or not provide the individual access.¹¹⁶ Such delays may also have downstream impacts and cause longer delays for other individuals waiting in line at the access point, including for those who may possess a REAL ID-compliant document. However, under a phased enforcement plan, after verifying the individual's identity, the individual may be able to use the valid, non-compliant identification to access Federal facilities (for a temporary period of time).

Finally, any benefits to individuals or States associated with procuring a noncompliant card would be extended to those impacted through the phase-in period of card-based enforcement to the extent the agencies such individuals interact with for official purposes determine to implement card-based enforcement through a phased approach, in place of full and immediate enforcement on May 7, 2025;

however, the security benefits associated with full enforcement would also be delayed.

b. Alternatives Considered

DHS considered one alternative in addition to the baseline scenario and the proposed rule.

Alternative 1: Baseline Scenario

In the no action baseline scenario (Alternative 1), full card-based enforcement would begin in May 2025 without further extensions of the enforcement date or a phased approach to enforcement.

In the baseline scenario, absent phased enforcement, DHS forecasts that by May 2025, approximately 70 percent of all State-issued DL/IDs would be REAL ID-compliant. Full card-based enforcement when a significant percentage of the population could present non-compliant identification may increase operational risks to Federal agencies; especially agencies that process a large number of individuals per day.¹¹⁷ Federal agencies would be unable to accept noncompliant DL/IDs and may have to turn away individuals unable to present REAL ID-compliant identification, or another form of acceptable identification. Federal agencies would also spend additional time adjudicating such transactions where individuals present non-compliant identification, including handling additional questions and waiting for individuals to present compliant identification. Individuals without compliant identification and those waiting in long queues could become frustrated and cause incidents, such as a backlash to security personnel enforcing REAL ID.

The additional time required to adjudicate transactions involving the presentation of non-compliant identification could lead to delays including accessing Federal facilities and federally regulated commercial aircraft, which could impact both individuals with non-compliant identification and individuals waiting in queues, increasing their time burden and associated opportunity costs. These delays could have a significant effect on the travel industry, with individuals unable to present compliant identification at TSA checkpoints being denied access, or individuals caught in

long queues, that may result in canceling, postponing, or adjusting travel plans and incurring associated costs. This may include making alternative travel arrangements whose substitution may include less efficient modes of transportation (e.g., travelers deciding to drive rather than fly).

While nationwide, approximately 56.4 percent of all DL/IDs are REAL ID-compliant as of January 2024, there is a wide distribution of compliance across States with some lagging well behind the national average. Implementation of full card-based enforcement in May 2025 may lead to a surge in REAL ID applications and visits to the Department of Motor Vehicles, especially in those States with lower levels of REAL ID adoption. As a result, States may incur additional costs to resolve such potential surges in applications, including, but not limited to, operating longer hours, hiring more workers, and providing overtime pay for employees. Surges in applications could also lead to additional costs for individuals, including increased processing times to obtain a REAL ID and increased waiting times at the Department of Motor Vehicles.

For example, in 2007, DHS and the Department of State implemented the WHTI rule.¹¹⁸ The WHTI rule imposed new passport requirements for U.S. citizens and nonimmigrant aliens from certain countries entering the United States from countries within the Western Hemisphere. The WHTI rule led to a larger than anticipated increase in passport applications in 2007, longer passport processing times from 5 weeks to 10 to 12 weeks, and longer lines and crowded waiting rooms at Department of State facilities. The Department of State incurred \$42.8 million in costs (in 2007 dollars) to alleviate the surge in applications through additional staff, overtime pay, travel for temporary staff, telephone services for its call centers, equipment, and furniture.¹¹⁹

Implementing full card-based REAL ID enforcement would allow for the full realization of the benefits of the REAL ID rule without further delay. Specifically, DHS believes the primary benefit of REAL ID enforcement, as discussed in the 2008 rule, would be a potential increase to U.S. national security by reducing the vulnerability to criminal or terrorist activity of Federal buildings, nuclear facilities, and aircraft. An additional possible benefit of the

¹¹⁵ DHS forecasts the rate of REAL IDs under the baseline scenario would reach 85.7 percent by May 2027 whereas, DHS forecasts the rate under phased enforcement would be between 69.1 to 83.4 percent by May 2027. This 2.3 to 16.6 difference helps spread the processing of REAL ID requests for states as well of reducing additional negative impacts associated with rapid enforcement.

¹¹⁶ Delays may be short and straightforward or lengthy and more complex. For example, simply explaining the REAL ID requirements and providing an alternative form of identification may only take a few minutes whereas individuals unable to use a noncompliant DL/ID may escalate the situation, refusing to leave the access point, request to speak with supervisors, or even assaulting security or screening workforce which represent longer customer interactions and consume more resources (e.g., additional workforce and/or law enforcement) to resolve each interaction.

¹¹⁷ For example, if an agency processes 2.5 million visitors a day and 30 percent of visitors have non-compliant DL/IDs, it could potentially result in 750,000 visitors being unable to use their DL/IDs to gain access per day. Such large numbers of individuals with non-compliant identification could result in operational and security concerns as well as negative public impacts.

¹¹⁸ 71 FR 68412 (November 24, 2006).

¹¹⁹ State Department: Comprehensive Strategy Needed to Improve Passport Operations, United States Government Accountability Office (Jul. 28, 2008), available at <https://www.gao.gov/assets/gao-08-891.pdf>.

2008 rule includes reducing fraud, by increasing the difficulty of fraudulently obtaining a valid license and increasing the cost to create false licenses.

DHS rejects Alternative 1, however, as it limits the flexibility Federal agencies can use to implement REAL ID card-based enforcement. The potential for large numbers of individuals presenting non-REAL ID-compliant identification as a means to verify identity to access Federal facilities could cause operational risks to Federal agencies; especially those that process large numbers of individuals (e.g., the airport security environment). Surges in REAL ID applications may also cause negative impacts to States in issuing REAL IDs, and individuals in obtaining them. The proposed rule allows Federal agencies to take such factors into account and make determinations about how to address potential full card-based enforcement risks associated with the card-based enforcement date.

Alternative 2: Extension of Card-Based Enforcement Deadline

In this alternative, DHS would issue a rule to extend the card-based enforcement date from May 7, 2025, to some date between one and two years later (Alternative 2). Alternative 2 is distinct from the proposed rule because it extends the card-based enforcement date for all Federal agencies and does not specifically include an option to implement card-based enforcement through a phased approach. Under Alternative 2, Federal agencies would be prohibited from accepting noncompliant cards by a new date.

While Alternative 2 would afford the public more time to obtain REAL ID-compliant identification, implementing Alternative 2 would potentially allow those without REAL ID-compliant DL/ID to prolong obtaining such document. REAL ID adoption rates may continue to decrease further than they have over the last 12 months. Issuing another extension may send a signal to individuals and industry that full implementation of REAL ID is delayed indefinitely and that additional extensions continue to be real possibilities thereby not providing sufficient encouragement or incentive for the public to obtain REAL IDs.

This alternative would also delay the security benefits associated with the REAL ID rule across all Federal agencies until the extended card-based enforcement date.

Under the Alternative 2, DHS and Federal agencies would be able to avoid the quantifiable and unquantifiable costs related to the proposed rule. For Federal agencies, this includes phased

enforcement plan development and implementation. Alternative 2 also shares some of the same benefits as the proposed rule. For example, extending the card-based enforcement date would provide the public more time to obtain a REAL ID and may mitigate a potential backlog of applications for States with lower compliance rates (or may simply further put off the issue without a real solution). States may be able to avoid costs related to measures to alleviate backlogs in applications for a period of time. The alternative would help Federal agencies that process large numbers of individuals avoid operational disruption in May 2025 because agencies would be able to continue to accept valid and unexpired non-REAL ID-compliant identification.

DHS does not prefer Alternative 2. Since 2020, DHS has extended the card-based enforcement date on three occasions and by nearly 5 years. DHS believes the vast majority of Federal agencies would be ready to fully enforce the card-based deadline on May 7, 2025. Another extension may give the public and industry the impression that REAL ID would continue to be delayed and not enforced in the near future. Thus, the proposed rule maintains the effective date for those Federal agencies able to implement yet also provides flexibilities for those who would benefit from additional time.

1. Regulatory Flexibility Assessment

The RFA of 1980 requires agencies to consider the potential impact of regulations on small businesses, small government jurisdictions, and small organizations during the development of their rules.¹²⁰ The Secretary, pursuant to 5 U.S.C. 605(b), certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. The NPRM would only be applicable to Federal agencies who under the RFA are not considered small entities. Accordingly, DHS is not required to prepare a regulatory flexibility analysis. See 5 U.S.C. 603, 604.

2. Unfunded Mandates Reform Act Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, DHS generally must prepare a written

Statement, including a cost-benefit analysis, for proposed and final rules with “federal mandates” that may result in expenditures by State, local, and Tribal governments in the aggregate or by the private sector of \$100 million or more (adjusted for inflation) in any one year.

Before DHS promulgates a rule for which a written statement is required, section 205 of the UMRA generally requires TSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rulemaking. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows DHS to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the proposed or final rule provides an explanation why that alternative was not adopted. Before DHS establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of DHS regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

When adjusted for inflation, the threshold for expenditures becomes \$183 million in 2023 dollars. DHS has determined that this proposed rule does not contain a Federal mandate that may result in expenditures that exceed that amount either for State, local, and Tribal governments in the aggregate in any one year thus a written statement would not be required under UMRA. DHS will publish a final analysis, including its response to public comments, when it publishes a final rule.

C. Executive Order 13132 (Federalism)

A rule has federalism implications under E.O. 13132, “Federalism” (64 FR 43255, Aug. 10, 1999), if it has a substantial direct effect on State governments, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. DHS has analyzed this proposed rule under E.O. 13132 and has determined that although this rulemaking may indirectly affect the States, it does not impose

¹²⁰ Public Law 96–354, 94 Stat. 1164 (Sept. 19, 1980), codified at 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

substantial direct compliance costs or preempt State law. The direct compliance costs to States for implementation of REAL ID requirements were already accounted for in DHS 2008 final rule.¹²¹ In fact, the proposed rule is responsive to concerns expressed by State agencies regarding the upcoming deadline and would potentially provide States' residents more time to obtain a REAL ID-compliant DL/ID if agencies determine to implement card-based enforcement through a phased approach. The key impact of the rulemaking is to allow Federal agencies the authority to provide a phased enforcement approach. DHS has determined that the proposed rule is consistent with E.O. 13132.

D. Executive Order 13175 (Tribal Consultation)

This proposed rule does not have tribal implications under E.O. 13175, "Consultation and Coordination with Indian Tribal Governments," because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Environmental Analysis

DHS reviews actions to determine whether National Environmental Policy Act (NEPA) applies to them and, if so, what degree of analysis is required. DHS Directive 023–01 Rev. 01 (Directive) and Instruction Manual 023–01–001–01 Rev. 01 (Instruction Manual) establishes the procedures that DHS and its components use to comply with NEPA and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR parts 1500 through 1508.

The CEQ regulations allow Federal agencies to establish, with CEQ review and concurrence, categories of actions ("categorical exclusions") which experience has shown do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an environmental assessment or environmental impact statement. 40 CFR 1507.3(b)(2)(ii), 1508.4. For an action to be categorically excluded, it must satisfy each of the following three conditions: (1) the entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that

create the potential for a significant environmental effect. Instruction Manual section V.B(2)(a)–(c).

The clarification and notice provided by this proposed rule fits within categorical exclusion A3(d) "Promulgation of rules...that interpret or amend an existing regulation without changing its environmental effect." Instruction Manual, appendix A, table 1. Furthermore, the proposed rule is not part of a larger action and presents no extraordinary circumstances creating the potential for significant environmental impacts. Therefore, the proposed rule is categorically excluded from further NEPA review.

F. Energy Impact Analysis

The energy impact of this rulemaking has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended (42 U.S.C. 6362). DHS has determined that this rulemaking would not be a major regulatory action under the provisions of the EPCA.

List of Subjects in 6 CFR Part 37

Document security, Driver's licenses, Identification cards, Motor vehicle administrations, Physical security.

For the reasons set forth above, the Department of Homeland Security proposes to amend 6 CFR part 37 as follows:

PART 37—REAL ID DRIVER'S LICENSES AND IDENTIFICATION CARDS

- 1. The authority citation for part 37 continues to read as follows:

Authority: 49 U.S.C. 30301 note; 6 U.S.C. 111, 112.

- 2. Amend § 37.5 by revising paragraphs (b) and (c) and adding paragraph (d) and (e) to read as follows:

§ 37.5 Validity periods and deadlines for REAL ID driver's licenses and identification cards.

* * * * *

(b) Except as provided in paragraph (d) of this section, on or after May 7, 2025, Federal agencies shall not accept a driver's license or identification card for official purposes from any individual unless such license or card is a REAL ID-compliant driver's license or identification card issued by a State that has been determined by DHS to be in full compliance as defined under this subpart.

(c) Through the end of May 6, 2025, Federal agencies may accept for official purposes a driver's license or identification card issued under § 37.71. Except as provided in paragraph (d) of

this section, on or after May 7, 2025, Federal agencies shall not accept for official purposes a driver's license or identification card issued under § 37.71.

(d) Federal agencies may implement the requirements of paragraphs (b) and (c) of this section through a phased enforcement plan if the agency determines phased implementation is appropriate. Federal agencies that implement phased enforcement plans authorized by this paragraph (d) must:

- (1) Make a determination that a phased enforcement plan is appropriate in consideration of relevant factors including security, operational feasibility, and public impact;
- (2) Coordinate the phased enforcement plan with DHS;

(3) Make the phased enforcement plan publicly available on the agency's web page; and

(4) Achieve full enforcement of the requirements of paragraphs (b) and (c) of this section no later than May 5, 2027.

(e) DHS will make publicly available a list of agencies that have coordinated phased enforcement plans with DHS pursuant to paragraph (d) of this section.

Dated: September 6, 2024.

David P. Pekoske,
Administrator.

[FR Doc. 2024–20616 Filed 9–11–24; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM24–9–000]

Alliance for Tribal Clean Energy; Notice of Petition for Rulemaking and Intent To Hold Tribal Consultation Meetings

SUMMARY: Take notice that, on August 9, 2024, the Alliance for Tribal Clean Energy, pursuant to Rule 207(a)(4) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, filed a petition requesting that the Commission conduct an expedited rulemaking to revise the *pro forma* Large Generator Interconnection Procedures (LGIP) to defer the time at which certain tribal energy developers must post commercial readiness deposits and exempt them from potential withdrawal penalties. The Commission intends to conduct Tribal consultation per the Commission's *Policy Statement on Consultation with Indian Tribes in*

¹²¹ See 73 FR 5272 (Jan. 29, 2008).

Commission Proceedings, Order No. 635. The Commission will issue a future notice with further details.

DATES: *Comments due:* 5 p.m. Eastern Time on November 4, 2024.

ADDRESSES: The Commission strongly encourages electronic submission of comments in lieu of paper using the “eFiling” link at <https://www.ferc.gov>. Persons unable to file electronically may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission’s Home Page (<https://www.ferc.gov>) using the “eLibrary” link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

FOR FURTHER INFORMATION CONTACT:

Michael G. Henry (Technical Information), Office of Energy Policy and Innovation, 202–502–8583, Michael.Henry@ferc.gov
Lewis Taylor (Legal Information), Office of General Counsel, 202–502–8624, Lewis.Taylor@ferc.gov
Elizabeth Molloy (Tribal Liaison), Office of General Counsel, 202–502–8771, Elizabeth.Molloy@ferc.gov

SUPPLEMENTARY INFORMATION: Any person that wishes to comment in this proceeding must file comments in accordance with Rule 211 of the Commission’s Rules of Practice and Procedure, 18 CFR 385.211. Comments will be considered by the Commission in determining the appropriate action to be taken. Comments must be filed on or before the comment date.

The Commission’s Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings,

comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

Dated: September 3, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–20312 Filed 9–11–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AQ72

Schedule for Rating Disabilities—Ear, Nose, Throat, and Audiology Disabilities; Special Provisions Regarding Evaluation of Respiratory Conditions; Schedule for Rating Disabilities—Respiratory System

AGENCY: Department of Veterans Affairs.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Department of Veterans Affairs (VA) is issuing a supplemental notice of proposed rulemaking (SNPRM) that proposes to add a diagnostic code (DC) for constrictive bronchiolitis (or obliterative bronchiolitis) (CB) to the regulations that govern the respiratory system.

DATES: Comments must be received on or before October 15, 2024.

ADDRESSES: Comments must be submitted through www.regulations.gov. Except as provided below, comments received before the close of the comment period will be available at www.regulations.gov for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on www.regulations.gov as soon as possible after they have been received. VA will not post on Regulations.gov public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm an individual. VA encourages individuals not to submit duplicative comments; however, we will post comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period’s closing date is considered late and will not be considered in the final rulemaking. In accordance with the Providing Accountability Through

Transparency Act of 2023, a plain language summary (not more than 100 words in length) of this SNPRM is available at www.regulations.gov, under RIN 2900–AQ72.

FOR FURTHER INFORMATION CONTACT:

Rodney Grimm and Terence Koontzy, Regulations Analysts, VASRD Regulations Staff (218A), Compensation Service (21C), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–9700. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: On February 15, 2022, VA published a proposed rulemaking in the **Federal Register** (See 87 FR 8474) that proposes to amend its regulations that govern the ear, nose, throat, audiology, and respiratory systems. Within this rulemaking, VA proposed to add a General Rating Formula for Respiratory Conditions to evaluate several respiratory conditions currently contained within 38 CFR 4.97, Schedule of ratings—respiratory system. VA will address all the public comments received on the proposed rule and any public comments VA receives on this SNPRM in the final rulemaking.

I. A Diagnostic Code (DC) for Constrictive Bronchiolitis (CB)

On August 10, 2022, the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act, Public Law 117–168, was signed into law to improve access to VA benefits and health care for Veterans who were exposed to toxic substances during their military service. This action occurred after VA published its proposed rule to update § 4.97. Section 406 of the PACT Act added 38 U.S.C 1120 to establish presumptive service connection for diseases related to exposure to burn pit and other toxins. Among the respiratory conditions included within section 406, CB is the only condition without its own DC within the VA Schedule for Rating Disabilities (VASRD). Therefore, VA is proposing in this SNPRM to add DC 6605 for CB. The CB addition is the only proposal of this SNPRM, and VA is seeking public comment on this issue only.

At present, VA does not have a specific DC for CB. When VA encounters disabilities not listed in the VASRD, VA rates them analogously to a listed condition that is closely related (similar anatomical location, impacted functionality, and/or symptomology) in accordance with 38 CFR 4.20. Thus, VA currently evaluates CB under one of the closely related respiratory conditions

found under § 4.97. Although § 4.20 allows VA to appropriately evaluate CB, the addition of a unique DC will enable VA to easily track claims and decision outcomes for this condition.

II. Rating CB

VA currently uses pulmonary function test (PFTs) as the primary evaluative criteria for many of the respiratory conditions found under § 4.97 because medical researchers suggest that “[PFTs] are the cornerstone for evaluating respiratory impairment.” See Sood, A. (2014). Performing a lung disability evaluation: How, when, and why?. *Journal of Occupational and Environmental Medicine*, 56 Suppl 10(0 10), S23–S29. Doi: 10.1097/JOM.0000000000000282. The proposed rule published on February 15, 2022, set forth a General Rating Formula for Respiratory Conditions to evaluate respiratory conditions based on PFT findings, maximum oxygen consumption, or metabolic equivalents. See 87 FR 8476. VA proposes to rate CB using that General Rating Formula.

To be clear, this SNPRM does not change VA’s proposal for the General Rating Formula; it simply adds for CB a DC that would use the General Rating Formula. To reiterate, VA is seeking comments on the CB issue only, to include whether the proposed General Rating Formula for Respiratory Conditions is appropriate for evaluating CB.

Executive Orders 12866, 13563 and 14094

Executive Order 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 (Executive Order on Modernizing

Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). The Office of Information and Regulatory Affairs has determined that this rulemaking is a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at www.regulations.gov.

Regulatory Flexibility Act

The added DC contained in this SNPRM would not have a significant economic impact on a substantial number of small entities because only VA officials process and assign DCs for Veterans. On this basis, the Secretary hereby certifies that this SNPRM would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This SNPRM would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This SNPRM contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Assistance Listing

The Assistance Listing numbers and titles for this proposed rule are 64.104,

Pension for Non-Service-Connected Disability for Veterans; 64.109, Veterans Compensation for Service-Connected Disability; and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

List of Subjects in 38 CFR Part 4

Disability benefits, Pensions, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on September 5, 2024, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, VA proposes to amend 38 CFR part 4 as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

■ 1. The authority citation for part 4, subpart B continues to read as follows:

Authority: 38 U.S.C. 1155, unless otherwise noted.

Subpart B—Disability Ratings

■ 2. Revise § 4.96 by revising paragraph (c) to read as follows:

§ 4.96 Special provisions regarding evaluation of respiratory conditions.

* * * * *

(c) *Special provisions for the application of evaluation criteria for diagnostic codes 6600 through 6605, 6731, 6820, 6825 through 6833, 6840 through 6846, and 6848.*

* * * * *

■ 3. Amend § 4.97 by adding, in numerical order, an entry for diagnostic code 6605 to read as follows:

§ 4.97 Schedule of ratings-respiratory system.

						Rating
*	*	*	*	*	*	*
INTRINSIC LUNG DISEASES Airway Disorders (Trachea, Bronchi)						
*	*	*	*	*	*	*
6605	Constrictive bronchiolitis or obliterative bronchiolitis.					
*	*	*	*	*	*	*

■ 4. Amend appendix A to part 4 by adding, in numerical order, an entry for diagnostic code 6605 to read as follows:

Appendix A to Part 4—Table of Amendments and Effective Dates Since 1946

Sec.	Diagnostic code No.					
*	*	*	*	*	*	*
		6605	Added [Effective date of the Final Rule].			
*	*	*	*	*	*	*

■ 5. Amend appendix B to part 4 by adding, in numerical order, an entry for diagnostic code 6605 to read as follows:

Appendix B to Part 4—Numerical Index of Disabilities

Diagnostic code No.						
*	*	*	*	*	*	*
THE RESPIRATORY SYSTEM Airway Disorders (Trachea, Bronchi)						
*	*	*	*	*	*	*
6605	.....	Constrictive bronchiolitis or obliterative bronchiolitis.				
*	*	*	*	*	*	*

■ 6. Amend appendix C to part 4 by adding, in numerical order, an entry for diagnostic code 6605 to read as follows:

Appendix C to Part 4—Alphabetical Index of Disabilities

						Diagnostic code No.
*	*	*	*	*	*	*
Constrictive bronchiolitis or obliterative bronchiolitis	.....					6605
*	*	*	*	*	*	*

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA-R4-OAR-2023-0361; FRL-12238-01-R4]

Air Plan Approval; Shelby County, Tennessee; Revisions To Startup, Shutdown, and Malfunction Rules**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a portion of a State Implementation Plan (SIP) revision submitted by the Tennessee Department of Environment and Conservation (TDEC) on behalf of Shelby County Health Department (SCHD) Pollution Control Section on March 2, 2022, in response to a finding of substantial inadequacy and SIP call published on June 12, 2015, regarding provisions in the Shelby County portion of the Tennessee SIP related to excess emissions during startup, shutdown, and malfunction (SSM) events. The revision contains amended air codes of Shelby County and the following municipalities within Shelby County: Town of Arlington, City of Bartlett, Town of Collierville, City of Germantown, City of Lakeland, City of Memphis, and Town of Millington (referred to hereinafter as the “included municipalities”). The SIP revision also contains other changes to the affected Chapter that are unrelated to the SIP call but of which Shelby County and the included municipalities are also requesting incorporation into the Shelby County portion of the Tennessee SIP. EPA is proposing to approve the portions of the SIP revision that correct certain deficiencies identified in the June 12, 2015, SSM SIP call and that are in accordance with the requirements for SIP provisions under the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before October 3, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R4-OAR-2023-0361 at [regulations.gov](https://www.regulations.gov). Follow the online instructions for submitting comments. Once submitted,

comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

Estelle Bae, Air Permits Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303-8960. Ms. Bae can be reached by telephone at (404) 562-9143 or via electronic mail at bae.estelle@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

- A. EPA’s 2015 SSM SIP Action
- B. *Environ. Comm. Fl. Elec. Power v. EPA*, 94 F.4th 77 (D.C. Cir. 2024)
- C. Shelby County SIP Provisions Related to Excess Emissions

II. Analysis of SCHD’s Revisions to City of Memphis Air Code Section 9–12–24, “Malfunctions, Startups, and Shutdowns”

- A. TAPCR Section 1200–3–20–.01, “Purpose”
- B. TAPCR Section 1200–3–20–.02, “Reasonable Measures Required”
- C. TAPCR Section 1200–3–20–.04, “Logs and Reports”
- D. TAPCR Section 1200–3–20–.06, “Scheduled Maintenance”
- E. New TAPCR Section 1200–3–20–.06, “Report Required Upon the Issuance of Notice of Violation”
- F. New TAPCR Section 1200–3–20–.07, “Special Reports Required”; New TAPCR Section 1200–3–20–.08, “Rights

Reserved”; and New TAPCR Section 1200–3–20–.09, “Additional Sources Covered”

III. Proposed Actions

IV. Incorporation by Reference

V. Statutory and Executive Order Reviews

I. Background

On May 31, 1972, EPA issued a rulemaking which initially recognized SCHD’s Air Pollution Control Section as a local agency for air pollution control and originally approved the Memphis and Shelby County Code into the Tennessee SIP. On June 15, 1989, EPA approved portions of SCHD’s July 7, 1986, SIP revision to revise and update several provisions in the Shelby County portion of the Tennessee SIP, which includes the incorporation by reference of Tennessee’s June 18, 1980, state-effective version of Tennessee Air Pollution Control Regulations (TAPCR) Chapter 1200–3–20, titled “Limits on Emissions due to Malfunctions, Startups, and Shutdowns,” into City of Memphis Air Code Section 9–12–24 (formerly Section 16–87).^{1 2}

¹ See 54 FR 25456 (June 15, 1989). EPA had initially approved the City of Memphis Code into the Tennessee SIP under “Memphis and Shelby County.” See *id.* Included in “Memphis and Shelby County” are Shelby County and the following municipalities: Town of Arlington, City of Bartlett, Town of Collierville, City of Germantown, City of Lakeland, City of Memphis, and Town of Millington. Shelby County Health Department’s Air Pollution Control Branch recommends to the aforementioned municipalities regulatory revisions, which, if approved, are adopted by Shelby County and these included municipalities, which implement and enforce the regulations within their respective jurisdictions. As the air pollution control regulations/ordinances adopted by those jurisdictions are substantively identical, EPA had selected just one to represent the SIP compilations for Shelby County and the included municipalities: the City of Memphis Air Code. Thus, the SIP-called provision from the Shelby County portion of the Tennessee SIP that was identified in the 2015 SSM SIP Action was City of Memphis Air Code (although it was referred to as “Shelby County Code”) Section 16–87. For simplicity and brevity in this NPRM, and since the jurisdictions’ regulations/ordinances remain substantively identical, EPA will continue to refer to the City of Memphis Air Code throughout this NPRM to represent the regulations/ordinances of Shelby County and the included municipalities.

² One of the intervening changes that EPA is proposing to approve as part of this proposed rulemaking is changing the relevant City of Memphis Air Code reference in the SIP from Section 16–87 to Section 9–12–24. The title of this section remains “Malfunctions, Startups and Shutdowns.”

In this notice of proposed rulemaking (NPRM), EPA is proposing to approve a portion of the SIP revision dated March 1, 2022, which was transmitted by TDEC to EPA on March 2, 2022, to revise the Shelby County portion of the Tennessee SIP. See below for more details on the portions of the March 2, 2022, SIP revision that EPA is not acting on in this NPRM. SCHD is requesting that EPA incorporate into the Shelby County portion of the Tennessee SIP portions of the version of TAPCR Chapter 1200–3–20, titled “Limits on Emissions Due to Malfunctions, Startups, and Shutdowns” as effective on December 5, 2018.^{3,4}

The revisions to City of Memphis Air Code Section 9–12–24 incorporate the changes that are responsive to the 2015 SSM SIP Action and correspond to changes approved by EPA into the Tennessee SIP on June 23, 2023.⁵ The revisions include other changes unrelated to the 2015 SSM SIP Action that are consistent with Tennessee SIP revisions that EPA has approved since the last version of TAPCR Chapter 1200–3–20 was formally adopted into

the Shelby County portion of the Tennessee SIP on June 15, 1989.

To be consistent with Tennessee’s approach with respect to its SIP-called provisions, SCHD withdrew certain portions of its March 2, 2022, SIP revision—specifically, the SCHD provisions with respect to which (1) EPA had determined the corresponding Tennessee provisions did not correct the deficiencies, (2) EPA had proposed to disapprove the corresponding Tennessee provisions in the April 6, 2023, NPRM, or (3) EPA’s proposed approval of the corresponding Tennessee provisions had received adverse comments during the public comment period for the April 6, 2023, NPRM. In particular, the changes to the March 2, 2022, SIP revision that SCHD has withdrawn include the changes to TAPCR Section 1200–3–20-.03, titled “Notice Required When Malfunction Occurs,” and TAPCR Section 1200–3–20-.06, “Report Required Upon the Issuance of a Notice of Violation,” paragraph (1) and paragraph (4). The letter withdrawing these provisions is provided in the docket for this NPRM.

A. EPA’s 2015 SSM SIP Action

On June 12, 2015, pursuant to CAA section 110(k)(5), EPA finalized “State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA’s SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,” hereinafter referred to as the “2015 SSM SIP Action.” See 80 FR 33839 (June 12, 2015). The 2015 SSM SIP Action clarified, restated, and updated EPA’s interpretation that SSM exemption and affirmative defense SIP provisions are inconsistent with CAA requirements. The 2015 SSM SIP Action found that certain SIP provisions in 45 State and local jurisdictions, including Shelby County, were substantially inadequate to meet CAA requirements and issued a SIP call to those State and local jurisdictions to submit SIP revisions to address the inadequacies. EPA established a deadline of November 22, 2016 (18 months after the effective date of the action) by which the affected State and local jurisdictions had to submit such SIP revisions.

On March 2, 2022, SCHD submitted a SIP revision in response to the 2015 SIP call requesting EPA approval of the adoption by reference of TAPCR Chapter 1200–3–20, as effective on December 5, 2018, into City of Memphis Air Code Section 9–12–24. The version of TAPCR Chapter 1200–3–20 of which

SCHD is requesting incorporation into the SIP includes revisions that were submitted by the State in response to the 2015 SSM SIP Action along with other revisions that were not subject to the SIP call but had been approved into the Tennessee SIP in prior rulemakings. The March 2, 2022, SIP revision was deemed complete on July 21, 2023. A copy of the letter containing this completeness determination is provided in the docket for this NPRM.

B. Environ. Comm. Fl. Elec. Power v. EPA, 94 F.4th 77 (D.C. Cir. 2024)

On March 1, 2024, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) issued a decision in *Environ. Comm. Fl. Elec. Power v. EPA*, No. 15–1239 (“D.C. Circuit decision”). The case is a consolidated set of petitions for review of the 2015 SSM SIP Action. The Court granted the petitions in part, vacating the SIP call with respect to SIP provisions that EPA identified as automatic exemptions, director’s discretion provisions, and affirmative defenses that are functionally exemptions; and denied the petitions as to other provisions that EPA identified as overbroad enforcement discretion provisions, or affirmative defense provisions that would preclude or limit a court from imposing relief in the case of violations. EPA has assessed the impact of the decision with respect to the removal of overbroad defense provisions at issue in the Shelby County portion of the Tennessee SIP.⁶ We have concluded that the previously stated reasons for the proposed removal of these provisions, as articulated in the 2015 SSM SIP Action, are consistent with the recent D.C. Circuit decision, as these are overbroad enforcement discretion provisions. The Court upheld⁷ the EPA’s 2015 SSM SIP Action with regard to provisions that grant States overbroad enforcement discretion, which EPA found to be “inconsistent with the enforcement structure of the CAA as they could be interpreted to allow the State to make the final decision whether such emissions are violations, thus impeding the ability of the EPA and citizens to enforce the emission limitations of the SIP.”⁸

⁶ Those provisions are TAPCR Section 1200–3–20-.06(2) and (4) (formerly Sections 1200–3–20-.07(1) and 1200–3–20-.07(3)).

⁷ See *Environ. Comm. Fl. Elec. Power v. EPA*, 94 F.4th 77, 114 (D.C. Cir. 2024).

⁸ See 80 FR 33935.

³ In this proposed action, EPA is proposing to incorporate by reference—with certain exceptions noted in this NPRM—into the Shelby County portion of the Tennessee SIP, the City of Memphis Air Code Section 9–12–24 (formerly Section 16–87), locally effective on February 22, 2022, which adopts by reference the December 5, 2018, state-effective version of TAPCR Chapter 1200–3–20, “Limits on Emissions Due to Malfunctions, Startups, and Shutdowns.” EPA is also proposing to incorporate by reference the following sections that contain substantively identical changes: Shelby County—Section 3–9 (locally effective on January 13, 2020); Town of Arlington—Section 20–101 (locally effective on November 2, 2020); City of Bartlett—Section 20–101 (locally effective on December 8, 2020); Town of Collierville—Section 96.02 (locally effective on November 23, 2020); City of Germantown—Section 9–21(24) (locally effective on July 12, 2021); City of Lakeland—Section 20–101 (locally effective on February 10, 2022); Town of Millington—Section 20–101 (locally effective on October 12, 2020). See the cover letter of the SIP revision dated March 1, 2022, with the subject line “Request to Incorporate Revisions into the Shelby County and Included Municipalities Ordinance into the SIP for Tennessee as Response to EPA’s SIP Call” in the docket for this proposed rulemaking for evidence of adoption into the air codes of Shelby County and the included municipalities.

⁴ The state-effective dates for the rules within TAPCR Chapter 1200–3–20 that were in effect on December 5, 2018, are: 1200–3–20-.01, “Purpose”—September 26, 1994; 1200–3–20-.02, “Reasonable Measures Required”—November 11, 1997; 1200–3–20-.04, “Logs and Reports”—June 19, 2013; 1200–3–20-.05, “Copies of Log Required”—September 26, 1994; 1200–3–20-.06, “Report Required Upon The Issuance of a Notice of Violation”—November 16, 2016; 1200–3–20-.07, “Special Reports Required”—September 26, 1994; 1200–3–20-.08, “Rights Reserved”—September 26, 1994; and 1200–3–20-.09, “Additional Sources Covered”—September 26, 1994. As noted above, 1200–3–20-.03 was withdrawn from Shelby County’s submission. There were no substantive changes to 1200–3–20-.05; therefore, it is not further addressed in this NPRM.

⁵ See 88 FR 41031.

C. Shelby County SIP Provisions Related to Excess Emissions

In the 2015 SSM SIP Action, with regard to the Shelby County portion of the Tennessee SIP, EPA determined that City of Memphis Air Code Section 9–12–24⁹ was substantially inadequate to meet the fundamental requirements of the CAA and issued a SIP call for this provision. In the March 2, 2022, SIP revision, SCHD requests approval of a revised version of City of Memphis Air Code Section 9–12–24, which adopts by reference portions of TAPCR Chapter 1200–3–20 as state-effective on December 5, 2018. City of Memphis Air Code Section 16–87 (since renumbered to Section 9–12–24) comprises, through the adoption by reference of the June 30, 2003, state-effective version of TAPCR Chapter 1200–3–20, certain provisions of which were SIP-called as part of the same action.¹⁰ Consequently, certain provisions of City of Memphis Air Code Section 16–87 (since renumbered to Section 9–12–24) were SIP-called for the same reasons that the corresponding provisions of TAPCR Chapter 1200–3–20 were SIP-called.

With regard to the State portion of the Tennessee SIP, EPA determined in the 2015 SSM SIP Action that two provisions in TAPCR Chapter 1200–3–20—Sections 1200–3–20–.07(1) and 1200–3–20–.07(3)—were substantially inadequate to satisfy CAA requirements and issued a SIP call for these provisions.¹¹ Paragraph (1) of Section 1200–3–20–.07, “Report Required Upon the Issuance of Notice of Violation,” provides the Technical Director with the discretion, upon review of a source’s excess emissions report, to determine if

an event is a violation and whether to pursue an enforcement action. Paragraph (3) of Section 1200–3–20–.07 provides reporting requirements in the event of excess emissions and specifies that failure to submit the required report precludes the admissibility of the report data as an excuse for causing excess emissions during malfunctions, startups, and shutdowns. The rationale underlying EPA’s determination that these provisions are substantially inadequate to meet CAA requirements and therefore require revisions is detailed in the 2015 SSM SIP Action and the corresponding proposals.

On March 2, 2022, TDEC submitted a SIP revision on behalf of SCHD in response to the SIP call issued in the 2015 SSM SIP Action and requested that EPA replace the existing City of Memphis Air Code Section 16–87 (since renumbered to Section 9–12–24) in the Shelby County portion of the Tennessee SIP with the version of Section 9–12–24 that adopts by reference TAPCR Chapter 1200–3–20, as effective December 5, 2018. The March 2, 2022, revision contains changes that are responsive to the 2015 SSM SIP Action and other revisions approved into TAPCR Chapter 1200–3–20 of the Tennessee SIP since its last adoption into the City of Memphis Air Code. EPA’s rationale for proposing to approve each revision is described in more detail in section II of this document.

II. Analysis of SCHD’s Revisions to City of Memphis Air Code Section 9–12–24, “Malfunctions, Startups, and Shutdowns”

EPA’s last approval into the Shelby County portion of the Tennessee SIP of the adoption of TAPCR Chapter 1200–3–20 into the City of Memphis Air Code Section 16–87 (since renumbered to Section 9–12–24) was completed on June 15, 1989, with a local effective date of June 18, 1986. *See* 54 FR 25456 (June 15, 1989).¹² EPA now proposes to act on the changes adopted between the 1989 SIP-approved version and the version transmitted in response to the 2015 SSM SIP Action with a local effective date of February 22, 2022. These changes include, among other things, the removal of the adoption by reference of TAPCR Section 1200–3–20–.06, “Scheduled Maintenance,” and the associated renumbering of the subsequent sections. SCHD requests to incorporate by reference the newly

renumbered sections (Sections 1200–3–20–.07 through .10 are renumbered to 1200–3–20–.06 through .09) and the other sections that contain changes addressed in the SIP revision.

SCHD has excluded certain parts of the adoption by reference of TAPCR Chapter 1200–3–20 from its request for EPA approval of City of Memphis Air Code Section 9–12–24 into the SIP. The February 22, 2022, version of City of Memphis Air Code Section 9–12–24, through which the City of Memphis adopts by reference TAPCR Chapter 1200–3–20, does not exclude Section 1200–3–20–.06(5), which lists various types of sources and corresponding “de minimis” emission levels below which no notice of violation(s) of certain pollutant limits will be automatically issued and SSM exemptions may apply. However, in the March 2, 2022, SIP revision, SCHD requests that Section 1200–3–20–.06(5) not be incorporated into the Shelby County portion of the Tennessee SIP. In addition, on June 30, 2023, EPA received a request submitted by TDEC, on behalf of SCHD, to withdraw the portion of its submission making changes to TAPCR Section 1200–3–20–.03, new TAPCR Section 1200–3–20–.06(1), and new TAPCR Section 1200–3–20–.06(4), as submitted in the March 2, 2022, SIP revision.¹³ Therefore, EPA is proposing to approve SCHD’s changes to its adoption by reference of TAPCR Sections 1200–3–20–.01, 1200–3–20–.02, 1200–3–20–.04, 1200–3–20–.05, 1200–3–20–.06 (renumbered from 1200–3–20–.07) except for 1200–3–20–.06(1), 1200–3–20–.06(4), and 1200–3–20–.06(5), 1200–3–20–.07 (renumbered from 1200–3–20–.08), 1200–3–20–.08 (renumbered from 1200–3–20–.09), and 1200–3–20–.09 (renumbered from 1200–3–20–.10). EPA is also proposing to approve the removal of existing Section 1200–3–20–.06, “Scheduled Maintenance.” The changes EPA proposes to approve are described in more detail below.

A. TAPCR Section 1200–3–20–.01, “Purpose”

SCHD’s March 2, 2022, SIP revision adopts by reference portions of the December 5, 2018, state-effective version of TAPCR Chapter 1200–3–20, which includes TAPCR Section 1200–3–20–.01. Changes to City of Memphis Air Code Section 9–12–24 with respect to TAPCR Section 1200–3–20–.01 are consistent with TDEC’s January 20, 2023, SIP revision, which EPA approved

⁹ In the 2015 SSM SIP Action, City of Memphis Air Code (although it was referred to as “Shelby County Code”) Section 16–87 was SIP-called. Since the last (1989) SIP-approved version of the adoption by reference of this Section, City of Memphis Air Code Section 16–87 has been renumbered to Section 9–12–24. *See supra* notes 1 and 2.

¹⁰ *See* 80 FR 33839, 33965 (June 12, 2015).

¹¹ In the 2015 SSM SIP Action, with respect to Tennessee, EPA also identified TAPCR Section 1200–3–5–.02(1), under the Chapter titled “Visible Emissions,” as substantially inadequate on the basis that it contains an impermissible unbounded director’s discretion provision, and this provision was SIP-called. The Shelby County portion of the Tennessee SIP, under Shelby County Air Code Section 3–17 (the equivalent of SIP-approved City of Memphis Air Code Section 16–83, which has since been revised to Section 9–12–20), incorporates by reference Chapter 1200–3–5 of the TAPCR. This provision is likewise substantially inadequate to satisfy the requirements of the CAA for the same reason. While this provision was not included in the 2015 SSM SIP Action, EPA issued a NPRM on February 24, 2023, proposing to SIP-call this provision from the Shelby County portion of the Tennessee SIP. The proposed SIP call has not yet been finalized, and SCHD has not yet submitted a SIP submission addressing the relevant provision. *See* 88 FR 11842 (February 24, 2023).

¹² The “State effective date” identified in 40 CFR 52.2220(c) for Memphis Air Code Section 16–87 is incorrect; instead of August 14, 1989, it should be June 18, 1986.

¹³ The June 30, 2023, letter from TDEC is included in the docket for this NPRM, as is SCHD’s June 29, 2023, letter regarding withdrawal of certain provisions.

on June 23, 2023.¹⁴ These changes are minor, are not responsive to the 2015 SIP call, and are otherwise consistent with the CAA. Specifically, they include removing the list of examples of sources that are considered to be an “air contaminant source.” The definition of “air contaminant source” is also included elsewhere in the Shelby County portion of the SIP—specifically, under City of Memphis Air Code Section 9–12–1, “Definitions,” which adopts by reference TAPCR Chapter 1200–3–2, “Definitions,” as approved on June 15, 1989.¹⁵ This revision would remove the redundancy of this term in the Shelby County portion of the Tennessee SIP and would not relax the applicability of the regulations in City of Memphis Air Code Section 9–12–24. Accordingly, EPA is proposing to approve the requested change to this regulation.

B. TAPCR Section 1200–3–20–02, “Reasonable Measures Required”

The March 2, 2022, SIP revision to the adoption by reference under City of Memphis Air Code Section 9–12–24 of TAPCR Section 1200–3–20–02 contains substantive changes that are not responsive to the 2015 SIP call but that either strengthen or do not alter the stringency of the Shelby County portion of the Tennessee SIP and are otherwise consistent with the CAA. Existing paragraph (1) of the SIP-approved version of the adoption by reference of TAPCR Section 1200–3–20–02 under City of Memphis Air Code Section 9–12–24, “Reasonable Measures Required,” provides, in part, that for sources that are in or are significantly affecting a nonattainment area, “failures that are caused by poor maintenance, careless operation or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions, and shall be considered in violation of the emission standard exceeded and this rule.” The revision removes the statement that such equipment failures “shall be considered in violation of the emission standard exceeded and this rule.” This revision simply eliminates unnecessary language indicating that a source which experiences an equipment failure is automatically in violation of applicable emission standards and the City of Memphis Air Code provision. This change is appropriate because an instance of equipment failure does not always result in an exceedance of an emission standard.

In addition, SCHD is requesting removal of a portion of this provision that limits the regulation to “sources identified in Tennessee Rule 1200–3–19, or by a permit condition or an order issued by the Board or by the Technical Secretary as being in or significantly affecting a nonattainment area.” The effect of removing this language would be to expand the applicability of the adoption by reference of TAPCR Section 1200–3–20–02 under City of Memphis Air Code Section 9–12–24 so that the regulation would now apply to all air contaminant sources instead of sources that are in or significantly affecting a nonattainment area only.

These changes do not provide an exemption for any applicable emission standards, nor do they modify any applicable requirements for air contaminant sources. With these changes, all applicable emission standards will continue to apply during all times. EPA is proposing to approve these changes to the adoption by reference of TAPCR Section 1200–3–20–02 under City of Memphis Air Code Section 9–12–24 in the Shelby County portion of the Tennessee SIP because they are consistent with the CAA.

C. TAPCR Section 1200–3–20–04, “Logs and Reports”

The changes that SCHD is requesting to this provision through the adoption of TAPCR Section 1200–3–20–04, “Logs and Reports,” as effective December 5, 2018, are not responsive to the 2015 SSM SIP Action. They include the removal of the existing text of paragraph (2) from the original March 21, 1979, SIP-approved version of the adoption by reference of TAPCR Section 1200–3–20–04 under City of Memphis Air Code Section 9–12–24 and replacement of the removed paragraph with the word “Reserved.” EPA approved Tennessee’s revision to this regulation in 2016.¹⁶ Existing paragraph (2) provides that all sources located in or having a significant impact on a nonattainment area must submit a quarterly report that (1) identifies periods of exceedance of an applicable emission limitation, (2) estimates the excess emissions released during such SSM events, and (3)

provides total source emissions where such emissions are not otherwise required to be reported under SCHD’s adoption by reference of TAPCR Section 1200–3–10–02 or Chapter 1200–3–16. EPA is proposing to approve this SIP revision as it is consistent with the CAA.

D. TAPCR Section 1200–3–20–06, “Scheduled Maintenance”

In its March 2, 2022, SIP revision, SCHD requests the removal of the adoption by reference of TAPCR Section 1200–3–20–06, “Scheduled Maintenance,” from City of Memphis Air Code Section 9–12–24, as approved in the Shelby County portion of the Tennessee SIP. Although this provision was not SIP-called in the 2015 SSM SIP Action, TAPCR Section 1200–3–20–06 specifies reporting requirements for any shutdown of air pollution control equipment for necessary scheduled maintenance that will result in excess emissions. Specifically, this regulation requires notification within 24 hours of planned maintenance of air pollution control equipment unless the maintenance is routine, in which case the notifications may be made on an annual basis.

Section 110(l) of the CAA provides that EPA shall not approve a revision to a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. EPA proposes to approve the removal of this regulation in its entirety because the removal is not expected to cause any increase in emissions. This revision does not remove a prohibition on excess emissions or any specific requirements to minimize those emissions and thus is not a relaxation of a control requirement. Furthermore, as Tennessee noted in its corresponding SIP revision,¹⁷ the routine shutdown of air pollution control equipment described in Section 1200–3–20–06 is inappropriate.

EPA also notes that a requirement for sources to identify and report any anticipated excess emissions event resulting from control equipment undergoing scheduled maintenance is not a CAA-required element of SIPs. The Shelby County portion of the Tennessee SIP contains other reporting requirements that include the reporting of actual excess emissions events once such events have occurred.¹⁸ Thus, the

¹⁶ See 81 FR 66826 (September 29, 2016). In the NPRM for that rulemaking, EPA included an evaluation of the impact of this removal on the reporting obligations for major sources, minor sources, and on TDEC’s ability to determine whether sources are operating in compliance with the SIP. See 81 FR 49201 (July 27, 2016). The NPRM also further evaluated the removal of this language with the requirements of section 110(l) and section 193 of the CAA. The effect of this corresponding revision in the Shelby County Air Code is consistent with the effect as evaluated by EPA with respect to Tennessee.

¹⁷ See 88 FR 20443, 20446 (April 6, 2023).

¹⁸ For example, Shelby County Air Code adopts by reference TAPCR Chapter 1200–3–10. Under TAPCR Section 1200–3–10–02, sources are required

¹⁴ See 88 FR 41031 (June 23, 2023).

¹⁵ See 54 FR 25456 (June 15, 1989).

removal from City of Memphis Air Code Section 9–12–24 of the adoption by reference of Section 1200–3–20–06 would not prevent the receipt of reports of actual excess emissions. EPA proposes to find that removing the adoption by reference of TAPCR Section 1200–3–20–06 would not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. Furthermore, this removal would be consistent with EPA’s approval of Tennessee’s removal of this regulation from the SIP.¹⁹ Accordingly, EPA is proposing to approve Shelby County’s request to remove the adoption by reference of TAPCR Section 1200–3–20–06, “Scheduled Maintenance,” from City of Memphis Air Code Section 9–12–24 in the Shelby County portion of the Tennessee SIP.

E. New TAPCR Section 1200–3–20–06, “Report Required Upon the Issuance of a Notice of Violation”

Due to the requested deletion of the adoption by reference of TAPCR Section 1200–3–20–06, “Scheduled Maintenance,” as discussed above, SCHD is requesting the renumbering of the existing adoption by reference of TAPCR Section 1200–3–20–07, “Report Required Upon The Issuance of a Notice of Violation,” to TAPCR Section 1200–3–20–06 under City of Memphis Air Code Section 3–9 in the Shelby County portion of the Tennessee SIP. Shelby County’s March 2, 2022, SIP revision also requests that EPA approve the adoption by reference of Tennessee’s changes to several paragraphs within this regulation, some of which are responsive to the 2015 SIP call. Some of the other changes include regulatory revisions that became state-effective prior to the changes made in response to the 2015 SSM SIP Action.

The changes to this section that are not in response to the 2015 SSM SIP Action include the renumbering of the adoption by reference of TAPCR Section 1200–3–20–07, “Report Required Upon the Issuance of a Notice of Violation,” to 1200–3–20–06, consistent with the removal of the current SIP-approved version of the adoption by reference of Section 1200–3–20–06, “Scheduled Maintenance,” under City of Memphis Air Code Section 3–9. Shelby County also revises the regulation by splitting the requirements of paragraph .07(1) into two paragraphs, now renumbered as .06(1) and .06(2). The text from

current SIP-approved paragraph .07(1) that has been moved to new paragraph .06(1) has been revised to, among other things, improve clarity and ensure consistency with other Tennessee regulations that have been adopted by reference into the City of Memphis Air Code and with the terms defined in City of Memphis Air Code Section 9–12–1 which adopts by reference TAPCR Chapter 1200–3–2, “Definitions.” The revised text also updates internal references to the regulations.

The text from current SIP-approved paragraph .07(1) that has been moved to new paragraph .06(2) has been revised to, among other things, update the citation in the provision to reflect the renumbering of the adoption by reference of TAPCR Section 1200–3–20–.07(2) to 1200–3–20–.06(3).

In a letter dated June 29, 2023, SCHD withdrew several changes submitted in the March 2, 2022, SIP revision that SCHD had determined may not be approvable into the Shelby County portion of the Tennessee SIP based on EPA’s proposed partial disapproval of Tennessee’s SIP call response,²⁰ including the revisions to the adoption by reference of TAPCR Section 1200–3–20–.06(1). The version of TAPCR Section 1200–3–20–.06(1) adopted by reference under City of Memphis Air Code Section 9–12–24 and submitted in the March 2, 2022, SIP revision contains a cross-reference to TAPCR Section 1200–3–5–.02(1), which EPA proposed to disapprove.²¹ Although Tennessee submitted a SIP revision to revise TAPCR Section 1200–3–5–.02(1), EPA determined that the State’s changes to this regulation did not adequately correct the deficiencies and proposed to disapprove this portion of Tennessee’s SIP revision.²² The D.C. Circuit upheld the EPA’s SIP call for former TAPCR Sections 1200–3–20–.07(1) and 1200–3–20–.07(3) (now Sections 1200–3–20–.06(1), 1200–3–20–.06(2), and 1200–3–20–.06(4)) in *Environ. Comm. Fl. Elec. Power v. EPA* on the basis that they are impermissible “overbroad enforcement discretion” provisions.²³ In light of the D.C. Circuit decision, SCHD intends to resubmit the language in those provisions to remove the remaining “overbroad enforcement discretion” language therein. SCHD will be in a

position to do that after Tennessee has made a determination about how to revise those provisions and the updated regulations have been adopted into the air codes for Shelby County and the included municipalities.

EPA is proposing to approve SCHD’s revisions to the adoption by reference of new TAPCR Section 1200–3–20–.06(2) (former TAPCR Section 1200–3–20–.07(1), now renumbered to .06(2)), which include removing the language which States that the report detailing the circumstances of the excess emissions will be used “to assist the Technical Secretary in deciding whether to excuse or proceed upon the violation.” By removing this phrase, the provision will no longer appear to provide an impermissible discretionary exemption from SIP emission limits. In addition, the adoption by reference of new TAPCR Section 1200–3–20–.06(2) includes minor updates to the wording for clarification purposes. By removing the ambiguous language in TAPCR Section 1200–3–20–.06(2) that EPA SIP-called as an impermissible discretionary exemption, SCHD has addressed the specific deficiencies that EPA identified in the 2015 SSM SIP Action with respect to the adoption by reference of TAPCR Section 1200–3–20–.06(2).

EPA is also proposing to approve SCHD’s revisions to the adoption by reference of new TAPCR Section 1200–3–20–.06(3) (former Section 1200–3–20–.07(2), now renumbered to .06(3)), which describes the contents of the report required to be submitted to the State when a notice of violation is issued. The only changes made to this paragraph are minor wording and punctuation changes.

Next, SCHD submitted revisions to the adoption by reference of new TAPCR Section 1200–3–20–.06(4) (former Section 1200–3–20–.07(3)), including wording changes, in the March 2, 2022, SIP revision. However, due to an adverse comment EPA received during the public comment period for the April 6, 2023, NPRM, regarding Tennessee’s revisions to this provision, SCHD withdrew from EPA’s consideration the adoption by reference of TAPCR Section 1200–3–20–.06(4).

The March 2, 2022, SIP revision also includes the adoption by reference of TAPCR Section 1200–3–20–.06(5), which lists various types of sources and “de minimis” emission levels, below which no notice of violation(s) of certain pollutant limits will be automatically issued and SSM exemptions may apply. However, as part of the March 2, 2022, SIP revision, SCHD requested that paragraph (5) not be incorporated into the Shelby County

²⁰ See 88 FR 20443.

²¹ See *id.* at 20446.

²² TDEC ultimately withdrew its changes to 1200–3–5–.02(1). See 88 FR 20443 (April 6, 2023) and 88 FR 41031 (June 23, 2023).

²³ See *Environ. Comm. Fl. Elec. Power v. EPA*, 94 F.4th 77, 114 (D.C. Cir. 2024). Sections 1200–3–20–.06(1) and (2) were formerly part of 1200–3–20–.07(1), and Section 1200–3–20–.06(4) was formerly 1200–3–20–.07(3).

to report any actual excess emissions if the source has a continuous emissions monitoring system.

¹⁹ See 88 FR 41031, 41033 (June 23, 2023).

portion of the Tennessee SIP at this time.

In paragraph .06(6), which was not SIP-called, the following statement has been added: “No emission during periods of malfunction, start-up, or shutdown that is in excess of the standards in Division 1200–03 or any permit issued thereto shall be allowed which can be proved to cause or contribute to any violations of the Ambient Air Quality Standards contained in TAPCR Chapter 1200–3–3 or the National Ambient Air Quality Standards.” As revised, this paragraph simply notes that excess emissions during periods of SSM which are known to cause or contribute to violations of ambient air quality standards are not allowed. EPA notes that, while this provision does not convey an inaccurate concept, in light of the D.C. Circuit decision, EPA is continuing its longstanding interpretation that emission limits in the SIP, whether intended to provide for attainment and maintenance of the national ambient air quality standards (NAAQS) or otherwise, must be continuous. Any excess emissions that would violate an applicable SIP emission limitation are not allowed, regardless of whether they can be proved to cause or contribute to violations of any ambient air quality standards, and regardless of whether they occur during periods of SSM. With Shelby County’s changes to the adoption by reference of TAPCR Chapter 1200–3–20, there are no specific exemptions from applicable SIP emission limitations in this Chapter.

For the reasons described in this Section II.E, EPA is proposing to approve SCHD’s March 2, 2022, SIP revision to City of Memphis Air Code Section 9–12–24, which incorporates by reference the portions of TAPCR Section 1200–3–20–.06, as renumbered from 1200–3–20–.07, that have not been withdrawn in the letter dated June 29, 2023. Specifically, with respect to the adoption by reference of new TAPCR Section 1200–3–20–.06, EPA is proposing to approve: the re-numbering of this provision from TAPCR Section 1200–3–20–.07 to TAPCR Section 1200–3–20–.06, splitting former TAPCR Section 1200–3–20–.07, paragraph (1), into paragraphs (1) and (2); and the textual revisions to new TAPCR Section 1200–3–20–.06, paragraphs (2), (3), and (6). The portions of the March 2, 2022, SIP revision that SCHD has withdrawn from EPA’s consideration as a SIP revision include the adoption by reference of TAPCR Section 1200–3–20–.06, paragraphs (1) and (4) (SCHD’s June 29, 2023, letter withdrawing these provisions is included in the docket for

this proposed rulemaking.) and (5) (SCHD requests in its March 2, 2022, SIP revision that this provision not be incorporated into the Shelby County portion of the Tennessee SIP). As noted above in this Section II.E, SCHD plans to reevaluate and resubmit at a later date a revised version of these provisions. The withdrawal of these provisions from EPA’s consideration is relevant to EPA’s previous finding of failure to submit for those SIP-called provisions. The finding of failure to submit for Shelby County will continue to remain in effect and will be considered in a separate action.

F. New TAPCR Section 1200–3–20–.07, “Special Reports Required”; New TAPCR Section 1200–3–20–.08, “Rights Reserved”; and New TAPCR Section 1200–3–20–.09, “Additional Sources Covered”

EPA is proposing to approve Shelby County’s request to incorporate the non-substantive changes to the code that adopt by reference TAPCR Sections 1200–3–20–.07 and 1200–3–20–.08. Additionally, EPA is proposing to approve Shelby County’s request to incorporate the adoption by reference of TAPCR Section 1200–3–20–.09, as renumbered from 1200–3–20–.10, which includes other minor edits to assign a number to the provision now included as paragraph .09(1) and to include parentheses around existing text in this provision. EPA is proposing to approve these revisions.

III. Proposed Action

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. See 42 U.S.C. 7410(k); 40 CFR 52.02(a). Based on the analysis in section II of this NPRM, EPA is proposing to approve the portion of Tennessee’s March 2, 2022, SIP revision that makes changes to the Shelby County portion of the Tennessee SIP under City of Memphis Air Code Section 9–12–24 (formerly Section 16–87), which adopts by reference portions of TAPCR Chapter 1200–3–20 as effective on December 5, 2018. Specifically, EPA is proposing to approve the changes to the adoption by reference of Section 1200–3–20–.01, “Purpose”; Section 1200–3–20–.02, “Reasonable Measures Required”; Section 1200–3–20–.04, “Logs and Reports”; Section 1200–3–20–.06, “Report Required Upon the Issuance of Notice of Violation,” renumbered from 1200–3–20–.07, except for 1200–3–20–.06(1), 1200–3–20–.06(4), and 1200–3–20–.06(5); Section 1200–3–20–.07, “Special Reports Required,”

renumbered from 1200–3–20–.08; and Section 1200–3–20–.09, “Additional Source Covered,” renumbered from 1200–3–20–.10. EPA is also proposing to approve the addition of Section 1200–3–20–.08, “Rights Reserved.” EPA is also proposing to approve the removal of Section 1200–3–20–.06, “Scheduled Maintenance.”

EPA is not reopening the 2015 SSM SIP Action nor soliciting comment on the rationale for issuing the 2015 SIP call to Shelby County or the 2022 finding of failure to submit in response to the 2015 SIP call for Shelby County. EPA is taking comment on whether the proposed revisions to the Shelby County portion of the Tennessee SIP are consistent with CAA requirements and whether these changes remedy the substantial inadequacies in the specific Tennessee SIP provisions identified in the 2015 SSM SIP Action.

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final rule regulatory text that includes incorporation by reference.²⁴ In accordance with the requirements of 1 CFR 51.5, and as discussed in sections I through III of this preamble, EPA is proposing to incorporate by reference, with certain exceptions, City of Memphis Air Code Section 9–12–24, locally effective on February 22, 2022, which itself adopts by reference TAPCR Chapter 1200–3–20, as State effective on December 5, 2018.²⁵ These revisions are intended, in part, to conform Shelby County’s regulations with the State of Tennessee’s SIP-approved regulations. EPA has made and will continue to make these materials generally available through <https://www.regulations.gov> and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

²⁴ EPA’s proposed approval of the changes to and incorporation by reference of City of Memphis Air Code Section 9–12–24 also includes the approval of substantively identical changes to regulations/ordinances submitted for Shelby County and the other included municipalities and the incorporation by reference of those impacted sections in these jurisdictions. See footnote 3, above.

²⁵ EPA is not proposing to incorporate by reference into the Shelby County portion of the Tennessee SIP the adoption by reference of TAPCR Section 1200–3–20–.03, 1200–.03–20–.06(1), 1200–3–20–.06(4), and 1200–.03–20–.06(5). If EPA finalizes this action as proposed, it will revise the entry for Section 16–87 in Table 2 of 40 CFR 52.2220(c) to reflect the retention of TAPCR Section 1200–3–20–.03 as State-effective March 21, 1979, and the first sentence of TAPCR Section 1200–3–20–.07(1) as State-effective December 14, 1981, and add an entry for Section 9–12–24 with the exceptions noted in the prior sentence.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal

agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The air agency did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this proposed action. Due to the nature of the action being proposed here, this proposed action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this proposed action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving EJ for communities with EJ concerns.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 6, 2024.

Jeananne Gettle,

Acting Regional Administrator, Region 4.

[FR Doc. 2024–20669 Filed 9–11–24; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2023–0466; FRL–12179–01–R4]

Air Plan Approval; Forsyth County, North Carolina; Removal of Excess Emissions Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the North Carolina Division of Air Quality (NCDAQ) on behalf of the Forsyth County Office of Environmental Assistance and Protection (FCEAP or Forsyth County) on November 28, 2022. The revision was submitted in response to a finding of substantial inadequacy and SIP call published on June 12, 2015, concerning excess emissions during startup, shutdown, and malfunction (SSM) events, and is intended to correct deficiencies in the Forsyth County portion of the North Carolina SIP identified by EPA in the SIP call. EPA is proposing to approve the SIP revision in accordance with requirements for SIP provisions under the Clean Air Act (CAA or Act). In addition, EPA is proposing to approve minor and administrative changes to certain regulatory provisions that have been revised by the local agency since EPA's last approval of those provisions.

DATES: Comments must be received on or before October 3, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2023–0466 at [regulations.gov](https://www.regulations.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or

multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

Faith Goddard, Multi-Air Pollutant Coordination Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8757. Ms. Goddard can also be reached via electronic mail at goddard.faith@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. EPA's 2015 SSM SIP Action

On June 12, 2015, pursuant to CAA section 110(k)(5), EPA finalized “State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA’s SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,” hereinafter referred to as the “2015 SSM SIP Action.” See 80 FR 33840 (June 12, 2015). The 2015 SSM SIP Action clarified, restated, and updated EPA’s interpretation that SSM exemption and affirmative defense SIP provisions are inconsistent with CAA requirements. The 2015 SSM SIP Action found that certain SIP provisions in 36 States, applicable in 45 statewide and local jurisdictions, including Forsyth County, North Carolina, were substantially inadequate to meet CAA requirements and issued a SIP call to those States to submit SIP revisions to address the inadequacies. EPA established an 18-month deadline by which the affected States had to submit such SIP revisions. States were required to submit corrective revisions to their SIPs in response to the SIP calls by November 22, 2016.

In the 2015 SSM SIP Action, EPA determined that Forsyth County Air Quality Control Ordinance and Technical Code Subchapter 3D, Section .0500, Rule 3D .0535, *Excess Emissions Reporting and Malfunctions*, paragraphs (c) and (g) (also referred to herein as “Rule 3D .0535(c) and (g)”), are substantially inadequate to meet CAA requirements on the basis that they contain impermissible director’s discretion provisions. See 80 FR 33840, 33964 (June 12, 2015). In the Forsyth County portion of the North Carolina SIP, Rule 3D .0535(c) and (g) provide

exemptions for emissions exceeding otherwise applicable SIP emission limitations at the discretion of a local official during malfunctions at paragraph (c) and startup and shutdown at paragraph (g). The rationale underlying EPA’s determination that these Forsyth County provisions are substantially inadequate to meet CAA requirements is detailed in the 2015 SSM SIP Action and the accompanying proposals.

B. 2022 Findings of Failure To Submit

On January 12, 2022, pursuant to CAA section 110(k)(1), EPA finalized “Findings of Failure To Submit State Implementation Plan Revisions in Response to the 2015 Findings of Substantial Inadequacy and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction,” hereinafter referred to as the “2022 Findings of Failure to Submit.” See 87 FR 1680 (January 12, 2022). The 2022 Findings of Failure to Submit found that twelve State and local agencies, including FCEAP, failed to submit timely corrective SIP revisions required by the 2015 SSM SIP Action. This action triggered certain CAA deadlines for EPA to impose sanctions if an affected agency did not submit a complete SIP revision addressing the outstanding deficiencies and to promulgate a Federal Implementation Plan (FIP) if EPA did not approve a required SIP submittal by February 11, 2024.

On November 28, 2022, in response to the 2015 SSM SIP Action and the 2022 Findings of Failure to Submit, NCDAQ submitted on behalf of FCEAP a revision to the Forsyth County portion of the North Carolina SIP. In its submittal, Forsyth County requests that EPA revise the Forsyth County portion of the North Carolina SIP by removing the substantive text of Rule 3D .0535(c) and (g) and adding language clarifying that paragraphs (c) and (g) are not included in EPA’s SIP-approved version of Rule 3D .0535 in the Forsyth County portion of the North Carolina SIP. Forsyth County also includes in the submittal minor and non-substantive administrative amendments to the remaining Rule 3D .0535 regulatory provisions, as revised since EPA’s last approval on February 17, 2000.¹

C. Environ. Comm. Fl. Elec. Power v. EPA, 94 F.4th 77 (D.C. Cir. 2024)

On March 1, 2024, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) issued a decision

in *Environmental Committee of the Florida Electric Power Coordinating Group, Inc., v. EPA*, 94 F.4th 77 (D.C. Cir. 2024). The case was a consolidated set of petitions for review of the 2015 SSM SIP Action. The court granted the petitions in part, vacating the SIP call with respect to SIP provisions that EPA identified as automatic exemptions, director’s discretion provisions, and affirmative defenses that are functionally exemptions; and denied the petitions as to other provisions that EPA identified as overbroad enforcement discretion provisions or affirmative defense provisions that would preclude or limit a court from imposing relief in the case of violations. Although the court vacated the SIP call as to director’s discretion provisions such as Rule 3D .0535(c) and (g), EPA is required, pursuant to CAA section 110(k)(3), to approve Forsyth County’s submittal requesting removal of the substantive text of these provisions from the Forsyth County portion of the North Carolina SIP because the submittal meets all of the applicable CAA requirements. See 42 U.S.C. 7410(k)(3). The D.C. Circuit’s decision in *Environmental Committee* does not preclude State and/or local air jurisdictions from submitting SIP revisions requesting removal of certain provisions from their SIP where that removal makes the SIP more protective of air quality, as FCEAP did here.

II. Analysis of the November 28, 2022, Submittal

Forsyth County requests that EPA remove the substantive text of Rule 3D .0535(c) and (g) from the Forsyth County portion of the North Carolina SIP and add language clarifying that Rule 3D .0535(c) and (g) are not included in the Forsyth County portion of the North Carolina SIP. Removing the substantive text of Rule 3D .0535(c) and (g) from the SIP would mean that emission limits incorporated into the Forsyth County portion of the North Carolina SIP would apply at all times, including periods of SSM. If removed from the Forsyth County portion of the North Carolina SIP, the substantive text of Rule 3D .0535(c) and (g) will apply to Forsyth County in its exercise of enforcement authority for local-law purposes only. These provisions would remain enforceable as local-only provisions, and language would be added to clarify that Rule 3D .0535(c) and (g) are not included in the Forsyth County portion of the North Carolina SIP. Because the substantive text of Rule 3D .0535(c) and (g) would not be part of the Forsyth County portion of the North Carolina SIP, citizens and EPA could seek injunctive relief or civil penalties for

¹ See 65 FR 8053.

excess emissions. Based on Forsyth County's request to revise Rule 3D .0535(c) and (g) in the Forsyth County portion of the North Carolina SIP, EPA proposes to approve Forsyth County's November 28, 2022, SIP revision because the requested revision is consistent with CAA requirements.

Minor and non-substantive administrative amendments to Rule 3D .0535 have been adopted by Forsyth County since EPA's last approval on February 17, 2000,² resulting in an inconsistency between the federally approved SIP and local rules (*i.e.*, a "SIP gap"). Forsyth County's November 28, 2022, SIP revision includes minor changes to Rule 3D .0535(e) and (f) that revise malfunction abatement plan deadlines (at Rule 3D .0535(e)) and notification and source testing requirements (at Rule 3D .0535(f)), as well as non-substantive administrative changes to the remaining Rule 3D .0535 regulatory provisions that update the formatting of rule references and make minor edits that are generally clarifying in nature.³ Regarding the non-substantive SIP revisions, EPA proposes to approve these administrative changes because the November 28, 2022, SIP revision is consistent with CAA requirements and does not alter the meaning of the regulations.

Regarding Rule 3D .0535(e), Forsyth County revises malfunction abatement plan requirements by removing an obsolete sentence that reads, "The owner or operator of any electric utility boiler unit required to have a malfunction abatement plan shall submit a malfunction abatement plan to the Director within 60 days of the effective date of this Rule." The existing subsequent sentence requires "any other source" required to have a malfunction abatement plan to submit that plan within six months of the Director's requirement to do so. Forsyth County revises Rule 3D .0535(e) such that it now States that "any source" required to have a malfunction abatement plan must submit that plan within six months of the Director's requirement to do so. Because Rule 3D .0535(d) still requires submission of malfunction abatement plans within 60 days for sources other than electric utility boilers, only the submission timeframe

for electric utility boilers has increased, and EPA anticipates no associated impact on air quality.

Forsyth County also revises the timeframe within which amendments can be submitted to remedy malfunction abatement plan deficiencies. The revised provision states that, if a malfunction abatement plan does not carry out objectives described in Rule 3D .0535(d) and is therefore disapproved, an amendment that corrects the deficiencies identified must be submitted "within 30 days of receipt of the Director's notification of disapproval," whereas the existing provision requires a satisfactory amendment to be submitted "within a time prescribed by the Director." EPA proposes to approve Forsyth County's changes to Rule 3D .0535(e) concerning malfunction abatement plan requirements because the November 28, 2022, SIP revision is consistent with CAA requirements and removes a sentence requiring the submission of an electric utility boiler unit malfunction abatement plan by an expired deadline and replaces an undefined timeframe for correcting the malfunction abatement plan to be prescribed by a local official with a definite timeframe of thirty days. Regarding the revised timeframe within which amendments can be submitted to remedy malfunction abatement plan deficiencies, EPA finds the revised provision to be more stringent.

Regarding Rule 3D .0535(f), Forsyth County updates a corrective measures notification requirement. The revised provision states that, "after" measures correcting excess emissions lasting more than four hours resulting from "a malfunction, a breakdown of process or control equipment or any other abnormal conditions" have been accomplished, the source owner or operator must notify a local official, whereas the existing provision requires the owner or operator to notify a local official "immediately when . . . corrective measures have been accomplished." Rule 3D .0535(f)'s initial notification requirements at (f)(1) remain unchanged, as do its ultimate reporting requirements at (f)(3).⁴ EPA proposes to approve Forsyth County's change to Rule 3D .0535(f) concerning corrective measures notification requirements because EPA anticipates no associated impact on air quality and the revision is consistent with CAA requirements; the precise timing of the notification of the accomplishment of a

particular corrective measure to a local official need not be exactly simultaneous with the accomplishment of such measure. EPA is not proposing at this time to act on a revised cross-reference to source testing requirements in the last sentence of Rule 3D .0535(f). The cross-referenced section, as revised, is not approved into the Forsyth County portion of the North Carolina SIP.

III. Proposed Action

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). EPA is proposing to approve Forsyth County's November 28, 2022, SIP submission requesting changes to Forsyth County Air Quality Control Ordinance and Technical Code Subchapter 3D, Section .0500, Rule 3D .0535, *Excess Emissions Reporting and Malfunctions*, except for the change to the cross-referenced rule in Rule 3D .0535(f), into the Forsyth County portion of the North Carolina SIP. Specifically, EPA is proposing to remove the substantive text of Rule 3D .0535(c) and (g) from the Forsyth County portion of the North Carolina SIP, to add statements clarifying that Rule 3D .0535(c) and (g) are not included in the Forsyth County portion of the North Carolina SIP, and to otherwise approve the revised version of Rule 3D .0535 into the Forsyth County portion of the North Carolina SIP, except for the revised cross-reference in the last sentence of Rule 3D .0535(f), which EPA is not proposing to act on at this time. EPA is proposing approval of the SIP revision because the Agency has determined that it is consistent with the requirements for SIP provisions under the CAA. EPA is not reopening the 2015 SSM SIP Action nor the 2022 Findings of Failure to Submit and is taking comment only on whether the SIP revision is consistent with CAA requirements.

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, and as discussed in sections I through III of this preamble, EPA is proposing to incorporate by reference Forsyth County Air Quality Control Ordinance and Technical Code Subchapter 3D, Section .0500, Rule 3D .0535, *Excess Emissions Reporting and Malfunctions*, locally effective July 14, 2022, with the following exceptions: EPA is not proposing to incorporate the last

² See 65 FR 8053.

³ The November 28, 2022, SIP revision includes the following typographical error: in Rule 3D .0535(b), as shown on page 10 of 75 in the SIP submittal, a cross-reference to "Subchapter 3Q .0700" is revised to "Section 3D-0700." The amendments to the state-effective version of Rule 3D .0535(b), which start at page 6 of 75 in the SIP submittal, show the revised cross-reference correctly as "Section 3Q-0700" at page 7 of 75 in the SIP submittal.

⁴ Rule 3D .0535(f)(1) contains initial excess emissions occurrence notification requirements, and Rule 3D .0535(f)(3) contains written reporting requirements for documenting excess emissions as described in prefatory text at paragraph (f).

sentence of Rule 3D .0535(f),⁵ and in Rule 3D .0535(c) and (g), is proposing to incorporate only the statements that each paragraph “is not included in Forsyth County’s portion of the State Implementation Plan.”⁶ EPA has made and will continue to make these materials generally available through www.regulations.gov and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

⁵ The July 14, 2022, local effective version of the last sentence of Rule 3D .0535(f) contains a change that incorporates a reference to regulations not approved into the SIP. If EPA takes final action to approve the November 28, 2022, SIP revision, the Agency will update the SIP table at 40 CFR 52.1770(c) to reflect the retention of the September 14, 1998, version of the aforementioned sentence.

⁶ If EPA takes final action to approve the November 28, 2022, SIP revision, the SIP-approved version of Rule 3D .0535(c) will read, “(Paragraph (c) is not included in Forsyth County’s portion of the State Implementation Plan.)” and the SIP-approved version of .0535(g) will read, “(Paragraph (g) is not included in Forsyth County’s portion of the State Implementation Plan.)” The Agency would update the SIP table at 40 CFR 52.1770(c) to reflect this fact.

- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The FCEAP did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this proposed action. Due to the nature of the proposed action being taken here, this proposed action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this proposed action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental

justice for communities with EJ concerns.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 6, 2024.

Jeananne Gettle,

Acting Regional Administrator, Region 4.

[FR Doc. 2024–20666 Filed 9–11–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 121

RIN 0937–AA13

Organ Procurement and Transplantation: Implementation of the HIV Organ Policy Equity (HOPE) Act

AGENCY: Office of the Assistant Secretary for Health (OASH) and Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Health and Human Services (HHS) proposes to amend the regulations implementing the National Organ Transplant Act of 1984, as amended (NOTA), to remove clinical research and institutional review board (IRB) requirements (“research and IRB requirements”) for transplantation of kidney and livers from donors with human immunodeficiency virus (HIV) to recipients with HIV. As allowed by the HIV Organ Policy Equity (HOPE) Act, the Secretary of HHS proposes to determine that participation in such clinical research should no longer be a requirement for transplantation of HIV positive kidneys and livers from donors with HIV to recipients with HIV. This proposed rule serves as publication of the Secretary’s proposed determination and proposes to amend the regulations to reflect this determination. Consistent with NOTA and current regulatory requirements, the Secretary’s proposed determination and the proposed corresponding regulatory revision, if finalized, will necessitate that the Organ Procurement and Transplantation Network (OPTN) adopt and use standards of quality concerning kidneys and livers from donors with HIV, as

directed by the Secretary, consistent with NOTA and in a way that ensures the revised requirements for transplantation of such organs will not reduce the safety of organ transplantation.

DATES: Comments on this notice of proposed rulemaking should be received no later than October 15, 2024.

ADDRESSES: You may send comments, identified by Document ID HRSA-2024-0001, to the Federal eRulemaking Portal: <https://www.regulations.gov>. For detailed instructions on sending comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

In accordance with 5 U.S.C. 553(b)(4), a summary of this rulemaking may be found in the docket for this rulemaking at www.regulations.gov [Document ID HRSA-2024-0001].

FOR FURTHER INFORMATION CONTACT:

Frank Holloman, Director, Division of Transplantation, Health Systems Bureau, HRSA, 5600 Fishers Lane, Room 08W63, Rockville, MD 20857; by email at donation@hrsa.gov; or by telephone (301) 443-7577.

SUPPLEMENTARY INFORMATION:

I. Public Participation

All interested parties are invited to participate in this rulemaking by submitting written comments and supportive data that should be considered. HHS also invites comments that relate to the economic, legal, environmental, or federalism effects that might result from this proposed rule. Comments that will provide the most assistance to HHS in finalizing the rule will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that supports such recommended change.

Instructions: If you submit a comment, you must include the agency name and the Document ID HRSA-2024-0001 for this rulemaking. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <https://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make to HHS. HHS may withhold information provided in comments from public viewing that it determines may

impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <https://www.regulations.gov>.

Docket: For access to the docket and to read background documents or comments received, go to <https://www.regulations.gov>, referencing Document ID HRSA-2024-0001. You may also sign up for email alerts on the online docket to be notified when comments are posted or a final rule is published.

II. Background and Purpose

A. HHS Oversight of Organ Allocation and Transplantation

Within HHS, HRSA is responsible for overseeing the operation of the nation's OPTN, including assisting in the equitable allocation of donor organs for transplantation. 42 U.S.C. 274(b)(2)(D). The allocation of organs is guided by the OPTN in accordance with NOTA and with the HHS regulations governing the operation of the OPTN in 42 Code of Federal Regulations (CFR) part 121. The OPTN is also charged with developing policies on many subjects related to organ donation and transplantation, which include establishing standards of quality pertaining to organs procured for use in transplantation. 42 U.S.C. 274(b)(2)(E). In addition to ensuring the efficient and effective allocation of donor organs through the OPTN, HHS supports efforts to increase the number of transplants performed in the United States.

B. HOPE Act Requirements and Implementation

In 1988, NOTA was amended to prohibit the transplantation of organs from donors with HIV, referring to HIV as the etiologic agent for acquired immunodeficiency virus or AIDS. Until 1997, a total of 32 kidney transplants were performed in recipients with HIV, all with organs from donors without HIV.¹ Advances in antiretroviral therapies (ART) have now made it possible for individuals with HIV to live longer and with fewer complications from the virus. Following the success of pioneering transplants occurring outside the United States of organs from donors with HIV to recipients with HIV,²

interest in developing specialized HIV transplant programs grew domestically.³

The enactment of the HOPE Act in 2013, Public Law 113-51, amended NOTA to eliminate the prohibition in the United States on transplantation of organs from persons with HIV, allowing transplantation of these organs if certain requirements are satisfied. Under the HOPE Act, organs from donors with HIV may be transplanted only in recipients living with HIV prior to receiving such an organ. 42 U.S.C. 274(b)(3)(A). Further, the HOPE Act requires that transplants of HIV-positive organs occur only in recipients with HIV who are participating in IRB-approved research protocols that adhere to certain criteria, standards, and regulations. 42 U.S.C. 274(b)(3)(B)(i). However, the Secretary may lift the research and IRB requirements if the Secretary has determined that participation in such clinical research, as a requirement for such transplants, is no longer warranted. 42 U.S.C. 274(b)(3)(B)(ii).

The HOPE Act outlines the process by which the Secretary may make such a determination under 42 U.S.C. 274(b)(3)(B)(ii). Specifically, the Secretary must routinely review the results of clinical research, in conjunction with the OPTN, to determine whether the results warrant revision of the OPTN standards of quality regarding organs from donors with HIV. If the Secretary determines that those standards of quality should be revised, the Secretary must direct the OPTN to revise the standards. 42 U.S.C. 274f-5(c)(2). The Secretary is also required to revise the regulatory provision implementing the HOPE Act, 42 CFR 121.6, upon determining that revisions to the OPTN standards of quality are warranted. 42 U.S.C. 274f-5(c)(3).

HRSA published a final rule implementing the HOPE Act on May 8, 2015. 80 FR 26464.⁴ The 2015 rule amended 42 CFR 121.6 to permit transplants of organs from donors with HIV in accordance with the HOPE Act requirements.

The HOPE Act also directs the Secretary to develop and publish criteria for the conduct of research relating to transplantation of organs from donors with HIV into persons who

³ Botha J, Fabian J, Etheredge H, Conradie F, Tiemessen CT. HIV and Solid Organ Transplantation: Where Are We Now. *Curr HIV/AIDS Rep.* 2019 Oct;16(5):404-413.

¹ Werbel WA, Durand CM. Solid Organ Transplantation in HIV-Infected Recipients: History, Progress, and Frontiers. *Curr HIV/AIDS Rep.* 2019 Jun;16(3):191-203.

² Muller E, Barday Z, Mendelson M, Kahn D. HIV-Positive to HIV-Positive Kidney Transplantation—Results at 3 to 5 Years. *New England Journal of Medicine.* 2015 Feb 12;372(7):613-620.

⁴ **Federal Register.** Organ Procurement and Transplantation: Implementation of the HIV Organ Policy Equity (HOPE) Act. 2015 May;80 FR 26464. <https://www.federalregister.gov/documents/2015/05/08/2015-11048/organ-procurement-and-transplantation-implementation-of-the-hiv-organ-policy-equity-act>.

are living with HIV before receiving an HIV-positive organ. 42 U.S.C. 274f–5(a). Subsequent to publication of the 2015 rule implementing the HOPE Act, NIH published the *Final Human Immunodeficiency Virus (HIV) Organ Policy Equity (HOPE) Act Safeguards and Research Criteria for Transplantation of Organs Infected With HIV*, on November 25, 2015. 80 FR 73785.⁵ The NIH Research Criteria were developed by an HHS working group of entities involved in organ transplantation, with input from multiple stakeholders.

In general, the NIH Research Criteria include safeguards designed to protect both donors and recipients, as well as healthcare providers at Organ Procurement Organizations (OPOs), and transplant centers. Specifically, and in addition to the requirements in established OPTN transplant policies, donors with HIV must not have evidence of opportunistic infections and recipients must have a stable CD4+ T-cell count and established HIV suppression and control on effective ART. The study team must describe the anticipated effective HIV treatment plan and ART regimen for patients receiving an organ with a potentially different HIV strain. Antiretroviral drugs suppress viral replication; however, HIV may develop resistance to a specific drug necessitating a different medication regimen to maintain effectiveness.⁶ Transplant hospitals conducting HOPE Act operations are required to have expertise in transplants provided to recipients with HIV. OPOs are required to have procedures in place to address working with families of deceased donors who lived with HIV and a biohazard plan to address viral exposure and potential transmission. Finally, the Research Criteria establish uniform outcome measures that must be incorporated in the research design so that data on HOPE Act transplants can be analyzed consistently and data collection is harmonized to inform future implementation of the HOPE Act.

Publication of both the final rule implementing the HOPE Act and the NIH Research Criteria necessitated that the OPTN update its standards of quality for HIV-positive organ

transplants and coordinate related OPTN policies. On November 21, 2015, the OPTN published an open variance (an experimental policy that tests methods of improving organ allocation) providing standards for transplant hospitals conducting HOPE Act transplants.⁷ The OPTN expanded the variance in 2019 to include all solid organs,⁸ and extended the variance through January 2026, to provide for the gathering of data and subsequent evaluation of the outcomes of HOPE Act transplants.⁹

C. Review of Research Results

As stated above, the HOPE Act requires that the Secretary, in conjunction with the OPTN, periodically review the results of scientific research to determine whether the results warrant revision to the OPTN standards of quality with respect to organs from donors with HIV and the safety of transplanting an organ from a donor with a particular strain of HIV into a recipient with a different strain of HIV. 42 U.S.C. 274f–5(c)(1). This review allows the Secretary to determine if the safety and efficacy of HOPE Act transplants are comparable to non-HOPE Act transplants and, if warranted, to further determine whether such transplants should be conducted outside of a research setting.

1. OPTN Review and Recommendations

In 2018, the OPTN initiated a review of research results and data relevant to HOPE Act transplants, forming a working group for this purpose.¹⁰ The OPTN's assessment as to whether revision is warranted for the OPTN standards of quality applicable to HOPE Act transplants was based primarily on (1) the review of studies demonstrating the safety and outcomes of organ transplantation in recipients with HIV and (2) a recognition that the removal of the general research and IRB requirements for HOPE Act transplants

could expand access to organ transplantation for all patients regardless of their HIV status. In this context, safety is measured by accidental or inadvertent transmission of HIV in the performance of HOPE Act transplants. (Of note, there were no recorded accidental or inadvertent transmission events in the data reviewed by the OPTN.) Outcomes are determined primarily by transplant recipient or graft survival, compared to non-HOPE Act transplants or transplant recipients without HIV. Measures (e.g., CD4+ T-cell counts, ART resistance, and detectable HIV viral loads) or variables such as opportunistic infections, HIV superinfection, malignancy, rejection or graft failure may also factor into comparative outcomes in the short and long term.

The OPTN used three primary sources of data to assess HOPE Act transplants, each of which contributed to the recommendation the OPTN provided to the Secretary: (1) the research results of two NIH-funded pilot studies evaluating HOPE Act kidney transplants and liver transplants, and the progress of two ongoing NIH-funded clinical trials evaluating HOPE Act kidney transplants and liver transplants, (2) the research results of an older clinical trial analyzing safety and efficacy of kidney transplants in a small cohort of transplant recipients with HIV, and (3) OPTN data on the outcomes of all HOPE Act transplants.

Pilot Studies

A multicenter pilot study funded by NIH was launched in 2016 to determine safety and efficacy of HOPE Act kidney transplants. The HOPE in Action Consortium of 14 transplant centers conducting HOPE Act kidney transplants which participated in the pilot study found that there were no major differences between HOPE Act transplants of a kidney from a donor with HIV to a recipient with HIV and non-HOPE Act kidney transplants from a donor without HIV to a recipient with HIV.¹¹ While donors with HIV were more likely to have co-infections, the study found that these were manageable in the larger clinical context. Rejection

⁷ Organ Procurement and Transplantation Network. Policy Notice: Modifications to the Open Variance for the Recovery and Transplantation of Organs from HIV Positive Donors. 2016 Sep 1: https://optn.transplant.hrsa.gov/media/1872/dtac_policynotice_hope_201606.pdf.

⁸ Organ Procurement and Transplantation Network. Policy Notice: Modify HOPE Act Variance to Include Other Organs. 2019 Jun 10: https://optn.transplant.hrsa.gov/media/3000/dtac_policynotice_201906.pdf.

⁹ Organ Procurement and Transplantation Network. Policy Notice: Extend HIV Organ Policy Equity (HOPE) Act Variance. 2021 Dec 6: https://optn.transplant.hrsa.gov/media/t1sdej22/policynotice_dtac_hope_variance.pdf.

¹⁰ Organ Procurement and Transplantation Network. Public Comment Proposal: Modify the HOPE Act Variance to Include Other Organs. 2019 Jan 22: https://optn.transplant.hrsa.gov/media/2800/dtac_publiccomment_20190122.pdf.

¹¹ Durand CM, Zhang W, Brown DM, Yu S, Desai N, Redd AD, Bagnasco SM, Naqvi FF, Seaman S, Doby BL, Ostrander D, Bowring MG, Eby Y, Fernandez RE, Friedman-Moraco R, Turgeon N, Stock P, Chin-Hong P, Mehta S, Stosor V, Small CB, Gupta G, Mehta SA, Wolfe CR, Hussion J, Gilbert A, Cooper M, Adebiyi O, Agarwal A, Muller E, Quinn TC, Odum J, Huprikar S, Florman S, Massie AB, Tobian AAR, Segev DL; HOPE in Action Investigators. A prospective multicenter pilot study of HIV-positive deceased donor to HIV-positive recipient kidney transplantation: HOPE in action. *Am J Transplant*. 2021 May;21(5):1754–1764.

⁵ **Federal Register**. Final Human Immunodeficiency Virus (HIV) Organ Policy Equity (HOPE) Act Safeguards and Research Criteria for Transplantation of Organs Infected With HIV. 2015 Nov;80 FR 73785. <https://www.federalregister.gov/documents/2015/11/25/2015-30172/final-human-immunodeficiency-virus-hiv-organ-policy-equity-hope-act-safeguards-and-research-criteria>.

⁶ HIV.gov. Opportunistic Infections: HIV Treatment Overview. <https://www.hiv.gov/hiv-basics/staying-in-hiv-care/other-related-health-issues/opportunistic-infections>. Accessed Apr 2024.

was common for the study participants in the first year after transplant, occurring in 50 percent of recipients who received a kidney from a donor with HIV and 29 percent of recipients who received a kidney from a donor without HIV, but this result was not found to be statistically significant. The insignificance of the result is due, in part, to the relatively small sample size. In addition, the investigators indicated that this result could be due to chance. This finding is consistent with the earlier clinical trial of kidney transplantation in recipients with HIV, discussed in the next subsection of this preamble, which also found that rejection of such transplants is common. The pilot study investigators noted that despite rejection rates, 1-year renal function was excellent for both study populations. Limitations of the pilot study include study size (75 transplants), which investigators attributed to the lower number of HOPE Act transplants conducted than the projected potential. In general, the study authors concluded that there is a survival benefit of transplantation for kidneys from donors with HIV to recipients with HIV, and that the availability of HOPE Act kidney transplants has the potential to mitigate disparities for a vulnerable population that faces lower access to transplant and higher waitlist mortality. The investigators further concluded that the observed trend toward higher rejection, albeit not statistically significant, for transplanted organs from donors with HIV raises concerns that merited further investigation.

A separate pilot study funded by NIH and conducted by HOPE In Action Consortium participants compared HOPE Act transplants of a liver from a donor with HIV to a recipient with HIV and non-HOPE Act liver transplants from a donor without HIV to a recipient with HIV, and found that there were no differences in one-year graft survival, rejections, HIV breakthrough or severe adverse events. While the recipients of HOPE Act liver transplants presented with more opportunistic infections, infectious hospitalizations, and cancer, compared to non-HOPE Act liver transplants, the investigators determined that these findings warrant further investigation and perhaps consideration of additional donor and recipient infection and malignancy monitoring. In general, the investigators concluded that the transplant outcomes were more favorable compared to historical data on liver transplantation in recipients with HIV, who are known to experience higher rates of

opportunistic infections and other complications. In addition, it was noted that co-infections are more common among both donors and recipients with HIV and confound the results. (Results of non-HOPE Act transplants have confirmed that recipients with both HIV and a co-infection have lower survival rates. Therefore, the presence of co-infections could independently impact survival and other variables measured by studies on HOPE Act transplants.) This pilot study was the first multicenter prospective study reporting results of U.S. transplants of livers from donors with HIV to recipients with HIV and comparing outcomes according to donor HIV status in order to assess attributable risk. The investigators recognized as a limitation that the pilot study was relatively small (45 transplants), and noted that the observed increases among HOPE Act liver transplant recipients in mortality, cytomegalovirus (CMV) viremia, infectious hospitalizations, and cancer. However, they note that these results should be considered in light of the relatively high rate of mortality for recipients awaiting liver transplant. For these patients, the benefit of undergoing a HOPE Act liver transplant may outweigh the risks of living with HIV and end stage liver disease.¹²

Ongoing Clinical Trials

Two NIH-funded studies on kidney and liver HOPE Act transplants are ongoing. The NIH-funded U01 HOPE Act kidney transplant clinical trial is designed to analyze rejection and long-term outcomes of kidney transplantation for recipients with HIV. The study will compare outcomes of 100 HOPE Act kidney transplant recipients to 100 kidney transplant recipients with HIV who received an HIV-negative organ at 15 transplant centers, adding to the cohort accrued from the pilot studies discussed in the immediately preceding section of this preamble.¹³ Similarly, the U01 HOPE Act liver transplant clinical

trial is designed to compare outcomes between HOPE Act transplants and non-HOPE Act transplants of livers from donors without HIV. The study has enrolled 40 individuals in each group over 3 years at 16 transplant centers.¹⁴

Both U01 clinical trials have reached their target enrollments and now in phases of final data analysis (kidney) and patient follow-up (liver). The final results are not yet published.

Other Research Results

Prior to the initiation of the pilot studies and clinical trials discussed previously, a clinical trial examined outcomes of 150 kidney transplants in recipients with HIV conducted between November 2003 and June 2009. The investigators found both recipient and graft survival rates were high with no important increases in complications associated with HIV.¹⁵ As noted in the description of the findings of the HOPE Act kidney transplant pilot study described in the immediately preceding subsection of this preamble, the investigators observed what they described as “unexpectedly higher” rejection rates in the transplant recipients with HIV participating in the study, compared with kidney transplant recipients who are not living with HIV. This higher rejection rate was blunted in transplant recipients that received anti-T-cell antibody medication at the time of transplantation. Studies of non-HOPE Act transplants have confirmed that such immunosuppressive regimens can reduce the risk of rejection for kidney transplant recipients with HIV.¹⁶

OPTN Data—HOPE Act Transplant Outcomes

Data from HOPE Act transplants is compiled by the OPTN on a quarterly basis, including waitlist registrations and counts of HOPE Act transplants, and is routinely reviewed. Prior to issuing its recommendation to the Secretary, the OPTN reviewed data on over 300 patients included in the HOPE

¹² Durand CM, Florman S, Motter JD, Brown D, Ostrander D, Yu S, Liang T, Werbel WA, Cameron A, Ottmann S, Hamilton JP, Redd AD, Bowring MG, Eby Y, Fernandez RE, Doby B, Labo N, Whitby D, Miley W, Friedman-Moraco R, Turgeon N, Price JC, Chin-Hong P, Stock P, Stosor V, Kirchner VA, Pruett T, Wojciechowski D, Elias N, Wolfe C, Quinn TC, Odum J, Morsheimer M, Mehta SA, Rana MM, Huprikar S, Massie A, Tobian AAR, Segev DL; HOPE in Action Investigators. HOPE in action: A prospective multicenter pilot study of liver transplantation from donors with HIV to recipients with HIV. *Am J Transplant*. 2022 Mar;22(3):853–864.

¹³ National Institutes of Health RePORT. Kidney Transplantation from Donors with HIV: Impact on Rejection and Long-term Outcomes. Project No. 5U01AI1177211–02. Accessed 21 May 2024. https://reporter.nih.gov/search/kcWJ0GeT8kigjO2_LU8R2g/project-details/10848468.

¹⁴ National Institutes of Health RePORT. Hope In Action: A Clinical Trial of HIV-to-HIV Liver Transplantation. Project No. 5U01AI138897–05. Accessed 21 May 2024. <https://reporter.nih.gov/project-details/10459319>.

¹⁵ Stock PG, Barin B, Murphy B, Hanto D, Diego JM, Light J, Davis C, Blumberg E, Simon D, Subramanian A, Millis JM, Lyon GM, Brayman K, Slakey D, Shapiro R, Melancon J, Jacobson JM, Stosor V, Olson JL, Stablein DM, Roland ME. Outcomes of kidney transplantation in HIV-infected recipients. *N Engl J Med*. 2010 Nov 18;363(21):2004–14.

¹⁶ Locke JE, James NT, Mannon RB, Mehta SG, Pappas PG, Baddley JW, Desai NM, Montgomery RA, Segev DL. Immunosuppression Regimen and the Risk of Acute Rejection in HIV-Infected Kidney Transplant Recipients. *Transplantation*. 2014 Feb 27;97(4):p 446–450.

Act research variance for which no case was halted, paused, or substantially amended to address safety concerns.

OPTN Recommendations

Based on the assessment of the above-described research results and data, in 2021 the OPTN recommended to the Secretary that the research and IRB requirements of the HOPE Act be removed for all organs.¹⁷ The OPTN specifically noted that in its review of the data safety monitoring review board (DSMB) reports from five years of HOPE Act transplants, with over 300 persons with HIV receiving HOPE Act transplants, no DSMB identified patient safety concerns in HOPE Act research. Further, there have been no reports made to the OPTN of safety issues regarding HOPE Act transplants among OPO, hospital, or transplant center personnel or in patients, in donor hospitals, or transplant hospitals. The OPTN noted that it was the opinion of the OPTN Safety Review Group that the research and IRB requirements for HOPE Act transplants present a barrier to fully realizing the potential of organ transplantation from donors with HIV to recipients with HIV, as the research and IRB requirements limit access to such transplants.^{18 19}

2. Additional Research Results Published Subsequent to the OPTN Assessment

Following the OPTN's review of research results and data relevant to HOPE Act transplants and its recommendation to the Secretary, additional research has since been published providing more evidence for the safety of organ transplantation from donors with HIV to recipients with HIV. In general, safety and outcomes of kidney and liver HOPE Act transplants is well established with over 468 HOPE Act kidney and liver transplants conducted to date.

One prospective study published in 2022, examined 92 HOPE Act donors contributing 177 organs, which included 131 kidneys and 46 livers, to understand the characteristics of donors with HIV in terms of clinical, immunologic, and virologic profiles to

ensure the safety of transplantation. Of these donors, 58 were donors with HIV and 34 were donors without HIV. For those donors with known HIV infection, 90 percent received ART treatment. The study concluded that although drug resistant mutations (DRMs) were common, DRMs that could compromise the effectiveness of certain ART were rare, reassuring the safety of using donor organs with HIV in recipients with HIV. Further, the study also found that there were no major differences comorbidities between recipient groups that received an organ from a donor with HIV compared to those that received an organ from a donor without HIV.²⁰

In a March 2024 analysis of the impact of the HOPE Act on access to kidney transplantation for recipients with HIV, the authors found 70 percent of HOPE Act recipients received a kidney transplant during the 4.5 year study period versus 43 percent of non-HOPE Act transplant candidates at the same center.²¹ Furthermore, those who received transplants in HOPE Act trials had shorter estimated wait times (median 10.3 months versus 60.8 months), and after adjusting for relevant allocation factors including time on dialysis, kidney transplantation was 3.3-fold higher for those who received an organ from a donor with HIV.²² These findings suggest that the availability of kidneys from donors with HIV increases access to transplantation among people with HIV. Given that people with HIV who are living with ESRD have higher

mortality than people with ESRD who are not also living with HIV,²³ in HHS's view, this data illustrates the benefit of HOPE Act kidneys transplants for this vulnerable population.

In addition to providing important evidence for the survival benefit of organ transplantation for recipients with HIV, the HOPE in Action Consortium has also published on the positive outcomes of living HOPE Act kidney donors. In a case series of three transplants, investigators reported that two of the three donors developed adverse events, but findings suggested these were medically managed and that HIV RNA copies and CD4+ T-cell counts were stable at two to four years post-transplant.²⁴

There is significantly less data on non-kidney and non-liver HOPE Act transplants. Since 2019, when the OPTN's HOPE Act policy was expanded to include all solid organs, only three heart transplant programs have received approval to perform HOPE Act transplants. To date, just one heart transplant has been conducted (dual organ: heart-kidney).^{25 26} No HOPE Act transplants have been recorded among recipients in need of organs such as a lung, pancreas, islet, or intestine. The lack of data makes it difficult to assess the safety and outcomes of HOPE Act transplants other than kidney and liver HOPE Act transplants.

3. HHS Advisory Committee on Blood and Tissue Safety and Availability Recommendations

Following the OPTN recommendation to the Secretary in 2021, the HHS Advisory Committee on Blood and Tissue Safety and Availability (ACBTSA) formed a Working Group to evaluate the recommendation from the OPTN. After analyzing the OPTN recommendation, and receiving presentations on data on HOPE Act kidney and liver transplants, and relevant research results on heart transplants and lung transplants in recipients with HIV, the ACBTSA HOPE Act working group recommended to the full committee that the Secretary

²⁰ Werbel WA, Brown DM, Kusemiju OT, Doby BL, Seaman SM, Redd AD, Eby Y, Fernandez RE, Desai NM, Miller J, Bismut GA, Kirby CS, Schmidt HA, Clarke WA, Seisa M, Petropoulos CJ, Quinn TC, Florman SS, Huprikar S, Rana MM, Friedman-Moraco RJ, Mehta AK, Stock PG, Price JC, Stosor V, Mehta SG, Gilbert AJ, Elias N, Morris MI, Mehta SA, Small CB, Haidar G, Malinis M, Husson JS, Pereira MR, Gupta G, Hand J, Kirchner VA, Agarwal A, Aslam S, Blumberg EA, Wolfe CR, Myer K, Wood RP, Neidlinger N, Strell S, Shuck M, Wilkins H, Wadsworth M, Motter JD, Odum J, Segev DL, Durand CM, Tobian AAR; HOPE in Action Investigators. National Landscape of Human Immunodeficiency Virus-Positive Deceased Organ Donors in the United States. *Clin Infect Dis*. 2022 Jun 10;74(11):2010–2019.

²¹ Motter JD, Hussain S, Brown DM, Florman S, Rana MM, Friedman-Moraco R, Gilbert AJ, Stock P, Mehta S, Mehta SA, Stosor V, Elias N, Pereira MR, Haidar G, Malinis M, Morris MI, Hand J, Aslam S, Schaenman JM, Baddley J, Small CB, Wojciechowski D, Santos CAQ, Blumberg EA, Odum J, Apewokin SK, Giorgakis E, Bowring MG, Werbel WA, Desai NM, Tobian AAR, Segev DL, Massie AB, Durand CM; HOPE in Action Investigators. Wait Time Advantage for Transplant Candidates With HIV Who Accept Kidneys From Donors With HIV Under the HOPE Act. *Transplantation*. 2024 Mar 1;108(3):759–767.

²² Motter JD, et al, on behalf of the HOPE in Action Investigators. Wait Time Advantage for Transplant Candidates With HIV Who Accept Kidneys From Donors With HIV Under the HOPE Act. *Transplantation*. 2024 Mar 1;108(3):759–767.

²³ *Ibid*.

²⁴ Durand CM, et al, on behalf of the HOPE in Action Investigators. Living Kidney Donors with HIV: Experience and Outcomes from a Case Series by the HOPE in Action Consortium. *The Lancet Regional Health Americas*. 2023 Jul;24:100553.

²⁵ Montefiore News Releases. World's First HIV-Positive to HIV-Positive Heart Transplant Performed at Montefiore Health System. 2022 Jul 22. <https://www.montefiore.org/body.cfm?id=1738&action=detail&ref=2194>

²⁶ Hemmige V, Saeed O, Puius YA, Azzi Y, Colovai A, Borgi J, Goldstein DJ, Rahmanian M, Carlese A, Jorde UP, Patel S. HIV D+/R+ heart/kidney transplantation: First case report. *J Heart Lung Transplant*. 2023 Mar;42(3):406–408.

¹⁷ Cooper M. "OPTN Letter to Secretary Becerra on the HOPE Act." 2021 Oct 29. <https://optn.transplant.hrsa.gov/media/ueyjdnd/hope-act-letter.pdf>.

¹⁸ McCauley J. "Fifty Sixth ACBTSA Meeting, Written Public Comment—November 17, 2022 Meeting." 2022 Nov 8. https://optn.transplant.hrsa.gov/media/hwgnca2/optn-executive-committee_acbtsa-letter.pdf.

¹⁹ Chandran S, Stock PG, Roll GR. Expanding Access to Organ Transplant for People Living With HIV: Can Policy Catch Up to Outcomes Data? *Transplantation*. 2024 Apr 1;108(4):874–883.

eliminate research and IRB requirements for all HOPE Act transplants. However, the working group expressed concern about the elimination of research and IRB requirements for non-kidney and non-liver HOPE Act transplants,²⁷ and whether there was sufficient data collected on other organs to justify a full adoption of the OPTN's recommendation.

The ACBTSA subsequently recommended that the Secretary act to lift the statutory research and IRB requirements for all HOPE Act transplants and at the same time recommended that the Secretary direct the OPTN to adopt, for HOPE Act transplants of organs other than kidneys and livers, organ-specific policies imposing additional requirements for the conduct of these transplants, including collecting safety and outcomes data for transplant candidates and recipients of such transplants through an IRB-approved research protocol.

These recommendations were later approved by the HHS Blood, Organ, and Tissue Senior Executive Council (BOTSEC), an advisory forum for senior leadership from HHS entities involved in blood, organ, and tissue safety and availability.

4. HHS Secretary: Review

Upon review of the OPTN, ACBTSA and BOTSEC recommendations, and in consideration of the results of relevant scientific research, the Secretary believes that the research and IRB requirements for kidney and liver HOPE Act transplants are no longer warranted.

The Secretary has been informed by the research results described in this preamble from pilot studies, clinical trials, and case reports, as well as OPTN outcomes data on all HOPE Act transplants and additional data. Studies of kidney and liver HOPE Act transplants have demonstrated survival benefit for transplant recipients with HIV, compared to non-HOPE Act transplants, with few adverse consequences.^{28 29 30} Additionally, the

OPTN's letter to the Secretary noted that in five years of HOPE Act transplants with over 300 HOPE Act transplant recipients with HIV, no patient safety concerns were identified, and no HOPE Act research has been halted, paused, or substantially amended to address recipient safety concerns.³¹

The outcomes of HOPE Act transplants are considered in light of the limitations of organ transplantation generally: that too few organs are available for the thousands of patients awaiting transplants. The pretransplant mortality rate for adults awaiting a kidney transplant varies substantially across the country. The average is 5.4 deaths per 100 person years, but it is reported to be as high as 7.5 deaths per 100 person years as of the most recent OPTN/SRTR Annual Data Report.³² This results in most transplant candidates waiting years for a kidney transplant, often requiring dialysis or other interventions.

It is well established that pretransplant kidney mortality rates among candidates with HIV are higher than those without HIV. In one study analyzing survival benefit of HIV-positive kidney transplantation (*i.e.*, non-HOPE Act transplants), mortality rates among transplant candidates with HIV after one year were 8.7 deaths per 100 person years compared to just 3.1 deaths per 100 person years among those that received a kidney transplant.³³ Therefore, it is hypothesized that reduction in waitlist times may indeed result in lower mortality for transplant candidates with HIV and end-stage diseases.

Research has demonstrated that recipients with HIV may reduce the time on the kidney waitlist significantly if they are willing to accept a HOPE Act transplant. As previously mentioned, one 2023 study found that median wait time for a HOPE Act transplant was 10.8 months compared to 60.8 months—a

3.3-fold higher rate of kidney transplant compared to non-HOPE Act transplants.³⁴

Significant progress has been made in the reduction of pretransplant mortality for liver transplant candidates over the past decade. Rates have declined from a high of 17.9 deaths per 100 person years in 2014 to 12.3 deaths per 100 person years in 2022.³⁵ Like kidney transplant, research has also demonstrated the survival benefit of organ transplantation for those with HIV and end-stage liver disease when compared to transplant candidates without HIV.³⁶

It is also hypothesized that the expansion of kidney and liver HOPE Act transplantation will also help to reduce stigma and health disparities associated with HIV. Stigma and physician reluctance to counsel potential transplant candidates with HIV on the benefits of organ transplantation may contribute to the lower than projected counts of HOPE Act transplants to date.³⁷

The Secretary also believes that the current research and IRB requirements should be maintained for HOPE Act transplants of all other organs, in light of the lack of data on outcomes for HOPE Act organ transplants other than kidney or liver transplants. At the time the ACBTSA developed its recommendations, no HOPE Act transplants outside of kidneys, livers, and one dual heart-kidney transplant had been performed, and data on heart, lung, pancreas, islet, intestine, or other organ transplants from donors with HIV to recipients with HIV that were conducted outside the U.S. is limited.

The HOPE Act requires that, for the statutory research and IRB requirements to be lifted for HOPE Act transplants, the Secretary must determine that participation in such clinical research, as a requirement for these transplants, is no longer warranted. 42 U.S.C. 274 (b)(3)(B)(ii). In the absence of research results and robust outcomes data

²⁷ HHS Advisory Committee on Blood and Tissue Safety and Availability. 2022. Fifty-Sixth ACBTSA Meeting November 17, 2022—Meeting Summary. <https://www.hhs.gov/oidp/advisory-committee/blood-tissue-safety-availability/meeting-summary/2022-11-17/index.html>.

²⁸ Durand CM, et al; HOPE in Action Investigators. A prospective multicenter pilot study of HIV-positive deceased donor to HIV-positive recipient kidney transplantation: HOPE in action. *Am J Transplant*. 2021 May;21(5):1754–1764.

²⁹ Durand CM, et al; HOPE in Action Investigators. HOPE in action: A prospective multicenter pilot study of liver transplantation from donors with HIV to recipients with HIV. *Am J Transplant*. 2022 Mar;22(3):853–864.

³⁰ Motter JD, et al; HOPE in Action Investigators. Wait Time Advantage for Transplant Candidates With HIV Who Accept Kidneys From Donors With HIV Under the HOPE Act. *Transplantation*. 2024 Mar 1;108(3):759–767.

³¹ Cooper M. "OPTN Letter to Secretary Becerra on the HOPE Act." 2021 Oct 29. <https://optn.transplant.hrsa.gov/media/ueyjdnd/hope-act-letter.pdf>.

³² Organ Procurement and Transplantation Network (OPTN)/Scientific Registry of Transplant Recipients (SRTR). 2022. "Annual Data Report: Kidney." Accessed May 2024. https://srtr.transplant.hrsa.gov/annual_reports/2022/Kidney.aspx.

³³ Locke JE, Gustafson S, Mehta S, Reed RD, Shelton B, MacLennan PA, Durand C, Snyder J, Salkowski N, Massie A, Sawinski D, Segev DL. Survival Benefit of Kidney Transplantation in HIV-infected Patients. *Ann Surg*. 2017 Mar;265(3):604–608.

³⁴ Motter JD, et al; HOPE in Action Investigators. Wait Time Advantage for Transplant Candidates With HIV Who Accept Kidneys From Donors With HIV Under the HOPE Act. *Transplantation*. 2024 Mar 1;108(3):759–767.

³⁵ Organ Procurement and Transplantation Network (OPTN)/Scientific Registry of Transplant Recipients (SRTR). 2022. "Annual Data Report: Liver." Accessed May 2024. https://srtr.transplant.hrsa.gov/annual_reports/2022/Liver.aspx.

³⁶ Ragni MV, Egtesad B, Schlesinger KW, Dvorchik I, Fung JJ. Pretransplant survival is shorter in HIV-positive than HIV-negative subjects with end-stage liver disease. *Liver Transpl*. 2005 Nov;11(11):1425–30.

³⁷ Klitenic SB, Levan ML, Van Pilsum Rasmussen SE, Durand CM. Science Over Stigma: Lessons and Future Direction of HIV-to-HIV Transplantation. *Curr Transplant Rep*. 2021;8(4):314–323.

relevant to HOPE Act transplants of organs other than kidneys and livers, the Secretary does not have sufficient information about transplants of organs other than kidneys and livers on which to base the statutorily required determination.

The Secretary acknowledges that the OPTN has argued that any research and IRB requirements serve as a barrier to access for HOPE Act transplant candidates and may perpetuate inequities in HOPE Act transplant programs.³⁸ We believe, however, that the proposed rule balances the need to ensure the safety of HOPE Act transplants while removing research and IRB requirements for HOPE Act kidney and liver transplants in transplant programs that are well established and have demonstrated both efficacy and safety.

D. Diversity, Equity, Inclusion: Effects on Individuals in Need of Transplant

Currently, only a limited number of centers can perform HOPE Act transplants, because there are specific requirements stipulated by the NIH Research Criteria for such transplant centers. These requirements include expertise in HIV infection management, minimum organ-specific transplant team experience of five transplants of organs from donors without HIV to recipients with HIV over four years and an independent advocate for both recipients with HIV and prospective living donors with HIV. The requirements for centers conducting HOPE Act transplants have been subject to critique and have been viewed as a barrier to participation in HOPE Act transplant programs, which may impact equity and access to organ transplantation throughout the United States.³⁹ By eliminating the requirement that HOPE Act kidney and liver transplants are conducted in the research context, it is anticipated that a larger number of transplant centers will be able to conduct such transplants. This proposal will enable more transplant centers to transplant kidneys and livers donated by both living and deceased donors with HIV, in recipients with HIV, thereby expanding

opportunities for people with HIV and end-stage diseases.

Other factors, such as systemic racism, perpetuate long-standing inequalities and inequities in health care access including organ transplantation. People who identify as Black or African American are four times more likely to develop ESRD compared to non-Hispanic White people but are less likely to receive a kidney transplant.^{40 41} These outcomes are not explained by individual characteristics alone, suggesting that other factors, such as lower socioeconomic status and poor clinical communication, contribute to this inequity.^{42 43}

Separate from organ transplantation, HIV disproportionately affects people of some racial and ethnic groups in the United States, such as Black or African American and Hispanic or Latino populations. Prevalence rates suggest these communities have higher rates of HIV compared to White populations. For example, according to the Centers for Disease Control and Prevention's (CDC) HIV Surveillance Supplemental Report, 2023, people who identified as Black or African American represented 12.4 percent of the population but 40.2 percent of those with diagnosed HIV in 2021.⁴⁴ In addition, people identified as Hispanic or Latino represent 17.6 percent of the population but make up 23.8 percent of people with diagnosed HIV.⁴⁵ Incidence rates also confirm that new infections disproportionately affect Black or African Americans (40 percent of new infections), and Hispanic or Latinos (29 percent of new infections), suggesting that prevention efforts are not adequately reaching these populations.⁴⁶ Higher prevalence and

incidence rates among communities over-represented in the HIV epidemic suggest that these communities would also benefit from expanded access to HOPE Act transplants. In fact, in one 2019 study of HOPE Act deceased-donor characteristics, investigators found a higher proportion of people who identify as Black or African American (72 percent) among HOPE Act kidney transplant recipients than the percent of Black or African Americans in the general population. Among recipient characteristics of HOPE Act liver transplant recipients in the same study, 23 percent identified as Black or African American.⁴⁷

In addition to racial and ethnic diversity, gay, bisexual, and other men who have sex with men (MSM) are the most affected group of people with HIV, accounting for 66 percent of new infections in 2021 even though they only compose 2 percent of the population.^{48 49} Lastly, people who identify as transgender represent 2 percent of all new HIV diagnoses, exceeding the proportion of people who identify as transgender in the general population.⁵⁰

In light of all of these considerations, HHS expects that this proposed rule, if finalized, will assist in improving access to kidney and liver transplants for recipients with HIV. This anticipated positive result is consistent with the Department's commitment to diversity, equity, and inclusion.

Further, this proposed rule to remove research and IRB requirements for kidney and liver HOPE Act transplants would, if finalized, expand access to organ transplantation for all patients, regardless of their HIV status. When eligible for transplant, a person with HIV is added to the waiting list. That patient may elect to receive an organ from a donor with HIV, as a HOPE Act transplant, should it become available, or may choose to wait for an organ from a donor who did not have HIV. If the patient with HIV chooses the HOPE Act

⁴⁰ National Institute of Diabetes and Digestive and Kidney Diseases. n.d. Kidney Disease Statistics for the United States. Accessed February 2024. <https://www.niddk.nih.gov/health-information/health-statistics/kidney-disease>.

⁴¹ U.S. Department of Health and Human Services. Office of Minority Health: Organ Donation and African Americans. <https://minorityhealth.hhs.gov/organ-donation-and-african-americans>. Accessed 2/27/2024.

⁴² El-Khoury B, Yang TC. Reviewing Racial Disparities in Living Donor Kidney Transplantation: a Socioecological Approach. *J Racial Ethn Health Disparities*. 2023 Mar 29;1–10.

⁴³ Siminoff LA, Burant CJ, Ibrahim SA. Racial disparities in preferences and perceptions regarding organ donation. *J Gen Intern Med*. 2006 Sep;21(9):995–1000.

⁴⁴ Centers for Disease Control and Prevention. Estimated HIV incidence and prevalence in the United States, 2017–2021. HIV Surveillance Supplemental Report, 2023; 28 (No.3). <https://www.cdc.gov/hiv/library/reports/hiv-surveillance.html>. Published May 2023.

⁴⁵ *Ibid*.

⁴⁶ Centers for Disease Control and Prevention. Estimated HIV incidence and prevalence in the United States, 2017–2021. HIV Surveillance Supplemental Report, 2023; 28 (No.3). <https://www.cdc.gov/hiv/library/reports/hiv-surveillance.html>. Published May 2023.

www.cdc.gov/hiv/library/reports/hiv-surveillance.html. Published May 2023.

⁴⁷ Wilk AR, Hunter RA, McBride MA, Klassen DK. National landscape of HIV+ to HIV+ kidney and liver transplantation in the United States. *American Journal of Transplantation* 2019;19(9):2594–2605.

⁴⁸ Centers for Disease Control and Prevention. Surveillance Supplemental Report, 2023, 2003 May;28(No.3). <https://www.cdc.gov/hiv/library/reports/hiv-surveillance.html>.

⁴⁹ Purcell DW, Johnson CH, Lansky A, et al. Estimating the population size of men who have sex with men in the United States to obtain HIV and syphilis rates. *Open AIDS J* 2012; 6:98–107.

⁵⁰ Centers for Disease Control and Prevention. HIV Surveillance Report, 2021; vol. 34. <https://www.cdc.gov/hiv/library/reports/hiv-surveillance.html>. Published May 2023.

³⁸ McCauley J. "Fifty Sixth ACBTSA Meeting, Written Public Comment—November 17, 2022 Meeting." 2022 Nov 8. https://optn.transplant.hrsa.gov/media/hwgnca2/optn-executive-committee_acbtsa-letter.pdf.

³⁹ Bowring, M.G., Ruck, J.M., Bryski, M.G., Werbel, W., Tobian, A.A.R., Massie, A.B., Segev, D.L., & Durand, C.M. (2023). Impact of expanding HOPE Act experience criteria on program eligibility for transplantation from donors with human immunodeficiency virus to recipients with human immunodeficiency virus. *American Journal of Transplantation*, 23(6), 860–864.

transplant, this will allow another patient on the waiting list to receive the next available organ from a donor who does not have HIV, which would reduce the time spent waiting for a transplant. Of note, patients who do not have HIV will not be offered an organ from a donor who has HIV, as such transplants are not allowed under Federal law.

As of February 16, 2024, more than 103,000 men, women, and children were on the national organ transplant waiting list.⁵¹ Every 10 minutes another person is added to the waiting list, and nearly 20 people die every day while waiting for a transplant.⁵² The current approach to acquiring organs for transplantation relies on the altruism of donors and their families.

According to the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), more than 1 in 7 adults in the U.S. are affected by kidney disease.⁵³ Of those, more than 800,000 Americans are living with end-stage renal disease (ESRD), a condition that often requires renal dialysis or kidney transplant.⁵⁴ Kidney transplants in 2023 set a new record, offering 27,332 ESRD patients and their families a life-changing organ.⁵⁵ Despite upward trends in the number of kidney transplants conducted year over year, tens of thousands of Americans remain on the waiting list, which currently exceeds 88,700 candidates.⁵⁶ The 2022 OPTN/U.S. Scientific Registry of Transplant Recipients (SRTR) Annual Data Report indicated that over the course of a year more than 4,400 adults died while waiting for a kidney transplant, and an additional 4,500 persons were removed from the waiting list because they became too sick to receive a transplant.⁵⁷ Furthermore, at

least 562,000 Americans endure renal dialysis each year, often while awaiting a kidney transplant.⁵⁸

In addition, thousands of Americans suffer from conditions requiring liver transplant. In 2023, more than 10,660 liver transplants were carried out with organs from both living and deceased donors, setting an all-time record.⁵⁹ As of February 16, 2024, 9,882 candidates remain on the waiting list, but additional registrations are expected throughout the year.⁶⁰ In 2021, more than 1,100 liver patients died while awaiting transplant, according to the OPTN/SRTR Annual Data Report.⁶¹

As such, HHS believes regulatory changes designed to increase the number of organs available for donation, such as those proposed in this rule, could mitigate these outcomes. HHS is committed to reducing the number of persons on the organ transplant waiting list by increasing the number of organs made available for transplantation.

E. Implementation Considerations

1. NIH Research Criteria

The HOPE Act provides the Secretary with the discretion to determine what research criteria should apply to HOPE Act transplants. 42 U.S.C. 274f–5(a). If this proposed rule is finalized, HHS anticipates that NIH will, in consultation with HRSA and the OPTN, and including the input of other relevant Federal stakeholders, revise and publish updated Research Criteria in the **Federal Register** for public comment later this year. The Research Criteria, as originally drafted, include a strong focus on HOPE Act kidney and liver transplants, as these are the most common types of HOPE Act transplants. As the current Research Criteria will no longer be applicable to HOPE Act kidney and liver transplants once the Secretary's determination is implemented, much of the current criteria will no longer be relevant.

Further, HHS recognizes it will be appropriate to update the NIH Research Criteria to reflect advances in research in the time since HOPE Act transplants began. The research criteria should reflect the current needs of various entities involved in HOPE Act transplants in consideration of input from transplant centers, transplant surgeons, OPOs, HIV clinicians, donors, recipients, HIV advocates, the OPTN, and individuals affected by the HOPE Act.

2. Secretarial Direction To Revise OPTN Policies

Should this proposed rule be finalized, the Secretary must direct the OPTN to update its policies to clarify that HOPE Act kidney and liver transplants may be conducted in a way consistent with the statutory requirements at 42 U.S.C. 274, and that ensures the revisions to the policies will not reduce the safety of organ transplantation. 42 U.S.C. 274f–5(c)(2); 42 CFR 121.6(b)(3). Through this NPRM, HHS specifically seeks public comment on the nature and content of the Secretary's direction to the OPTN, including the level of specificity in the direction and the extent of the OPTN's discretion in developing the revised policies; what factors should be considered in assessing whether the revised policies are consistent with 42 U.S.C. 274; and what factors should be considered in assessing whether the revisions to the OPTN policies will not reduce the safety of organ transplantation. HHS further welcomes comment on any other aspects relating to the Secretary's direction to the OPTN to revise its standards of quality as required by the HOPE Act.

HHS expects that the OPTN would solicit public comment on a proposed revision to relevant OPTN policies, and update the OPTN policies containing standards of quality with respect to kidneys and livers from donors with HIV, within 15 months from the publication of a final rule.

F. Secretarial Determination

The Secretary has reviewed the recommendations of the OPTN, the ACBTSA, and the BOTSEC on implementation of the HOPE Act, and the results of research on HOPE Act transplants conducted to date as well as results of other relevant research on organ transplants in recipients with HIV. Pursuant to his authority under the HOPE Act, 42 U.S.C. 274(b)(3)(B)(ii), and consistent with the implementing regulations at 42 CFR 121.6, the Secretary proposes to determine that participation in clinical research, and

⁵¹ Organ Procurement and Transplantation Network. 2024. *Dashboard and metrics*. Accessed February 2024. <https://insights.unos.org/OPTN-metrics/>.

⁵² Health Resources and Services Administration. *Organ Donation Statistics*. Accessed February 2024. <https://www.organdonor.gov/learn/organ-donation-statistics>.

⁵³ National Institute of Diabetes and Digestive and Kidney Diseases. n.d. *Kidney Disease Statistics for the United States*. Accessed February 2024. <https://www.niddk.nih.gov/health-information/health-statistics/kidney-disease>.

⁵⁴ National Institute of Diabetes and Digestive and Kidney Diseases. n.d. *Kidney Disease Statistics for the United States*. Accessed Feb 2024. <https://www.niddk.nih.gov/health-information/health-statistics/kidney-disease>.

⁵⁵ *Ibid.*

⁵⁶ Organ Procurement and Transplantation Network. *Dashboard and metrics*. <https://insights.unos.org/OPTN-metrics/>. Accessed Feb 2024.

⁵⁷ Organ Procurement and Transplantation Network (OPTN)/Scientific Registry of Transplant Recipients (SRTR). 2021. "Annual Data Report." Accessed Feb 2024. https://srtr.transplant.hrsa.gov/annual_reports/2021_ADR_Preview.aspx.

⁵⁸ National Institute of Diabetes and Digestive and Kidney Diseases. n.d. *Kidney Disease Statistics for the United States*. Accessed Feb 2024. <https://www.niddk.nih.gov/health-information/health-statistics/kidney-disease>.

⁵⁹ United Network for Organ Sharing (UNOS). February 14, 2024. A decade of record increases in liver transplant. Accessed Feb 2024. <https://unos.org/news/in-focus/a-decade-of-record-increases-in-liver-transplant/>.

⁶⁰ Organ Procurement and Transplantation Network. *Dashboard and metrics*. <https://insights.unos.org/OPTN-metrics/>. Accessed Feb 2024.

⁶¹ Organ Procurement and Transplantation Network (OPTN)/Scientific Registry of Transplant Recipients (SRTR). 2021. "Annual Data Report." Accessed February 2024. https://srtr.transplant.hrsa.gov/annual_reports/2021_ADR_Preview.aspx.

therefore adherence to research and IRB requirements, as a requirement for transplants of kidneys and livers from persons with HIV, is no longer warranted. Through this rulemaking, the Secretary proposes to lift the statutory research and IRB requirements for such transplants.

Through this NPRM, HHS specifically seeks public comment on the Secretary's proposed determination that participation in clinical research, and application of the statutory research and IRB requirements, as a requirement for transplants of kidneys and livers from persons with HIV, is no longer warranted.

III. Discussion of the Proposed Rule

A. Removal of Research and IRB Requirements for HOPE Act Kidney and Liver Transplants

Consistent with the Secretary's proposed determination under the HOPE Act, this proposed rule, if finalized, will revise § 121.6 of the HHS regulations governing the OPTN to reflect the removal of the statutory research and IRB requirements for kidney and liver HOPE Act transplants.

HHS proposes to revise § 121.6(b)(1)(ii)(B) to reflect the Secretary's proposed determination that participation in clinical research is no longer warranted for the following categories of transplants:

- (1) Transplant of a donor kidney with HIV; and
- (2) Transplant of a donor liver with HIV.

In implementation, this proposal, if approved, would mean that HOPE Act kidney and liver transplants will no longer be conducted as research, and instead will be conducted in accordance with newly adopted OPTN policies regarding kidneys and livers from donors with HIV.

B. Revised Terminology: Persons With HIV

HHS is aware that previous language used in enacting and implementing the HOPE Act contained vocabulary and phrases that some people find stigmatizing—namely, references to “infected with HIV” when the regulatory language encompasses both living and deceased donors with HIV, or recipients with HIV. For the references to both living and deceased donors with HIV, HHS proposes to revise all current references in § 121.6(b) from “individuals infected with human immunodeficiency virus (HIV)” and “individuals infected with HIV” to “donors with HIV” or, when discussing organs donated, “donor organs with

HIV.” Further, HHS proposes to revise the current reference in § 121.6(b)(1)(i) describing the allowable recipients of HOPE Act transplants from individuals who are “infected with HIV before receiving such organ(s)” to instead refer to individuals who are “living with HIV before receiving such organ(s).” This is consistent with the Centers for Disease Control and Prevention's (CDC) Stigma Language Guide.⁶²

HHS is proposing these new regulatory references to “donors with HIV” and “living with HIV” with the intent to be respectful, and not to change the group of people referenced in the current § 121.6.

V. Explanation of the 30-Day Public Comment Period

HHS is publishing this proposed rule with a 30-day public comment period, as multiple opportunities for public input on the matters addressed through this rulemaking already have been provided. HHS has been collecting public commentary on the HOPE Act since the OPTN provided its HOPE Act recommendations to Secretary Becerra in October 2021. ACBTSA heard a summary of the OPTN's consideration of the HOPE Act soon after its December 1, 2021 public meeting. Following this presentation, ACBTSA formed a working group to develop a recommendation regarding the HOPE Act. During the ACBTSA's November 17, 2022 public meeting, ACBTSA received written public comment on its proposed recommendations to the Secretary regarding removing the research and IRB requirements for kidney and liver HOPE Act transplantations.⁶³

HHS has actively engaged transplant surgeons, researchers, advocates, donors, and recipients involved in organ transplantation in the course of drafting a recommendation to the Secretary. The Department has reviewed dozens of comments received in response to discussions held by the ACBTSA, the BOTSEC and the Presidential Advisory Council on HIV/AIDS (PACHA).^{64,65} The

Department understands that there is widespread support for the proposed recommendation including the endorsement of at least 35 non-governmental organizations involved in HIV advocacy, organizations representing entities involved in organ transplantation, associations representing transplant surgeons, nephrologists, HIV clinicians, epidemiologists, and many more individuals.

Given the multiple committees and policy mechanisms employed for discussion of potential changes to requirements for HOPE Act transplants, previous efforts to gather public commentary and the considerable public health impact this proposed policy may have on those in need of organ transplantation, HHS believes the 30-day public comment period is sufficient and most expedient.

VI. Paperwork Reduction Act of 1995

This proposed rule, if finalized, would not impose any additional information collection burden under the Paperwork Reduction Act and does not contain any information collection requirements beyond those already imposed by current regulations, which have been approved by the Office of Management and Budget. The current data collection requirements in the OPTN final rule approved by the OMB under the Paperwork Reduction Act of 1995 are assigned control numbers OMB No. 0915–0157 (for organ donors, candidates, and recipients) and OMB No. 0915–0184 (for OPTN membership application data).

VII. Preliminary Economic Analysis of Impacts

We have examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, Executive Order 14094, the Regulatory Flexibility Act (5 U.S.C. 601–612), the Congressional Review Act (5 U.S.C. 801, Pub. L. 104–121), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Orders 12866, 13563, and 14094 direct us to assess all benefits, costs, and transfers of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Rules are “significant” under Executive Order 12866 section 3(f)(1) (as amended by Executive Order 14094) if they have an annual effect on the economy of \$200 million or more (adjusted every 3 years

⁶² Centers for Disease Control and Prevention. Let's Stop HIV Together: Stigma Language Guide. <https://www.cdc.gov/stopshivtogether/hiv-stigma/ways-to-stop.html>. Accessed 2/23/2024.

⁶³ HHS Advisory Committee on Blood and Tissue Safety and Availability. 2022. Fifty-Sixth ACBTSA Meeting November 17, 2022—Meeting Summary.

⁶⁴ 79th Presidential Advisory Council on HIV/AIDS (PACHA) Full Council Meeting [12.06.23 | Part 4. Uploaded by U.S. Department of Health and Human Services. 2023 Dec 14. <https://www.youtube.com/watch?v=oHM3ygWpMek>.

⁶⁵ HHS Presidential Advisory Council on HIV/AIDS (PACHA). Seventy-Ninth PACHA Meeting December 6, 2023—Meeting Summary. 2023 Dec 6. <https://files.hiv.gov/s3fs-public/2024-03/PACHA-Dec-2023-meeting-summary-final.pdf>.

by the Administrator of the Office of Information and Regulatory Affairs (OIRA) for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities. This analysis indicates that this proposed rule is a significant regulatory action under Executive Order 12866 section 3(f)(1).

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the impacts are small relative to the number of organ transplants performed annually, and because the costs are small relative to the average payroll of firms in the smallest enterprise size category, we propose to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (UMRA) generally requires that each agency conduct a cost-benefit analysis, identify and consider a reasonable number of regulatory

alternatives, and select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule before promulgating any proposed or final rule that includes a Federal mandate that may result in expenditures of more than \$100 million (adjusted for inflation) in at least one year by State, local, and Tribal governments, or by the private sector. Each agency must also seek input from State, local, and Tribal governments.⁶⁶ The current threshold after adjustment for inflation using the Implicit Price Deflator for the Gross Domestic Product is \$183 million, reported in 2023 dollars. This proposed rule, if finalized, would not result in an unfunded mandate in any year that meets or exceeds this amount.

This proposed rule would, if finalized, remove the current research and institutional review board (IRB) requirements for transplants of human immunodeficiency virus (HIV)-positive kidneys and livers. This would result in impacts related to changes in the number of kidney and liver transplants performed annually. We monetize benefits associated with increases in life

expectancy for organ transplant recipients and, for kidney transplant recipients, benefits associated with improved quality of life and time savings from fewer kidney dialysis visits. We monetize costs from medical expenditures associated with organ transplantation; for kidney transplants, we report impacts that are net of medical expenditures associated with kidney dialysis. We also monetize costs associated with organ transplant centers reading and understanding the rule, reviewing policies and procedures, and training staff. We report the shift in expenditures associated with kidney dialysis to expenditures associated with kidney transplantation separately as transfers. We estimate that the annualized benefits over a 10-year time horizon covering 2025 through 2034 would range from \$561 million to \$1.26 billion at a 2 percent discount rate, with a primary estimate of \$900 million. The annualized costs would range from \$134 million to \$174 million, with a primary estimate of \$154 million. The annualized transfers would range from \$24 million to \$39 million, with a primary estimate of \$31 million.

TABLE 1—SUMMARY OF IMPACTS OF THE PROPOSED RULE
[Millions of constant 2023 dollars]

Category	Primary estimate	Low estimate	High estimate	Dollar year or unit	Discount rate (%)	Time horizon	Notes
BENEFITS:							
Annualized monetized benefits.	\$900	\$561	\$1,261	2023	2	2025–2034	Increased life expectancy for organ transplant recipients; improved quality of life for kidney transplant recipients; time savings from fewer kidney dialysis visits.
Annualized quantified, but non-monetized, benefits.	147	129	166	People affected	2	2025–2034	Improved quality of life for liver transplant recipients.
Unquantified benefits.	.....	.....	.....	.....	.....	2025–2034	Time savings for caregivers; cost savings related to removing the research and institutional review board requirements.
COSTS:							
Annualized monetized costs.	\$154	\$134	\$174	2023	2	2025–2034	Net costs associated with organ transplants; costs associated with organ transplant centers reading and understanding the rule, reviewing policies and procedures, and training staff.
TRANSFERS:							
Annualized monetized transfers.	\$31	\$24	\$39	2023	2	2025–2034	Shift in expenditures associated with kidney dialysis to expenditures associated with kidney transplantation.
NET BENEFITS:							
Annualized monetized net benefits.	\$746	\$412	\$1,101	2023	2	2025–2034	

Note: primary, low, and high estimates correspond to the mean, 5th percentile, and 95th percentile of the outcomes of a Monte Carlo simulation.

We have developed a comprehensive preliminary economic analysis of impacts that assesses the impacts of the proposed rule, which is available in the

docket for this proposed rule Document ID HRSA–2024–0001.

List of Subjects in 42 CFR Part 121

Health care, Hospitals, Transplant centers, Organ transplantation, Reporting and recordkeeping requirements.

⁶⁶ U.S. Office of Management and Budget, Office of Information and Regulatory Affairs. “2018, 2019, and 2020 Report to Congress on the Benefits and

Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act.” <https://www.whitehouse.gov/wp-content/>

[uploads/2021/01/2018_2019_2020-OMB-Cost-Benefit-Report.pdf](#).

Dated: September 6, 2024.

Xavier Becerra,
Secretary.

Accordingly, by the authority vested in me as the Secretary of Health and Human Services, and for the reasons set forth in the preamble, 42 CFR part 121 is proposed to be amended as follows:

PART 121—ORGAN PROCUREMENT AND TRANSPLANTATION NETWORK

■ 1. The authority citation for part 121 continues to read as follows:

Authority: Sections 215, 371–77, and 377E of the PHS Act (42 U.S.C. 216, 273–274d, 274f–5); sections 1102, 1106, 1138 and 1871 of the Social Security Act (42 U.S.C. 1302, 1306, 1320b–8, and 1395hh); section 301 of the National Organ Transplant Act, as amended (42 U.S.C. 274e); and E.O. 13879, 84 FR 33817.

■ 2. In § 121.6, revise paragraph (b) to read as follows:

§ 121.6 Organ procurement.

* * * * *

(b) *HIV.* (1) Organs from donors with human immunodeficiency virus (HIV) may be transplanted only into individuals who—

(i) Are living with HIV before receiving such organ(s); and

(ii)(A) Are participating in clinical research approved by an institutional review board, as defined in 45 CFR part 46, under the research criteria published by the Secretary under subsection (a) of section 377E of the Public Health Service Act, as amended; or

(B) The Secretary has published, through appropriate procedures, a determination under section 377E(c) of the Public Health Service Act, as amended, that participation in such clinical research, as a requirement for transplants of donor organs with HIV, is no longer warranted. The Secretary has determined that participation in such clinical research is no longer warranted for the following categories of transplants:

(1) Transplant of a donor kidney with HIV; and

(2) Transplant of a donor liver with HIV.

(2) Except as provided in paragraph (b)(3) of this section, the OPTN shall adopt and use standards of quality with respect to donor organs with HIV to the extent the Secretary determines necessary to allow the conduct of research in accordance with the criteria described in paragraph (b)(1)(ii)(A) of this section.

(3) If the Secretary has determined under paragraph (b)(1)(ii)(B) of this section that participation in clinical research is no longer warranted as a

requirement for transplants of donor organs with HIV, the OPTN shall adopt and use standards of quality with respect to donor organs with HIV as directed by the Secretary, consistent with 42 U.S.C. 274, and in a way that ensures the changes will not reduce the safety of organ transplantation.

* * * * *

[FR Doc. 2024–20643 Filed 9–11–24; 8:45 am]

BILLING CODE 4150–28–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 64

[GN Docket No. 24–213; MD Docket No. 10–234; FCC 24–85; FR ID 240720]

Improving the Effectiveness of the Robocall Mitigation Database; Amendment of CORES Registration System

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) proposes and seeks comment on procedural measures that would require Robocall Mitigation Database filers to take additional steps to ensure the accuracy of submitted information, potential technical solutions for validating data, accountability measures to ensure and improve the overall quality of submissions in the Robocall Mitigation Database, and generally invites comment on any other procedural steps the Commission could require to increase the effectiveness of the Robocall Mitigation Database as a compliance and consumer protection tool.

DATES: Comments are due on or before October 15, 2024, and reply comments are due on or before November 12, 2024.

ADDRESSES: Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated above. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

• *Electronic Filers:* Comments may be filed electronically using the internet by accessing ECFS: <https://www.fcc.gov/ecfs/>.

• *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

• Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8 a.m. and 4 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

• Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

• Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent to 45 L Street NE, Washington, DC 20554.

Accessible Formats. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice).

FOR FURTHER INFORMATION CONTACT: For further information about the Notice of Proposed Rulemaking (NPRM), contact Erik Beith, Attorney Advisor, Competition Policy Division, Wireline Competition Bureau, at Erik.Beith@fcc.gov. For additional information concerning the Paperwork Reduction Act proposed information collection requirements contained in this document, send an email to PRA@fcc.gov or contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's NPRM in GN Docket No. 24–213, MD Docket No. 10–234, released on August 8, 2024. The complete text of this document is available for download at <https://docs.fcc.gov/public/attachments/FCC-24-85A1.pdf>.

Paperwork Reduction Act: The NPRM may contain proposed new and revised information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4),

we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Ex Parte Rules. The proceeding the NPRM initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b) of the Commission’s rules. In proceedings governed by § 1.49(f) of the Commission’s rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

Providing Accountability Through Transparency Act: The Providing Accountability Through Transparency Act, Public Law 118–9, requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule. The required summary of the NPRM is available at <https://www.fcc.gov/proposed-rulemakings>.

Synopsis

I. Introduction

Illegal robocalls cause billions of dollars in consumer fraud, not to mention the losses suffered by consumers due to lost time and attention, and diminished confidence in the Nation’s telephone network. In 2023, the Commission received approximately 96,500 complaints concerning unwanted calls, including illegal robocalls—more than any other issue. Protecting Americans from illegal robocalls remains the Commission’s top consumer protection priority. With the NPRM we launch a proceeding to explore new initiatives intended to increase consumer protection, reduce unwanted calls, and increase accountability of non-compliant providers.

This initiative follows a series of Commission actions on multiple fronts to stem the tide of robocalls using every tool at our disposal. One such tool is the Robocall Mitigation Database (RMD or Database), a public database established by the Commission in 2021 to facilitate the implementation of our STIR/SHAKEN and robocall mitigation rules. Consistent with the Commission’s efforts to expand both STIR/SHAKEN implementation and robocall mitigation requirements in recent years, *all* providers are now required to file certifications and robocall mitigation plans in the Robocall Mitigation Database, as well as additional information to assist the Commission with evaluating compliance with our rules. This makes the Robocall Mitigation Database an essential consumer protection tool that is not only relied upon by the Commission for our own enforcement activities, but by other Federal and state enforcement bodies, and by downstream providers, which are prohibited from accepting a provider’s traffic if it is not listed in the Robocall Mitigation Database. It is, therefore, critical that the information submitted to the Robocall Mitigation Database by providers be complete, accurate, and up-to-date.

Given the importance of the Robocall Mitigation Database, we launch this proceeding to examine ways to ensure and improve the overall quality of submissions based on the collective experience of all stakeholders over the last three years. Specifically, we propose and seek comment on procedural measures that the Commission could adopt to promote the highest level of diligence when providers submit required information to the Robocall Mitigation Database, and technical solutions that the Commission

could use to identify data discrepancies in filings—and require them to be corrected—before they are accepted by the system. At this time, we are not proposing or seeking comment on additional content requirements for Robocall Mitigation Database filings. The Commission adopted significant additional content requirements in March 2023 and required all providers to submit Robocall Mitigation Database filings that complied with those additional requirements by February 26, 2024. Those filings are currently under review. We propose and seek comment on measures to increase accountability for providers that submit inaccurate and false information to the Robocall Mitigation Database or fail to update their filings when the information they contain changes, as required by the Commission’s rules. Lastly, we generally invite comment on any other procedural steps the Commission could require to increase the effectiveness of the Robocall Mitigation Database as a compliance and consumer protection tool.

II. Background

The Commission created the Robocall Mitigation Database in 2021 to effectuate provisions of the TRACED Act, which directed the Commission to require voice service providers to implement the STIR/SHAKEN caller ID authentication framework on their IP-based voice networks by June 30, 2021, subject to certain extensions due to undue hardship or reliance on non-IP infrastructure. The TRACED Act included two provisions for extension of the June 30, 2021, implementation deadline. First, it permitted the Commission to extend the compliance date for a reasonable period of time “upon a public finding of undue hardship,” and second, it directed the Commission to grant an extension to those providers that “materially rel[y]” on non-IP infrastructure. First, it permitted the Commission to extend the compliance date for a reasonable period of time “upon a public finding of undue hardship,” and second, it directed the Commission to grant an extension to those providers that “materially rel[y]” on non-IP infrastructure. Pursuant to these provisions, in 2020 the Commission granted three categorical STIR/SHAKEN implementation extensions on the basis of undue hardship to: (1) small voice service providers with 100,000 or fewer voice subscriber lines; (2) voice service providers unable to obtain the SPC “token” necessary to participate in STIR/SHAKEN; and (3) services scheduled for section 214

discontinuance. Further, the Commission granted voice service providers a continuing extension for the portions of their networks that rely on technology that cannot initiate, maintain, or terminate SIP calls. The implementation extensions for services scheduled for section 214 discontinuance ended on June 30, 2022, and the implementation extensions for non-facilities-based and facilities-based small voice service providers ended on June 30, 2022, and June 30, 2023, respectively. In 2023, the Commission granted an indefinite extension of time for small voice providers that are satellite providers originating calls using North American Numbering Plan (NANP) numbers on the basis of the TRACED Act's undue hardship standard. Under the framework established by the TRACED Act, any voice service provider that is granted a STIR/SHAKEN implementation extension pursuant to these provisions must implement "an appropriate robocall mitigation program to prevent unlawful robocalls from originating on the network of the provider." To promote transparency, effective mitigation practices, and diligent enforcement of the Commission's rules, the Commission required voice service providers to submit certifications to the Robocall Mitigation Database concerning their STIR/SHAKEN implementation progress, and if they had not fully implemented STIR/SHAKEN, a description of their robocall mitigation program, including "[t]he specific reasonable steps the voice service provider has taken to avoid originating illegal robocall traffic." Providers filing in the Robocall Mitigation Database were also required to submit additional information, including business names and addresses, and a point of contact for resolving robocall-mitigation related issues. The Commission made the certification data and robocall mitigation plans filed in the Robocall Mitigation Database publicly available on the Commission's website to facilitate inter-provider cooperation and the public's ability to understand providers' robocall mitigation practices.

Since 2021, the Commission has worked to expand the scope of providers required to implement STIR/SHAKEN and comply with robocall mitigation requirements, and thus, the providers required to submit certifications and robocall mitigation plans in the Robocall Mitigation Database. Today, all providers carrying or processing voice traffic—voice service providers, gateway providers,

and non-gateway intermediate providers—are required to file certifications and robocall mitigation plans in the Robocall Mitigation Database. The consequences for not doing so, or for filing certifications and robocall mitigation plans that do not comply with the Commission's rules, are severe. They may include the imposition of a Commission forfeiture and/or the removal of a deficient filing from the Database. The latter remedy effectively precludes the provider from operating as a provider of voice services in the United States, as the Commission's rules prohibit intermediate and terminating providers from accepting traffic directly from any provider that does not appear in the Database. This prohibition, which denies "a service provider access to the regulated U.S. voice network if [the Commission] determines that the service provider's . . . robocall mitigation practices are inadequate," recognizes the importance of the information submitted to the Robocall Mitigation Database and its role as a tool for enforcement and industry self-regulation.

A. Content Requirements for Robocall Mitigation Database Submissions

To start a filing in the Robocall Mitigation Database, providers must first obtain a business-type FCC Registration Number (FRN) via the FCC's Commission Registration System (CORES) and an FCC username and password. CORES is the system the FCC uses to facilitate the assignment of FRNs to all persons and entities seeking to do business with the Commission. An FRN is a unique 10-digit number assigned to a business or individual registering with the Commission that is used to identify the registrant's business dealings with the agency. Providers establish a CORES account and FRN to submit a new filing or manage existing filings in the Robocall Mitigation Database. Once a provider's FRN is selected in the Database, the entity name and business address associated with that FRN are automatically populated in the Robocall Mitigation Database certification form. These fields of the certification form are "read only" and may not be changed without changing the associated data in CORES.

To complete the remainder of the Robocall Mitigation Database certification form, providers must manually enter additional information, including:

- Whether the provider has fully, partially, or not implemented the STIR/SHAKEN authentication framework in the IP portions of its network;

- Confirmation that all of the calls that it originates on its network are subject to a robocall mitigation program consistent with § 64.6305(a), (b), and/or (c);

- Confirmation that any prior Robocall Mitigation Database submission has not been removed by Commission action and that the provider has not been prohibited from filing in the Robocall Mitigation Database by the Commission;

- Any other business name(s) currently in use by the provider;

- All business names previously used by the provider;

- Whether the provider is a foreign voice service provider;

- The name, title, department, business address, telephone number, and email address of one person within the company responsible for addressing robocall mitigation-related issues;

- The provider's role(s) in the call path;

- Whether the provider is eligible for any STIR/SHAKEN implementation extensions or exemptions;

- Information regarding the provider's principals, affiliates,

- subsidiaries, and parent companies;

- Information on any recent enforcement actions concerning illegal robocalls; and

- The provider's Operating Company Number (OCN), if it has one.

Once the certification is complete, providers must then upload a PDF file containing the written description of their robocall mitigation programs. Providers that wish to designate a portion of their robocall mitigation program filing as confidential may upload both confidential (*i.e.*, unredacted) and non-confidential (*i.e.*, redacted) documents pursuant to the terms of the Protective Order adopted for Robocall Mitigation Database filings. Under the Commission's rules, all providers are required to develop robocall mitigation programs that include reasonable steps to avoid transmitting illegal robocall traffic, and include commitments to respond within 24 hours to all traceback requests from the Commission, law enforcement, and the industry traceback consortium, and to cooperate with such entities in investigating and stopping any illegal robocalls that use its service to originate calls. The Commission's "reasonable steps" standard requires that a robocall mitigation program "include[] detailed practices that can reasonably be expected to significantly reduce' the carrying or processing (for intermediate providers) or origination (for voice service providers) of illegal robocalls." Certain additional

requirements apply based on the role the provider plays in the call path. For instance, voice service providers must describe how they are meeting their existing obligation to take affirmative, effective measures to prevent new and renewing customers from originating illegal calls, and gateway providers and non-gateway intermediate providers must describe their 'know-your-upstream provider' procedures designed to mitigate illegal robocalls. In addition, all providers must describe any call analytics systems they use to identify and block illegal traffic, including whether they use a third-party vendor or vendors and the name of the vendor(s).

The Commission has not otherwise mandated that providers include specific measures in their mitigation plans, finding that providers require "flexibility in determining which measures to use to mitigate illegal calls on their networks." At the same time, the Commission directed that providers must comply with the practices specified in their robocall mitigation plans and that their robocall mitigation programs will be deemed deficient if the provider knowingly or through negligence carries or processes calls (for intermediate providers) or originates (for voice service providers) unlawful robocall campaigns. Further, a robocall mitigation plan will be deemed facially deficient if it does not provide any information about the specific reasonable steps that the provider is taking to mitigate illegal robocalls. For example, robocall mitigation plans that only include a generalized statement that a robocall mitigation plan is in place or merely recite the Commission's rules for robocall mitigation will be deemed facially deficient. Providers that submit deficient robocall mitigation plans to the Robocall Mitigation Database and fail to cure those deficiencies are referred to the Commission's Enforcement Bureau for investigation and potential removal from the Database, after which all downstream providers will be prohibited from carrying their traffic.

B. When and How Robocall Mitigation Database Submissions are Filed

Providers are required to submit Robocall Mitigation Database certifications and robocall mitigation plans pursuant to deadlines set and announced by the Commission. Providers are also required to update their submissions within 10 business days of any changes to required content. For instance, if the contact information provided for the individual within the company responsible for robocall mitigation efforts has changed since the

provider submitted its certification and robocall mitigation plan to the Robocall Mitigation Database, the provider is required to update its submission to include the current contact information within 10 business days of that change.

All Robocall Mitigation Database submissions are filed via a portal accessible on the Commission's website at <https://www.fcc.gov/robocall-mitigation-database>. After entering all of the required content, the provider's submission must be electronically signed by an officer of the company who certifies, under penalty of perjury, that the information included in the submission is true and correct. The submission is then accepted by the system. Instructions to assist filers with completing their Robocall Mitigation Database submissions are available on the Commission's website, as well as other reference documents providing guidance to providers on what is required to comply with the Commission's rules. Any provider or member of the public may view submissions to the Robocall Mitigation Database via the Commission's website or download a list of them as a .CSV file.

III. Discussion

The Robocall Mitigation Database is a critical tool in the Commission's efforts to ensure compliance with its STIR/SHAKEN and robocall mitigation rules and protect the public from the harms caused by illegal robocalling campaigns. Many stakeholders outside of the Commission also depend on the information in the Robocall Mitigation Database to make important decisions that directly impact consumers. Downstream providers use the information in the Database to determine whether they are permitted to carry traffic on their networks, and other consumer protection and enforcement bodies use the information to pursue their own investigations into suspected illegal robocalling activities under applicable laws. Information submitted to the Robocall Mitigation Database by providers must be accurate and complete, and the Commission's requirements for filing in the Database and related accountability measures must promote accuracy, thoroughness, and continued diligence.

A review of filings in the Robocall Mitigation Database indicates that, among some providers, diligence is lacking. We have identified deficiencies ranging from failures to provide accurate contact information to failing to submit robocall mitigation plans that in any way describe reasonable robocall mitigation practices. While the

Commission has acted to support the integrity of Robocall Mitigation Database information by removing deficient filings through enforcement actions and remains committed to doing so, there may be ways that the Commission could incentivize providers to avoid submitting deficient filings to the Database in the first instance through additional procedural steps, accountability measures, and technical validation solutions. In addition to improving the overall quality of submissions to the Robocall Mitigation Database, such measures may also deter bad actors that wish to evade our rules by deliberately submitting false or misleading information to the Database in an effort to ensure the traffic they send is carried by downstream providers.

We initiate this proceeding to propose and seek comment on additional procedural and accountability measures for the Robocall Mitigation Database to make it as effective as possible for the providers and government entities that use it, and thus the consumers it was instituted to protect. Specifically, we:

- Propose to amend the Commission's rules to require providers to update information they have submitted to CORES within 10 business days of any changes to ensure that the business name and address information automatically populated into Robocall Mitigation Database submissions from that system is current;
- Propose to require multi-factor authentication each time a provider accesses the Robocall Mitigation Database;
- Seek comment on requiring providers to obtain a unique Personal Identification Number (PIN) that must be provided before the Robocall Mitigation Database will accept a submission;
- Seek comment on requiring providers to remit a filing fee for submissions to the Robocall Mitigation Database;
- Seek comment on technical solutions that will scan Robocall Mitigation Database submissions, flag data discrepancies, and require providers to resolve such discrepancies before the submission is accepted by the filing system;
- Propose base and maximum forfeiture amounts for submitting inaccurate or false information to the Robocall Mitigation Database, or failing to update information that has changed within 10 business days, as required by the Commission's rules;
- Propose to authorize downstream providers to permissively block traffic from Robocall Mitigation Database filers

that have been given notice of facial deficiencies in their robocall mitigation plans and failed to correct those deficiencies within 48 hours; and

- Seek comment on additional procedural steps the Commission could require to encourage providers to submit accurate and complete information to the Robocall Mitigation Database and CORES and keep that information current.

We estimate that the gains—including reduced fraud, avoided aggravation, and enhanced consumer confidence—should far exceed any added compliance burdens. We seek comment on the costs and benefits of our proposals outlined below.

A. Measures To Improve the Quality of Robocall Mitigation Database Submissions

In this section, we seek comment on procedural and technical measures to improve the overall quality of Robocall Mitigation Database submissions in order to make the Database more effective for all stakeholders who use it. First, we seek comment on any additional steps filers should be required to affirmatively take to ensure the accuracy of information submitted to the Robocall Mitigation Database, and to ensure that such information remains accurate and up-to-date over time. Second, we seek comment on any technical solutions that the Commission could deploy to validate data in submissions and flag discrepancies before they are accepted by the Robocall Mitigation Database.

1. Procedural Steps To Improve the Accuracy of Robocall Mitigation Database Filings

We seek comment on whether the Commission should adopt additional procedural steps for Robocall Mitigation Database filings to improve and ensure the accuracy of information contained in the Robocall Mitigation Database. We believe that there is ample information in the Commission's rules, orders, public notices, filing instructions, and other materials to advise providers on *what* they must file in the Robocall Mitigation Database to comply with our rules. We now turn to explore ways to improve diligent adherence to those requirements by filers. We, therefore, seek comment on measures that will prompt providers to affirmatively verify that the information they submit is responsive to the Commission's legal requirements and factually accurate, and to incentivize compliance with the on-going requirement to keep information in the Robocall Mitigation Database current. In addition to the

specific measures discussed below, we invite general comment on procedures that we could adopt that would achieve these goals.

Requiring Filers to Update Information in CORES. We first propose adopting a rule to require providers to update any information submitted to CORES within 10 business days of any changes to that information. As noted above, a CORES account and FRN are required to file in the database. A user's FRN is uniquely associated with each Robocall Mitigation Database filing, and the entity name and address associated with this FRN in CORES are imported directly into the Database along with a user's FRN. This contact information, along with a taxpayer identification number (TIN), such as a Social Security Number (SSN) for individuals, or an Employer Identification Number (EIN) for businesses is entered by users when they create a CORES account and complete an FRN registration form. Currently, § 1.8002 of the Commission's rules, which governs obtaining an FRN, requires that information submitted by registrants, including the entity's name and address, "be kept current." It does not, however, establish a deadline for submitting updates after a change in information occurs. Thus, information in CORES may be out of date at the time a provider submits a certification and robocall mitigation plan to the Robocall Mitigation Database, resulting in inaccurate information being imported into the Database.

We therefore propose to require all entities and individuals that register in CORES to update any information required by the system within 10 business days of any changes, as is currently required for filings in the Robocall Mitigation Database. We seek comment on the benefits and burdens of this proposal. We believe a requirement to update contact information promptly would not impose any significant costs on CORES users, which are already obligated to keep their information current under § 1.8002, and that any incidental burdens are easily outweighed by the significant interests of the Commission and other stakeholders in obtaining accurate identifying information from the Commission's databases. This is particularly true given that other Commission databases beyond the Robocall Mitigation Database similarly make use of contact information imported directly from CORES. We seek comment on this view. Are there nevertheless any countervailing burdens that the Commission should consider in weighing this proposal? How should the Commission enforce such a

requirement, if it were adopted? Should this proposed deadline apply to all entities registering for an FRN, or only those that must file in the Robocall Mitigation Database? Since Robocall Mitigation Database filers must obtain a business-type FRN in order to submit a certification, should we apply this requirement only to business-type FRNs, rather than individual FRNs? Are there reasons a longer duration of time may be necessary for individual FRN holders? Are there alternative proposals the Commission should consider to ensure the accuracy of information submitted to CORES, and by extension, other FCC databases that make use of information imported from CORES?

Multi-Factor Authentication. We seek comment on whether to deploy multi-factor authentication functionality for the Robocall Mitigation Database and whether to require providers to use such technology in order to submit a filing to the Database. Multi-factor authentication, which requires use of multiple authentication protocols in order to grant access to an account—for example, a password and a one-time verification code—is more secure than authentication with a username and password alone. We note that the Commission's Office of Managing Director recently required all CORES users to undergo two-factor authentication each time a user logs into CORES. Under this system users are "prompted to request a six-digit secondary verification code, which will be sent to the email address(es) associated with each username." The code must then be entered into CORES by the user before accessing their account. Would a more robust authentication system of this kind be beneficial for the Robocall Mitigation Database? Why or why not? If the Commission were to require multi-factor authentication for the Database, what type of authentication protocol should the Commission employ? For example, in addition to a password, should the Commission require use of a one-time verification code provided by an authentication app or physical security key? We tentatively conclude that, under applicable OMB policy, if the Commission adopts multi-factor authentication for the Robocall Mitigation Database, we also will have to afford users the option to use "phishing-resistant authentication" methods. We seek comment on this understanding and on users' expectations regarding authentication methods. We also seek comment on the benefits and burdens associated with

different means of deploying such functionality.

Requiring Filers to Obtain a PIN to File in the Robocall Mitigation Database. In addition, or as an alternative to the multi-factor authentication methods discussed above, we seek comment on increasing accountability for the accuracy of information submitted to the Robocall Mitigation Database by requiring an officer, owner, or other principal of a provider (collectively, “officer”) to obtain a PIN that must be entered before an Robocall Mitigation Database submission is accepted by the filing system. Currently, an officer is required to electronically sign a provider’s Robocall Mitigation Database certification. By doing so, the officer declares that “under penalty of perjury” the information provided in the Robocall Mitigation Database submission is true and correct. As noted above, the provider’s business name and address is imported from CORES, and contact information for an employee of the company responsible for robocall mitigation must be provided. An officer is not, however, required to provide their own direct contact information or to make more specific certifications with respect to their role in ensuring that the provider submits and maintains accurate information in the Robocall Mitigation Database. We are concerned that this may lead to consultants and provider employees completing Robocall Mitigation Database submissions without sufficient diligence, and that an additional verification step by the responsible officer may be necessary to ensure that Robocall Mitigation Database certifications and robocall mitigation plans are submitted and kept up-to-date in accordance with our rules.

We therefore seek comment on whether we should require the signing officer to submit additional information and certifications to obtain a PIN that must be used to submit an Robocall Mitigation Database certification. Specifically, we seek comment on requiring the officer to complete a form, separate from the filing in the Robocall Mitigation Database and prior to certification thereto can be submitted, that collects: (1) A non-P.O. box street address and telephone number for the location of the office where the officer does business, and a direct business email address for the officer; (2) a business address, telephone number, and email address for the provider’s registered agent for service of process in the District of Columbia (or a certification that such an agent is not required by § 1.47(h) of the

Commission’s rules); and (3) certifications, under penalty of perjury pursuant to § 1.16 of the Commission’s rules, that the officer:

- Is authorized to submit the PIN form, Robocall Mitigation Database certification, and robocall mitigation plan on behalf of the provider;
 - Has personally reviewed the provider’s Robocall Mitigation Database certification and robocall mitigation plan and verifies that the information provided in both is true and accurate;
 - Verifies that the information in the PIN form is true and accurate;
 - Understands that the provider is required to update the information submitted to the Robocall Mitigation Database within 10 business days of any changes, and that failure to do so could result in the provider’s filing being removed from the Robocall Mitigation Database and additional penalties permitted under law, including a forfeiture as discussed in section B.1 below; and
 - Understands that any false statements on the PIN form and in the Robocall Mitigation Database submissions can be punished by fine or forfeiture under the Communications Act, 47 U.S.C. 502, 503(b), and removal of the provider’s filing from the Robocall Mitigation Database.
- By direct business email address, we mean a business email address associated with the officer individually and used by them to conduct business in their official capacity, rather than a general email inbox, such as “*robocall.mitigation@provider.com*,” which is not tied to any specific individual(s).

We tentatively conclude that we have authority to adopt this information collection under the provisions of the Communications Act cited herein. We seek comment on this tentative conclusion and on whether requiring the submission of this information to obtain a PIN to file in the Robocall Mitigation Database will improve the accuracy of the information in the Database. In particular, we seek comment on whether such a system would dissuade inaccurate or inadequately reviewed filings, or filings by bad actors by: (1) increasing direct accountability by an officer for reviewing, understanding, and verifying the contents of a provider’s filing; and (2) providing additional direct contact information that can be used in enforcement actions if the business information imported from CORES or robocall mitigation contact information submitted to the Robocall Mitigation Database is inaccurate or becomes out of date. We seek comment on the scope of

this information collection and whether it is sufficient to achieve these objectives. Should we collect additional or different information and certifications, and if so, what? To the extent necessary, the Commission will make necessary changes to the applicable System of Records under the Privacy Act. Is there information that we could also collect to verify that the person completing the form is, in fact, an officer of a legitimate provider? Should we require that all filers, even those not required to under § 1.47(h) of the Commission’s rules, have a registered agent in the District of Columbia and report that information via this separate PIN form? We believe that doing so would aid in Commission investigations into bad actors that should be removed from the Database and for purposes of service of process. We seek comment on whether and how such a requirement would facilitate these or other goals.

We seek comment on the benefits and burdens of such an information collection, and on any alternative approaches. What are the burdens and potential consequences of collecting this information? How could we mitigate these burdens? Are there, for example, confidentiality or privacy issues with collection of this information? Because the information that we propose to collect is about individuals in their official or business capacities, we expect that this information is low sensitivity, reducing the privacy risk associated with this proposed collection. We also anticipate that, relative to other Commission programs that collect personally identifiable information (PII) and/or Privacy Act records, fewer individuals, who generally are not members of vulnerable populations, will be required to submit this low-sensitivity information to the database, further reducing the privacy risk. We seek comment on this analysis. We also note that our proposed requirement, discussed above, that filers update their information in CORES will help ensure the accuracy, relevance, timeliness, and completeness of the PII and/or records that we are proposing to collect. Additionally, under the Federal Information Security Modernization Act of 2014 (FISMA), any information system that we would use to collect information and provide PINs would need to have applicable privacy and security controls to ensure the confidentiality, integrity, and availability of such information. We therefore tentatively conclude that the overall privacy risk associated with this collection of information would be low.

We seek comment on this tentative conclusion and the reasons for it. We also seek comment on whether the collection of this information would cause any undue delays for providers in submitting their filings.

We seek comment on the method by which the Commission could collect this information and generate the PIN for use by the officer when submitting an Robocall Mitigation Database filing. We expect that this information collection would require the use of a platform accessed via the Commission's website that would allow the officer to complete a digital form and then generate the PIN. We seek comment on any such platforms or other PIN-generating solutions that are currently in use, including any that are currently employed by other Federal agencies. Are there other procedural issues we should consider? For example, should a provider be required to submit a new PIN form within 10 business days if the officer leaves the company or any information on the form changes? Should we require providers to obtain a PIN each time they revise their filing (*i.e.*, a unique PIN for each submission) or just once (*i.e.*, a unique PIN for each filer)? In keeping with the two-factor authentication protocol deployed recently for CORES, we believe that requiring a PIN for each submission would provide greater security benefits. We seek comment on this view.

We also seek comment on whether to require all providers that have already filed in the Robocall Mitigation Database to submit the separate form we propose above as a prerequisite to obtaining a PIN, so that the Commission has the same information on file for all providers in the Database. We also seek comment on any procedural steps that would guard against bad actors submitting false information to obtain a PIN. Finally, we seek comment on delegating authority to the Wireline Competition Bureau, in consultation with the Office of the Managing Director, to take the steps necessary to implement any system for collecting the information required to generate and provide Robocall Mitigation Database filers with a PIN, to publish instructions for providers on how to use the system, and to establish additional filing requirements needed to achieve the objectives of the system.

Requiring Providers to Remit a Filing Fee. We next seek comment on requiring providers to pay a fee when submitting filings to the Robocall Mitigation Database. Section 8(a) of Communications Act states that “[t]he Commission shall assess and collect application fees at such rates as the

Commission shall establish in a schedule of application fees to recover the costs of the Commission to process applications.” In 2018, as part of the RAY BAUM'S Act of 2018, Congress revised the Commission's application fee authority by amending section 8 and adding section 9A to the Communications Act. Prior to the RAY BAUM'S Act, the Commission had limited authority to amend the application fee schedule, which was set out by Congress. The Commission was required to simply adjust these fees every two years to reflect changes in the Consumer Price Index; the Commission did not have the authority to make other changes to application fees or to add or delete fee categories. Pursuant to the requirements of the RAY BAUM'S Act, the Commission has adopted a schedule of fees based on the cost of processing applications, with cost determined based on direct labor costs. The Commission uses time and staff compensation estimates to establish the direct labor costs of application fees, which are in turn based on applications processed by Commission staff found to be typical in terms of the amount of time spent on processing each type of application. In applying our statutory authority, we adhere to the goal of ensuring that our fees are fair, administrable, and sustainable. This is the same overarching set of goals we employ in the context of our regulatory fee collections. The application of our overarching program goals, however, must work within the language of the statute. Moreover, in administering the application fee authority, we are also mindful of other general limits of fee authority. While the Independent Offices Appropriation Act of 1952 (IOAA) no longer applies to the Commission, we are nevertheless cognizant of broader legal issues raised by user fee and/or regulatory fee precedent.

We tentatively conclude that submissions to the Robocall Mitigation Database are “applications” within the meaning of the RAY BAUM'S Act. The Commission has broadly construed the term “applications” to apply to a wide range of submissions for which filing fees are required, including tariff filings containing the rates, terms, and conditions of certain services provided by telecommunications providers. Following a period of public notice, a tariff filing is deemed accepted unless the Commission takes action, which can include suspension or rejection of the tariff filing by staff. We believe this process is analogous to Robocall Mitigation Database filings, which are

accepted upon submission but may be subject to further action by the Commission, including removal from the Robocall Mitigation Database for failure to cure any identified deficiencies. Additionally, the application fee proposed here in some ways mirrors the fee charged for filing formal complaints and pole attachment complaints. In calculating the fee for such complaints, the Commission noted that staff must still review the complaint after its receipt “for general conformance with the Commission's complaint rules to determine if it is accepted for adjudication.” In response to a commenter's argument that the fee for formal complaints should be lower, the Commission explained that the fee being assessed also covers “the costs of adjudicating such complaints.” Thus, even after a complaint is filed and “a letter to the parties [is sent] indicating that the filing has been accepted or rejected,” Commission staff—like here—must still engage in a lengthy review process thereafter that involves “significant work” in order to adjudicate, *i.e.*, process, the complaint. We thus believe that Robocall Mitigation Database filings may be deemed applications for the purposes of requiring a filing fee, and seek comment on this view. We note that in the *2020 Application Fee Report and Order* (86 FR 15026, March 19, 2021), the Commission recognized that, as a result of the changes it made then and “those made previously to implement the RAY BAUM'S Act . . . with respect to regulatory fees,” further revisions to the part 1, subpart G, Schedule of Statutory Charges and Procedures for Payment, may be required. Since the creation of the Robocall Mitigation Database, which occurred after the adoption of the *Application Fee NPRM* (85 FR 65566, October 15, 2020), the Commission has gained a fuller understanding of the costs involved in processing submissions thereto, and now proposes a filing fee consistent with those costs.

Further, the Commission's review of Robocall Mitigation Database submissions requires a significant investment of labor hours that continues to increase. The original requirement for voice service providers to file certifications and robocall mitigation plans in the Robocall Mitigation Database resulted in more than 2,600 submissions. As noted above, the Commission has since expanded the scope of providers required to file in the Database and the information that must be filed. As a result, there are currently approximately 9,000 filings in the Robocall Mitigation Database, each

comprising not only a certification form, but also a robocall mitigation plan that details the specific steps the provider is taking to mitigate illegal robocall traffic.

Each of those submissions must be reviewed by Commission staff to determine if they comply with the requirements of the Commission's caller ID authentication and robocall mitigation rules. This compliance review process requires significant staff resources, including analysts to review each filing, attorneys to perform compliance assessments, and a supervisory attorney to oversee the process and coordinate the referral of any deficient filings to the Enforcement Bureau. We estimate that this process involves \$100 per filing in costs. The Bureau estimates that each filing will require 40 minutes of analyst review at the GS-12 level; 20 minutes of attorney review at the GS-14 level; and 15 minutes of attorney supervisory review at the GS-15 level. The estimated total labor costs (including 20% overhead) for the analyst review (GS-12, step 5) of each filing is \$43 (0.66 hours * \$64.64 = \$43). The estimated labor costs (including 20% overhead) for the attorney review (GS-14, step 5) for each filing is \$32.95 (0.33 hours * \$98.84 = \$32.95). The estimated total labor costs (including 20% overhead) for the attorney supervisory review (GS-15, step 5) for each filing is \$26.71 (0.25 hours * \$106.85 = \$26.71). The total labor costs per filing review is \$102.66 (\$43 + \$32.95 + \$26.71). Salary data is sourced from the Office of Personnel Management and include overhead costs based on 2,087 annual hours. Based on these hourly rates and the estimated time for processing each filing, the Bureau proposes that the filing fee is \$100 per filing, and we seek comment on this determination. We therefore propose to add "Robocall Mitigation Database Certification" as a service requiring an application fee in § 1.1105 of the Commission's rules, and to set that application fee based on this cost estimate. We seek comment on whether it is appropriate for the Commission to assess an application fee for Robocall Mitigation Database submissions based on these costs, and if not, the scope of costs that should serve as the basis for the fee, if any. In so doing, we remind commenters that our section 8 authority is distinct from the Commission's authority with respect to other collections. In particular, the Commission is required by Congress to assess and collect as an offsetting collection regulatory fees each year in an amount that can reasonably be expected to equal the amount of the

Commission's Salaries and Expenses (S&E) annual appropriation. The Commission is also directed by Congress to recover, as an offsetting collection, against auction proceeds costs incurred, subject to an annual cap, in developing and implementing our section 309(j) spectrum auctions program. Both such collections are deposited with the U.S. Treasury and credited to the Commission's account. For more information about the Commission's collections and budgetary authority, the Commission's annual financial statement and budget estimates for Congress provide helpful material. Application fees collected by the Commission are deposited in the general fund of the U.S. Treasury. Thus, while the determination of the fee amount will be based on cost, the collected fees are not used to fund Commission activities. In crafting comments, we ask that commenters explain whether their proposals are supported by the statute.

In addition, although not a basis for proposing a fee for Robocall Mitigation Database filings, we believe that requiring providers to submit a fee may have collateral public interest benefits, including (1) discouraging filings by bad actors by requiring them to use a traceable payment method; and (2) incentivizing better filings by requiring entities to incur a nominal expense upon filing or refiling, should they be removed from the Database for noncompliance. We seek comment on these beliefs.

We seek comment on when the Commission should collect the fee. Should they be collected only with initial filings or also when filings are updated, given that Commission staff will need to re-review the updated filings? We note that currently, there is no requirement that providers refile in the Database, outside of a change in the underlying information contained in the filing, or a change in the Commission's Robocall Mitigation Database filing requirements necessitating providers to resubmit their filings. Should the fee be collected from existing filers, and if so, under what circumstances—e.g., when a provider refiles to update their information? Should the fee be collected if a provider refiles after being removed from the Robocall Mitigation Database pursuant to an enforcement action? Would assessing a refiling fee deter providers, particularly smaller providers, from updating their policies and procedures? We seek comment on these and any other procedural matters relevant to the collection of a filing fee for the Robocall Mitigation Database.

Red-Light Rule. Finally, we seek comment on whether to apply the Commission's "red-light" rule to Robocall Mitigation Database filings. Under the red-light rule, the Commission will not process applications and other requests for benefits by parties that owe non-tax debt to the Commission. In the context of our rules implementing the Debt Collection Improvement Act, the Commission has noted some filings with the Commission go into effect immediately "thus precluding a check to determine if the filer is a delinquent debtor before the request goes into effect." In such situations, the Commission has the ability to take appropriate action after the fact for noncompliance with any of the Commission's rules. In the context of filings to the Commission's Intermediate Provider Registry, which similarly "make[s] registrations immediately effective upon receipt," the Commission determined that "any applicable red-light check will be conducted after intermediate provider registration; appropriate action, if any, will be taken against intermediate providers who are later discovered to be delinquent debtors, including de-registration." We seek comment on whether to apply such an approach to Robocall Mitigation Database filings, and on any alternative approaches to conducting a red-light check for Database filers.

2. Availability and Use of Data Validation Tools

We seek comment on technological and marketplace innovations that the Commission could employ to validate data entered into Robocall Mitigation Database filings and require filers to take a more proactive role in ensuring that accurate and complete information is submitted to the Database in the first instance. Specifically, we seek comment on software and other technical solutions that would cross-reference addresses and other contact details submitted by filers against other data sources and flag actual or potential discrepancies for filers to resolve. What tools could be used to cross-reference data entered into Robocall Mitigation Database certifications against reliable external sources and flag discrepancies, such as confirming the validity of address information submitted to the RMD against a United States Postal Service (USPS) database? For example, the USPS offers several web-based tools including an API for "Address Validation/Standardization." How do the tools work and how have they been integrated into systems to prompt users to confirm the validity of the

information being entered into the system and correct any errors? What are the costs of integrating such tools into a system, and what are the technical and legal requirements for doing so? For example, we note that establishing a “matching program” with another Federal or non-Federal entity requires entering into a written matching agreement under the computer matching provisions of the Privacy Act of 1974. However, we tentatively conclude that the validation of filers to the Robocall Mitigation Database would not qualify as a matching program since the purpose of such validation does not relate to Federal benefits programs. We seek comment on this tentative conclusion. Would integrating such tools into the Robocall Mitigation Database raise any legal, privacy, or policy concerns? We note, for instance, that the applicable system of records notice permits disclosures, as a routine use, to non-Federal personnel, including contractors and other vendors, and specifically “identity verification service[.]” providers. While information submitted by providers to the Robocall Mitigation Database is generally public, providers may request confidential treatment of information included in their robocall mitigation plans. Would allowing a data validation tool to cross-reference data from Robocall Mitigation Database filings against an external data source raise concerns about protecting confidential or proprietary information? Are there ways to mitigate any such concerns?

We seek comment on whether the Commission should prevent a filing from being submitted to the Robocall Mitigation Database if any technical validation tools employed flag a data discrepancy and the filer fails to resolve that discrepancy. For example, if the Commission were to employ a technical solution for verifying all or part of an address, and the provider does not or cannot submit an address that can be validated by the solution, should the filing be provisionally rejected until the provider finds a way to resolve the discrepancy? Or, should the filing be accepted by the system but flagged as an internal warning to the Commission that the filing should be prioritized for compliance review and enforcement? Is there a middle ground that would allow the system to hold the filing containing the unvalidated address while the provider seeks to resolve the discrepancy through other means with Commission staff, e.g., through the manual submission of documents that corroborate the submitted address? We seek comment on the benefits and

burdens of employing a technical approach to Robocall Mitigation Database data validation, and on how the Commission should seek to integrate such tools into its review of Robocall Mitigation Database filings.

B. Increased Consequences for Submitting False or Inaccurate Information to the Robocall Mitigation Database

1. Establishing Forfeiture for Submitting Inaccurate or False Certification Data

We propose to establish a separate base forfeiture amount for submitting false or inaccurate information to the Robocall Mitigation Database. In the *Sixth Caller ID Authentication Report and Order* (88 FR 40096, June 21, 2023), the Commission found that Robocall Mitigation Database filings are Commission authorizations. The Commission may impose a forfeiture against any person found to have willfully or repeatedly failed to comply substantially with the terms and conditions of any authorization issued by the Commission. In the *Fifth Caller ID Authentication Further Notice of Proposed Rulemaking (FNPRM)* (87 FR 42670, July 18, 2022), the Commission proposed to “impose the highest available forfeiture for failures to appropriately certify in the Robocall Mitigation Database.” We now propose a base forfeiture of \$10,000 for each violation for filers that submit false or inaccurate information to the Robocall Mitigation Database. The Commission has set the base forfeiture for failure to file required forms or information at \$3,000. We tentatively conclude that submitting false or inaccurate information to the RMD warrants a significantly higher penalty, and seek comment on this tentative conclusion. What are the benefits to this approach? Would a higher or lower base forfeiture amount be more appropriate? Alternatively, we propose to impose the statutory maximum forfeiture amount allowable under section 503 of the Communications Act for submitting false or inaccurate information to the Robocall Mitigation Database. The Commission has set the statutory maximum as the base forfeiture for violations of § 1.17 of our rules related to misrepresentation and lack of candor in investigatory or adjudicatory matters. Is submitting false or inaccurate information to the RMD similar to the Commission’s misrepresentation and lack of candor rules to justify the highest possible penalty? What are the benefits and drawbacks to this alternative approach? We seek comment on these proposals.

For either proposal, should we consider each instance of false or inaccurate information a single violation or a continuing violation for each day the false information remains in the Robocall Mitigation Database? Are there particular aggravating or mitigating factors we should take into consideration when determining the amount of a forfeiture penalty? Or are the aggravating and mitigating factors set forth in our rules sufficient? Should we use the same maximum forfeiture regardless of whether the violator is a common carrier or not? Currently, common carriers may be assessed a maximum forfeiture of \$2,449,575 for a continuing violation, while entities not explicitly mentioned in section 503 of the Communications Act may only be assessed a maximum forfeiture of \$183,718 for a continuing violation. In the *Sixth Caller ID Authentication Report and Order*, the Commission found it should not impose a higher maximum penalty on common carriers for violations of the mandatory blocking rules. Should we take a similar approach here? Are there any practical or legal considerations? We seek comment on these proposals.

Finally, we propose to find that we can impose a forfeiture on filers that fail to update information that has changed in the Robocall Mitigation Database within 10 business days. All filers in the Robocall Mitigation Database are required to update their filings within 10 business days if any information they are required to submit has changed. We propose a base forfeiture of \$1,000 for failure to update information within 10 business days. We propose treating it as a continuing violation for every day the inaccurate information remains in the Robocall Mitigation Database, with a maximum forfeiture of \$24,496 for each day of the continuing violation up to the statutory maximum of \$183,718. We seek comment on these proposals. Should we establish separate base and maximum forfeiture amounts for failing to update a filing within 10 business days? Should the violation be a single violation or a continuing violation for each day the non-updated information remains in the Robocall Mitigation Database? If it is a continuing violation, what should the maximum forfeiture for the continuing violation be?

2. Authorizing Permissive Blocking for Facially Deficient Filings

We next propose to authorize downstream providers to permissively block traffic by Robocall Mitigation Database filers that have been given notice that their robocall mitigation plans are facially deficient and that fail

to correct those deficiencies within 48 hours. We seek comment on this proposal.

The Commission's rules currently require downstream providers to refuse traffic from providers that are not in the Robocall Mitigation Database. This means that when a provider is removed from the Database, it is effectively precluded from operating as a provider of voice services in the United States. For this reason, the Commission has recognized that removal of Robocall Mitigation Database submissions has severe consequences and is arguably equivalent to revoking a license, and thus has adopted notice and opportunity to cure procedures before removal of filings from the Robocall Mitigation Database consistent with the Administrative Procedure Act (APA). For most filing deficiencies, the Commission follows a three-step process for removal, whereby:

(1) the Wireline Competition Bureau contacts the provider, notifying it that its filing is deficient, explaining the nature of the deficiency, and providing 14 days for the provider to cure the deficiency; (2) if the provider fails to rectify the deficiency, the Enforcement Bureau releases an order concluding that a provider's filing is deficient based on the available evidence and directing the provider to explain, within 14 days, 'why the Enforcement Bureau should not remove the Company's certification from the Robocall Mitigation Database' and giving the provider a further opportunity to cure the deficiencies in its filing; and (3) if the provider fails to rectify the deficiency or provide a sufficient explanation why its filing is not deficient within that 14-day period, the Enforcement Bureau releases an order removing the provider from the Robocall Mitigation Database.

In the *Sixth Caller ID Authentication Report and Order*, however, the Commission recognized that the failure to submit a robocall mitigation plan within the meaning of our rules constitutes a facial deficiency that warrants an expedited removal process. A robocall mitigation plan is facially deficient if it fails to submit any information regarding the "specific reasonable steps" the provider is taking to mitigate illegal robocalls. In such cases, the Commission found that providers have "willfully" violated its Robocall Mitigation Database filing rules and an expedited removal process is therefore warranted. Under this two-step expedited procedure for removing a facially deficient certification, the Enforcement Bureau will: (1) issue a notice to the provider explaining the basis for its conclusion that the certification is facially deficient and providing an opportunity for the provider to cure the deficiency or

explain why its certification is not deficient within 10 days; and (2) if the deficiency is not cured or the provider fails to establish that there is no deficiency within that 10-day period, issue an order removing the provider from the Database.

We seek comment on whether the Commission should adopt additional measures to protect consumers where submissions to the Robocall Mitigation Database demonstrate willful violations of the Commission's rules. Specifically, we propose to allow downstream providers to permissively block traffic from providers that have submitted facially deficient robocall mitigation plans beginning 48 hours after the agency issues the notice of facial deficiency and continuing until either the deficiency is cured or the provider's certification is removed from the Robocall Mitigation Database, which would trigger the mandatory blocking requirement. We propose to do so through a three step process: (1) a notice would be issued to the provider that its robocall mitigation plan is facially deficient because it fails to describe the specific reasonable steps that the provider is taking to avoid carrying and transmitting illegal robocalls; (2) the provider would be allowed 48 hours to cure this facial deficiency by uploading a robocall mitigation plan that sufficiently describes its mitigation practices; and (3) if it fails to do so, the Wireline Competition Bureau would apply a flag to the facially deficient filing in the Robocall Mitigation Database to inform other providers that they may permissively block traffic from that provider after providing notice to the Commission that they intend to do so.

We view this process to be similar to that authorized when the Commission sends cease-and-desist letters pursuant to § 64.1200(k)(4) of our rules, which states that a provider may, without liability, block voice calls or traffic from an originating or intermediate provider that has been notified by the Commission but fails to take steps to mitigate or prevent its network from being used to originate illegal calls. Under this rule, a provider must, prior to initiating blocking, provide the Commission with notice and a brief summary of the basis for its determination that the originating or intermediate provider has met one of these two conditions for blocking.

In the context of the Robocall Mitigation Database, the flag applied to the filing would constitute notice that the provider has failed to remedy a facial deficiency in its filing within 48 hours and that downstream providers

may block traffic from that provider if they submit a notice to the Commission that they intend to do so for the reason stated in the notice. We believe that there are equivalencies between the context in which the Commission issues cease-and-desist letters pursuant to § 64.1200(k)(4) of the Commission's rules and a willful failure to submit the required description of a provider's robocall mitigation practices in the Robocall Mitigation Plan. We seek comment on this belief. In the former, the Enforcement Bureau has found evidence that the provider has originated or transmitted illegal robocalls (e.g., traceback data). The willful violation of the Commission's rules requiring providers to describe the steps they are taking to avoid carrying and transmitting illegal robocalls supports a presumption that no such steps are being taken and that the provider is doing nothing to stop illegal traffic as required by our rules.

We seek comment on this view and whether applying the three-step process for permissive blocking proposed above in the context of facially deficient Robocall Mitigation Database filings is warranted. Are there considerations that apply when the Commission issues cease-and-desist letters pursuant to § 64.1200(k)(4) of the Commission's rules that do not apply in the context of the Robocall Mitigation Database? For instance, is it significant that in the context of § 64.1200(k)(4) cease-and-desist letters, the Enforcement Bureau has evidence that illegal robocalls have actually been transmitted, whereas here, the evidence would be that the provider has willfully failed to describe the reasonable steps it is taking to mitigate illegal traffic? If commenters argue that is not a sufficient showing to authorize permissive blocking from a provider that has willfully violated the Commission's robocall mitigation rules, what showing would be sufficient to authorize permissive blocking, if any?

Is 48 hours an appropriate amount of time to allow a provider with a facially deficient plan to cure the deficiency to avoid permissive blocking, or should more or less time be allowed prior to opening the window for permissive blocking? Should the new rule include a safe harbor from liability under the Communications Act or the Commission's rules for providers that engage in permissive blocking under this new rule if they notify the Commission that they intend to do so, as under § 64.1200(k)(4)? What information should be included in a notice to the Commission that a provider intends to permissively block traffic from another provider? Should

they simply state that they intend to block traffic from the provider that has been flagged by the Commission due to its facially deficient robocall mitigation plan, or should additional information be required? Should the new rule also address situations where the facial deficiency is cured after the Wireline Competition Bureau applies a flag? In such situations, we propose that the Wireline Competition Bureau would take down the flag applied to the Robocall Mitigation Database filing and notify any providers that have commenced permissive blocking to cease such blocking. We seek comment on this approach and whether our rules should require providers to cease permissive blocking within a specified period of time. If so, what is an appropriate timeframe?

What are the risks to legitimate providers, and their customers, of authorizing permissive blocking in the context of facially deficient robocall mitigation plans submitted to the Robocall Mitigation Database, and do those risks outweigh the public interest benefits of enabling providers to decline traffic from providers that have demonstrated a willful disregard for their duty to mitigate illegal robocalls without penalty under our rules? What are the costs of authorizing permissive blocking in this context, and do the public interest benefits outweigh those costs? To the extent commenters argue that the risks and costs of the proposed permissive blocking process are high, is there a way to modify the process to minimize those risks and costs, or to otherwise improve it in a manner that appropriately balances the public interest objective of protecting consumers from illegal traffic against potential burdens to legitimate providers? We invite comment on these or any other points the Commission should consider when assessing the merits of our permissive blocking proposal.

Scope of Facial Deficiencies. As stated above, we propose to limit any permissive blocking measure to circumstances where the robocall mitigation plan submitted to the Robocall Mitigation Database is facially deficient, versus circumstances that require the Commission to make a qualitative judgment about the sufficiency of the measures described in the plan. In the *Sixth Caller ID Authentication Report and Order*, the Commission found it was “not practical to provide an exhaustive list of reasons why a filing would be considered ‘facially deficient,’” but provided several examples, including “where the provider only submits: (1) a request for

confidentiality with no underlying substantive filing; (2) only non-responsive data or documents (e.g., a screenshot from the Commission’s website of a provider’s [FRN] data or other document that does not describe robocall mitigation efforts); (3) information that merely states how STIR/SHAKEN generally works, with no specific information about the provider’s own robocall mitigation efforts; or (4) a certification that is not in English and lacks a certified English translation.” We seek comment on whether there are additional examples of robocall mitigation plan deficiencies that would rise to the level of willful violations of the Commission’s robocall mitigation rules within the meaning of section 9(b) of the APA. While the Commission has not set a particular format or minimum requirements for robocall mitigation plans, understanding the value of allowing providers flexibility to develop robocall mitigation programs that are specific to their networks, are there factors short of a complete failure to describe a provider’s specific robocall mitigation practices that could render a mitigation plan facially deficient? For instance, are there any omissions that should universally render any robocall mitigation plan filed by any provider deficient, such that the Commission should adopt a standard that a failure to address that subject constitutes a willful violation of our rules? Is there a level of brevity that clearly falls below the requirement to describe *specific* reasonable steps being taken by the provider? While we do not intend to define a specific standard for facial deficiency, we do seek comment on whether there are any other bright line circumstances to which the standard should be applied generally and for the purposes of the permissive blocking process proposed above.

Delegation of Authority. Should the Commission authorize permissive blocking when a provider submits a facially deficient robocall mitigation plan to the Robocall Mitigation Database, we propose to delegate authority to the Wireline Competition Bureau to design the permissive blocking system, including the process for issuing notifications to providers that their robocall mitigation plan is facially deficient, the contents of that notice, the procedures for allowing the providers to remedy the deficiency by uploading a robocall mitigation plan that describes their robocall mitigation practices, the mechanism for applying a flag to the Robocall Mitigation Database filing of any provider that fails to do so

within 48 hours, the process for collecting notifications from downstream providers that they intend to block traffic from the flagged provider, the content requirements for such notifications, and the process for removing a flag and notifying blocking providers in the event that a provider cures its facially deficient filing after a flag has been applied. We propose to delegate authority to the Wireline Competition Bureau to make any necessary changes to the Robocall Mitigation Database to implement these processes and direct the Bureau to release a public notice providing updated instructions and training materials regarding any relevant changes to the Database. We seek comment on this approach.

IV. Legal Authority

We propose to adopt the foregoing obligations in part pursuant to the legal authority relied upon by the Commission in prior caller ID authentication and call blocking orders. We propose to rely upon sections 201(b), 202(a), and 251(e) of the Act, the Truth in Caller ID Act, and section 4 of the TRACED Act to authorize downstream providers to permissively block traffic by facially deficient Robocall Mitigation Database filers that have failed to correct those deficiencies within 48 hours after notice, and to require corporate officers to obtain a PIN before filing in the Robocall Mitigation Database.

We propose to rely on sections 501, 502, and 503 of the Act to establish forfeiture amounts for submitting inaccurate or false certification data to the Robocall Mitigation Database. We propose to rely on our authority under section 8 of the Act to add Robocall Mitigation Database filings to the Commission’s Schedule of Application Fees. We believe the Commission has ample authority to adopt the foregoing obligations related to the Robocall Mitigation Database, as well as any related administrative enhancements pertaining to CORES. We seek comment on this view and whether there are any alternative sources of authority that we should consider.

Digital Equity and Inclusion. The Commission, as part of its continuing effort to advance digital equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. We define the term “equity” consistent with

Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility.

V. Procedural Matters

Regulatory Flexibility Act. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” Accordingly, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible/potential impact of the rule and policy changes contained in the *NPRM*. The IRFA is set forth in this document.

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities from the policies and rules proposed in the *NPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *NPRM*. The Commission will send a copy of the *NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

In order to continue the Commission’s work of protecting American consumers from illegal calls, the *NPRM* seeks comment on ways to ensure and improve the overall quality of submissions to the Robocall Mitigation Database (RMD). In its review of filings

by providers in the RMD, the Commission staff noted a lack of information ranging from a failure to provide accurate contact information for employees responsible for completing certifications of robocall mitigation practices, to failing to submit robocall mitigation plans with sufficient detail. The *NPRM* proposes and seeks comment on measures to increase accountability for providers that submit inaccurate and false information to the RMD and fail to update their filings when the information they contain changes, as required by the Commission’s rules. The *NPRM* also invites comment on any other procedural steps the Commission could require to increase the RMD’s effectiveness as a compliance and consumer protection tool.

B. Legal Basis

The proposed action is authorized pursuant to sections 4(i), 4(j), 201, 202, 217, 227, 227b, 251(e), and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. 154(i), 154(j), 201, 202, 217, 227, 227b, 251(e), and 303(r).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act. A “small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

Small Businesses, Small Organizations, Small Governmental Jurisdictions. Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.

Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2022, there were approximately 530,109 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data from the 2022 Census of Governments indicate there were 90,837 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 36,845 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 11,879 special purpose governments (independent school districts) with enrollment populations of less than 50,000. Accordingly, based on the 2022 U.S. Census of Governments data, we estimate that at least 48,724 entities fall into the category of “small governmental jurisdictions.”

Wired Telecommunications Carriers.

The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including voice over internet protocol (VoIP) services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.

The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services. Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

Local Exchange Carriers (LECs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were fixed local exchange service providers. Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

Incumbent Local Exchange Carriers (Incumbent LECs). Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms

in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers. Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

Competitive Local Exchange Carriers (CLECs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 3,378 providers that reported they were competitive local service providers. Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

Interexchange Carriers (IXCs). Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 127 providers that reported they were

engaged in the provision of interexchange services. Of these providers, the Commission estimates that 109 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

Cable System Operators (Telecom Act Standard). The Communications Act of 1934, as amended, contains a size standard for a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 498,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator. Based on industry data, only six cable system operators have more than 498,000 subscribers. Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million. Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

Other Toll Carriers. Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 90 providers that reported they were

engaged in the provision of other toll services. Of these providers, the Commission estimates that 87 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

Wireless Telecommunications Carriers (except Satellite). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

Satellite Telecommunications. This industry comprises firms "primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with \$38.5 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year. Of this number, 242 firms had revenue of less than \$25 million. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 65 providers that reported they were engaged in the provision of satellite telecommunications services. Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees.

Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

Local Resellers. Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with an SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 207 providers that reported they were engaged in the provision of local resale services. Of these providers, the Commission estimates that 202 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

Toll Resellers. Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers is the closest industry with an SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. MVNOs are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that

1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees.

Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 457 providers that reported they were engaged in the provision of toll services. Of these providers, the Commission estimates that 438 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

Prepaid Calling Card Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. Telecommunications Resellers is the closest industry with an SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. MVNOs are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 62 providers that reported they were engaged in the provision of prepaid card services. Of these providers, the Commission estimates that 61 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

All Other Telecommunications. This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving

telecommunications from, satellite systems. Providers of internet services (e.g., dial-up ISPs) or VoIP services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than \$25 million. Based on this data, the Commission estimates that the majority of “All Other Telecommunications” firms can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

In the *NPRM*, the Commission proposes and seeks comment on imposing several reporting, recordkeeping, and compliance obligations on various providers, many of whom may be small entities. Specifically, the *NPRM* proposes to require all entities and individuals that file in the Commission Registration System (CORES) to update any information required by the system within 10 business days of any changes.

With respect to the RMD, the *NPRM* seeks comment on whether to deploy multi-factor authentication functionality and whether to require providers to use such technology in order to submit a filing to the Database. In addition, or as an alternative to multi-factor authentication, the *NPRM* seeks comment on requiring an officer, owner, or other principal of a provider to obtain a PIN that must be entered before an RMD submission is accepted by the filing system. In particular, we seek comment on whether the Commission should require the signing officer to submit additional information to obtain a PIN that must be used to submit an RMD certification, including: (1) a non-P.O. box street address and telephone number for the location of the office where the officer does business, and a direct business email address for the officer; (2) a business address, telephone number, and email address for the provider's registered agent for service of process (or a certification that such an agent does not exist); and (3) certifications, under penalty of perjury pursuant to 47 CFR 1.16 of the Commission's rules. The *NPRM* also seeks comment on the method by which the Commission could collect this information and generate the PIN for use by the officer when submitting an RMD filing. The *NPRM* seeks comment on whether to require providers to pay a fee

when submitting filings to the RMD, and seeks comment on when the Commission should collect the fee. In addition, the *NPRM* seeks comment on technological innovations that the Commission could employ to validate data entered into RMD filings, specifically, on software and other technical solutions that would cross-reference addresses and other contact details submitted by filers against other data sources, and flag actual or potential discrepancies for filers to resolve before the filing is submitted to the Commission.

With regard to our enforcement of these proposed rules, the *NPRM* seeks comment on whether to establish a base and/or maximum forfeiture for submitting inaccurate or false information to the RMD, and failing to update information that has changed in the within 10 business days. The *NPRM* also seeks comment on what an appropriate forfeiture would be when a provider submits inaccurate or false information to the RMD, and in what circumstances this forfeiture would apply. Specifically, we propose to use the current statutory maximum of \$24,496 listed in section 503(b)(2)(D) of the Act as the base forfeiture amount regardless of the type of service provided by the filer for submitting false or inaccurate information to the Robocall Mitigation Database. Additionally, the *NPRM* proposes a base forfeiture of \$5,000 for failure to update information within 10 days, and further proposes treating this as a continuing violation for every day the inaccurate information remains in the RMD, up to the statutory maximum of \$183,718.

The *NPRM* proposes to authorize downstream providers to permissively block traffic by RMD filers that have been given notice that their robocall mitigation plans are facially deficient and that fail to correct those deficiencies within 48 hours. The proposed blocking would occur through a three step process: (1) a notice issued to the provider through the RMD that their robocall mitigation plan is facially deficient because it fails to describe the specific reasonable steps that the provider is taking to avoid carrying and transmitting illegal robocalls; (2) allowing the provider 48-hours to cure this facial deficiency by uploading a robocall mitigation plan that sufficiently describes its mitigation practices; and (3) if it fails to do so, having a flag applied to the facially deficient filing in the RMD advising other providers that they may permissively block traffic from that provider upon providing notice to the Commission that they intend to do so. The *NPRM* seeks comment on

whether there are additional examples of robocall mitigation plan deficiencies that would rise to the level of willful violations of the Commission's robocall mitigation rules.

We anticipate the information we receive in comments including where requested, cost and benefit analyses, will help the Commission identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result from the proposals and inquiries we make in the *NPRM*. With respect to costs for filing fees, we seek comment on a fee schedule based on the cost of processing applications, with cost determined by the Commission's direct labor costs. We also believe that some proposals, such as the requirement that providers update any information submitted to CORES within 10 business days of any changes to that information, may not impose significant costs on small entities because Commission databases beyond the RMD similarly make use of contact information imported directly from CORES. We seek comment from small and other entities on that perspective.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that could minimize impacts to small entities that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

The *NPRM* seeks comment on proposals and alternatives that may have a significant impact on small entities. In particular, it seeks comment on the benefits and burdens of requiring all entities and individuals that file in CORES, including small entities, to update any information required by the system within 10 business days of any changes. The *NPRM* seeks comment on the benefits and burdens associated with various procedural and technical solutions to improve the quality of RMD filings, including: (1) deploying multi-factor authentication functionality for

the RMD; (2) requiring an officer to obtain a PIN in order to submit an RMD filing; and (3) employing a technical approach to RMD data validation, and any alternatives that might mitigate those burdens for RMD filers, including small entities. The *NPRM* also seeks comment on fees for future RMD filings, and seeks comment on whether these fees should be collected from existing filers.

In proposing to establish the statutory maximum as the base forfeiture amount for submitting false or inaccurate information to the RMD, the *NPRM* seeks comment on whether a lower base forfeiture amount would be more appropriate. Further, it also seeks comment on whether there are particular mitigating factors the Commission should take into consideration when determining the amount of the forfeiture penalty, and proposes to find that the Commission should not impose a higher penalty on

common carriers, including those that are small entities. In proposing to find that the Commission can impose a forfeiture on filers that fail to update information that has changed in the RMD within 10 days, the *NPRM* seeks comment on whether to establish a base or maximum forfeiture, and whether the violation should be a single violation or continuing violation for each day the non-updated information remains in the RMD, which may have a particular impact on small entities. It also seeks comment on what the maximum forfeiture for a continuing violation should be.

In proposing to allow downstream providers to permissively block traffic from providers that have submitted facially deficient robocall mitigation plans, instead of instances where the Commission must make a qualitative judgement, the *NPRM* seeks comment on the risks and costs to legitimate providers, including small entities, of

authorizing permissive blocking, and whether those risks and costs outweigh the public interest benefits. The *NPRM* also seeks comment on any alternative that may modify the process to minimize those risks and costs to legitimate providers, including small entities. The Commission expects to more fully consider the economic impact and alternatives for small entities following the review of comments filed in response to the *NPRM*.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2024–20176 Filed 9–11–24; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 89, No. 177

Thursday, September 12, 2024

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Privacy Act of 1974; System of Records

AGENCY: Forest Service, USDA.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, and Office of Management and Budget Circular No. A-108 Federal Agency Responsibilities for Review, Reporting, and Publication, the U.S. Department of Agriculture (USDA or Department) is issuing a public notice of its intent to modify the current system of records titled "Department of Agriculture, Forest Service, FS-33 Law Enforcement and Investigative Records." This system allows Law Enforcement and Investigations to record all criminal and civil investigations that take place or are related to crimes committed on National Forest System lands, which includes verified violations of criminal statutes and Forest Service (Agency) policy, as well as situations that may result in civil claims for or against the government. This information helps the Agency meet its objective of contributing to the safety of law enforcement officers, Forest Service employees, and national forest visitors.

DATES: This notice is applicable upon publication, subject to a 30-day period in which to comment on the routine uses described below. Comments must be submitted by October 15, 2024.

ADDRESSES: Comments, identified by docket number FS-2021-0002, may be submitted via one of the following methods:

1. *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the instructions for submitting comments.

2. *Email:* Curtis Davis, sm.fs.usfslei@usda.gov.

3. *Mail:* Director, Law Enforcement and Investigations (Mail Stop 1140), USDA Forest Service, P.O. Box 96090, Washington, DC 20250.

Instructions: All submissions must include the agency name and docket number [FS-2021-0002]. All comments received, including any personal information provided, will be posted without change to <https://www.regulations.gov>.

Docket: For access to the docket to read background information or comments received go to <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For general questions please contact U.S. Department of Agriculture, Forest Service, Law Enforcement and Investigations Staff, 1400 Independence Avenue SW (Mail Stop 1140), Washington, DC 20250; phone 703-605-4730, email sm.fs.usfslei@usda.gov. For privacy questions, please contact Chief Privacy Officer, Office of the Chief Information Officer, Department of Agriculture, Washington, DC 20250. Cynthia Ebersohn by email at cynthia.ebersohn@usda.gov or by phone at 703-282-5413.

SUPPLEMENTARY INFORMATION: The purposes for changes to this system of records are:

1. To provide the procedures that allow individuals to gain access to their information maintained in this system of records notice as outlined in section 6 (Notice) and section 7 (Access, Redress, and Correction) of the Law Enforcement Investigations Reporting System (LEIRS), formerly known as Law Enforcement Investigations Management Attainment Record System (LEIMARS), and Law Enforcement Investigation (LEI) Vault Privacy Impact Assessments. LEIRS is the system of record for the LEI information technologies (IT) portfolio, which is comprised of LEIRS, the LEI Vault, and any later acquisitions that fall within the LEI IT portfolio for these purposes.

2. To reflect changes in practice and policy that affect the personally identifiable information (PII) maintained in this system of records. The LEIRS database is not accessible by the public. The information is shared on a need-to-know basis with law enforcement partners and the Federal, State, and local court systems. Information such as statistical crime analysis, including the number of

incidents and cases, but excluding PII, is shared with Congress and other agencies on a need-to-know basis. This change to the routine uses section is intended to also meet the requirements of Executive Order 14074 to "include within the policies developed pursuant to subsection (a)(i) of this section protocols for expedited public release of BWC [body-worn camera] video footage following incidents involving serious bodily injury or deaths in custody, which shall be consistent with applicable law, including 7 CFR, 5 U.S.C., and the Privacy Act of 1974, and shall take into account the need to promote transparency and accountability, the duty to protect the privacy rights of persons depicted in the footage, and any need to protect ongoing law enforcement operations."

The intended effect of these changes is to show individuals their PII information is secure within the LEI IT portfolio.

The Forest Service proposes to modify a system of records, entitled "USDA/FS-33 Law Enforcement and Investigative Records" that will be used to maintain records of activities conducted by the Agency pursuant to its mission and responsibilities.

The Forest Service LEIRS application is primarily a criminal database and is used to collect information concerning criminal incidents; it is also used to document incidents that may be non-criminal in nature, primarily pertaining to civil cases that may result in a claim for or against the government. LEI Vault contains visual imagery and audio recordings of law enforcement and investigation events and interviews conducted.

Consistent with the USDA's information sharing mission, information stored within the components of LEIRS may be shared with other USDA components, as well as appropriate Federal, State, local, tribal, foreign, or international government agencies. This sharing will only take place after the USDA determines the receiving component or agency has a need to know the information to carry out national security, law enforcement, immigration, intelligence, or other functions consistent with the routine uses set forth in this system of records notice.

The Privacy Act embodies fair information principles in a statutory

framework governing the means by which the United States Government collects, maintains, uses, and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency for which information is retrieved by using the name of an individual or using some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and legal permanent residents.

The Privacy Act of 1974, as amended (5 U.S.C. 552a), requires agencies to publish in the **Federal Register** notice of new or revised systems of records maintained by the agency. In accordance with 5 U.S.C. 552a(r), the Department has provided a report of this system change to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER:

USDA/FS-33 Law Enforcement and Investigative Records is the title given to the Law Enforcement Investigations IT (LEI IT) portfolio, consisting of the Law Enforcement Investigations Reporting System (LEIRS) and Law Enforcement Investigation (LEI) Vault.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

LEIRS is a FedRAMP recognized centralized cloud-based database and is hosted within the Tyler Federal cloud-based hosting environment, which is housed within an Equinix provided data center physically located at 44470 Chilum Place, DC3—Bldg. 1, in Ashburn, VA.

LEI Vault is hosted in a FedRAMP recognized cloud-based environment hosted in Microsoft Azure. The address of the third-party service provider is Microsoft, 1 Microsoft Way, Redmond, WA 98052-6399.

SYSTEM MANAGER(S):

The Director, Law Enforcement and Investigations, U.S. Department of Agriculture, Forest Service, 1400 Independence Avenue SW (Mail Stop 1140), Washington, DC 20250.

PURPOSE(S) OF THE SYSTEM:

LEIRS is a national database used by USDA Forest Service Law Enforcement and Investigations, consisting of approximately 600 to 700 users dispersed throughout the nine Forest Service regions. The information is

collected to document all criminal and civil investigations that take place or are related to crimes committed on National Forest System lands.

LEI Vault is the USDA-Forest Service implementation of technology to meet the data storage requirements that support the Law Enforcement and Investigations Directorate fielding of body-worn cameras. Body-worn cameras are widely used by law enforcement agencies in the United States. They are worn principally by sworn officers in the performance of duties that require open and direct contact with the public. Body-worn cameras are cameras with a microphone and internal data storage. They allow audio-video footage, known as digital media evidence, to be stored and analyzed with compatible software. Cameras are typically designed to be located on an officer's chest or head but may also be configured to deploy with a weapon or to be triggered when a weapon is deployed.

The LEI Vault and the underlying, supporting Axon Evidence(dot)com systems are not used by, nor are they available for access by the public. LEI Vault leverages the FedRAMP-accredited cloud resources provided by Axon Evidence(dot)com to store and manage law enforcement officers' digital evidence (such as camera footage and audio recordings of interviews) and to provide a central management console for associated products and devices. All data originate with and is consumed by authorized USDA Forest Service LEI personnel and staff. All data is subject to the USDA Forest Service LEI organization policies in place to govern this data, to include privacy and organization-level security.

RECORD SOURCE CATEGORIES:

LEIRS is primarily a criminal and civil investigation database and is used to collect information concerning criminal incidents that includes the PII related to suspects, witnesses, and victims in addition to information pertaining to the investigation of criminal activity. LEIRS collects the following information: first name, last name, middle initial, date of birth, home or mailing address, work address, driver's license, fishing license, hunting license, military issued ID, school issued ID, social security ID, state issued ID, height, weight, race, sex, hair color, eye color, adult/juvenile, and occupation, handwriting or an image of the signature. LEIRS is also used to document incidents that may be non-criminal in the nature, primarily pertaining to civil cases which may result in a claim for or against the government.

LEI Vault consists of video and audio evidence gathered by federal officers while in direct contact with subjects. The footage is not searchable by keyword.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, routine uses are defined as disclosures where information is routinely shared whether internally or externally. Below are routine uses applicable to Law Enforcement and Investigative Records:

A. Sharing information with the Department of Justice when (a) USDA or any component thereof, (b) any employee of USDA in his or her official capacity where the Department of Justice has agreed to represent the employee, or (c) the United States Government is a party to litigation or has an interest in such litigation, and, by careful review, USDA determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by USDA to be for a purpose that is compatible with the purpose for which USDA collected the records.

B. Sharing information with a congressional office in response to an inquiry from that congressional office made at the written request of the individual to whom the record pertains.

C. Sharing information with the National Archives and Records Administration or other Federal Government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. Sharing information with an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law but only such information as is necessary and relevant to such audit or oversight function.

E. Sharing information with appropriate agencies, entities, and persons when (1) the USDA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the USDA has determined that as a result of the suspected or confirmed breach, there is a risk of harm to individuals, the USDA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in

connection with USDA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. Sharing information when a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or tribal, or other public authority responsible for enforcing, investigating, or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative, or prosecutorial responsibility of the receiving entity. Referral to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting violation of law, or of enforcing or implementing a statute, rule, regulation, or order issued pursuant thereto, of any record within the system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature.

G. Sharing information with another Federal agency or Federal entity when information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach, or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

H. Sharing information with a court or adjudicative body in a proceeding when (a) the USDA or any component thereof, (b) any employee of the USDA in his or her official capacity, or (c) any employee of the USDA in his or her individual capacity where the USDA has agreed to represent the employee or the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the USDA determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by the USDA to be for a purpose that is compatible with the purpose for which the USDA collected the records.

I. Sharing information with the news media and the public, with the approval of the Director of Law Enforcement and Investigations in consultation with the Chief Privacy Officer and the Office of the General Counsel, in support of law enforcement activities, including obtaining public assistance with identifying and locating criminal suspects and lost or missing individuals, and providing the public with alerts about dangerous individuals, unless the Chief Privacy Officer determines that release of the specific information in the context of a particular case would constitute a clearly unwarranted invasion of personal privacy.

J. Sharing information with the news media and the public, with the approval of the Director of Law Enforcement and Investigations in consultation with the Chief Privacy Officer and the Office of the General Counsel, of body-worn camera video footage following incidents involving serious bodily injury or death occurring while an individual is in the custody of a law enforcement officer, when a legitimate public interest exists in the disclosure of the information; when disclosure is necessary to preserve confidence in the integrity of the USDA; and when disclosure is necessary to demonstrate the accountability of the USDA's law enforcement officers, employees, or individuals covered by the system, unless the Chief Privacy Officer determines that release of the body-worn camera video footage in the context of a particular case would constitute a clearly unwarranted invasion of personal privacy. The public release of such video footage will be consistent with applicable law, including the Privacy Act of 1974, and shall take into account the duty to protect the privacy rights of the persons depicted in the footage and any need to protect ongoing law enforcement operations. The release will also comply with all applicable Department and Agency regulations and policies.

NOTIFICATION PROCEDURES:

LEIRS contains information about individuals that is recorded on a violation notice. Individuals who receive a violation notice are provided with a copy at the time of the incident. The notification provides a copy of all recorded information to individuals.

Information to individuals is provided via:

- LEIRS Privacy Impact Analysis on the Department Privacy Impact Analysis website at <https://www.usda.gov/home/privacy-policy/privacyimpact-assessments>.

- The **Federal Register** for system of records notices and legal authorities.

- Forest Service-specific system of records notices are also published on the Forest Service website at <https://www.fs.fed.us/im/foia/pasystems.htm>.

- Forms associated with Privacy Act systems are approved through the Office of Management and Budget under the Paperwork Reduction Act (also cited in the **Federal Register**); the forms cite the Privacy Act.

Any individual may request general information regarding this system of records or information as to whether the system contains records pertaining to him or her. All inquiries pertaining to this system should be in writing, must name the system of records as set forth in the system notice, and must contain the individual's name, telephone number, address, and email address (see specific instructions above).

Dated: September 5, 2024.

Randy Moore,

Chief, USDA Forest Service.

[FR Doc. 2024-20694 Filed 9-11-24; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed Recreation Fee Site

AGENCY: Forest Service, USDA.

ACTION: Notice

SUMMARY: The Bridger-Teton National Forest is proposing to establish a special recreation permit and special recreation permit fees along the Congressionally designated Wild and Scenic Snake River. Proposed special recreation permit fees would be used for operation, maintenance, and improvements to prevent degradation, enhance recreation opportunities, and preserve the outstandingly remarkable values described in the comprehensive river management plan for the Snake River. An analysis of nearby specialized recreation uses with similar amenities and services shows the proposed special recreation permit fees that would be charged are reasonable and typical of similar specialized recreation uses in the area.

DATES: If approved, the proposed special recreation permit and proposed special recreation permit fees would be established no earlier than six months following the publication of this notice in the **Federal Register**.

ADDRESSES: Bridger-Teton National Forest, Attention: Recreation Fees, 340 North Cache, P.O. Box 1888, Jackson, WY 83001.

FOR FURTHER INFORMATION CONTACT: Shannon Connolly, Forest Recreation Program Manager, (406) 544-4734 or shannon.connolly@usda.gov.

SUPPLEMENTARY INFORMATION: The Federal Lands Recreation Enhancement Act (16 U.S.C. 6803(b)) requires the Forest Service to publish a six-month advance notice in the **Federal Register** of establishment of proposed special recreation permits and proposed special recreation permit fees. Most of the proposed special recreation permit fees would be spent where they are collected to enhance the visitor experience in connection with the specialized recreation use covered by the proposed special recreation permit.

A proposed special recreation permit would be required and a proposed special recreation permit fee would be charged of \$5 per vehicle per day, \$40 per vehicle per year, \$20 per additional vehicle per year, \$3 per outfitted customer, or \$3 per noncommercial group member along the Snake River. Expenditures of special recreation permit fees collected would enhance recreation opportunities, improve customer service, and address maintenance needs along the Snake River.

Dated: September 9, 2024.

Jacqueline Emanuel,

Associate Deputy Chief, National Forest System.

[FR Doc. 2024-20718 Filed 9-11-24; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notices by the Rocky Mountain Region: Colorado, Kansas, Nebraska, and Parts of South Dakota and Wyoming

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of newspapers of record.

SUMMARY: This notice lists the newspapers that will be used by the ranger districts, national forests and grasslands, and regional office of the Rocky Mountain Region to publish legal notices. The intended effect of this action is to inform interested members of the public which newspapers the Forest Service will use to publish notices of proposed actions and notices of decision. This will provide the public with constructive notice of Forest Service proposals and decisions, provide information on the procedures to comment, object or appeal, and

establish the date that the Forest Service will use to determine if comments or appeals/objections were timely.

DATES: Publication of legal notices in the listed newspapers will begin on the date of this publication and continue until further notice.

ADDRESSES: Scarlett Vallaire, Regional Administrative Review Coordinator, Rocky Mountain Region, 1617 Cole Blvd., Bldg. 17, Lakewood, CO 80401.

FOR FURTHER INFORMATION CONTACT: Scarlett Vallaire, Regional Administrative Review Coordinator, by phone at 801-989-6605 or by email at scarlett.vallaire@usda.gov.

SUPPLEMENTARY INFORMATION: The administrative procedures at 36 Code of Federal Regulations (CFR) parts 214, 218, and 219 require the Forest Service to publish notices in a newspaper of general circulation. The content of the notices is specified in 36 CFR parts 214, 218, and 219. In general, the notices will identify: the decision or project, by title or subject matter; the name and title of the official making the decision; how to obtain additional information; and where and how to file comments or appeals/objections. The date the notice is published will be used to establish the official date for the beginning of the comment or appeal/objection period. The newspapers to be used are as follows:

Regional Forester, Rocky Mountain Region

Regional Forester decisions affecting National Forests in Colorado, Kansas, Nebraska and those portions of South Dakota and Wyoming within the Rocky Mountain Region: *The Denver Post*.

Arapaho and Roosevelt National Forests and Pawnee National Grassland

Forest Supervisor decisions: *Coloradoan*.

Canyon Lakes District Ranger decisions: *Coloradoan*.

Pawnee District Ranger decisions: *Greeley Tribune*.

Boulder District Ranger decisions: *Daily Camera*.

Clear Creek District Ranger decisions: *Clear Creek Courant*. A "courtesy" copy will also be published in the *Mountain Ear*.

Sulphur District Ranger decisions: *Middle Park Times*.

Bighorn National Forest

Forest Supervisor and District Ranger decisions: *Casper Star-Tribune*.

Black Hills National Forest

Forest Supervisor decisions: *The Rapid City Journal*.

Bearlodge District Ranger decisions: *The Rapid City Journal*.

Mystic District Ranger decisions: *The Rapid City Journal*.

Hell Canyon District Ranger decisions: *The Rapid City Journal*.

Northern Hills District Ranger decisions: *Black Hills Pioneer*.

Grand Mesa, Uncompahgre, and Gunnison National Forests

Forest Supervisor decisions: *Grand Junction Daily Sentinel*.

Grand Valley District Ranger decisions: *Grand Junction Daily Sentinel*.

Paonia District Ranger decisions: *Delta County Independent*.

Gunnison District Ranger decisions: *Gunnison Country Times*.

Norwood District Ranger decisions: *Telluride Daily Planet*.

Ouray District Ranger decisions: *Montrose Daily Press*. A "courtesy" copy will also be published in the *Ouray County Plaindealer*.

Medicine Bow-Routt National Forests and Thunder Basin National Grassland

Forest Supervisor decisions: *Laramie Boomerang*.

Laramie District Ranger decisions: *Laramie Boomerang*.

Douglas District Ranger decisions: *Casper Star-Tribune*.

Brush Creek-Hayden District Ranger decisions: *Rawlins Daily Times*.

District Ranger decisions for Hahns Peak-Bears Ears and Yampa: *Steamboat Pilot*.

Parks District Ranger decisions: *Jackson County Star*.

Nebraska National Forest, Nebraska and South Dakota.

Forest Supervisor decisions: *The Rapid City Journal*.

Bessey District/Charles E. Bessey Tree Nursery District Ranger decisions: *The North Platte Telegraph*.

Pine Ridge District Ranger decisions: *The Rapid City Journal*.

District Ranger decisions for Samuel R. McKelvie National Forest: *The North Platte Telegraph*.

District Ranger decisions for Fall River and Wall Districts, Buffalo Gap National Grassland: *The Rapid City Journal*.

District Ranger decisions for Fort Pierre National Grassland: *The Capital Journal*.

Pike and San Isabel National Forests and Cimarron and Comanche National Grasslands

Forest Supervisor decisions: *Pueblo Chieftain*.

San Carlos District Ranger decisions: *Pueblo Chieftain*.

Comanche District-Carrizo Unit District Ranger decisions: *Plainsman Herald*. A “courtesy” copy will also be published in the *Tribune Democrat*.

Comanche District-Timpas Unit District Ranger decisions: *Tribune Democrat*.

Cimarron District Ranger decisions: *Elkhart Tri-State News*.

South Platte District Ranger decisions: *Douglas County News Press*.

Leadville District Ranger decisions: *Herald Democrat*.

Salida District Ranger decisions: *The Mountain Mail*.

South Park District Ranger decisions: *Fairplay Flume*.

Pikes Peak District Ranger decisions: *The Gazette*.

Rio Grande National Forest

Forest Supervisor and District Ranger decisions: *Valley Courier*.

San Juan National Forest

Forest Supervisor decisions: *Durango Herald*.

Columbine District Ranger decisions: *Durango Herald*.

Pagosa District Ranger decisions: *Pagosa Sun*.

Dolores District Ranger decisions: *Cortez Journal*.

Shoshone National Forest

Forest Supervisor decisions: *Cody Enterprise*.

Clarks Fork District Ranger decisions: *Powell Tribune*.

Wapiti and Greybull Districts Ranger decisions: *Cody Enterprise*.

Wind River District Ranger decisions: *The Dubois Frontier*.

Washakie District Ranger decisions: *Lander Journal*.

White River National Forest

Forest Supervisor decisions: *The Glenwood Springs Post Independent*.

Aspen-Sopris District Ranger decisions: *Aspen Times*.

Blanco District Ranger decisions: *Herald Times*.

Dillon District Ranger decisions: *Summit Daily*.

Eagle-Holy Cross District Ranger decisions: *Vail Daily*.

Rifle District Ranger decisions: *Citizen Telegram*.

Keith Lannom,

Associate Deputy Chief, National Forest System.

[FR Doc. 2024–20720 Filed 9–11–24; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–20–2024]

Foreign-Trade Zone (FTZ) 38; Authorization of Production Activity; BMW Manufacturing Co. LLC; (Passenger Motor Vehicles); Spartanburg, South Carolina

On May 10, 2024, BMW Manufacturing Company, LLC submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 38A, in Spartanburg, South Carolina.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (89 FR 42423–42424, May 15, 2024). On September 9, 2024, the applicant was notified of the FTZ Board’s decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board’s regulations, including section 400.14.

Dated: September 9, 2024.

Elizabeth Whiteman,
Executive Secretary.

[FR Doc. 2024–20670 Filed 9–11–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–134]

Certain Metal Lockers and Parts Thereof From the People’s Republic of China: Preliminary Results and Intent To Rescind, in Part, of Countervailing Duty Administrative Review; 2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies were provided to producers and exporters of certain metal lockers and parts thereof (metal lockers) from the People’s Republic of China (China). The period of review (POR) is January 1, 2022, through December 31, 2022. In addition, Commerce, intends to rescind this review with respect to four companies. Interested parties are invited to comment on these preliminary results.

DATES: Applicable September 12, 2024.

FOR FURTHER INFORMATION CONTACT: Laura Delgado, AD/CVD Operations,

Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1468.

SUPPLEMENTARY INFORMATION:

Background

On October 18, 2023, based on timely requests for review, Commerce initiated this administrative review of the countervailing duty order on metal lockers from China.¹ On December 18, 2023, Commerce selected Hangzhou Evernew Machinery and Equipment Company Limited (Hangzhou Evernew) and Xingyi Metalworking Technology (Zhejiang) Co., Ltd. (Xingyi Metalworking) as the mandatory respondents in this review.² On April 1, 2024, Commerce extended the deadline for the preliminary results of this review until August 30, 2024.³ On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days,⁴ and therefore the deadline for these preliminary results is September 6, 2024.

For a complete description of the events that followed the initiation of this review, see the Preliminary Decision Memorandum.⁵ A list of topics included in the Preliminary Decision Memorandum is provided in the appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNotices/ListLayout.aspx>.

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 71829 (October 18, 2023) (*Initiation Notice*); see also *See Certain Metal Lockers and Parts Thereof from the People’s Republic of China: Antidumping and Countervailing Duty Orders*, 86 FR 46826 (August 20, 2021) (*Order*).

² See Memorandum, “Respondent Selection,” dated December 19, 2023.

³ See Memorandum, “Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review,” dated April 1, 2024.

⁴ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,” dated July 22, 2024.

⁵ See Memorandum, “Decision Memorandum for the Preliminary Results of the Administrative Review of the Countervailing Duty Order on Certain Metal Lockers and Parts Thereof from the People’s Republic of China; 2022,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Scope of the Order

The product covered by the *Order* is metal lockers from China. For a complete description of the scope of the *Order*, see the Preliminary Decision Memorandum.

Intent To Rescind Administrative Review, in Part

It is Commerce's practice to rescind an administrative review of a countervailing duty order, pursuant to 19 CFR 351.213(d)(3), when there are no reviewable entries of subject merchandise during the POR for which liquidation is suspended.⁶ Normally, upon completion of an administrative review, the suspended entries are liquidated at the countervailing duty assessment rate calculated for the review period.⁷ Therefore, for an administrative review of a company to be conducted, there must be a reviewable, suspended entry that Commerce can instruct U.S. Customs and Border Protection (CBP) to liquidate at the calculated countervailing duty assessment rate calculated for the review period.⁸

According to the CBP import data on the record, there are four companies subject to this review that did not have reviewable entries of subject merchandise during the POR for which liquidation is suspended: Kunshan Dongchu Precision Machinery Co., Ltd.; Pingchu Chenda Storage Office Co., Ltd.; Tianjin Jia Mei Metal Furniture Ltd.; and Zhejiang Xingyi Metal Products Co., Ltd. Accordingly, in the absence of reviewable, suspended

entries of subject merchandise during the POR, we intend to rescind this administrative review with respect to these four companies, in accordance with 19 CFR 351.213(d)(3).

Methodology

Commerce is conducting this administrative review in accordance with 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.*, a financial contribution by an "authority" that gives rise to a benefit to the recipient, and that the subsidy is specific.⁹ For a full description of the methodology underlying our conclusions, including our reliance, in part, on facts otherwise available with adverse inferences pursuant to sections 776(a) and (b) of the Act, see the Preliminary Decision Memorandum.

Rate for Non-Selected Companies Under Review

The Act and Commerce's regulations do not address the establishment of a rate to apply to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, Commerce normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation. Section 777A(e)(2) of the Act provides

that "the individual countervailable subsidy rates determined under subparagraph (A) shall be used to determine the all-others rate under section 705(c)(5) {of the Act}." Section 705(c)(5)(A) of the Act states that for companies not investigated, in general, we will determine an all-others rate by weight averaging the countervailable subsidy rates established for each of the companies individually investigated, excluding zero and *de minimis* rates or any rates based entirely on facts available.

Accordingly, to determine the rate for companies not selected for individual examination, Commerce's practice is to weight average the net subsidy rates for the selected mandatory respondents, excluding rates that are zero, *de minimis*, or based entirely on facts available.¹⁰ In this administrative review, we calculated preliminary individual estimated countervailable subsidy rates for Hangzhou Evernew and Xingyi Metalworking that are not zero, *de minimis*, or based entirely on facts otherwise available. Commerce calculated the rate assigned to the companies under review that were not selected for individual examination using a simple average of the individual estimated subsidy rates calculated for the examined respondents.¹¹

Preliminary Results of Review

As a result of this review, we preliminarily determine the following net countervailable subsidy rates exist for the POR, January 1, 2022, through December 31, 2022:

Company	Subsidy rate (percent <i>ad valorem</i>)
Hangzhou Evernew Machinery & Equipment Company ¹²	15.35
Xingyi Metalworking Technology (Zhejiang) Co., Ltd	22.82
Hangzhou Xline Machinery & Equipment Co., Ltd ¹³	19.09
Jiangsu Wanlong Special Containers Co., Ltd	19.09

Disclosure

Commerce intends to disclose its calculations and analysis performed to

interested parties for these preliminary results within five days of any public announcement or, if there is no public

announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

⁶ See Preliminary Decision Memorandum at "Partial Rescission of Administrative Review."

⁷ See 19 CFR 351.212(b)(2).

⁸ See 19 CFR 351.213(d)(3).

⁹ See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

¹⁰ See, e.g., *Certain Pasta from Italy: Final Results of the 13th (2008) Countervailing Duty Administrative Review*, 75 FR 37386, 37387 (June 29, 2010).

¹¹ With two respondents under examination, Commerce normally calculates: (A) a weighted-average of the estimated subsidy rates calculated for the examined respondents; (B) a simple average of

the estimated subsidy rates calculated for the examined respondents; and (C) a weighted-average of the estimated subsidy rates calculated for the examined respondents using each company's publicly-ranged U.S. sales values for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. See, e.g., *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53662 (September 1, 2010), and accompanying Issues and Decision Memorandum at Comment 1. As complete

publicly ranged sales data were not available, Commerce based the all-others rate on a simple average of the mandatory respondents' estimated subsidy rates.

¹² As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with Hangzhou Evernew: Zhejiang Yinghong Metalware Co., Ltd.

¹³ In the *Initiation Notice*, we initiated a review of both Hangzhou Xline Machinery and Hangzhou Xline Machinery & Equipment Co., Ltd. We preliminarily determine that these are two names for the same company, and thus, we are assigning the non-selected rate to the full name of the company, Hangzhou Xline Machinery & Equipment Co., Ltd.

Public Comment

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.¹⁴ Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.¹⁵ All briefs must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety in ACCESS by 5:00 p.m. Eastern Time on the established deadline.

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their briefs that should be limited to five pages total, including footnotes. In this review, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹⁶ Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the public executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹⁷

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Oral presentations at the hearing will be

limited to issues raised in the briefs. If a request for a hearing is made, Commerce will inform parties of the scheduled date for the hearing.¹⁸

Assessment Rates

Consistent with section 751(a)(1) of the Act and 19 CFR 351.212(b)(2), upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. For the companies for which we intend to rescind this review, upon issuance of the final rescission, Commerce will instruct CBP to assess CVDs on all appropriate entries at a rate equal to the cash deposit of estimated CVDs required at the time of entry, or withdrawal from warehouse, for consumption, during the period January 1, 2022, through December 31, 2022. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

Pursuant to section 751(a)(2)(C) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amount indicated above with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit instructions, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: September 6, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Order*
- IV. Intent to Rescind Administrative Review, in Part
- V. Analysis of China's Financial System
- VI. Diversification of China's Economy
- VII. Use of Facts Otherwise Available and Adverse Inferences
- VIII. Subsidies Valuation
- IX. Benchmarks and Interest Rates
- X. Analysis of Programs
- XI. Rates for Non-Selected Companies
- XII. Recommendation

[FR Doc. 2024–20759 Filed 9–11–24; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–883, A–549–837, A–588–878]

Glycine From India, Japan, and Thailand: Final Results of the Expedited First Sunset Reviews of the Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of these expedited sunset reviews, the U.S. Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) orders on glycine from India, Japan, and Thailand would be likely to lead to the continuation or recurrence of dumping at the levels indicated in the “Final Results of Sunset Reviews” section of this notice.

DATES: Applicable September 12, 2024.

FOR FURTHER INFORMATION CONTACT: Brian Smith, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1766.

SUPPLEMENTARY INFORMATION:

Background

On June 21, 2019, Commerce published in the **Federal Register** the AD orders on glycine from India and Japan and subsequently published the AD order for the same product from Thailand on October 18, 2019.¹ On May

¹⁴ See 19 CFR 351.309(d); see also *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Procedures*).

¹⁵ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁶ We use the term “issue” here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹⁷ See *APO and Service Procedures*.

¹⁸ See 19 CFR 351.310(d).

¹ See *Glycine from India and Japan: Amended Final Affirmative Antidumping Duty Determination*

1, 2024, Commerce published the notice of initiation of the first sunset reviews of the *Orders*, pursuant to section 751(c)(2) of the Tariff Act of 1930, as amended (the Act).²

On May 13, 2024, Commerce received notices of intent to participate in these reviews from Deer Park Glycine, LLC of Deer Park, Texas, which is a subsidiary of GEO Specialty Chemicals, Inc., and Chattem Chemicals, Inc. of Chattanooga, Tennessee (collectively, the domestic interested parties), within the deadline specified in 19 CFR 351.218(d)(1).³ The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as producers of the domestic like product in the United States.⁴ In May, 2024, Commerce received adequate substantive responses from the domestic industry parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).⁵ We received no substantive responses from respondent interested parties.

On June 21, 2024, Commerce notified the U.S. International Trade Commission that it did not receive substantive responses from any respondent interested parties.⁶ As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted expedited (120-day) sunset reviews of the *Orders*.

On July 22, 2024, Commerce tolled certain deadlines in these administrative proceedings by seven days.⁷ The deadline for these final results of sunset reviews is September 5, 2024.

and Antidumping Duty Orders, 84 FR 29170 (June 21, 2019); and *Glycine from Thailand: Antidumping Duty Order*, 84 FR 55912 (October 18, 2019) (collectively, *Orders*).

² See *Initiation of Five-Year (Sunset) Reviews*, 88 FR 50110 (May 1, 2024).

³ See Domestic Interested Parties' Letter, "Domestic Interested Parties' Notification of Intent to Participate," dated May 13, 2024.

⁴ *Id.*

⁵ See Domestic Interested Parties' Letters, "Sunset Review (1st Review) of the Antidumping Duty Order on Glycine from India: Domestic Interested Parties' Substantive Response to the Notice of Initiation," dated May 20, 2024; "Domestic Interested Parties' Substantive Response to the Notice of Initiation," dated May 20, 2024; "Sunset Review (1st Review) of the Antidumping Duty Order on Glycine from Thailand: Domestic Interested Parties' Substantive Response to the Notice of Initiation," dated May 21, 2024; and "Sunset Review (1st Review) of the Antidumping Duty Order on Glycine from Japan: Domestic Interested Parties' Substantive Response to the Notice of Initiation," dated May 21, 2024.

⁶ See Commerce's Letter, "Sunset Reviews Initiated on May 1, 2024," dated June 21, 2024.

⁷ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated July 22, 2024.

Scope of the Orders

The products covered by these *Orders* are glycine from India, Japan, and Thailand. For a full description of the scope of the *Orders*, see the Issues and Decision.⁸

Analysis of Comments Received

A complete discussion of all issues raised in these sunset reviews is contained in the accompanying Issues and Decision Memorandum.⁹ A list of topics discussed in the Issues and Decision Memorandum is included as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be directly accessed at <https://access.trade.gov/public/FRNotices/ListLayout.aspx>.

Final Results of Sunset Reviews

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *Orders* would likely lead to the continuation or recurrence of dumping and that the magnitude of the dumping margins likely to prevail would be weighed-average dumping margins up to 13.61 percent for India, 86.22 percent for Japan, and 227.17 percent for Thailand.¹⁰

Administrative Protective Order

This notice serves as the only reminder to interested parties subject to an administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

⁸ See Memorandum, "Issues and Decision Memorandum for the Final Results of the Expedited First Sunset Reviews of the Antidumping Duty Orders on Glycine from India, Japan, and Thailand," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

⁹ *Id.*

¹⁰ See *Orders*.

Notification to Interested Parties

We are issuing and publishing these final results in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: September 5, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Orders*
- IV. History of the *Orders*
- V. Legal Framework
- VI. Discussion of the Issues
 1. Likelihood of Continuation or Recurrence of Dumping
 2. Magnitude of the Margins of Dumping Likely to Prevail
- VII. Final Results of Sunset Reviews
- VIII. Recommendation

[FR Doc. 2024–20671 Filed 9–11–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–817]

Ripe Olives From Spain: Preliminary Results of Antidumping Duty Administrative Review, and Partial Rescission of Review; 2022–2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that producers/exporters subject to this administrative review made sales of subject merchandise at less than normal value during the period of review (POR), August 1, 2022, through July 31, 2023. In addition, we are rescinding the administrative review with respect to one company. We invite interested parties to comment on these preliminary results.

DATES: Applicable September 12, 2024.

FOR FURTHER INFORMATION CONTACT: Maria Teresa Aymerich or Drew Jackson, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington DC 20230; telephone: (202) 482–0499 or (202) 482–4406, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2018, Commerce published in the **Federal Register** the

antidumping duty order on ripe olives (olives) from Spain.¹ On August 2, 2023, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order*.² On October 18, 2023, based on timely requests for an administrative review, Commerce initiated the administrative review covering five companies.³ On November 13, 2023, Commerce selected Agro Sevilla Aceitunas, S. Coop. And. (Agro Sevilla) and Angel Camacho Alimentacion, S.L. (Camacho) as the mandatory respondents in this administrative review.⁴

On April 10, 2024, Commerce extended the preliminary results of this review to August 30, 2024.⁵ On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.⁶ The deadline for the preliminary results is now September 6, 2024. For a complete description of the events between the initiation of this review and these preliminary results, *see* the Preliminary Decision Memorandum.⁷

A list of the topics discussed in the Preliminary Decision Memorandum is attached as the appendix to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum is available at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Order

The products covered by this *Order* are olives from Spain. For a full

description of the scope of the *Order*, *see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price are calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum.

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested a review withdraws its request within 90 days of the date of publication of the notice of initiation. The request for an administrative review of Plasoliva, S.L (Plasoliva) was withdrawn within 90 days of the date of publication of the *Initiation Notice*.⁸ No other party requested an administrative review of Plasoliva. As a result, Commerce is rescinding this review with respect to this company, in accordance with 19 CFR 351.213(d)(1).

Rate for Non-Selected Companies

The Act and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally "an amount equal to the weighted-average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}." In this review, we preliminarily calculated dumping margins for the two mandatory respondents, Agro Sevilla and Camacho, of 23.86 and 3.43 percent, respectively, and have assigned to the non-selected

companies a rate of 17.67 percent, which is the weighted average dumping margins of Agro Sevilla and Camacho weighted by their publicly ranged U.S. sales values.⁹

Preliminary Results of Review

We preliminarily determine that the following estimated weighted-average dumping margins exist for the period August 1, 2022, through July 31, 2023:

Producer/exporter	Weighted-average dumping margin (percent)
Agro Sevilla Aceitunas, S. Coop. And	23.86
Angel Camacho Alimentacion, S.L	3.43
Aceitunera del Norte de Cáceres, S.Coop.Ltda. de 2 Grado	17.67
Alimentary Group DCOOP, S.Coop. And	17.67

Disclosure

We intend to disclose the calculations performed in connection with these preliminary results to interested parties within five days after public announcement of the preliminary results.¹⁰

Public Comment

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice.¹¹ Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the date for filing case briefs.¹² Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a

¹ See *Ripe Olives from Spain: Antidumping Duty Order*, 83 FR 37465 (August 1, 2018); and *Ripe Olives from Spain: Notice of Correction to Antidumping Duty Order*, 83 FR 39691 (August 10, 2018) (collectively, *Order*).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join Annual Inquiry Service List*, 88 FR 50840 (August 2, 2023).

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 71829 (October 18, 2023) (*Initiation Notice*).

⁴ See Memorandum, "Companies to be Reviewed," dated November 13, 2023.

⁵ See Memorandum, "Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated April 10, 2024.

⁶ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated July 22, 2024.

⁷ See Memorandum, "Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Ripe Olives from Spain; 2022–2023," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁸ See Plasoliva's Letter, "Plasoliva, S.L.'s Withdrawal Request for Administrative Review," dated January 12, 2024.

⁹ With two respondents under examination, Commerce normally calculates (A) a weighted-average of the dumping margins calculated for the examined respondents; (B) a simple average of the dumping margins calculated for the examined respondents; and (C) a weighted-average of the dumping margins calculated for the examined respondent using each company's publicly-ranged U.S. sales quantities for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See, e.g., Ball Bearings and Parts thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53663 (September 1, 2010).

¹⁰ See 19 CFR 351.224(b).
¹¹ See 19 CFR 351.303 (for general filing requirements).

¹² See 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

statement of the issue; and (2) a table of authorities.¹³

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this review, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹⁴ Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this review. We request that interested parties include footnotes for relevant citations in the public executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹⁵

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. An electronically filed hearing request must be received successfully in its entirety by Commerce's electronic records system, ACCESS, within 30 days after the date of publication of this notice. If a request for a hearing is made, Commerce intends to hold a hearing at a time and date to be determined.¹⁶ Parties should confirm the date, time, and location of the hearing two days before the scheduled date. All submissions, including case and rebuttal briefs, as well as hearing requests, should be filed using ACCESS.¹⁷ An electronically-filed document must be received successfully in its entirety by ACCESS by 5:00 p.m.

Eastern Time on the established deadline.

Assessment Rates

Upon completion of the final results, Commerce shall determine, and the U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.¹⁸ If a respondent's weighted-average dumping margin is not zero or *de minimis* (i.e., less than 0.5 percent) in the final results of this review, we intend to calculate an importer-specific assessment rate based on the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).¹⁹ If the respondent's weighted-average dumping margin or an importer-specific assessment rate is zero or *de minimis* in the final results of this review, we intend to instruct CBP not to assess duties on any of its entries in accordance with the *Final Modification for Reviews*.²⁰ The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.²¹

For entries of subject merchandise during the POR produced by either of the individually examined respondents for which they did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate these entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.²²

For the companies identified above that were not selected for individual examination, we will instruct CBP to liquidate entries at the rates established after the completion of the final results of review.

Because Commerce is rescinding this review with respect to Plasoliva, we will instruct CBP to assess antidumping duties on all appropriate entries of subject merchandise during the POR

from this company at a rate equal to the cash deposit rate for estimated antidumping duties that was required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR

351.212(c)(1)(i). Commerce intends to issue its rescission instructions to CBP no earlier than 35 days after the date of publication of this notice in the **Federal Register**.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (i.e., within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements for estimated antidumping duties will be effective upon publication in the **Federal Register** of the notice of final results of this review for all shipments of olives from Spain entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) the cash deposit rate for companies subject to this review will be equal to the weighted-average dumping margins established in the final results of the review; (2) for merchandise exported by companies not covered in this review but covered in a prior segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation but the producer is, then the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 19.98 percent,²³ the all-others rate established in the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Final Results of Review

Unless extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised

¹³ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁴ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹⁵ See APO and Service Final Rule.

¹⁶ See 19 CFR 351.310(d).

¹⁷ See 19 CFR 351.303.

¹⁸ See 19 CFR 351.212(b)(1).

¹⁹ In these preliminary results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

²⁰ See *Final Modification for Reviews*, 77 FR at 8103; see also 19 CFR 351.106(c)(2).

²¹ See section 751(a)(2)(C) of the Act.

²² For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

²³ See Order, 83 FR at 37466; see also Amended Order, 83 FR at 39692.

in any written briefs, no later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of countervailing duties.

Notification to Interested Parties

These preliminary results and notice are issued and published in accordance with sections 751(a)(1) and 777(i) of the Act, 19 CFR 351.213(d)(4), 19 CFR 351.213(h) and 19 CFR 351.221(b)(4).

Dated: September 5, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Order*
- IV. Rescission of Review, In Part
- V. Rate for Non-Selected Companies
- VI. Discussion of the Methodology
- VII. Currency Conversion
- VIII. Recommendation

[FR Doc. 2024–20620 Filed 9–11–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–469–818]

Ripe Olives From Spain: Preliminary Results of Countervailing Duty Administrative Review and Partial Rescission of Review; 2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that certain producers/exporters of producers and exporters of ripe olives from Spain received countervailable subsidies during the period of review (POR), January 1, 2022, through

December 31, 2022. In addition, Commerce is rescinding the review, in part, with respect to three companies. Interested parties are invited to comment on these preliminary results.

DATES: Applicable September 12, 2024.

FOR FURTHER INFORMATION CONTACT:

Dusten Hom or Theodore Pearson, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5075 or (202) 482–2631, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2018, Commerce published in the **Federal Register** the countervailing duty (CVD) order on ripe olives from Spain.¹ On October 18, 2023, Commerce published in the **Federal Register** the notice of initiation of an administrative review of the *Order*.² On November 15, 2023, Commerce selected Agro Sevilla Aceitunas S.Coop And. (Agro Sevilla) and Angel Camacho Alimentación, S.L. (Camacho) for individual examination as the mandatory respondents in this administrative review.³ On April 5, 2024, Commerce extended the deadline for the preliminary results review until August 29, 2024.⁴ On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.⁵ The deadline for the preliminary results is now September 5, 2024.

For a complete description of the events that followed the initiation of this investigation, see the Preliminary Decision Memorandum.⁶ A list of topics discussed in the Preliminary Decision Memorandum is included in the Appendix I to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and

Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Order

The products covered by the *Order* are ripe olives from Spain. For a complete description of the scope of the *Order*, see the Preliminary Decision Memorandum.⁷

Methodology

Commerce is conducting this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each subsidy program found countervailable, we preliminarily find that there is a subsidy (*i.e.*, a financial contribution by an “authority” that gives rise to a benefit to the recipient, and that the subsidy is specific).⁸ For a full description of the methodology underlying our conclusions, including our reliance, in part, on facts otherwise available pursuant to sections 776(a) and (b) of the Act, see the Preliminary Determination Memorandum.

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation. Commerce received timely filed withdrawal requests with respect to one company, Plasoliva, S.L. (Plasoliva), pursuant to 19 CFR 351.213(d)(1).⁹ Because the withdrawal request was timely filed, and no other parties requested a review of this company, in accordance with 19 CFR 351.213(d)(1), Commerce is rescinding this review of the *Order* with respect to Plasoliva.

Additionally, Commerce's practice is to rescind an administrative review of a countervailing duty order, pursuant to 19 CFR 351.213(d)(3), when there are no reviewable entries of subject merchandise during the POR for which liquidation is suspended.¹⁰ Normally,

⁷ *Id.*

⁸ See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

⁹ See Preliminary Decision Memorandum at the section titled “Partial Rescission of Administrative Review.”

¹⁰ See, e.g., *Lightweight Thermal Paper from the People's Republic of China: Notice of Rescission of*

¹ See *Ripe Olives from Spain: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 83 FR 37469 (August 1, 2018) (*Order*).

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 71829 (October 18, 2023) (*Initiation Notice*).

³ See Memorandum, “Companies to be Reviewed; 2022,” dated November 15, 2023.

⁴ See Memorandum, “Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review,” dated April 5, 2024.

⁵ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,” dated July 22, 2024.

⁶ See Memorandum, “Decision Memorandum for the Preliminary Results of the Administrative Review of the Countervailing Duty Order on Ripe Olives from Spain; 2022,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

upon completion of an administrative review, the suspended entries are liquidated at the countervailing duty assessment rate calculated for the review period.¹¹ Therefore, for an administrative review of a company to be conducted, there must be a reviewable, suspended entry that Commerce can instruct U.S. Customs and Border Protection (CBP) to liquidate at the countervailing duty assessment rate calculated for the review period.¹²

On February 8, 2024, we issued a memorandum notifying parties of our intent to rescind this administrative review with respect to: (1) Aceitunera del Norte de Cáceres, S.Coop.Ltda. de 2º Grado; and (2) Alimentary Group DCoop S.Coop. And.¹³ We received no comments from interested parties regarding our intention to rescind the review with respect to these two companies. Accordingly, in the absence of reviewable, suspended entries of subject merchandise during the POR, we are rescinding this administrative review with respect to these two companies, in accordance with 19 CFR 351.213(d)(3).

Preliminary Results of Review

Commerce preliminary determines that the following net countervailable subsidy rates exist for the period January 1, 2022, through December 31, 2022:

Company	Subsidy rate (percent <i>ad valorem</i>)
Agro Sevilla Aceitunas S.Coop And Angel Camacho Alimentación, S.L. and its cross-owned affiliates ¹⁴	6.59 12.69

Disclosure and Public Comment

We intend to disclose the calculations performed for these preliminary results to interested parties within five days after the date of publication of this

notice.¹⁵ Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance. A timeline for the submission of case briefs and written comments will be notified to interested parties at a later date. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.¹⁶ Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.¹⁷

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this review, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹⁸ Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹⁹

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. An electronically filed hearing request must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5 p.m. Eastern Time within

30 days after the date of publication of this notice.

Unless extended, we intend to issue the final results of this administrative review, which will include the results of our analysis of the issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Assessment Rates

In accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.221(b)(4)(i), we preliminarily determined subsidy rates in the amounts shown above for the producers/exporters shown above. Upon completion of the administrative review, consistent with section 751(a)(1) of the Act and 19 CFR 351.212(b)(2), Commerce shall determine, and CBP shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

For the companies for which this review is rescinded with these preliminary results, we will instruct CBP to assess countervailing duties on all appropriate entries at a rate equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period January 1, 2022, through December 31, 2022, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP no earlier than 35 days after the date of publication of this notice in the **Federal Register**.

Cash Deposit Requirements

In accordance with section 751(a)(2)(C) of the Act, Commerce also intends upon publication of the final results, to instruct U.S. Customs and Border Protection (CBP) to collect cash deposits of the estimated countervailing duties in the amounts calculated in the final results of this review for the respective companies listed above with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. If the rate

Countervailing Duty Administrative Review; 2015, 82 FR 14349 (March 20, 2017); *see also Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2017*, 84 FR 14650 (April 11, 2019).

¹¹ See 19 CFR 351.212(b)(2).

¹² See 19 CFR 351.213(d)(3).

¹³ See Memorandum, "Notice of Intent to Rescind Review, in Part," dated February 8, 2024. In this memorandum, Commerce also notified parties of its intent to rescind the administrative review with respect to Plasilova. However, as discussed above, Commerce is rescinding the review with respect to Plasilova pursuant to 19 CFR 351.213(d)(1).

¹⁴ As discussed in the Preliminary Decision Memorandum, Commerce found the following companies to be cross-owned with Angel Camacho Alimentación, S.L.: Grupo Angel Camacho, S.L., Cuarterola S.L., and Cucancho S.L.

¹⁵ See 19 CFR 351.224(b).

¹⁶ See 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

¹⁷ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁸ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹⁹ See *APO and Service Final Rule*.

calculated in the final results is zero or *de minimis*, no cash deposit will be required on shipments of the subject merchandise entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

For all non-reviewed firms, CBP will continue to collect cash deposits of estimated countervailing duties at the all-others rate or the most recent company-specific rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213 and 351.221(b)(4).

Dated: September 5, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Partial Rescission of Administrative Review
- V. Subsidies Valuation
- VI. Use of Facts Otherwise Available
- VII. Analysis of Programs
- VIII. Recommendation

[FR Doc. 2024-20623 Filed 9-11-24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Ruling Applications Filed in Antidumping and Countervailing Duty Proceedings

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) received scope ruling applications, requesting that scope inquiries be conducted to determine whether identified products are covered by the scope of antidumping duty (AD) and/or countervailing duty (CVD) orders and that Commerce issue scope rulings pursuant to those inquiries. In accordance with Commerce's regulations, we are notifying the public of the filing of the scope ruling applications listed below in the month of July 2024.

DATES: Applicable September 12, 2024.

FOR FURTHER INFORMATION CONTACT:

Terri Monroe, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482-1384.

SUPPLEMENTARY INFORMATION:

Notice of Scope Ruling Applications

In accordance with 19 CFR 351.225(d)(3), we are notifying the public of the following scope ruling applications related to AD and CVD orders and findings filed in or around the month of June 2024. This notification includes, for each scope application: (1) identification of the AD and/or CVD orders at issue (19 CFR 351.225(c)(1)); (2) concise public descriptions of the products at issue, including the physical characteristics (including chemical, dimensional and technical characteristics) of the products (19 CFR 351.225(c)(2)(ii)); (3) the countries where the products are produced and the countries from where the products are exported (19 CFR 351.225(c)(2)(i)(B)); (4) the full names of the applicants; and (5) the dates that the scope applications were filed with Commerce and the name of the ACCESS scope segment where the scope applications can be found.¹ This notice does not include applications which have been rejected and not properly resubmitted. The scope ruling applications listed below are available on Commerce's online e-filing and document management system, Antidumping and Countervailing Duty Electronic Service System (ACCESS), at <https://access.trade.gov>.

Scope Ruling Applications

Ceramic Tile from the People's Republic of China (China) (A-570-108/C-570-109); Ornamental roof tiles, components, decorations and board brick (Ornamental Roof Tiles);² produced in and exported from China; submitted by Landscape Associates, Inc.

¹ See *Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*, 86 FR 52300, 52316 (September 20, 2021) (*Final Rule*) ("It is our expectation that the **Federal Register** list will include, where appropriate, for each scope application the following data: (1) identification of the AD and/or CVD orders at issue; (2) a concise public summary of the product's description, including the physical characteristics (including chemical, dimensional and technical characteristics) of the product; (3) the country(ies) where the product is produced and the country from where the product is exported; (4) the full name of the applicant; and (5) the date that the scope application was filed with Commerce.")

² The products are Chinese ornamental roof tiles, components, decorations and board brick made of Kaolin clay, bauxite and porcelain clay.

(Landscape Associates); July 1, 2024; ACCESS scope segment "Landscape Assoc. Ornamental Roof Tiles."

Magnesium Metal from China (A-570-896); Magnesium Alloy Chips;³ produced in and exported from Japan; submitted by Monko LLC (Monko); July 2, 2024; ACCESS scope segment "Magnesium Alloy Chips."

Certain Steel Racks and Parts thereof from China (A-570-088/C-570-089); Steel Pods with or without additional support (Steel Pods);⁴ produced in and exported from China; submitted by LEDVANCE LLC (LEDVANCE); July 17, 2024; ACCESS scope segment "AGV Steel Pods."

Boltless Steel Shelving Units Prepackaged for Sale from China (A-570-018/C-570-019); Steel Pods with or without additional support (Steel Pods);⁵ produced in and exported from China; submitted by LEDVANCE; July 17, 2024; ACCESS scope segment "Ledvance Steel Pods."

Forged Steel Fittings from Italy (A-475-839); PFT Hub and Cap System (Hub and Cap);⁶ produced in and exported from Italy; submitted by National Oilwell Varco, L.P. (NOV); July

³ The products are magnesium alloy chips consisting of 9% by weight of aluminum, 1% by weight of zinc, and the remaining balance pure magnesium ingot from China. The chips are grated in a rectangular shape approximately 4 mm long with a thickness of 1-2mm.

⁴ The products are steel pods entered with or without additional supports. The steel pods can be characterized as a horizontal and rectangular surface, which is supported off the ground with four legs; one in each corner of the rectangle. The pod legs are welded to the horizontal frame. The surface is created by the intersection of bars running across the rectangle. There is one main bar that runs the long way from one end to the other; and four supporting bars, which run perpendicular to the main bar. They are all welded at the perimeter, and to each other in the middle of the rectangle. This describes the base unit of the pod. It is made of carbon steel with an epoxy powder coating.

⁵ The products are steel pods entered with or without additional supports. The steel pods can be characterized as a horizontal and rectangular surface, which is supported off the ground with four legs; one in each corner of the rectangle. The pod legs are welded to the horizontal frame. The surface is created by the intersection of bars running across the rectangle. There is one main bar that runs the long way from one end to the other; and four supporting bars, which run perpendicular to the main bar. They are all welded at the perimeter, and to each other in the middle of the rectangle. This describes the base unit of the pod. It is made of carbon steel with an epoxy powder coating.

⁶ The product is a PFT Hub and Cap System, otherwise known as threaded closure, where a hub is butt welded to the end of a pipe and cap is threaded to the end of the hub. The system is available for installation vertically, horizontally, or angled. The PFT Hub and Cap System is available in sizes from 2" to 12", and larger sizes upon request.

25, 2024; ACCESS scope segment “PFT Hub and Cap.”

Notification to Interested Parties

This list of scope ruling applications is not an identification of scope inquiries that have been initiated. In accordance with 19 CFR 351.225(d)(1), if Commerce has not rejected a scope ruling application nor initiated the scope inquiry within 30 days after the filing of the application, the application will be deemed accepted and a scope inquiry will be deemed initiated the following day—day 31.⁷ Commerce’s practice generally dictates that where a deadline falls on a weekend, Federal holiday, or other non-business day, the appropriate deadline is the next business day.⁸ Accordingly, if the 30th day after the filing of the application falls on a non-business day, the next business day will be considered the “updated” 30th day, and if the application is not rejected or a scope inquiry initiated by or on that particular business day, the application will be deemed accepted and a scope inquiry will be deemed initiated on the next business day which follows the “updated” 30th day.⁹

In accordance with 19 CFR 351.225(m)(2), if there are companion AD and CVD orders covering the same merchandise from the same country of origin, the scope inquiry will be conducted on the record of the AD proceeding. Further, please note that pursuant to 19 CFR 351.225(m)(1), Commerce may either apply a scope ruling to all products from the same country with the same relevant physical characteristics, (including chemical, dimensional, and technical characteristics) as the product at issue, on a country-wide basis, regardless of the producer, exporter, or importer of those products, or on a company-specific basis.

For further information on procedures for filing information with Commerce through ACCESS and participating in

scope inquiries, please refer to the Filing Instructions section of the Scope Ruling Application Guide, at https://access.trade.gov/help/Scope_Ruling_Guidance.pdf. Interested parties, apart from the scope ruling applicant, who wish to participate in a scope inquiry and be added to the public service list for that segment of the proceeding must file an entry of appearance in accordance with 19 CFR 351.103(d)(1) and 19 CFR 351.225(n)(4). Interested parties are advised to refer to the case segment in ACCESS as well as 19 CFR 351.225(f) for further information on the scope inquiry procedures, including the timelines for the submission of comments.

Please note that this notice of scope ruling applications filed in AD and CVD proceedings may be published before any potential initiation, or after the initiation, of a given scope inquiry based on a scope ruling application identified in this notice. Therefore, please refer to the case segment on ACCESS to determine whether a scope ruling application has been accepted or rejected and whether a scope inquiry has been initiated.

Interested parties who wish to be served scope ruling applications for a particular AD or CVD order may file a request to be included on the annual inquiry service list during the anniversary month of the publication of the AD or CVD order in accordance with 19 CFR 351.225(n) and Commerce’s procedures.¹⁰

Interested parties are invited to comment on the completeness of this monthly list of scope ruling applications received by Commerce. Any comments should be submitted to James Maeder, Deputy Assistant Secretary for AD/CVD Operations, Enforcement and Compliance, International Trade Administration, via email to CommerceCLU@trade.gov.

This notice of scope ruling applications filed in AD and CVD proceedings is published in accordance with 19 CFR 351.225(d)(3).

Dated: September 6, 2024.

Scot Fullerton,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2024–20672 Filed 9–11–24; 8:45 am]

BILLING CODE 3510–DS–P

¹⁰ See *Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*, 86 FR 53205 (September 27, 2021).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for Office of Management and Budget Review; The Understanding and Expanding the Reach of Home Visiting (HV–REACH) Project (New Collection)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: As part of the Understanding and Expanding the Reach of Home Visiting (HV–REACH) project, the Administration for Children and Families (ACF) within the U.S. Department of Health and Human Services is proposing to collect qualitative data to understand the features of centralized, coordinated, or collaborative intake systems used by seven purposively selected sites that refer families to early childhood home visiting (ECHV) programs.

DATES: *Comments due October 15, 2024.* The Office of Management and Budget (OMB) must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. You can also obtain copies of the proposed collection of information by emailing OPREinfocollection@acf.hhs.gov. Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The HV–REACH project is proposing to conduct seven qualitative case studies to provide an in-depth understanding of centralized intake systems, including how centralized intake systems reach potentially eligible families, and how staff and families think centralized intake systems support and expand the recruitment and enrollment of families in ECHV programs.

The goals of the study are to understand (1) the features, strengths,

⁷ In accordance with 19 CFR 351.225(d)(2), within 30 days after the filing of a scope ruling application, if Commerce determines that it intends to address the scope issue raised in the application in another segment of the proceeding (such as a circumvention inquiry under 19 CFR 351.226 or a covered merchandise inquiry under 19 CFR 351.227), it will notify the applicant that it will not initiate a scope inquiry, but will instead determine if the product is covered by the scope at issue in that alternative segment.

⁸ See *Notice of Clarification: Application of “Next Business Day” Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

⁹ This structure maintains the intent of the applicable regulation, 19 CFR 351.225(d)(1), to allow day 30 and day 31 to be separate business days.

and challenges of centralized intake systems that refer to ECHV programs; (2) how centralized intake systems support outreach to and enrollment of families in ECHV programs; (3) enrolled families' experiences with centralized intake systems.

We will conduct virtual or in person site visits in seven sites, where a site is defined as including a centralized intake organization(s) and one or two associated home visiting programs. We will collect documentation related to:

- outreach, enrollment, screening, and referrals processes and pathways, and data about the defining characteristics of centralized intake systems;

- local contexts and community needs;
- communication processes and feedback loops with families and programs;
- successes and challenges of the system and opportunities for improvement or technical assistance;
- home visiting program staff and family perceptions of centralized intake;
- implementation of centralized intake;
- staff and family experiences with outreach and enrollment processes using centralized intake; and
- staff and family background characteristics.

Findings will highlight opportunities for program improvement efforts, technical assistance, or changes to centralized intake system processes. We will disseminate findings in a report, research briefs, and presentations or briefings.

Respondents: Centralized intake administrators and other staff responsible for overseeing outreach and enrollment; home visiting program directors and other staff responsible for overseeing outreach and enrollment; home visitors and other staff responsible for conducting outreach and enrollment; and families enrolled in home-visiting programs.

ANNUAL BURDEN ESTIMATES				
Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Avg. burden per response (in hours)	Total/ annual burden (in hours)
Centralized Intake Administrator Screening	19	1	0.33	3
On site coordination ¹	14	1	4.0	56
Centralized Intake Administrator and Other Staff Interview Protocol	42	1	1.5	63
Document Review Request	21	1	0.25	5
Home visiting program director and Other Staff Interview Protocol	28	1	1.0	28
Home visitor and Other Staff Interview Protocol	42	1	1.0	42
Family interview protocol	42	1	1.0	42
Participant characteristics form	154	1	0.08	12
Total Annual Burden:				251

¹ There is no instrument associated with this activity, which refers to the time spent by the on-site coordinator (nominated by the home visiting program director) to help the research team coordinate data collection activities.

Authority: Social Security Act, title V, section 511 (42 U.S.C. 711), as extended by the Consolidated Appropriations Act of 2023 (Pub. L. 117–328) (fiscal years 2023–2027).

Mary C. Jones,
ACF/OPRE Certifying Officer.
[FR Doc. 2024–20661 Filed 9–11–24; 8:45 am]
BILLING CODE 4182–77–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Generic Clearance for Decision Science Data Collections

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of

1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on June 11, 2024, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Institute of Standards and Technology (NIST), Commerce.
Title: Generic Clearance for Decision Science Data Collections.
OMB Control Number 0693–0089.
Form Number(s): None.
Type of Request: Regular submission, extension of a current information collection.
Number of Respondents: 30,000.

Average Hours per Response: Varied, dependent upon the data collection method used. The possible response time may be 15 minutes to complete a

questionnaire or 2 hours to participate in an interview.

Burden Hours: 15,000.

Needs and Uses: The core mission of the National Institute of Standards and Technology (NIST) is to promote U.S. innovation and industrial competitiveness by advancing measurement science, standards, and technology in ways that enhance economic security and improve our quality of life. NIST's operating units across the agency increasingly recognize that the built environment is meant to serve social and economic functions. With this in mind, NIST proposes to conduct a number of data collection efforts directly related to decision-making across individuals, institutions, and communities relevant to key research areas of the agency. The use of decision and information science is critical to further the mission of NIST to promote U.S. innovation and industrial competitiveness. NIST proposes to conduct a number of data collection efforts in decision and information science to include: decision analysis, risk analysis, cost-benefit and cost-

effectiveness analysis, constrained optimization, simulation modeling, and application of perception, information processing, and decision models and theories; and drawing on parts of operations research, microeconomics, statistical inference, management control, cognitive and social psychology, and computer science. By focusing on decisions as the unit of analysis, decision science provides a unique framework for understanding interactions across technologies, socioeconomic networks, organizations (e.g., institutions, firms), elements of the built environment, and a range of ecological problems and perceptions that influence these decisions. Data may be collected through a variety of modes, including but not limited to electronic or social media, direct or indirect observation (i.e., in-person, video and audio collections), interviews, structured questionnaires, and focus groups.

Affected Public: Federal Government; households and individuals; the private sector; and State and local governments.

Frequency: Select from the following options: once, annually, monthly, quarterly: Frequency will be variable across collections.

Respondent's Obligation: Voluntary.

Legal Authority:

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website: www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function and entering either the title of the collection or the OMB Control Number 0693–0089.

Sheleen Dumas,

Departmental PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–20663 Filed 9–11–24; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Social and Economic Survey of Hired Captains and Crew in Commercial Fisheries

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on May 7, 2024 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration, Commerce.

Title: Social and Economic Survey of Hired Captains and Crew in Commercial Fisheries.

OMB Control Number: 0648–0636.

Form Number(s): None.

Type of Request: Regular submission [revision and extension of a current information collection].

Annual Number of Respondents: 1,353.

Average Hours per Response: 15 minutes.

Total Annual Burden Hours: 338.

Needs and Uses: This request is for a revision and extension to an approved collection. The proposed revisions would do the following to the currently approved information collection.

1. Expand the scope from New England, Mid-Atlantic, South Atlantic, and Gulf of Mexico commercial fisheries to Puerto Rico, U.S. Virgin Islands, West Coast, and Pacific Islands commercial fisheries;

2. Change the title from "Socio-Economic Survey of Hired Captains and Crew in New England, Mid-Atlantic, South Atlantic and Gulf of Mexico Commercial Fisheries" to "Social and Economic Survey of Hired Captains and Crew in Commercial Fisheries";

a. Replace the survey instrument that OMB approved in 2021, which included some region-specific questions, with

region-specific survey instruments that NMFS produced by eliminating the few irrelevant questions for each region, adding a few region-specific questions, rewording a few questions to make them region specific, and giving each survey a region-specific name.

Under the revised information collection, the Northeast Fisheries Science Center (NEFSC) will conduct the survey for the New England and Mid-Atlantic fisheries; the Southeast Fisheries Science Center (SEFSC) will conduct the survey for the South Atlantic, Gulf of Mexico, Puerto Rico, and the U.S. Virgin Islands fisheries; the Northwest Fisheries Science Center (NWFSC) and the Southwest Fisheries Science Center (SWFSC) will jointly conduct the survey for the West Coast fisheries; and the Pacific Islands Fisheries Science Center (PIFSC) will conduct the survey for the Pacific Islands fisheries. Each Fisheries Science Center will conduct a social and economic survey of hired captains and crew once in the following three years for its commercial fisheries.

The Fisheries Science Centers seek to conduct surveys to provide for the ongoing collection of social and economic data related to the fishing industries in those states. The purpose of this survey is to assess and track over time the social and economic conditions of commercial fishing crews and hired captains for which little is known. This survey will provide data on social and economic impacts for this population and the changes in fisheries because of regulatory changes. Data to be collected include demographic information on crew, individual and community well-being, fishing practices, job satisfaction, job opportunities, and attitudes toward fisheries management. The National Environmental Policy Act (NEPA) and Magnuson-Stevens Conservation and Management Act (MSA) both contain requirements for considering the social and economic impacts of fishery management decisions. There is a need to understand how such fishery management policies and programs will affect the social and economic characteristics of those involved in the commercial fishing industry. To help meet these requirements of NEPA and MSA, the Fisheries Science Centers will collect data on an ongoing basis to track how the social and economic characteristics of fisheries are changing over time and the impact of fishery management policies and programs implemented for the New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, Puerto Rico, U.S. Virgin Islands, West Coast, and Pacific Islands commercial fisheries.

Affected Public: Individuals (*i.e.*, hired captains and other crew members in commercial fisheries).

Frequency: Once.

Respondent's Obligation: Voluntary.

Legal Authority: The National Environmental Policy Act (NEPA) and Magnuson-Stevens Conservation and Management Act (MSA).

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0636.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–20664 Filed 9–11–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE233]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Ad-hoc Sacramento River Fall Chinook (SRFC) Workgroup will hold a two-day online meeting in October 2024.

DATES: The online meeting will be held on Wednesday, October 2, 2024 and Thursday, October 3, 2024, daily from 9 a.m. until 3 p.m., Pacific time, or when business for the day concludes.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see www.pcouncil.org). You may send an email to Mr. Kris

Kleinschmidt (kris.kleinschmidt@noaa.gov) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT:

Angela Forristall, Staff Officer, Pacific Council; telephone: (503) 820–2419.

SUPPLEMENTARY INFORMATION: The primary purpose of the meetings is to address guidance received from the Pacific Council at their June 2024 meeting. The Workgroup will likely focus on finalizing their report that considers new or updated tools for SRFC management for the Pacific Council's November 2024 meeting. If applicable, the Workgroup may also discuss 2024 Salmon Methodology Review topics relevant to their tasking. Additional discussions may include, but are not limited to, future meetings, workload planning, and upcoming Council agenda items.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (kris.kleinschmidt@noaa.gov; (503) 820–2412) at least 10 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 9, 2024.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024–20705 Filed 9–11–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE280]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public online meeting.

SUMMARY: The Groundfish Subcommittee of the Pacific Fishery Management Council's (Pacific Council) Scientific and Statistical Committee (SSC) will convene an online meeting to review the suitability of fish age estimates developed using Fourier Transformed Near-Infrared Spectroscopy (FT–NIRS) for inclusion in groundfish stock assessments. The methodology review meeting is open to the public.

DATES: The groundfish methodology review online meeting will be held Tuesday, October 1, 2024 and Wednesday October 2, 2024, daily from 8 a.m. until noon (Pacific daylight time) or until business for the day has been completed.

ADDRESSES: The groundfish methodology review will be conducted as an online meeting. Specific meeting information, including the agenda and directions on how to join the meeting and system requirements, will be provided in the workshop announcement on the Pacific Council's website (see www.pcouncil.org). You may send an email to Mr. Kris Kleinschmidt (kris.kleinschmidt@noaa.gov) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT:

Marlene A. Bellman, Staff Officer, Pacific Council; telephone: (503) 820–2414, email: marlene.bellman@noaa.gov.

SUPPLEMENTARY INFORMATION: The purpose of the groundfish methodology review meeting is aimed at evaluating FT–NIRS to provide a reliable alternative to traditional ageing. Proponents plan to explore and document the variability in estimated relationships between traditional age reads and spectral data across major categorical dimensions. In addition, the review may evaluate the effect that replacing large blocks of traditional ages in assessments with FT–NIRS ages has on important assessment metrics. Evaluation of the benefits of including additional variables and the costs/implications for use of the age data in estimating other relationships, such as growth, will be explored, as time permits. This review is planned in preparation for the 2025 groundfish stock assessment cycle. The results of

this review are not considered final until reviewed by the full SSC at a future Council meeting.

No management actions will be decided by the meeting participants. The participants' role will be development of recommendations and reports for consideration by the SSC and the Pacific Council at a future Council meeting.

Although nonemergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent of the workshop participants to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (kris.kleinschmidt@noaa.gov; (503) 820-2412) at least 10 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 9, 2024.

Key Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024-20708 Filed 9-11-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE263]

Endangered Species; File No. 23096

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application for a permit modification.

SUMMARY: Notice is hereby given that the University of Georgia, Warnell School of Forestry and Natural Resources, 180 E Green Street, Athens, GA 30602 (Nate Nibbelink, Ph.D., Responsible Party) has requested a modification to scientific research Permit No. 23096-01.

DATES: Written comments must be received on or before October 15, 2024.

ADDRESSES: The modification request and related documents are available for

review by selecting "Records Open for Public Comment" from the Features box on the Applications and Permits for Protected Species (APPS) home page, <https://apps.nmfs.noaa.gov>, and then selecting File No. 23096 mod #10 from the list of available applications. These documents are also available upon written request via email to NMFS.Pr1Comments@noaa.gov.

Written comments on this application should be submitted via email to NMFS.Pr1Comments@noaa.gov. Please include File No. 23096 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to NMFS.Pr1Comments@noaa.gov. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Malcolm Mohead or Erin Markin, Ph.D., (301) 427-8401.

SUPPLEMENTARY INFORMATION: The subject modification to Permit No. 23096-01, issued on November 20, 2023 (88 FR 85880, December 11, 2023), is requested under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222-226).

Permit No. 23096-01 authorizes the permit holder to: quantify population dynamics and seasonal habitat of Atlantic and shortnose sturgeon in Georgia and Florida river systems and estuaries [*i.e.*, Savannah (GA), Altamaha (GA), Ogeechee (GA), Satilla (GA), St. Marys (GA, FL), Nassau (FL) and St. Johns River systems (FL)]. Researchers may capture (by gillnet or trammel net), tag (passive integrated transponder, internal acoustic, and dart), anesthetize, genetic fin clip, fin ray clip, measure, weigh, photograph/video, blood sample, mucus sample, and laparoscopically biopsy gonads of juvenile, sub-adult, and adult Atlantic and shortnose sturgeon. Early life stages of each species may be lethally sampled to document occurrence of spawning in systems. Up to two sturgeon of each species may unintentionally die annually in each river system during sampling activities, excluding the Satilla, St Marys, and St. Johns Rivers. The permit holder now requests authorization to: (1) increase the number of juvenile Atlantic sturgeon from 10 to 20 in the Ogeechee River that may be captured by trammel net, anesthetized, internally acoustically tagged, measured, weighed, PIT tagged, Floy tagged, tissue (genetic) sampled,

and photographed annually prior to release; (2) increase the number of juvenile Atlantic sturgeon from 80 to 160 in the Ogeechee River that may be captured by trammel net, measured, weighed, PIT tagged, Floy tagged, tissue (genetic sampled), and photographed annually prior to release. A sub-set of 80 of these fish may also have the leading and secondary fin rays, scute tips and epidermal mucus sampled. The permit expires January 31, 2030.

Dated: September 9, 2024.

Amy C. Sloan,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024-20747 Filed 9-11-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE264]

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Executive Committee via webinar to discuss the Council budget and workplan.

DATES: The meeting will be held on Monday, September 30, 2024, from 10 a.m. until 12 p.m.

ADDRESSES: The meeting will be held via webinar. Webinar registration is required. Details are included in the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 302-8440 or toll free: (866) SAFMC-10; fax: (843) 769-4520; email: kim.iverson@safmc.net.

SUPPLEMENTARY INFORMATION: Meeting information, including the webinar registration link, online public comment form, agenda, and briefing book materials will be posted on the Council's website at: <https://safmc.net/council-meetings/>. Comments become part of the Administrative Record of the meeting and will automatically be posted to the website and available for Council consideration.

At this meeting, the Council's Executive Committee will review the 2024 Council budget status, planned activities for 2024, and the draft 2025

operating budget. The Committee will also review planned activities for 2025–2028 addressed in the next administrative grant package. The meeting will include a closed session to discuss personnel and contract topics.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 9, 2024.

Key Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024–20707 Filed 9–11–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE244]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council will hold a workshop to create a focused discussion on how aspects of alternative 5 from the Atlantic Surfclam and Ocean Quahog Species Separation Requirements Amendment would be implemented by the Council and NOAA Fisheries.

DATES: The meeting will be held from 1 p.m. Wednesday, October 2, 2024 through 3 p.m. Thursday, October 3, 2024. For agenda details, see

SUPPLEMENTARY INFORMATION.

ADDRESSES: The meeting will be held at the Philadelphia Marriott Downtown,

1201 Market Street, Philadelphia, PA 19107; telephone: (215) 625–6763. The meeting will be partially streamed by webinar for portions of the agenda that are held in plenary. Connection information will be posted to the calendar prior to the meeting at www.mafmc.org.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331 or on their website at www.mafmc.org.

FOR FURTHER INFORMATION CONTACT:

Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Mid-Atlantic Fishery Management Council will hold a workshop from 1 p.m. Wednesday, October 2 through 3 p.m. Thursday, October 3, 2024, to create a focused discussion on how aspects of alternative 5 from the Atlantic Surfclam and Ocean Quahog Species Separation Requirements Amendment would be implemented by the Council and NOAA Fisheries. Alternative 5 is one of 6 alternatives in the Amendment under consideration by the Council to address the issues of mixed catches occurring in the Atlantic surfclam and ocean quahog individual transferable quota fisheries. Meeting materials will be posted to www.mafmc.org.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shelley Spedden at the Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 9, 2024.

Key Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024–20706 Filed 9–11–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XV202]

Space Weather Advisory Group Meeting

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Space Weather Advisory Group (SWAG) will meet for one and a half days on September 25–26, 2024.

DATES: The meeting is scheduled as follows: September 25, 2024, from 1 p.m. to 5 p.m. Eastern Daylight Time (EDT) and September 26, 2024, from 9 a.m. to 5 p.m. EDT.

ADDRESSES: The public meeting will be a hybrid event with the SWAG and invited guests convening “in person” at the Eisenhower Executive Office Building, 1650 17th Street NW, Washington, DC, and any public participants attending virtually via Webinar. For details on how to register for the webinar, please visit <https://www.weather.gov/swag>. To submit written public comments, email: amy.macpherson@noaa.gov by September 20, 2024.

FOR FURTHER INFORMATION CONTACT:

Amy Macpherson, National Weather Service, NOAA, 7220 NW 101st Terrace, Kansas City, MO 64153; 816–287–1344 or amy.macpherson@noaa.gov; or visit the SWAG website: <https://www.weather.gov/swag>.

SUPPLEMENTARY INFORMATION: Pursuant to the Promoting Research and Observations of Space Weather to Improve the Forecasting of Tomorrow (PROSWIFT) Act, 51 U.S.C. 60601 *et seq.*, the Administrator of NOAA and the National Science and Technology Council's Space Weather Operations, Research, and Mitigation (SWORM) Subcommittee established the Space Weather Advisory Group (SWAG) on April 21, 2021. The SWAG is the only Federal Advisory SWAG that advises and informs the interest and work of the SWORM. The SWAG is to receive advice from the academic community, the commercial space weather sector, and nongovernmental space weather end users to carry out the responsibilities of the SWAG set forth in the PROSWIFT Act, 51 U.S.C. 60601 *et seq.*

The SWAG is directed to advise the SWORM on the following: facilitating advances in the space weather enterprise of the United States; improving the ability of the United States to prepare for, mitigate, respond to, and recover from space weather phenomena; enabling the coordination and facilitation of research to operations and operations to research, as described in section 60604(d) of title 51, United States Code; and developing and implementing the integrated strategy under 51 U.S.C. 60601(c), including subsequent updates and reevaluations. The SWAG shall also conduct a comprehensive survey of the needs of users of space weather products to

identify the space weather research, observations, forecasting, prediction, and modeling advances required to improve space weather products, as required by 51 U.S.C. 60601(d)(3).

Matters To Be Considered

The meeting will be open to the public. During the meeting, the SWAG will discuss the PROSWIFT Act, 51 U.S.C. 60601 *et seq.*, directed duties of the SWAG including the required 51 U.S.C. 60601(d)(3) user survey. The second day of the meeting will include the roll-out of the first SWAG user-needs survey report. The full agenda will be published on the SWAG website: <https://www.weather.gov/swag>.

Additional Information and Public Comments

The meeting will be held over one and a half days and will be conducted in a hybrid manner (for meeting details see **ADDRESSES**). Please register for the meeting through the website: <https://www.weather.gov/swag>.

This event is accessible to individuals with disabilities. For all other special accommodation requests, please contact amy.macpherson@noaa.gov.

This webinar is a SWAG public meeting and will be recorded and transcribed. Public comments directed to the SWAG members and SWAG related topics are encouraged. If you have a public comment, you acknowledge you will be recorded and are aware you can opt out of the meeting. Participation in the meeting constitutes consent to the recording. Both the meeting minutes and presentations will be posted to the SWAG website (<https://www.weather.gov/swag>). The agenda, speakers and times are subject to change. For updates, please check the SWAG website (<https://www.weather.gov/swag>).

For other written public comments, please email amy.macpherson@noaa.gov by September 20, 2024. Written comments received after this date will be distributed to the SWAG but may not be reviewed prior to the meeting date. As time allows, public comments will be read into the public record during the meeting, or posted to the meeting website.

Dated: September 6, 2024.

AJ Reiss,

Director, Ocean Prediction Center, National Weather Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2024-20626 Filed 9-11-24; 8:45 am]

BILLING CODE 3510-KE-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE224]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public online meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Ad-Hoc Klamath River Fall Chinook Workgroup will hold an online meeting.

DATES: The online meeting will be held Tuesday, October 1, 2024, from 9 a.m. until 3 p.m. Pacific time, or until business for the day concludes.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join and system requirements will be provided in the meeting announcement on the Pacific Council's website (see www.pcouncil.org). You may send an email to Mr. Kris Kleinschmidt (kris.kleinschmidt@noaa.gov) or contact him at (503) 820-2280, extension 412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384.

FOR FURTHER INFORMATION CONTACT: Angela Forristall, Staff Officer, Pacific Council; telephone: (503) 820-2419.

SUPPLEMENTARY INFORMATION: The primary purpose of the meeting, is to discuss and further develop interim management measures, or a management framework, intended to address the response of Klamath River fall Chinook to the dynamic nature of the Klamath River environment and the available habitat immediately following dam removal, and post-dam removal until the natural environment is stabilized and the salmon population is more predictable. Additional discussions may include, but are not limited to, future meetings, workload planning, and upcoming items on the upcoming Pacific Council meeting agenda.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section

305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (kris.kleinschmidt@noaa.gov; (503) 820-2412) at least 10 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 9, 2024.

Key Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024-20704 Filed 9-11-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Public Meeting of the National Sea Grant Advisory Board

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Sea Grant Advisory Board (Board), a Federal Advisory Committee. Board members will discuss and provide advice on the National Sea Grant College Program (Sea Grant) in the areas of program evaluation, strategic planning, education and extension, science and technology programs, and other matters as described in the agenda found on the Sea Grant website. For more information on this Federal Advisory Committee please visit the Federal Advisory Committee database: <https://www.facadatabase.gov/FACA/FACAPublicPage>.

DATES: The announced meeting is scheduled for Monday October 28, 2024 from 3 p.m.-5 p.m. (EST).

ADDRESSES: The meeting will be held virtually only. For more information and for virtual access see below in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: For any questions concerning the meeting, please contact Ms. Donna Brown, National Sea Grant College Program. Email: oar.sg-feedback@noaa.gov,

Phone Number 301-734-1088. To attend via webinar, please R.S.V.P. to Donna Brown (contact information above) by Friday, October 25, 2024.

SUPPLEMENTARY INFORMATION: Status:

The meeting will be open to public participation with a public comment period on Monday, October 28 at 3:15 p.m. The Board expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of three (3) minutes. Written comments should be received by Ms. Donna Brown by Monday, October 21, 2024 to provide sufficient time for Board review. Written comments received after the deadline will be distributed to the Board, but may not be reviewed prior to the meeting date.

Special Accommodations: The Board meeting is virtually accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Donna Brown by Monday, October 21, 2024.

The Board, which consists of a balanced representation from academia, industry, state government and citizens groups, was established in 1976 by section 209 of the Sea Grant Improvement Act (Pub. L. 94-461, 33 U.S.C. 1128). The Board advises the Secretary of Commerce and the Director of the National Sea Grant College Program with respect to operations under the Act, and such other matters as the Secretary refers to them for review and advice.

Matters To Be Considered: Board members will discuss and vote on membership for the Mission Support Committee as well as approve and accept the "State of Sea Grant" Biennial Report to Congress. <https://seagrants.noaa.gov/About/Advisory-Board>.

David Holst,

Chief Financial Officer/Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2024-20693 Filed 9-11-24; 8:45 am]

BILLING CODE 3510-KA-P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 240906-0233]

RIN 0660-XC063

Request for Comment on Local Estimates of Internet Adoption

AGENCY: National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce.

ACTION: Notice, request for public comments.

SUMMARY: The National Telecommunications and Information Administration (NTIA) is seeking comments and recommendations regarding the project entitled, "Local Estimates of Internet Adoption" (Project LEIA). Project LEIA is a new joint project of NTIA and the United States Census Bureau (Census Bureau) to develop model-based estimates of internet adoption for smaller populations than would typically be possible using survey data alone. We request input about potential uses of these estimates. We are also seeking suggestions for potential future improvements to the initial experimental model, as well as what additional sub-state geographies, small populations, indicators, or methods should be considered as future directions for Project LEIA.

DATES: Interested persons are invited to submit comments on or before October 15, 2024.

ADDRESSES: All electronic public comments on this action, identified by *Regulations.gov* docket number NTIA-2024-0003, may be submitted through the Federal e-Rulemaking Portal at www.regulations.gov. Click the "Comment Now!" icon, complete the required fields, and enter or attach your comments. Please do not include information of a confidential nature, such as sensitive personal information or proprietary information, in your comments. All comments received are a part of the public record and will generally be posted to www.regulations.gov without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Information obtained as a result of this notice may be used by the Federal Government for program planning on a non-attribution basis.

FOR FURTHER INFORMATION CONTACT: Please direct questions regarding this

Request for Comment to Rafi Goldberg, Senior Policy Advisor, Digital Equity, NTIA, 1401 Constitution Avenue NW, Suite 4725, Washington, DC 20230, at (202) 482-4375 or rgoldberg@ntia.gov. Please direct media inquiries to NTIA's Office of Public Affairs, at (202) 482-7002 or press@ntia.gov.

SUPPLEMENTARY INFORMATION: For thirty years, NTIA and the Census Bureau have partnered to produce valuable data on computer and internet use in the United States. These data enable policymakers, researchers, and advocates to better understand challenges to achieving digital equity and other internet policy issues. The most enduring example of this is the NTIA internet Use Survey, which is administered as a supplement to the Census Bureau's Current Population Survey. The most recent edition of this survey was fielded in November 2023.¹ Since 1994, the survey has served as the premier Federal data source for in-depth information on who uses the internet, what technologies they use, and what challenges still prevent far too many Americans from fully realizing the benefits of modern information technologies. The relationship between NTIA and the Census Bureau has also expanded over time, facilitating the creation of additional data products that further improve the state of knowledge on internet use. In 2008, the Broadband Data Improvement Act directed the Census Bureau to add questions to the American Community Survey (ACS) about household computer use and internet subscribership.² NTIA and the Federal Communications Commission (FCC) staff worked with our Census Bureau counterparts on implementation of these questions. More recently, NTIA collaborated with Census Bureau teams to create estimates of the Covered Populations, as defined by the Digital Equity Act.³ We also collaborated to launch the ACCESS BROADBAND Dashboard, which visualizes internet adoption across the United States.⁴

While these data products have enabled a great deal of important research and policy analysis, some significant gaps remain in our

¹ See, e.g., NTIA, "New NTIA Data Show 13 Million More Internet Users in the U.S. in 2023 than 2021," June 6, 2024, available at <https://www.ntia.gov/blog/2024/new-ntia-data-show-13-million-more-internet-users-us-2023-2021>.

² 47 U.S.C. 1303(d).

³ U.S. Census Bureau, Digital Equity Act of 2021, available at <https://www.census.gov/programs-surveys/community-resilience-estimates/partnerships/ntia/digital-equity.html>.

⁴ U.S. Census Bureau, ACCESS BROADBAND Act of 2021, available at <https://www.census.gov/programs-surveys/community-resilience-estimates/partnerships/ntia/broadband-act.html>.

understanding of internet use. Notably, we have limited ability to reliably estimate variables like internet adoption for individual counties or other smaller geographies and populations. Data from the NTIA internet Use Survey can be used to estimate internet use at the national and state levels and for a range of demographic groups. However, it cannot provide estimates for counties, census tracts, or other small areas. The ACS comes closer to fulfilling this task—at least for the indicators enabled by the three computer and internet use questions it contains—but can only shed light on less populous areas by aggregating five consecutive years' worth of survey responses.⁵ While invaluable for many purposes, a five-year time scale is not ideal for tasks like conducting yearly program evaluation or studying the impacts of relatively sudden changes.

Last year, NTIA and the Census Bureau began an experimental project to study the feasibility of—and ultimately to produce—estimates of internet adoption for small, sub-state areas during a single year to address this knowledge gap and better serve the policymaking process. Using techniques that have been successfully employed in other data products,⁶ Census Bureau experts are combining existing data from key household surveys with auxiliary data that are known to correlate with internet adoption rates. By using a predictive model, the Census Bureau team can produce estimates for less populous geographies or groups that have both smaller margins of error than equivalent estimates based on survey data alone and reduced risk that such estimates can be used to identify individual respondents. Those two features of small area modeling make it possible to publish more granular estimates than would otherwise be permissible or recommended for estimates generated entirely from survey data.

For this first phase of Project LEIA, the Census Bureau team produced an experimental model to estimate the proportion of households in each U.S. county that subscribed to wired internet service in 2022.⁷ To accomplish this,

Census used the direct survey estimates for wired internet adoption from the 2022 ACS in combination with several variables related to subscribership levels, including each county's median household income, educational attainment level, and availability of fixed broadband services offering at least 100 Mbps download and 20 Mbps upload speeds. A complete feasibility report detailing the methodology used in this model, as well as the experimental estimates themselves and related materials, is available at <https://www.census.gov/data/experimental-data-products/local-estimates-of-internet-adoption.html>.

As we prepare to continue this important collaboration with the Census Bureau, NTIA invites all suggestions for improvements to the initial experimental model. We also welcome suggestions about how to prioritize future expansion of Project LEIA's scope. The following questions serve as a non-exhaustive guide to some of the issues commenters may wish to address:

1. Should NTIA be aware of any potential applications where Project LEIA could make a particularly substantial contribution to policy research or development? Would any future work on Project LEIA help improve or expand these contributions?

2. In the feasibility report,⁸ the Census Bureau describes the methodology it used in the experimental model and lists a number of potential predictor variables it tested before selecting the ones used in these initial estimates. Are there additional variables or data sources that should be considered to improve the model's predictive power? Should we consider any methodological refinements or modifications to this model to improve its performance?

3. While the current experimental model only produces estimates at the county level, the same principles can potentially be applied for other small geographies and populations. During the next phase of Project LEIA, NTIA and the Census Bureau intend to experiment with creating census tract-level

estimates. Are there other small geographies or populations for which model-based estimates of internet adoption might be beneficial? What relevant data sources at that level could be considered to help generate these estimates?

4. In this first phase, we decided to analyze the percentage of households subscribed to wired internet services. We did this because (a) the variable is useful for policymaking and (b) sufficient data were available to accurately fit a model. However, this is not the only metric that possibly could be modeled through future work. In addition to considering other variables from the ACS questions on computer and internet use, we are also interested in applying small area modeling to more detailed questions from the NTIA internet Use Survey. What metrics from either survey could we prioritize for future work under Project LEIA?

5. Is there anything else NTIA should take into consideration when contemplating the further development of Project LEIA?

Stephanie Weiner,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2024–20645 Filed 9–11–24; 8:45 am]

BILLING CODE 3510–60–P

COMMISSION OF FINE ARTS

Notice of Meeting

Per 45 CFR chapter XXI 2102.3, the next meeting of the U.S. Commission of Fine Arts is scheduled for September 19, 2024, at 9:00 a.m. and will be held via online videoconference. Items of discussion may include buildings, infrastructure, parks, memorials, and public art.

Draft agendas, the link to register for the online public meeting, and additional information regarding the Commission are available on our website: www.cfa.gov. Inquiries regarding the agenda, as well as any public testimony, should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address; by emailing cfastaff@cfa.gov; or by calling 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated: September 6, 2024 in Washington, DC.

Zakiya N. Walters,
Administrative Officer.

[FR Doc. 2024–20627 Filed 9–11–24; 8:45 am]

BILLING CODE 6330–01–P

⁵ See ACS “Areas Published,” available at <https://www.census.gov/programs-surveys/acs/geography-acs/areas-published.html>.

⁶ See, e.g., U.S. Census Bureau, Small Area Income and Poverty Estimates (SAIPE) Program, available at <https://www.census.gov/programs-surveys/saipe.html>.

⁷ Specifically, the metric being modeled is households reporting a subscription to “broadband (high speed) internet service such as cable, fiber optic, or DSL service installed in this household.” While dial-up internet service—which by definition is also a “wired” internet service—is not included

here (and falls under a different answer choice in the relevant ACS question), it was an extremely uncommon type of internet service by 2022. According to the 2022 ACS, approximately 0.1 percent of households used only a dial-up internet service. See 2022 American Community Survey questionnaire at 9, available at <https://www2.census.gov/programs-surveys/acs/methodology/questionnaires/2022/quest22.pdf>; Census Bureau Table S2801, available at <https://data.census.gov/table/ACSST1Y2022.S2801>.

⁸ U.S. Census Bureau, Local Estimates of internet Adoption: Feasibility Report, available at <https://www.census.gov/data/experimental-data-products/local-estimates-of-internet-adoption.html>.

DEPARTMENT OF DEFENSE**Department of the Air Force****[Docket ID: USAF-2024-HQ-0008]****Proposed Collection; Comment Request****AGENCY:** Department of the Air Force, Department of Defense (DoD).**ACTION:** 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the Department of the Air Force, DoD announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 12, 2024.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, 4800 Mark Center Drive, Mailbox #24, Suite 05F16, Alexandria, VA 22350-1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to RAF Mildenhall Integrated Resilience Office, Unit 4890

Box 210 APO AE 09459-500, Charity Rose, 314-238-2163.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: RAF Mildenhall Stress Survey; OMB Control Number 0701-RAFM.

Needs and Uses: In order to better understand the stressors to the RAF Mildenhall community, a survey that helps identify potential stressors is being developed. The survey will be accessible to Service Members, Civilians, Local National Direct Hires, and Spouses. The results will be used internally to improve current community programs, help develop new community programs, and/or help focus resources to areas of greater need.

Affected Public: Individuals or households (Service Members, Civilians, Local National Direct Hires, Spouses).

Annual Burden Hours: 84.
Number of Respondents: 1,013.
Responses per Respondent: 1.
Annual Responses: 1,013.
Average Burden per Response: 5 minutes.

Frequency: Annually.

Dated: September 4, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024-20648 Filed 9-11-24; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE**Office of the Secretary****[Docket ID: DoD-2024-OS-0019]****Submission for OMB Review; Comment Request**

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD (P&R)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by October 15, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open

for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Reginald Lucas, (571) 372-7574, whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: National Security Education Program (Service Agreement Report for Scholarship and Fellowship Awards); DD Form 2752, DD Form 2753; OMB Control Number: 0704-0368.

Type of Request: Revision.

Number of Respondents: 1,650.

Responses per Respondent: 1.

Annual Responses: 1,650.

Average Burden per Response: 10 minutes.

Annual Burden Hours: 275 hours.

Needs and Uses: The David L. Boren National Security Education Act (NSEA), Title VIII of Public Law 102-183, sec. 802(b), as amended, directs the Secretary of Defense to carry out a program to award undergraduate scholarships and graduate fellowships, as well as grants to U.S. institutions of higher education. Accordingly, the National Security Education Program (NSEP) was established. Both DD Form 2752, "National Security Education Program (NSEP) Service Agreement for Scholarship and Fellowship Awards," and the DD Form 2753, "National Security Education Program (NSEP) Service Agreement Report (SAR) for Scholarship and Fellowship Awards," are designed to appropriately collect information on the NSEP award recipients. This information will be used by the NSEP Office, or designated administrative agents, as verification that applicable scholarship and fellowship recipients are fulfilling service obligations mandated by the NSEA.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov>.

www.regulations.gov as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Reginald Lucas.

Requests for copies of the information collection proposal should be sent to Mr. Lucas at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil*.

Dated: September 4, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–20656 Filed 9–11–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 23–06]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Pamela Young at (703) 953–6092, *pamela.a.young14.civ@mail.mil*, or

dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 23–06, Policy Justification, and Sensitivity of Technology.

Dated: September 9, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001–FR–P

**DEFENSE SECURITY COOPERATION AGENCY**

2800 Defense Pentagon
Washington, DC 20301-2800

March 14, 2023

The Honorable Kevin McCarthy
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 23-06, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Romania for defense articles and services estimated to cost \$104 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

A handwritten signature in dark ink, appearing to read "James A. Hursch", is written over a horizontal line.

James A. Hursch
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 23–06

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser*: Government of Romania

(ii) *Total Estimated Value*:

Major Defense Equipment *	\$47.0 million
Other	\$57.0 million
TOTAL	\$104.0 million

Funding Source: National Funds

(iii) *Description and Quantity or Quantities of Articles or Services Under Consideration for Purchase*: Foreign Military Sales (FMS) case RO–B–UFL, was below congressional notification threshold at \$43.73 million (\$11.41 million in MDE) and included thirty-four (34) Heavy Gun Carriers Joint Light Tactical Vehicles (JLTVs). The Government of Romania has requested the case be amended to include an additional ninety-five (95) Heavy Gun Carriers JLTVs. This amendment will push the current case above the MDE and total case value notification thresholds and thus requires notification of the entire case.

Major Defense Equipment (MDE):

One hundred twenty-nine (129)

M1278A1 Heavy Gun Carriers Joint Light Tactical Vehicles (JLTVs)

Non-MDE:

Also included are VRC–104 radio kits; VRC–114 radio kits; baseline integration kits; basic issue items; Defense Advanced GPS Receivers (DAGRs); DAGR integration kits; network switch ports; exportable power kits; silent watch energy storages; power expansion kits; RF7800i intercom kits; combat bumper kits; winch kits; flat tow kits; run flat kits; spare tire kits; commander supply display units; improved turret drive systems; M1114 turret ring hatches; 2-year contractor spare parts package; technical assistance; total package fielding; technical publications/manuals; and other related elements of logistics and program support.

(iv) *Military Department*: Army (RO–B–UFL)

(v) *Prior Related Cases, if any*: None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid*: None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold*: See Attached Annex

(viii) *Date Report Delivered to Congress*: March 14, 2023

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Romania—M1278A1 Heavy Gun Carriers Joint Light Tactical Vehicles (JLTVs)

The Government of Romania has requested to buy an additional ninety-five (95) Heavy Gun Carriers Joint Light Tactical Vehicles (JLTVs). This amendment will push the current case above the MDE and total case value notification thresholds and thus requires notification of the entire case. The original FMS case, valued at \$43.73 million, included thirty-four (34) Heavy Gun Carriers JLTVs. Therefore, this notification is for a total of one hundred twenty-nine (129) M1278A1 Heavy Gun Carriers Joint Light Tactical Vehicles. Also included are VRC–104 radio kits; VRC–114 radio kits; baseline integration kits; basic issue items; Defense Advanced GPS Receivers (DAGRs); DAGR integration kits; network switch ports; exportable power kits; silent watch energy storages; power expansion kits; RF7800i intercom kits; combat bumper kits; winch kits; flat tow kits; run flat kits; spare tire kits; commander supply display units; improved turret drive systems; M1114 turret ring hatches; 2-year contractor spare parts package; technical assistance; total package fielding; technical publications/manuals; and other related elements of logistics and program support. The total estimated cost is \$104.0 million.

This proposed sale will support the foreign policy goals and national security objectives of the United States by improving the security of a NATO Ally that is a force for political stability and economic progress in Europe.

The proposed sale will improve Romania's capability to meet current and future threats by providing a credible force that is capable of deterring adversaries and enhance its participation in NATO operations. Romania will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be Oshkosh Corporation, Oshkosh, WI, and Oshkosh Defense, LLC, Oshkosh, WI. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this sale will not require the assignment of any U.S. Government or contractor representatives to Romania.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 23–06

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology*:

1. The Joint Light Tactical Vehicle (JLTV) program is a light tactical vehicle designed to replace the U.S. Military's aging High Mobility Multipurpose Wheeled Vehicle fleet. It was designed to close the existing gap in payload, performance, and protection to our adversaries during multi-domain operations. It has been an operationally optimal choice for the light tactical vehicle mission spectrum anywhere in the world. All JLTV mission variants include a strong balance of protection, maneuverability, speed, reliability, and combat support/combat service support capability that far surpasses any similar vehicle developed in its weight class today.

2. The JLTV is designed to be a system of systems. System of systems is a "set or arrangement of systems that results when independent and useful systems are integrated into a larger system that delivers unique capabilities. The Joint Light Tactical Vehicle allows material and equipment from authorized contractors or industrial facilities used by U.S. forces in tactical operations and managed by other Program Offices.

3. The JLTV has inherent armor built into the base vehicle. It is what the US Government (USG) calls A-Kit armor. This A-Kit Inherent armor provides both opaque and transparent armor solutions to provide a 360-degree azimuthal (*i.e.*, all around) to include an elevated fire level of protection from a spectrum of kinetic energy/small arms fire threats with survivability enhancements to include Automatic Fire Extinguishing Protection (AFES) and structural rollover protection of 150% of the vehicle Ground Vehicle Weight Rating (GVWR).

4. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

5. If a technologically advanced adversary were to obtain knowledge of the hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce system effectiveness or be used in the development of a system with similar or advanced capabilities.

6. A determination has been made that the Government of Romania can provide substantially the same degree of

protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

7. All defense articles and services listed in this transmittal are authorized for release and export to the Government of Romania.

[FR Doc. 2024-20731 Filed 9-11-24; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 23-11]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Pamela Young at (703) 953-6092, pamela.a.young14.civ@mail.mil, or

dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

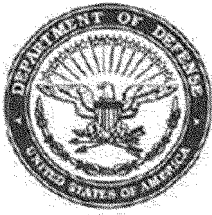
SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 23-11, Policy Justification, and Sensitivity of Technology.

Dated: September 9, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001-FR-P



DEFENSE SECURITY COOPERATION AGENCY
 2800 Defense Pentagon
 Washington, DC 20301-2800

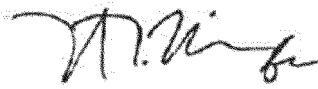
March 7, 2023

The Honorable Kevin McCarthy
 Speaker of the House
 U.S. House of Representatives
 H-209, The Capitol
 Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 23-11, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Australia for defense articles and services estimated to cost \$60.18 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,


 James A. Hursch
 Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 6001-FR-C

Transmittal No. 23-11

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Australia

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$60.00 million
Other	\$.18 million
TOTAL	\$60.18 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):
 Up to two hundred fifty-five (255)
 Javelin FGM-148F Missiles
 (includes five (5) Fly-to-Buy Missiles)

Non-MDE:

Also included is U.S. technical assistance, consisting of Tactical Air Ground Missiles (TAGM) Project Office technical assistance and other related elements of logistical and program support.

(iv) *Military Department:* Army (AT-B-UMX)

(v) *Prior Related Cases, if any:* (AT-B-ULI)

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None known at this time

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* March 7, 2023

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION*Australia—Javelin FGM-148F Missiles*

The Government of Australia has requested to buy up to two hundred fifty-five (255) Javelin FGM-148F missiles (includes five (5) fly-to-buy missiles). Also included is U.S. technical assistance, consisting of Tactical Air Ground Missiles (TAGM) Project Office technical assistance and other related elements of logistical and program support. The estimated total cost is \$60.18 million.

This proposed sale will support the foreign policy and national security objectives of the United States. Australia is one of our most important allies in the Western Pacific. The strategic location of this political and economic power contributes significantly to ensuring peace and economic stability in the region. It is vital to the U.S. national interest to assist our ally in developing and maintaining a strong and ready self-defense capability.

The proposed sale will improve the Australian Army's capability to meet current and future threats by maintaining and increasing its anti-armor capability. Australia will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime U.S. contractor will be the Javelin Joint Venture between Lockheed Martin in Orlando, FL and Raytheon Missiles and Defense in Tucson, AZ. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any U.S. Government or contractor representatives to Australia.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 23-11

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) Sensitivity of Technology:

1. The Javelin Weapon System is a medium-range, man portable, shoulder-launched, fire and forget, anti-tank system for infantry, scouts, and combat engineers. It may also be mounted on a variety of platforms including vehicles, aircraft, and watercraft. The system weighs 49.5 pounds and has a maximum range in excess of 2,500 meters. They system is highly lethal

against tanks and other systems with conventional and reactive armors. The system possesses a secondary capability against bunkers.

2. Javelin's key technical feature is the use of fire-and-forget technology which allows the gunner to fire and immediately relocate or take cover. Additional special features are the top attack and/or direct fire modes, an advanced tandem warhead and imaging infrared seeker, target lock-on before launch, and soft launch from enclosures or covered fighting positions. The Javelin missile also has a minimum smoke motor thus decreasing its detection on the battlefield.

3. The Javelin Weapon System is comprised of two major tactical components, which are a reusable Light Weight Command Launch Unit (LWCLU) and a round contained in a disposable launch tube assembly. The LWCLU has been identified as Major Defense Equipment (MDE). The LWCLU may also be used in a stand-alone mode for battlefield surveillance and target detection. The LWCLU's thermal sight is a 3rd generation Forward Looking Infrared (FLIR) sensor.

4. The missile is autonomously guided to the target using an imaging infrared seeker and adaptive correlation tracking algorithms. This allows the gunner to take cover or reload and engage another target after firing a missile. The missile has an advanced tandem warhead and can be used in either the top attack or direct fire modes (for target undercover). An onboard flight computer guides the missile to the selected target.

5. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

6. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

7. A determination has been made that Australia can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

8. All defense articles and services listed in this transmittal have been authorized for release and export to Australia.

[FR Doc. 2024-20740 Filed 9-11-24; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Docket ID FEMA-2024-0002; Internal Agency Docket No. FEMA-B-2456]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before December 11, 2024.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location <https://hazards.fema.gov/femaportal/prelimdownload> and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

You may submit comments, identified by Docket No. FEMA-B-2456, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacbibit@fema.dhs.gov.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and

Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacibit@fema.dhs.gov; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are

used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information

regarding the SRP process can be found online at https://www.floodsrp.org/pdfs/srp_overview.pdf.

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location <https://hazards.fema.gov/femaportal/prelimdownload> and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Nicholas A. Shufro,

Assistant Administrator (Acting) for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Richland County, Illinois and Incorporated Areas Project: 20-05-0022S Preliminary Date: October 18, 2023	
City of Olney	City Hall, 300 South Whittle Avenue, Olney, IL 62450.
Unincorporated Areas of Richland County	Richland County Courthouse, 103 West Main Street, Olney, IL 62450.
Village of Claremont	Claremont Fire Station, 110 East North Street, Claremont, IL 62421.
Village of Parkersburg	Village Hall, 103 East Parker Street, Parkersburg, IL 62452.
Isle of Wight County, Virginia and Incorporated Areas Project: 20-03-0037S Preliminary Date: January 15, 2024	
Town of Smithfield	Town Hall, 310 Institute Street, Smithfield, VA 23430.
Town of Windsor	Municipal Building, 8 East Windsor Boulevard, Windsor, VA 23487.
Unincorporated Areas of Isle of Wight County	Isle of Wight County Community Development Building, 17090 Monument Circle, Isle of Wight, VA 23397.

[FR Doc. 2024-20659 Filed 9-11-24; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 23-02]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Pamela Young at (703) 953-6092, pamela.a.young14.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is

published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 23-02, Policy Justification, and Sensitivity of Technology.

Dated: September 9, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001-FR-P

**DEFENSE SECURITY COOPERATION AGENCY**

2800 Defense Pentagon
Washington, DC 20301-2800

March 16, 2023

The Honorable Kevin McCarthy
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 23-02, concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Australia for defense articles and services estimated to cost \$895 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Hursch", is positioned above the printed name of the Director.

James A. Hursch
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 23–02

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser*: Government of Australia

(ii) *Total Estimated Value*:

Major Defense Equipment *	\$526 million
Other	\$369 million

TOTAL	\$895 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase*:

Major Defense Equipment (MDE):

Up to two hundred (200) Tomahawk Block V All Up Rounds (AUR) (RGM–109E)

Up to twenty (20) Tomahawk Block IV All Up Rounds (AUR) (RGM–109E)

Non-MDE:

Also included is support for all three segments of Australia's Tomahawk Weapon System (TWS) to include the All-Up Round (AUR), the Tactical Tomahawk Weapon Control System (TTWCS) and the Theater Mission Planning Center (TMPC). The support consists of unscheduled missile maintenance; spares; procurement; training; in-service support; software; hardware; communication equipment; operational flight test; engineering and technical expertise to maintain the TWS capability; and other related elements of logistical and program support.

(iv) *Military Department*: Navy (AT–P–LGJ)

(v) *Prior Related Cases, if any*: None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid*: None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold*: See Attached Annex

(viii) *Date Report Delivered to Congress*: March 16, 2023

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Australia—Tomahawk Weapon System

The Government of Australia has requested to buy up to two hundred (200) Tomahawk Block V All Up Rounds (AUR) (RGM–109E); and up to twenty (20) Tomahawk Block IV All Up Rounds (AUR) (RGM–109E). Also included is support for all three segments of Australia's Tomahawk Weapon System (TWS) to include the All-Up Round (AUR), the Tactical Tomahawk Weapon Control System (TTWCS) and the Theater Mission Planning Center (TMPC). The support

consists of unscheduled missile maintenance; spares; procurement; training; in-service support; software; hardware; communication equipment; operational flight test; engineering and technical expertise to maintain the TWS capability; and other related elements of logistical and program support. The estimated total cost is \$895 million.

This proposed sale will support the foreign policy and national security objectives of the United States. Australia is one of our most important allies in the Western Pacific. The strategic location of this political and economic power contributes significantly to ensuring peace and economic stability in the region. It is vital to the U.S. national interest to assist our ally in developing and maintaining a strong and ready self-defense capability.

The proposed sale will improve Australia's capability to interoperate with U.S. maritime forces and other allied forces as well as its ability to contribute to missions of mutual interest. By deploying the Tomahawk Weapon System, Australia will contribute to global readiness and enhance the capability of U.S. Forces operating alongside them globally. Australia will use the enhanced capability as a deterrent to regional threats and to strengthen its homeland defense. Australia will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime U.S. contractor will be Raytheon Missiles and Defense, Tucson, AZ. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require multiple trips by U.S. Government representatives and contractor personnel to visit Australia on a temporary basis over the life of the case to support delivery and integration of items and to provide supply support management, inventory control, and equipment familiarization. Visits will also include program and technical reviews.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 23–02

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology*:

1. The Block IV/V All Up Round (AUR) consists of the RGM–109E Tomahawk cruise missile assembled in a canister for surface launch. Tomahawk Block IV/V capabilities include, increased system flexibility, improved system response times, improved lethality against an increased target set, improved accuracy, improved Anti-Jam GPS Receiver (AGR) with Selective Availability Anti-Spoofing Module (SAASM) capability, enhanced availability due to a 15-year maintenance interval and two-way communications between missile and Strike/Missile Controllers via Ultra High Frequency (UHF) Satellite Communications (SATCOM). The two-way communication capability, provided by the Satellite Data Link Terminal (SDLT) enables Mission Planners and the Strike/Missile Controller to issue in-flight missile retargeting commands, receive in-flight missile Health & Status (H&S) transmissions, obtain Battle Damage Indication (BDI) data and obtain single-frame Battle Damage Indication Imagery (BDII) using the onboard camera that is part of the Digital Scene Matching Area Correlator (DSMAC) Sensor Assembly (DSA).

2. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Australia can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal have been authorized for release and export to Australia.

[FR Doc. 2024–20730 Filed 9–11–24; 8:45 am]

BILLING CODE 6001–FR–P

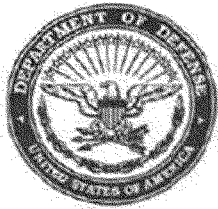
DEPARTMENT OF DEFENSE**Office of the Secretary**

[Transmittal No. 23-14]

Arms Sales Notification**AGENCY:** Defense Security Cooperation Agency, Department of Defense (DoD).**ACTION:** Arms sales notice.**SUMMARY:** The DoD is publishing the unclassified text of an arms sales notification.**FOR FURTHER INFORMATION CONTACT:**Pamela Young at (703) 953-6092, pamela.a.young14.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.**SUPPLEMENTARY INFORMATION:** This 36(b)(1) arms sales notification is published to fulfill the requirements of

section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 23-14, Policy Justification, and Sensitivity of Technology.

Dated: September 9, 2024.

Aaron T. Siegel,*Alternate OSD Federal Register Liaison Officer, Department of Defense.***BILLING CODE 6001-FR-P****DEFENSE SECURITY COOPERATION AGENCY**
2800 Defense Pentagon
Washington, DC 20301-2800

March 7, 2023

The Honorable Kevin McCarthy
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 23-14, concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Japan for defense articles and services estimated to cost \$1.381 billion. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

A handwritten signature in black ink, reading "James A. Hursch".

James A. Hursch
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 23–14

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser*: Government of Japan

(ii) *Total Estimated Value*:

Major Defense Equipment *	\$1.125 billion
Other	\$.256 billion

TOTAL	\$1.381 billion

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase*:

* As defined in Section 47(6) of the Arms Export Control Act.

Major Defense Equipment (MDE):

Five (5) E–2D Advanced Hawkeye (AHE) Airborne Early Warning and Control (AEW&C) Aircraft
 Twelve (12) T56–A–427A Engines (10 installed, 2 spares)
 Six (6) Multifunction Information Distribution System Joint Tactical Radio System (MIDS JTRS) Terminals (5 installed, 1 spare)
 Five (5) APY–9 Radars (installed)
 Five (5) AN/AYK–27 Integrated Navigation Control and Display Systems (INCDS) (installed)
 Twelve (12) LN–251 Embedded Global Positioning Systems/Inertial Navigation Systems (EGIs) with Embedded Airborne Selective Availability Anti-Spoofing Module (SAASM) or M-Code Receiver (10 installed, 2 spares)
 Six (6) ALQ–217 Electronic Support Measures Systems (5 installed and 1 spare)

Non-MDE:

Also included are aircraft ancillary equipment; modifications; spare and repair parts; support equipment; publications and technical documentation; software; personal protective equipment; personnel training and training equipment; ferry services; U.S. Government and contractor logistics, engineering, and technical support services; and other related elements of logistics and program support.

(iv) *Military Department*: Navy (JA–P–SDF)

(v) *Prior Related Cases, if any*: JA–P–SCW, JA–P–SCJ, JA–P–SCL, JA–P–SCM, JA–P–SCQ

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid*: None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services*

Proposed to be Sold: See Attached Annex

(viii) *Date Report Delivered to Congress*: March 7, 2023

POLICY JUSTIFICATION

Japan—E–2D Advanced Hawkeye Airborne Early Warning and Control Aircraft

The Government of Japan has requested to buy five (5) E–2D Advanced Hawkeye (AHE) Airborne Early Warning and Control (AEW&C) aircraft; twelve (12) T56–A–427A engines (10 installed, 2 spares); six (6) Multifunction Information Distribution System Joint Tactical Radio System (MIDS JTRS) terminals (5 installed, 1 spare); five (5) APY–9 radars (installed); five (5) AN/AYK–27 Integrated Navigation Control and Display Systems (INCDS) (installed); twelve (12) LN–251 Embedded Global Positioning Systems/Inertial Navigation Systems (EGIs) with Embedded Airborne Selective Availability Anti-Spoofing Module (SAASM) or M-Code Receiver (10 installed, 2 spares); and six (6) ALQ–217 Electronic Support Measures Systems (5 installed, 1 spare). Also included are aircraft ancillary equipment; modifications; spare and repair parts; support equipment; publications and technical documentation; software; personal protective equipment; personnel training and training equipment; ferry services; U.S. Government and contractor logistics, engineering, and technical support services; and other related elements of logistics and program support. The estimated total program cost is \$1.381 billion.

This proposed sale will support the foreign policy goals and national security objectives of the United States by improving the security of a major ally that is a force for political stability and economic progress in the Asia-Pacific region.

The proposed sale will improve Japan's ability to effectively provide homeland defense utilizing an AEW&C capability. Japan will use the E–2D AHE aircraft to provide AEW&C situational awareness of air and naval activity in the Pacific region and to augment its existing E–2C Hawkeye AEW&C fleet. Japan will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Northrop Grumman Corporation Aerospace Systems, Melbourne, FL. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Japan.

However, U.S. Government or contractor personnel in-country visits will be required, on a temporary basis, in conjunction with program technical and management oversight and support requirements.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 23–14

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology*:

1. The E–2D Advanced Hawkeye (AHE) Airborne Early Warning and Control (AEW&C) provides detection and surveillance of regional surface and aircraft platforms through the use of the APY–9 radar, APX–122A Identification Friend or Foe (IFF), and ALQ–217 Electronic Support Measures (ESM) systems. The E–2D AHE provides area surveillance and detection, air intercept control, air traffic control, search and rescue assistance, communication relay and automatic tactical data exchange.
 2. The APY–9 radar is a mechanically rotated, electronically scanned array, which utilizes Space-Time Adaptive Processing (STAP) technology to provide 360-degree detection and surveillance in high clutter environments. It is able to provide simultaneous detection and surveillance of surface and air units.

3. The Multifunction Information Distribution System Joint Tactical Radio System (MIDS JTRS (5)) terminal provides enhanced Link 16 functionality, namely Concurrent Multi-netting with four channels (CMN–4) and Concurrent Contention Receive (CCR). CMN–4 is a Link 16 enhancement that increases the terminal capability from receiving only one Tactical Digital Information Link–J (TADIL–J) message packing structure per time slot to receive as many as four simultaneous message packing structures per time slot, each transmitted on a unique Link 16 net. CCR described the Link 16 terminal's ability to receive multiple messages in the same net within the same time slot.

4. The APX–122A IFF Interrogator and APX–123A IFF Transponder are identification systems designed for command and control. They provide the ability to distinguish friendly aircraft, vehicles, or forces, and to determine their bearing and range from the Interrogator.

5. The ALQ–217 Electronic Support Measure (ESM) system is used to detect,

intercept, identify, locate, record, and/or analyze sources of radiated electromagnetic energy to support classification of unknown surface and airborne units.

6. The AN/AYK-27 Integrated Navigation Control and Display System serves as the network manager and the human machine interface for the E-2D navigation system.

7. The LN-251 Embedded Global Positioning Systems/Inertial Navigation Systems (EGIs) with embedded airborne Selective Availability Anti-Spoofing Module (SAASM) or M-Code Receiver (ASR) system provides position, navigation and timing information to the E-2D via the Global Positioning Satellite system and an inertial measuring unit.

8. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

9. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might

reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

10. A Special Security Agreement will be in place to provide additional security requirements for implementation by the Government of Japan to protect the advanced capabilities this aircraft provides. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

11. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Japan.

[FR Doc. 2024-20743 Filed 9-11-24; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 22-72]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Pamela Young at (703) 953-6092, pamela.a.young14.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

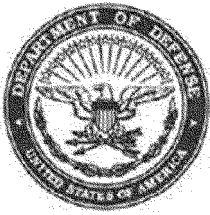
SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 22-72, and Policy Justification.

Dated: September 9, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001-FR-P

**DEFENSE SECURITY COOPERATION AGENCY**

2800 Defense Pentagon
Washington, DC 20301-2800

MAR 29 2023

The Honorable Kevin McCarthy
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 22-72, concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Bahrain for defense articles and services estimated to cost \$350 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

A handwritten signature in cursive script, reading "James A. Hursch", is positioned above the printed name.

James A. Hursch
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Regional Balance (Classified document provided under separate cover)

Transmittal No. 22–72
Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Bahrain

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$ 0 million
Other	\$350 million

TOTAL \$350 million

Funding Source: National Funds

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):
None

Non-MDE:

The Government of Bahrain has requested to buy equipment and services to refurbish twenty-four (24) Excess Defense Article (EDA) AH–1W multi-role helicopters. Included are services to refurbish a full-motion Aircraft Procedures Trainer (APT), M272A1 missile launchers and spare T–700–GE–401 aircraft engines, spare parts, support, training, publications, and other related elements of logistics and program support.

(iv) *Military Department:* Navy (BA–P–SAV)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* March 29, 2023

*As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Bahrain—Refurbishment of AH–1W Attack and Reconnaissance Helicopters

The Government of Bahrain has requested to buy equipment and services to refurbish twenty-four (24) Excess Defense Article (EDA) AH–1W multi-role helicopters. Included are services to refurbish a full-motion Aircraft Procedures Trainer (APT), M272A1 missile launchers and spare T–700–GE–401 aircraft engines, spare parts, support, training, publications, and other related elements of logistics and program support. The estimated total cost is \$350 million.

This proposed sale will support the foreign policy and national security objectives of the United States by helping to improve the security of a Major Non-NATO ally that is an important force for political stability and economic progress in the Middle East.

The proposed sale will improve Bahrain’s capability to meet current and future threats by improving its ability to fulfill maritime patrol, close air support, and search and rescue missions. Bahrain will have no difficulty absorbing these defense articles and services into its armed forces.

The proposed sale of these services and support will not alter the basic military balance in the region.

The principal contractor will be Bell Corporation, Fort Worth, TX. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any

additional U.S. Government or contractor representatives to Bahrain.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2024–20735 Filed 9–11–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 22–0U]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

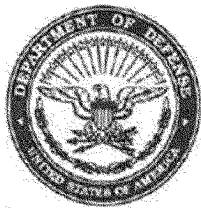
FOR FURTHER INFORMATION CONTACT: Pamela Young at (703) 953–6092, pamela.a.young14.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b)(5)(C) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 22–0U.

Dated: September 9, 2024.

Aaron T. Siegel,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001–FR–P



DEFENSE SECURITY COOPERATION AGENCY

2800 Defense Pentagon
Washington, DC 20301-2800

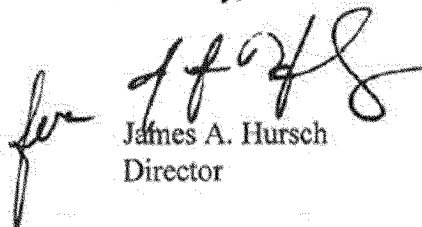
November 21, 2022

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 22-0U. This notification relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 11-54 of February 2, 2012.

Sincerely,


James A. Hursch
Director

Enclosures:

1. Transmittal

Transmittal No. 22–0U

**REPORT OF ENHANCEMENT OR
UPGRADE OF SENSITIVITY OF
TECHNOLOGY OR CAPABILITY (SEC.
36(B)(5)(C), AECA)**

(i) *Purchaser*: Government of Poland
(ii) *Sec. 36(b)(1), AECA Transmittal
No.*: 11–54

Date: February 2, 2012
Implementing Agency: Air Force
Funding Source: Foreign Military
Financing (FMF)

(iii) *Description*: On February 2, 2012, Congress was notified by Congressional certification transmittal number 11–54, of the possible sale, under Section 36(b)(1) of the Arms Export Control Act, of 93 AIM–9X–2 SIDEWINDER Block II Tactical Missiles, 4 CATM–9X–2 Captive Air Training Missiles, 65 AIM–120C–7 Advanced Medium Range Air-to-Air Missiles, 42 GBU–49 Enhanced PAVEWAY II 500 lb Bombs, 200 GBU–54 (2000 lb) Laser Joint Direct Attack Munitions (JDAM) Bombs, 642 BLU–111 (500 lb) General Purpose Bombs, 127 MK–82 (500 lb) General Purpose Bombs, 80 BLU–117 (2000 lb) General Purpose Bombs, 4 MK–84 (2000 lb) Inert General Purpose Bombs, 9 F–100–PW–229 Engine Core Modules, 28 Night Vision Devices plus 6 spare intensifier tubes, 12 Autonomous Air Combat Maneuvering Instrumentation P5 pods, a Joint Mission Planning System, and five years of follow-on support and sustainment services for Poland’s F–16 fleet, spare and repair parts, support and test equipment, publications and technical documentation, system overhauls and upgrades, personnel training and training equipment, U.S. Government and contractor technical support, and other related elements of program support. The estimated total cost was \$447 million. Major Defense

Equipment (MDE) constituted \$219 million of this total.

On April 9, 2019, Congress was notified by Congressional certification transmittal number 19–0F, of an additional twenty-seven (27) AIM–9X–2 Sidewinder Block II Tactical Missiles and eighteen (18) AIM–9X–2 Captive Air Training Missiles (CATM). This notification also included twelve (12) AIM–9X Tactical Guidance Units and six (6) AIM–9X CATM Guidance Units. These changes increased the MDE value by \$35 million, for a revised MDE value of \$254 million. The total case value increased to \$482 million.

This transmittal notifies the addition of the following MDE items: seven (7) F–16 F–100–PW–229 engines. The following non-MDE items are also included: additional follow-on support and sustainment services.

The estimated total value of the additional items is \$86 million, increasing the total MDE value to \$340 million. The total non-MDE value will remain \$228 million. The revised estimated total case value will increase to \$568 million.

(iv) *Significance*: The proposed sale will address Poland’s urgent requirement for replacement F–16 engines, directly impacting combat readiness of its F–16 fleet. Continued and uninterrupted operation of their F–16 fleet enables Poland to deter current and future threats and further NATO interoperability targets.

(v) *Justification*: This proposed sale will support the foreign policy and national security of the United States by improving the security of a NATO ally and partner nation, which is an important force for peace, political stability, and economic progress in Eastern Europe.

(vi) *Sensitivity of Technology*: The Sensitivity of Technology Statement contained in the original notification applies to additional items reported here.

(vii) *Date Report Delivered to Congress*: November 21, 2022.

[FR Doc. 2024–20723 Filed 9–11–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 22–0V]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Pamela Young at (703) 953–6092, pamela.a.young14.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b)(5)(C) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 22–0V.

Dated: September 9, 2024.

Aaron T. Siegel,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.

BILLING CODE 6001–FR–P



DEFENSE SECURITY COOPERATION AGENCY

2800 Defense Pentagon
Washington, DC 20301-2800

December 1, 2022

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 22-0V. This notification relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 09-75 of January 29, 2010.

Sincerely,

A handwritten signature in black ink, reading "James A. Hursch", is positioned above the printed name and title.

James A. Hursch
Director

Enclosures:
1. Transmittal

Transmittal No. 22–0V

**REPORT OF ENHANCEMENT OR
UPGRADE OF SENSITIVITY OF
TECHNOLOGY OR CAPABILITY (SEC.
36(B)(5)(C), AECA)**

(i) *Purchaser:* Taipei Economic and Cultural Representative Office in the United States (TECRO)

(ii) *Sec. 36(b)(1), AECA Transmittal No.:* 09–75

Date: January 29, 2010

Military Department: Army

Funding Source: National Funds

(iii) *Description:* On January 29, 2010, Congress was notified by Congressional certification transmittal number 09–75, of the possible sale, under Section 36(b)(1) of the Arms Export Control Act, of 114 PATRIOT Advanced Capability (PAC–3) missiles, 3 AN/MPQ–65 Radar Sets, 1 AN/MSQ–133 Information and Coordination Centrals, 1 Tactical Command Station, 3 Communication Relay Groups, 3 AN/MSQ–132 Engagement Control Stations, 26 M902 Launching Stations, 5 Antenna Mast Groups, 1 Electronic Power Plant III (EPP), battery and battalion maintenance equipment, prime movers, generators, electrical power units, personnel training and equipment, trailers, communication equipment, tool and test sets, spare and repair parts, publications and technical documentation, Quality Assurance Team support services, U.S. Government and contractor engineering and logistics support service and other related elements of logistics support. The estimated total cost was \$2.81 billion. Major Defense Equipment (MDE) constituted \$1.57 billion of this total.

This transmittal notifies the inclusion of the following MDE items: one

hundred (100) PAC–3 Missile Segment Enhancement (MSE) missiles; and two (2) PAC–3 MSE test missiles. Also included are M903 Launcher modification kits; missile round trainers; and Post Deployment Build (PDB) 8.1 software upgrade. The estimated total value of these additional items is \$882 million. These additions will not result in an increase to the total estimated MDE value of \$1.57 billion. The total estimated case value will remain \$2.81 billion.

(iv) *Significance:* The proposed sale will enhance the recipient's PATRIOT missile system to improve its missile defense capability, defend its territorial integrity, and deter threats for regional stability.

(v) *Justification:* This proposed sale serves U.S. national, economic, and security interests by supporting the recipient's continuing efforts to modernize its armed forces and to maintain a credible defensive capability. The proposed sale will help improve the security of the recipient and assist in maintaining political stability, military balance, and economic progress in the region.

(vi) *Sensitivity of Technology:*

The PAC–3 Missile Segment Enhanced missile is a small, highly agile, kinetic kill interceptor for defense against tactical ballistic missiles, cruise missiles and air-breathing threats. The MSE variant of the PAC–3 missile represents the next generation in hit-to-kill interceptors and provides expanded battlespace against evolving threats. The PAC–3 MSE improves upon the original PAC–3 capability with a higher performance solid rocket motor, modified lethality enhancer, more responsible control surfaces, upgraded

guidance software, and insensitive munitions improvements.

The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

(vii) *Date Report Delivered to Congress:* December 1, 2022

[FR Doc. 2024–20724 Filed 9–11–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 23–0B]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Pamela Young at (703) 953–6092, pamela.a.young14.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

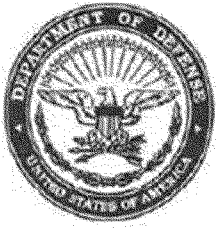
SUPPLEMENTARY INFORMATION: This 36(b)(5)(C) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 23–0B.

Dated: September 9, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001–FR–P



DEFENSE SECURITY COOPERATION AGENCY

2800 Defense Pentagon
Washington, DC 20301-2800

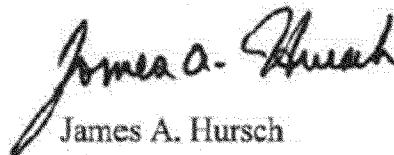
February 28, 2023

Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Speaker:

Pursuant to the reporting requirements of Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 23-0B. This notification relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 19-65 of October 29, 2019.

Sincerely,


James A. Hursch
Director

Enclosures:
1. Transmittal

Transmittal No. 23–0B

**REPORT OF ENHANCEMENT OR
UPGRADE OF SENSITIVITY OF
TECHNOLOGY OR CAPABILITY (SEC.
36(B)(5)(C), AECA)**

(i) *Purchaser:* Government of Japan
(ii) *Sec. 36(b)(1), AECA Transmittal
No.:* 19–65

Date: October 29, 2019

Implementing Agency: Air Force

(iii) *Description:* On October 29, 2019, Congress was notified by Congressional certification transmittal number 19–65 of the possible sale, under Section 36(b)(1) of the Arms Export Control Act, of the upgrade of up to ninety-eight (98) F–15J aircraft to a Japanese Super Interceptor (JSI) configuration consisting of up to one hundred three (103) APG–82(v)1 Active Electronically Scanned Array (AESA) Radar (includes 5 spares); one hundred sixteen (116) Advanced Display Core Processor II (ADCP II) Mission System Computer (includes 19 spares); and one hundred one (101) ALQ–239 Digital Electronic Warfare System (DEWS) (includes 3 spares). Also included were Joint Mission Planning System (JMPS) with software, training and support; Selective Availability Anti-spoofing Module (SASSM); ARC–210 radio, aircraft and munition integration and test support; ground training devices (including flight and maintenance simulators); support and test equipment; software delivery and support; spare and repair parts; communications equipment; facilities and construction support; publications and technical documentation; personnel training and training equipment; U.S. Government and contractor engineering; technical and logistics support services; studies and surveys; and other related elements of logistical and program support. The estimated total program cost was \$4.5 billion. Major Defense Equipment (MDE) constituted \$2.4 billion of this total.

On July 26, 2022, Congress was notified by Congressional certification transmittal number 22–0K of the possible sale, under Section 36(b)(5)(C) of the Arms Export Control Act, of one hundred three (103) AN/ALQ–250 Eagle Passive Active Warning Survivability System (EPAWSS) electronic warfare suites. The total cost of new MDE articles was \$956 million. This did not increase the total net cost of MDE, which remained \$2.4 billion. The total case value did not increase, remaining \$4.5 billion.

This transmittal notifies the addition of the following MDE items: up to one (1) Instrumented Test Vehicle; two (2) JASSM AGM–158 Separation Test Vehicles; two (2) JASSM AGM–158

Jettison Test Vehicles; two (2) JASSM AGM–158 Captive Carry Flight Test Vehicles; two (2) AGM–158 Inert JASSMs; and one hundred three (103) Embedded Global Positioning System/Inertial Navigation System (GPS/INS) (EGI) devices with M-code technology. The total cost of new MDE articles is \$41 million. The total net cost of MDE remains \$2.4 billion. The total net cost of non-MDE remains \$2.1 billion. The total case value remains \$4.5 billion.

(iv) *Significance:* The inclusion of this MDE represents an increase in capability over what was previously notified. The proposed articles and services will assist Japan in developing and maintaining a strong and effective self-defense capability.

(v) *Justification:* This proposed sale will support the foreign policy goals and national security objectives of the United States by improving the security of a major ally that is a force for political stability and economic progress in the Asia-Pacific region.

(vi) *Sensitivity of Technology:*

The AGM–158B/B–2 Joint Air-to-Surface Standoff Missile with Extended Range (JASSM–ER) is a low-observable, highly survivable, subsonic cruise missile designed to penetrate next-generation air defense systems in route to target. The JASSM–ER is designed to kill hard, medium-hardened, soft and area-type targets. A turbo-fan engine and reconfigured fuel tanks provide added capacity. This potential sale will only include testing and training munitions.

a. The AGM–158/B–2 system capabilities include all the capabilities of the AGM–158/B. The AGM–158/B–2 configuration has different internal components to address multiple obsolescence issues as well as subcomponent updates to position for GPS M-Code and other potential upgrades.

b. The AGM–158 Instrumented Test Vehicle (ITV) is a flight certification vehicle equipped with an intelligent Test Instrumentation Kit (iTIK). The ITV collects airworthiness data to ensure safe separation of the munition from the aircraft.

c. The JASSM AGM–158 Separation Test Vehicle (STV), equipped with iTIK, collects separation data during airworthiness/flight certification.

d. The JASSM Jettison Test Vehicle (JTV) is used during the airworthiness data collection process to ensure safe jettison of the munition from the aircraft. It provides pilot captive-carry training with recording capability for post-release data analysis.

e. The JASSM AGM–158 Captive Carry Flight Test Vehicle, equipped with iTIK, has an inert warhead and

fuze and an anti-jam GPS receiver. It is used solely for captive carry testing, conducted in the U.S.

f. The AGM–158 Inert JASSM, equipped with iTIK, has an inert warhead and fuze and an anti-jam GPS receiver. It is used for live launch testing, conducted in the U.S.

The M-Code capable Embedded Global Positioning System/Inertial Navigation System (GPS/INS) (EGI), with an embedded GPS Precise Positioning Service (PPS) Receiver Application Module-Standard Electronic Module (GRAM–S/M), is a self-contained navigation system that provides acceleration, velocity, position, attitude, platform azimuth, magnetic and true heading, altitude, body angular rates, time tags, and coordinated universal time (UTC) synchronized time. The embedded GRAM–S/M enables access to both the encrypted P(Y) and M-Code signals, providing protection against active spoofing attacks, enhanced military exclusivity, integrity, and anti-jam.

The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

(vii) *Date Report Delivered to Congress:* February 28, 2023

[FR Doc. 2024–20736 Filed 9–11–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 23–12]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Pamela Young at (703) 953–6092, pamela.a.young14.civ@mail.mil, or dsca.ncr.rsrmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 23–12, Policy Justification, and Sensitivity of Technology.

Dated: September 9, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison
Officer, Department of Defense.

BILLING CODE 6001-FR-P



DEFENSE SECURITY COOPERATION AGENCY

2800 Defense Pentagon
Washington, DC 20301-2800

March 17, 2023

The Honorable Kevin McCarthy
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 23-12, concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Greece for defense articles and services estimated to cost \$268 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Hursch", is positioned above the printed name of the Director.

James A. Hursch
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Section 620C(d) Certification

BILLING CODE 6001-FR-C

Transmittal No. 23–12

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Greece

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$163.3 million
Other	\$104.7 million

TOTAL	\$268.0 million

Funding Sources: National Funds (\$243.0 million)

Foreign Military Financing (\$25.0 million)

(iii) *Description and Quantity or Quantities of Articles or Services Under Consideration for Purchase:*

Major Defense Equipment (MDE):

Sixty-three (63) Assault Amphibious Vehicles, Personnel Variant (AAVP–7A1)

Nine (9) Assault Amphibious Vehicles, Command Variant (AAVC–7A1)

Four (4) Assault Amphibious Vehicles, Recovery Variant (AAVR–7A1)

Sixty-three (63) 50-Caliber Machine Guns (Heavy Barrel)

Non-MDE:

Also included are MK–19 Grenade Launchers; M36E T1 Thermal Sighting Systems (TSS), supply support (spare parts), support equipment (including special mission kits/tools/Enhanced Applique Kits (EAAK)), training, technical manuals (UNCLASSIFIED), technical data, U.S. Government and contractor engineering, technical support and assistance (including Contractor Engineering Technical Services (CETS)), Integrated Logistic Support (ILS) management services, parts obsolescence remediation, calibration services transportation, Follow-on Support (FOS), Return, Repair and Reshipment of unserviceable repairable items/equipment, applicable software and apparel, and other related elements of logistics and program support.

(iv) *Military Department:* Navy (GR–P–SCO)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* March 17, 2023.

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Greece—Assault Amphibious Vehicles

The Government of Greece has requested to buy sixty-three (63) Assault Amphibious Vehicles, Personnel Variant (AAVP–7A1), nine (9) Assault Amphibious Vehicles, Command Variant (AAVC–7A1), four (4) Assault Amphibious Vehicles, Recovery Variant (AAVR–7A1), and sixty-three (63) 50-Caliber Machine Guns (Heavy Barrel). Also included are MK–19 Grenade Launchers, M36E T1 Thermal Sighting Systems (TSS), supply support (spare parts), support equipment (including special mission kits/tools/Enhanced Applique Kits (EAAK)), training, technical manuals (UNCLASSIFIED), technical data, U.S. Government and contractor engineering, technical support and assistance (including Contractor Engineering Technical Services (CETS)), Integrated Logistic Support (ILS) management services, parts obsolescence remediation, calibration services, transportation, Follow-on Support (FOS), Return, Repair and Reshipment of unserviceable repairable items/equipment, applicable software and apparel, and other related elements of logistics and program support. The estimated total cost is \$268 million.

This proposed sale will support the foreign policy and national security objectives of the United States by helping to improve the security of a NATO ally, which is an important partner for political stability and economic progress in Europe.

This proposed sale will improve Greece's capability to meet current and future threats by providing an effective capability to protect maritime interests and infrastructure in support of its strategic location on NATO's southern flank. Greece contributes to NATO operations, as well as to counterterrorism and counter-piracy maritime efforts. Greece will have no difficulty absorbing these articles and services into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

There is not a principal contractor associated with this potential sale. Consequently, there are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of U.S. Government personnel, but will require one (1) contractor representative, Full-Time Equivalent (FTE) position to Greece to deliver Assault Amphibious Vehicles, related equipment and support.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 23–12

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The mission of the Assault Amphibious Vehicle (AAV) is to maneuver surface assault elements of the landing force and their equipment from assault shipping during amphibious operations to inland objectives and to conduct mechanized operations and related combat support in subsequent operations ashore.

The AAV–7A1 Family of Vehicles includes the Personnel variant which carries troops in amphibious operations from ship to shore, through the surf zone and to inland objectives. The AAVP–7A1 provides protected transport for up to 25 combat-loaded personnel through all types of terrain. The Command Variant, AAVC–7A1, is an armored assault amphibious full-tracked landing vehicle. The vehicle provides a mobile task force communication center in amphibious operations from ship to shore through the surf zone to inland objectives. The Recovery Variant, AAVR–7A1, is an armored assault amphibious full-tracked vehicle. The vehicle is designed to recover similar or smaller sized vehicles. It also carries basic maintenance equipment to provide field support maintenance to vehicles in the field.

2. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

3. If a technologically advanced adversary were to obtain knowledge of the hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Greece can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal have been

authorized for release and export to Greece.

[FR Doc. 2024–20738 Filed 9–11–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 22–67]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Pamela Young at (703) 953–6092, *pamela.a.young14.civ@mail.mil*, or *dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil*.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164

dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 22–67, Policy Justification, and Sensitivity of Technology.

Dated: September 9, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001–FR–P

**DEFENSE SECURITY COOPERATION AGENCY****2800 Defense Pentagon
Washington, DC 20301-2800**

December 1, 2022

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 22-67, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Finland for defense articles and services estimated to cost \$380 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

James A. Hursch
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 22–67

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser*: Government of Finland

(ii) *Total Estimated Value*:

Major Defense Equipment *	\$310 million
Other	\$70 million

TOTAL \$380 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase*:

Major Defense Equipment (MDE):

Three hundred fifty (350) FIM–92K

Stinger Man Portable Missiles

Five (5) Production Verification Flight

Test (PVFT) FIM–92K Stinger Man

Portable Missiles

Non-MDE:

Also included is support equipment; production support, engineering, and technical services; transportation services; and other related elements of program and logistics support.

(iv) *Military Department*: Army (FI–B–VBF)

(v) *Prior Related Cases, if any*: FI–B–VAJ, FI–B–VBA

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid*: None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold*: See Attached Annex

(viii) *Date Report Delivered to*

Congress: December 1, 2022

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Finland—Stinger Man Portable Ground-to-Air Missiles

The Government of Finland has requested to buy three hundred fifty (350) FIM–92K Stinger Man Portable missiles; and five (5) Production Verification Flight Test (PVFT) FIM–92K Stinger Man Portable missiles. Also included is support equipment; production support, engineering, and technical services; transportation services; and other related elements of program and logistics support. The total estimated cost is \$380 million.

This proposed sale will support the foreign policy and national security of the United States by improving the security of a trusted partner which is an important force for political stability and economic progress in Europe. It is vital to the U.S. national interest to assist Finland in developing and maintaining a strong and ready self-defense capability.

The proposed sale will improve Finland's defense and deterrence capabilities. Finland intends to use these defense articles and services to increase its national stock. This critical platform will bolster the land and air defense capabilities in Europe's northern flank, supporting the U.S. European Command's top priorities. Finland will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be Raytheon Missiles and Defense, Tucson, AZ and Lockheed Martin Corporation, Syracuse, NY. There are no known offset agreements in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of U.S. Government or contractor representatives to Finland.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 22–67

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology*:

1. The Stinger missile is a lightweight, self-contained air defense system that can be rapidly deployed by ground troops. Its seeker and guidance systems enables the weapon to acquire, track and engage a target with one shot.

2. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

3. If a technologically advanced adversary were to obtain knowledge of

the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Finland can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Finland.

[FR Doc. 2024–20727 Filed 9–11–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 22–64]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Pamela Young at (703) 953–6092, pamela.a.young14.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 22–64, Policy Justification, and Sensitivity of Technology.

Dated: September 9, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001–FR–P



DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

November 28, 2022

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 22-64, concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Finland for defense articles and services estimated to cost \$323.3 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

for 
James A. Hursch
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 22–64

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Finland

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$164.1 million
Other	\$159.2 million
TOTAL	\$323.3 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Forty (40) AIM 9X Block II Tactical Missiles

Four (4) AIM 9X Block II Tactical Guidance Units

Forty-eight (48) AGM–154 Joint Stand Off Weapons (JSOW)

Non-MDE:

Also included are Dummy Air Training Missiles (DATM); Captive Air Training Missile (CATM); Captive Flight Vehicles (CFVs); Free Flight Vehicles (FFVs); containers; mission planning; integration support and testing; munitions storage security and training; weapon operational flight program software development; transportation; tools and test equipment; support equipment; spare and repair parts; publications and technical documentation; personnel training and training equipment; U.S. Government and contractor engineering and logistics support services; books and other publications; training; training aids and devices; space parts; support equipment; weapon system software support; U.S. Government and contractor engineering; technical and logistics support services; studies and surveys; missile technical assistance; and other related elements of program and logistics support.

(iv) *Military Department:* Navy (FI–P–AAT, FI–P–AAU)

(v) *Prior Related Cases, if any:* FI–P–AAS, FI–P–AAI, FI–P–GAT, FI–P–LDB, FI–P–LBM

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* November 28, 2022

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Finland—AIM 9X Block II Tactical Missiles and AGM–154 Joint Standoff Weapons

The Government of Finland has requested to buy forty (40) AIM 9X Block II tactical missiles; four (4) AIM 9X Block II tactical guidance units; and forty-eight (48) AGM–154 Joint Stand Off Weapons (JSOW). Also included are Dummy Air Training Missiles (DATM); Captive Air Training Missile (CATM); Captive Flight Vehicles (CFVs); Free Flight Vehicles (FFVs); containers; mission planning; integration support and testing; munitions storage security and training; weapon operational flight program software development; transportation; tools and test equipment; support equipment; spare and repair parts; publications and technical documentation; personnel training and training equipment; U.S. Government and contractor engineering and logistics support services; books and other publications; training; training aids and devices; space parts; support equipment; weapon system software support; U.S. Government and contractor engineering; technical and logistics support services; studies and surveys; missile technical assistance; other technical assistance; and other related elements of program and logistics support. The total estimated cost is \$323.3 million.

This proposed sale will support the foreign policy and national security of the United States by improving the security of a trusted partner, which is an important force for political stability and economic progress in Europe. It is vital to the U.S. national interest to assist Finland in developing and maintaining a strong and ready self-defense capability.

The proposed sale will improve Finland's air-to-air and air-to-surface weapons capabilities and will positively impact U.S. relations with countries in the Nordic region. Finland intends to use these defense articles and services for its fighter aircraft fleet. Finland will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be Raytheon Missiles and Defense, Tucson, AZ. There are no known offset agreements proposed in connection with this potential sale.

Implementation of the proposed sale will require U.S. Government and contractor representatives to visit Finland on a temporary basis in conjunction with program technical

oversight and support requirements, including program and technical reviews.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 22–64

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The AIM 9X Block II Tactical Missile is a datalink-enabled, launch and leave, air combat munition that uses passive Infrared (IR) energy to acquire and track enemy air targets. The AIM–9X Block II Sidewinder continues the evolution of the AIM–9 series of missiles.

2. The AGM–154 JSOW is a precision strike weapon with a 500-pound blast/fragmentation/penetrator warhead effective against fixed-point targets. It includes GPS/INS guidance, and an uncooled, long-wave imaging infrared seeker with autonomous target acquisition algorithms for precise targeting.

3. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

5. A determination has been made that Finland can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

6. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Finland.

[FR Doc. 2024–20726 Filed 9–11–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE**Office of the Secretary****Notice of Solicitation of Proposals for the Department of Defense University Consortium for Cybersecurity Support Center**

AGENCY: Office of the Chief Information Officer, Department of Defense (DoD).

ACTION: Solicitation of applications.

SUMMARY: The Secretary of Defense has determined the need for a Support Center (Center) for the University Consortium for Cybersecurity (UC2). The Center will provide, during a two-year term, administrative support for the academic research and engagement activities of UC2. To be eligible, interested institutions must have been designated as National Centers of Academic Excellence (NCAE) in cybersecurity for at least 24 months from the date of the publication of this notice and, further, must demonstrate an understanding of cybersecurity research, be eligible for access to classified material, and demonstrate commitment to the UC2 mission of a closer collaboration between academia and the DoD.

DATES: Consideration will be given to all applications received by October 15, 2024.

FOR FURTHER INFORMATION CONTACT: Dr. Gwyneth Sutherland, 202-685-2080. The application shall include a cover page, labeled "PROPOSAL UC2 Support Center," that includes the prospective proposer's administrative point of contact, to include a telephone number and email address. The application must be limited to three (3) pages, single-sided, and must include: a certificate of NCAE designation status for 24 months, a statement of experience and understanding with cybersecurity research, evidence of eligibility to access to classified material, a narrative description of potential contribution and support to UC2 mission, and a potential team and management plan. Reference and other citations are not required but may be included outside the three-page limit.

Documents must be submitted on 8.5 x 11-inch paper, single spaced, with 1-inch margins, in 12 point, Times New Roman font. The name of the institution must be in the header or footer.

Applications shall be addressed to: College of Information and Cyberspace, University of Consortium for Cybersecurity, Attn: Dr. Gwyneth

Sutherland, 300 Fifth Ave., Bldg. 62, Fort Lesley J. McNair, Washington, DC 20319-5066.

SUPPLEMENTARY INFORMATION: In accordance with Section 1505 of Public Law 117-263 (Dec. 23, 2022; 136 Stat. 2395), the Secretary shall require proposals be submitted by institutions designed as a National Center of Academic Excellence in Cybersecurity (NCAE-C).

The NCAE-C program is managed by the National Cryptologic School at the National Security Agency. U.S. Government partners include the Cybersecurity and Infrastructure Security Agency and the Federal Bureau of Investigation. Such designation was created to manage a collaborative cybersecurity educational program with community colleges, colleges, and universities that: (1) establishes standards for cybersecurity curriculum and academic excellence; (2) includes competency development among students and faculty; (3) values community outreach and leadership in professional development; (4) integrates cybersecurity practice within the institution across academic disciplines; and (5) actively engages in solutions to challenges facing cybersecurity education.

There are three types of designations:

The Cyber Defense (CAE-CD) Designation is awarded to regionally accredited academic institutions offering cybersecurity degrees and/or certificates at the associates, bachelors, and masters and doctoral levels.

The Cyber Research (CAE-R) designation is awarded to DoD schools, doctoral degree-producing military institutions, or regionally accredited, degree granting four-year institutions rated by the Carnegie Foundation Basic Classification system as either a Doctoral University—Highest Research Activity (R1), Doctoral University—Higher Research Activity (R2), or Doctoral University—Moderate Research Activity (R3).

The Cyber Operations (CAE-CO) program is a deeply technical, interdisciplinary, higher education program firmly grounded in the computer science, computer engineering, and/or electrical engineering disciplines, with extensive opportunities for hands-on applications via labs and exercises.

More information can be found here: <https://www.nsa.gov/Academics/Centers-of-Academic-Excellence/>.

An added requirement is the capability to be immediately eligible or

current Facility Clearance (FCL) eligibility for access to classified information. As required by the Defense Counterintelligence and Security Agency (DCSA), entities (including companies and academic institutions) engaged in providing goods or services to the U.S. Government involving access to or creation of classified information may be granted an FCL. Mandated by the guidelines set forth in the National Industrial Security Program, DCSA processes, issues, and monitors the continued eligibility of entities for an FCL.

More information can be found here: https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/520001m_vol3.pdf and <https://www.dcsa.mil/Industrial-Security/Entity-Vetting-Facility-Clearances-FOCI/Facility-Clearances/>.

Dated: September 8, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024-20652 Filed 9-11-24; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE**Office of the Secretary**

[Transmittal No. 23-17]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Pamela Young at (703) 953-6092, pamela.a.young14.civ@mail.mil, or dsca.ncr.rsrmgmt.list.cns-mbx@mail.mil.

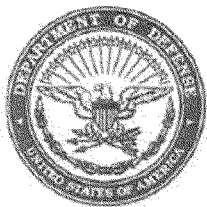
SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 23-17, Policy Justification, and Sensitivity of Technology.

Dated: September 9, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001-FR-P



DEFENSE SECURITY COOPERATION AGENCY

2800 Defense Pentagon
Washington, DC 20301-2800

February 28, 2023

Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 23-17, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of the United Kingdom for defense articles and services estimated to cost \$125.13 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

A handwritten signature in dark ink, reading "James A. Hursch", is positioned above the printed name and title.

James A. Hursch
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 23–17

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of the United Kingdom
(ii) *Total Estimated Value:*

Major Defense Equipment *	\$125.00 million
Other	\$.13 million
TOTAL	\$125.13 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):
Up to six hundred (600) Javelin FGM–148F Missiles (includes twelve (12) Fly-to-Buy Missiles)

Non-MDE:

Also included is U.S. Government technical assistance and other related elements of logistics and program support.

(iv) *Military Department:* Army (UK–B–WVJ)

(v) *Prior Related Cases, if any:* UK–B–WVA

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* February 28, 2023

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

United Kingdom—Javelin Missiles

The Government of the United Kingdom has requested to buy up to six hundred (600) Javelin FGM–148F missiles (includes twelve (12) fly-to-buy missiles). Also included is U.S. Government technical assistance and other related elements of logistics and program support. The total estimated cost is \$125.13 million.

This proposed sale will support the foreign policy goals and national security objectives of the United States by improving the security of a NATO Ally that is a force for political stability and economic progress in Europe.

The proposed sale will improve the United Kingdom’s capability to meet current and future threats. The United Kingdom will use the enhanced capability to build its long-term defense capacity to meet its national defense requirements. The United Kingdom will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractors will be Raytheon/Lockheed Martin Javelin Joint Venture, Orlando, FL and Tucson, AZ. There are no known offset agreements in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of U.S. Government or contractor representatives to the United Kingdom.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 23–17

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The Javelin Weapon System is a medium-range, man portable, shoulder-launched, fire and forget, anti-tank system for infantry, scouts, and combat engineers. It may also be mounted on a variety of platforms including vehicles, aircraft and watercraft. The system weighs 49.5 pounds and has a maximum range in excess of 2,500 meters. They system is highly lethal against tanks and other systems with conventional and reactive armors. The system possesses a secondary capability against bunkers.

2. Javelin’s key technical feature is the use of fire-and-forget technology which allows the gunner to fire and immediately relocate or take cover. Additional special features are the top attack and/or direct fire modes, an advanced tandem warhead and imaging infrared seeker, target lock-on before launch, and soft launch from enclosures or covered fighting positions. The Javelin missile also has a minimum smoke motor thus decreasing its detection on the battlefield.

3. The Javelin Weapon System is comprised of two major tactical components, which are a reusable Light Weight Command Launch Unit (LWCLU) and a round contained in a disposable launch tube assembly. The LWCLU has been identified as Major Defense Equipment (MDE). The LWCLU incorporates an integrated day-night sight that provides a target engagement capability in adverse weather and countermeasure environments. The LWCLU may also be used in a stand-alone mode for battlefield surveillance and target detection. The LWCLU’s thermal sight is a 3rd generation Forward Looking Infrared (FLIR) sensor. To facilitate initial loading and subsequent updating of software, all on-board missile software is uploaded via

the LWCLU after mating and prior to launch.

4. The missile is autonomously guided to the target using an imaging infrared seeker and adaptive correlation tracking algorithms. This allows the gunner to take cover or reload and engage another target after firing a missile. The missile has an advanced tandem warhead and can be used in either the top attack or direct fire modes (for target undercover). An onboard flight computer guides the missile to the selected target.

5. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

6. If a technologically advanced adversary obtains knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

7. A determination has been made that the United Kingdom can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary to further the U.S. foreign policy and national security objectives outlined in the Policy Justification.

8. All defense articles and services listed on this transmittal are authorized for release and export to the Government of the United Kingdom.

[FR Doc. 2024–20739 Filed 9–11–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 23–09]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Pamela Young at (703) 953–6092, pamela.a.young14.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a

copy of a letter to the Speaker of the House of Representatives with attached Transmittal 23-09, Policy Justification, and Sensitivity of Technology.

Dated: September 9, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001-FR-P



DEFENSE SECURITY COOPERATION AGENCY

2800 Defense Pentagon
Washington, DC 20301-2800

March 1, 2023

Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 23-09, concerning the Air Force's proposed Letter(s) of Offer and Acceptance to the Taipei Economic and Cultural Representative Office in the United States (TECRO) for defense articles and services estimated to cost \$619 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

A handwritten signature in dark ink, reading "James A. Hursch".

James A. Hursch
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 23–09

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser*: Taipei Economic and Cultural Representative Office in the United States (TECRO)

(ii) *Total Estimated Value*:

Major Defense Equipment *	\$557 million
Other	\$62 million

TOTAL	\$619 million

Funding Source: National Funds

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase*:

Major Defense Equipment (MDE):

One hundred (100) AGM–88B High-Speed Anti-Radiation Missiles (HARM)

Twenty-three (23) HARM Training Missiles

Two hundred (200) AIM–120C–8 Advanced Medium Range Air-to-Air Missiles (AMRAAM)

Four (4) AIM–120C–8 AMRAAM Guidance Sections

Twenty-six (26) LAU–129 Multi-Purpose Launchers

Non-MDE:

Also included are LAU–118A missile launchers with Aircraft Launcher Interface Computer (ALIC); HARM missile containers; AIM–120 control sections and containers; AIM–120C Captive Air Training Missiles (CATM); dummy air training missiles (DATM), integration and test support and equipment; munitions support and support equipment; spare parts, consumables and accessories and repair and return support; classified software; maintenance and maintenance support; classified publications and technical documentation; U.S. Government and contractor engineering, technical and logistics support services, studies and surveys; and other related elements of logistical and program support.

(iv) *Military Department*: Air Force (TW–D–YAC)

(v) *Prior Related Cases, if any*: TW–D–QBZ, TW–D–SAD, TW–D–YPH

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid*: None known at this time

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold*: See Attached Annex

(viii) *Date Report Delivered to Congress*: March 1, 2023

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Taipei Economic and Cultural Representative Office in the United States—F–16 Munitions

The Taipei Economic and Cultural Representative Office in the United States (TECRO) has requested to buy one hundred (100) AGM–88B High-Speed Anti-Radiation Missiles (HARM); twenty-three (23) HARM training missiles; two hundred (200) AIM–120C–8 Advanced Medium Range Air-to-Air Missiles (AMRAAM); four (4) AIM–120C–8 AMRAAM Guidance Sections; and twenty-six (26) LAU–129 multi-purpose launchers. Also included are LAU–118A missile launchers with Aircraft Launcher Interface Computer (ALIC); HARM missile containers; AIM–120 control sections and containers; AIM–120C Captive Air Training Missiles (CATM); dummy air training missiles (DATM), integration and test support and equipment; munitions support and support equipment; spare parts, consumables and accessories and repair and return support; classified software; maintenance and maintenance support; classified publications and technical documentation; U.S. Government and contractor engineering, technical and logistics support services, studies and surveys; and other related elements of logistical and program support. The estimated total cost is \$619 million.

This proposed sale is consistent with U.S. law and policy as expressed in Public Law 96–8.

This proposed sale serves U.S. national, economic, and security interests by supporting the recipient's continuing efforts to modernize its armed forces and to maintain a credible defensive capability. The proposed sale will help improve the security of the recipient and assist in maintaining political stability, military balance, and economic progress in the region.

The proposed sale will contribute to the recipient's capability to provide for the defense of its airspace, regional security, and interoperability with the United States. The recipient will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be Raytheon Missiles and Defense, Tucson, AZ and Lockheed Martin Corporation, Bethesda, MD. The purchaser typically requests offsets. Any offset agreement would be defined in negotiations between the purchaser and the contractor(s).

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to recipient.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 23–09

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology*:

1. The AGM–88 High-speed Anti-Radiation Missile (HARM) is a tactical, supersonic air-to-surface missile designed to suppress or destroy enemy radar-equipped, surface-to-air missile radars, early warning radars, and radar-directed air defense artillery systems. This potential sale will include HARM training missiles.

2. The LAU–118 launcher provides the mechanical and electrical interface between the HARM missile and aircraft.

3. The AIM–120C–8 Advanced Medium Range Air-to-Air Missile (AMRAAM) is a supersonic, air-launched, aerial intercept, guided missile featuring digital technology and micro-miniature solid-state electronics. AMRAAM capabilities include look-down/shoot-down, multiple launches against multiple targets, resistance to electronic countermeasures, and interception of high- and low-flying and maneuvering targets. This potential sale will include Captive Air Training Missiles (CATM), as well as AMRAAM guidance section and control section spares.

4. The LAU–129 Guided Missile Launcher provides mechanical and electrical interface between the AIM–9 Sidewinder or AIM–120 AMRAAM missile and aircraft.

5. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

6. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

7. A determination has been made that the recipient can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national

security objectives outlined in the Policy Justification.

8. All defense articles and services listed in this transmittal have been authorized for release and export to the recipient.

[FR Doc. 2024–20732 Filed 9–11–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 22–36]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Pamela Young at (703) 953–6092, pamela.a.young14.civ@mail.mil, or

dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 22–36, Policy Justification, and Sensitivity of Technology.

Dated: September 9, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001–FR–P

**DEFENSE SECURITY COOPERATION AGENCY**

2800 Defense Pentagon
Washington, DC 20301-2800

NOV 29 2022

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 22-36, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Qatar for defense articles and services estimated to cost \$1.0 billion. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

A handwritten signature in black ink, reading "James A. Hursch", is positioned above the printed name and title.

James A. Hursch
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified document provided under separate cover)

Transmittal No. 22–36

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser*: Government of Qatar

(ii) *Total Estimated Value*:

Major Defense Equipment *	\$.075 billion
Other	\$.925 billion
TOTAL	\$1.000 billion

Funding Source: National Funds

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase*: The Government of Qatar has requested to buy ten (10) Fixed Site-Low, Slow, Small Unmanned Aircraft System Integrated Defeat System (FS–LIDS) System of Systems, to include:

Major Defense Equipment (MDE):

Two hundred (200) Coyote Block 2 Interceptors

Non-MDE:

Also included is the Counter Unmanned Electronic Warfare System (CUAEWS); Coyote launchers; Ku Band Multi-function Radio Frequency System (KuMRFS) radars; Forward Area Air Defense Command and Control (FAAD C2); Counter Unmanned Electronic Warfare Systems (CUAEWS); E.O./IR cameras; support and test equipment; integration and test support; spare and repair parts; communications equipment; software delivery and support; facilities and construction support; publications and technical documentation; personnel training and training equipment; U.S. Government and contractor engineering; technical and logistics support services; studies and surveys; maintenance services; and other related elements of logistical and program support.

(iv) *Military Department*: Army (QA–B–UAV)

(v) *Prior Related Cases, if any*: None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid*: None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold*: See Attached Annex

(viii) *Date Report Delivered to Congress*: November 29, 2022

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Qatar—Fixed Site-Low, Slow, Small Unmanned Aircraft System Integrated Defeat System (FS–LIDS)

The Government of Qatar has requested to buy ten (10) Fixed Site-

Low, Slow, Small Unmanned Aircraft System Integrated Defeat System (FS–LIDS) System of Systems, to include: two hundred (200) Coyote Block 2 interceptors. Also included is the Counter Unmanned Electronic Warfare System (CUAEWS); Coyote launchers; Ku Band Multi-function Radio Frequency System (KuMRFS) radars; Forward Area Air Defense Command and Control (FAAD C2); Counter Unmanned Electronic Warfare Systems (CUAEWS); E.O./IR cameras; support and test equipment; integration and test support; spare and repair parts; communications equipment; software delivery and support; facilities and construction support; publications and technical documentation; personnel training and training equipment; U.S. Government and contractor engineering; technical and logistics support services; studies and surveys; maintenance services; and other related elements of logistical and program support. The total estimated program cost is \$1 billion.

This proposed sale will support the foreign policy and national security objectives of the United States by helping to improve the security of a friendly country that continues to be an important force for political stability and economic progress in the Middle East.

The proposed sale will improve Qatar's capability to meet current and future threats by providing electronic and kinetic defeat capabilities against Unmanned Aircraft Systems. Qatar will have no difficulty absorbing these articles and/or services into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be Raytheon, Huntsville AL; SRC, Huntsville, AL; and Northrop Grumman, Huntsville, AL. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of five (5) additional U.S. Government and fifteen (15) U.S. contractor representatives to Qatar for a duration of five (5) years to support fielding, training, and sustainment activities.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 22–36

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology*:

1. The Fixed Site-Low, Slow, Small Unmanned Aircraft System Integrated Defeat System (FS–LIDS) is a Counter Unmanned Aircraft System of Systems. It provides defeat capabilities against Unmanned Aircraft vehicles.

2. The Counter Unmanned Electronic Warfare System (CUAEWS) is a Counter Unmanned Aircraft defeat system. It provides signal disruption and jamming of position, timing, navigation, command link and video downlink signals to/from the ground command station.

3. The Coyote Launcher is a high speed, highly maneuverable, semi-active guided airframe with a proximity blast fragmentation warhead. It provides a kinetic defeat capability against Counter Unmanned Aircraft threats.

4. The Coyote Interceptor is a Counter Unmanned Aircraft kinetic missile that provides kinetic defeat capabilities against Unmanned Aircraft vehicles.

5. The Ku Band Multi-function Radio Frequency System (KuMRFS) is a multi-function radar. It provides three-dimensional target location to provide situational awareness for command-and-control systems and guidance used by the Coyote Block-2 Interceptor.

6. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

7. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

8. A determination has been made that Qatar can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

9. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Qatar.

[FR Doc. 2024–20725 Filed 9–11–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE**Office of the Secretary****[Docket ID: DoD-2022-OS-0113]****Submission for OMB Review;
Comment Request**

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by October 15, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Reginald Lucas, (571) 372-7574, whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: USMC Pre-Command Sexual Assault Prevention & Response and Integrated Prevention Training Evaluation; OMB Control Number 0704-0644.

Type of Request: New.

Number of Respondents: 420.

Responses per Respondent: 2.

Annual Responses: 840.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 210 hours.

Needs and Uses: This data collection is in response to the Independent Review Commission on Sexual Assault in the Military (IRC-SAM) recommendations (2.1c, 2.4, 3.2, & 3.6). It addresses the problem of sexual assault (SA) in the military and the need for a rigorous evaluation of the USMC Pre-Command Sexual Assault Prevention and Response—Integrated Prevention (SAPR—IP) Training. SAPR—IP is an existing program implemented across the USMC for all slated Commanders and Sergeants Majors. The proposed program evaluation and data collection will assess the impact of the revised training program to create safe, stable, and supportive command environments free from sexual assault.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Reginald Lucas.

Requests for copies of the information collection proposal should be sent to Mr. Lucas at whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

Dated: September 4, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024-20654 Filed 9-11-24; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE**Office of the Secretary****[Transmittal No. 23-23]****Arms Sales Notification**

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Pamela Young at (703) 953-6092, pamela.a.young14.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 23-23, Policy Justification, and Sensitivity of Technology.

Dated: September 9, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001-FR-P



DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

March 16, 2023

The Honorable Kevin McCarthy
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 23-23, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Poland for defense articles and services estimated to cost \$150 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Hursch", is positioned above the name of the Director.

James A. Hursch
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 23–23

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

- (i) *Prospective Purchaser*: Republic of Poland
- (ii) *Total Estimated Value*:

Major Defense Equipment *	\$125 million
Other	\$ 25 million
TOTAL	\$150 million

- Funding Source*: National Funds
- (iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase*:

Major Defense Equipment (MDE):
Eight hundred (800) AGM–114R2 Hellfire Missiles
Four (4) M36 Hellfire Captive Air Training Missiles (CATM)

Non-MDE:
Also included is Tactical Aviation Ground Munition Program Office technical assistance; Security Assistance Management Directorate technical assistance; Joint Attack Munition Systems technical assistance; Classified and Unclassified publications; spare parts; repair and return; storage; and other related elements of logistics and program support.

- (iv) *Military Department*: Army (PL–B–UDZ)

- (v) *Prior Related Cases, if any*: None
- (vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid*: None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold*: See Attached Annex

- (viii) *Date Report Delivered to Congress*: March 16, 2023
- *As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Poland—Hellfire Missiles

The Republic of Poland has requested to buy eight hundred (800) AGM–114R2 Hellfire missiles; and four (4) M36 Hellfire Captive Air Training Missiles (CATM). Also included is Tactical Aviation Ground Munition Program Office technical assistance; Security Assistance Management Directorate technical assistance; Joint Attack Munition Systems technical assistance; Classified and Unclassified publications; spare parts; repair and return; storage; and other related elements of logistics and program support. The total estimated cost is \$150 million.

This proposed sale will support the foreign policy goals and national security objectives of the United States

by improving the security of a NATO ally that is a force for political stability and economic progress in Europe.

The proposed sale will improve Poland’s military goals of updating capability while further enhancing interoperability with the United States and other allies. Poland intends to use these defense articles and services to modernize its armed forces and expand its capability to strengthen its homeland defense and deter regional threats. Poland will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Lockheed Martin Corporation, Orlando, FL. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Poland.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 23–23

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

- (vii) *Sensitivity of Technology*:
 1. The Hellfire AGM–114R2 is a precision strike, semi-active laser-guided missile and is the principal air-to-ground weapon for the U.S. Army AH–64 Apache. The Hellfire R model incorporates a multi-purpose warhead with selectable effects appropriate for engagement of a wide range of targets including heavily or lightly armored targets, thin-skinned vehicles, urban structures, caves, and personnel.

- 2. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

- 3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

- 4. A determination has been made that Poland can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security

objectives outlined in the Policy Justification.

- 5. All defense articles and services listed in this transmittal have been authorized for release and export to Poland.

[FR Doc. 2024–20733 Filed 9–11–24; 8:45 am]
BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Virtual Public and Tribal Meetings Regarding the U.S. Army Corps of Engineers Civil Works Environmental Justice Strategic Plan and Vision, Establishment of a Public Docket, Request for Input

AGENCY: Department of the Army, Corps of Engineers, DoD.

ACTION: Notice; announcement of virtual public and Tribal meeting dates and solicitation of input.

SUMMARY: Pursuant to the Executive order, “Revitalizing our Nation’s Commitment to Environmental Justice for All”, the U.S. Army Corps of Engineers (Corps) is preparing its Environmental Justice Strategic Plan for the Civil Works programs. As part of that effort, the Corps is soliciting feedback on its Draft Environmental Justice Strategic Plan vision, goals, and objectives. The Corps is also soliciting input on priority actions and performance metrics that will be evaluated to advance the Draft Environmental Justice Strategic Plan vision, goals, and objectives. The Environmental Justice Strategic Plan will be a living document that is periodically updated, and comments will be therefore accepted any time at the email address listed below.

DATES: To be considered for this 2024 Environmental Justice Strategic Plan, written recommendations must be received on or before Tuesday, October 1st, 2024. The Corps will hold public virtual meetings on the following dates: September 17th and September 19th. In addition, the Corps will hold Tribal virtual meetings on the following dates: September 18th.

Tribal Nations may request consultation through October 15. Written comments from Tribal Nations will be accepted until October 22. Please refer to the **SUPPLEMENTARY INFORMATION** section below for additional information on these virtual meetings.

ADDRESSES: You may send written feedback, identified by Docket ID No.

COE–2024–0003, by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting written feedback.
- *Email:* EJ_Strategic_Plan@usace.army.mil and Include Docket ID No. COE–2024–0003 in the subject line of the message.
- *Mail:* Joseph Redican, U.S. Army Corps of Engineers, HQ, Deputy Chief, Planning and Policy Division; Desk 3F94, 441 G Street NW, Washington, DC 20314, Include Docket ID No. COE–2024–0003 on the Letter Head.
- *Hand Delivery/Courier:* Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: All submissions received must include Docket ID No. COE–2024–0003. Written feedback received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. The Corps encourages the public to submit written feedback via <https://www.regulations.gov/> or email, as there may be a delay in processing mail.

FOR FURTHER INFORMATION CONTACT: Jessica Ludy, Office of the Assistant Secretary of the Army for Civil Works at 1–415–732–9165 or by email at EJ_Strategic_Plan@usace.army.mil.

SUPPLEMENTARY INFORMATION:

I. Background:

Executive Order (E.O) 14096 directs Federal agencies to develop an Environmental Justice Strategic Plan that will, “set forth the agency’s vision, goals, priority actions, and metrics to address and advance environmental justice and to fulfill the directives of [the E.O.], including through the identification of new staffing, policies, regulations, or guidance documents”, as well as “identify and address opportunities through regulations, policies, permits, or other means to improve accountability and compliance with any statute the agency administers that affects the health and environment of communities with environmental justice concerns (United States, Executive Office of the President, [Joseph Biden], Executive Order 14096: Revitalizing Our Nation’s Commitment to Environmental Justice for All. Section 4. 26 April 2023).

When complete, the Draft Environmental Justice Strategic Plan will offer a vision to transform how the Corps works with communities in its Civil Works program. Overall, the Corps will integrate environmental justice

principles into the foundational elements of the Corps Civil Works programs. This includes consideration of Federal Tribal trust responsibilities and any disproportionate impact on disadvantaged communities from Civil Works programs. This vision is reflected in the five goals and associated objectives outlined in this notice and include our People (the Corps workforce); our Projects, permits and other Corps work activities; our Partners (Tribes, communities, agencies, and other organizations with whom the Corps collaborates); our Processes (including the way the Corps conducts work activities and makes decisions); and our Policy (including the laws, authorities, and policies that require or inform Corps compliance). Public input received through this notice in the **Federal Register** will help the Corps identify ways to further institutionalize environmental justice. These five goals can help the Corps directly address any barriers to all communities’ ability to enjoy the same degree of protections and equal access to Civil Works programs and services to achieve a healthy environment in which to live.

A. Draft Environmental Justice Strategic Plan Vision

It is the vision of the Corps to leverage our congressional authorities, our technical expertise, and our partnerships to ensure environmental justice principles and the Federal trust responsibility result in the Civil Works programs supporting *all* communities and enhancing their access to a healthy, sustainable, and resilient environment in which to live, play, work, learn, grow, worship, and engage in cultural and subsistence practices. It is the vision of the Corps to support all communities in enjoying the benefit of protection from natural hazards, environmental health and climate risks, and to also have meaningful input into Corps decisions that impact them. The Corps also aims to build and sustain a world-class, water resources workforce where Tribal Nations, U.S. Territories, and all communities with environmental justice concerns see themselves and their interests well represented, and want to partner with us to restore, and repair the nation’s waterways for public, environmental, social, cultural, and economic benefits.

B. Draft Environmental Justice Strategic Plan Goal One: People

Recruit, retain, and train a workforce with the lived experience, expertise, and capacity to deliver the Corps mission in ways that advance environmental justice for all

communities and protect our Federal trust responsibilities. Goal one will be accomplished through the following four objectives:

1. Consistent with merit system principles, develop a Corps workforce across all levels including junior staff and senior leaders, temporary and permanent staff, technical and operational staff that reflects the diversity of the American people. This includes targeted recruitment and outreach to people with lived experience of marginalization or environmental justice concerns and removing barriers to equal opportunity.

2. Foster a model workplace environment at the Corps where all employees are engaged, supported, heard, and empowered, with opportunities to learn, grow and excel during their career.

3. Provide workforce training and support for Corps staff to grow their environmental justice literacy and expertise, including how to incorporate environmental justice into the analysis of direct, indirect, and cumulative effects of proposed Federal actions or permits and to increase their understanding of Tribal sovereignty and the Federal trust responsibility.

4. Provide training and tools for staff on how to engage and communicate with Tribes and communities with environmental justice concerns in ways that foster mutual respect and trust, and in how to consider the information received during engagements in projects, decisions, and other Corps activities.

C. Draft Environmental Justice Strategic Plan Goal Two: Projects, Permits, and Other Corps Activities

Goal two of the Strategic Plan is to strive to conduct all Corps work within its authorities in ways that reduce disproportionate environmental burdens including human health effects across the landscape and improve environmental, economic, and social conditions in places and with communities with environmental justice concerns. Goal two will be accomplished through the following three objectives:

1. Prioritize resources (staff, funding, outreach) to efforts that will bring significant benefits with no group bearing a disproportionate burden of environmental harms and risks, including health burdens, in communities with environmental justice concerns, including in U.S. territories and across Tribal Nations.

2. Integrate best practices in equitable community engagement *and* the principles of Climate Resilience,

Indigenous Knowledge, Nature Based Solutions, the Federal trust responsibility, and Environmental Justice into the Corps Civil Works planning and project delivery process, and into current (where practicable) and new work activities and decisions that affect communities. Fully consider the public input provided as part of all decision-making processes.

3. Evaluate relevant legal authorities to enhance the Corps ability to both identify impacts and implement alternative solutions or specific mitigation actions that will reduce adverse impacts on and increase benefits to communities with environmental justice concerns.

D. Draft Environmental Justice Strategic Plan Goal Three: Partnerships

As part of a whole-of-government approach, goal three focuses on investing in building the trusted partnerships and collaboration needed to advance environmental justice across the nation. Goal three will be accomplished through the following three objectives:

1. Build, nurture, repair, or rebuild trusted relationships with Tribal Nations and all communities with environmental justice concerns to enhance their ability to receive benefits and to reduce burdens related to Corps activities. Work together with them to anticipate environmental justice concerns before they arise and integrate preferences into solutions.

2. Build strategic partnerships and increase project-based collaboration with other agencies and organizations who can help advance environmental justice. These organizations may have specialized expertise, unique authorities that compliment Corps authorities to create a more complete or equitable project, and or may have pre-existing relationships with local Tribes and communities, or insight into community needs.

3. Continue to participate in and leverage opportunities through interagency committees and working groups on relevant topics to exchange knowledge and advance environmental justice. Example topics include community-driven relocation, issues of homelessness, nature-based solutions, environmental justice-focused trainings, etc.

E. Draft Environmental Justice Strategic Plan Goal Four: Policy and Process

Goal four of the Strategic Plan is to refine Corps policy, processes, and decision making to reduce disparate environmental burden including adverse health effects, to increase access

to the benefits of Corps work activities, and to remove barriers to participation in decision-making for Tribal Nations and all communities with environmental justice concerns. Goal four will be accomplished through the following two objectives:

1. Staff will review and recommend improvements to policy or guidance that could reduce disparate environmental burden, increase access to benefits of Corps Civil Works programs for communities, and make it easier for affected communities to participate in the Corps processes that affect their built and natural environment. Further, Environmental Justice and Tribal subject matter experts should review Corps policies and guidance updates to ensure that updates will not disproportionately affect communities with environmental justice concerns.

2. Review and modify planning, budgeting, procurement, contracting, and other processes and decisions to focus resources to the maximum extent possible in Tribal and other communities or places that have the most environmental burdens, that would be the most affected by a particular agency action or decision, or are most in need to advance environmental justice.

F. Draft Environmental Justice Strategic Plan Goal Five: Further Institutionalize Environmental Justice

Goal five of the Strategic Plan is to institutionalize environmental justice and Federal trust principles across the Corps throughout all operations and establish accountability for decisionmakers and practitioners as they apply these principles across agency activities, in the Army Civil Works program. Goal five will be accomplished through the following three objectives:

1. Learn how environmental justice and Tribal trust issues intersect with every functional or work area at the Corps and use findings to update Policy and Process Guidance referenced in Goal four.

2. Develop a structure that ensures all employees can both learn and be held accountable for advancing environmental justice and upholding the Federal trust responsibilities.

3. Create a feedback mechanism to update Senior Leaders on progress and challenges to implementing environmental justice strategies.

II. Accessing Documents and Additional Information

You may access information on the Corps' Environmental Justice program, and information on the Environmental

Justice Strategic Plan update at the Corps' environmental justice website at <https://www.usace.army.mil/Missions/Environmental-Justice/>.

III. Stakeholder Engagement

The Corps poses a series of questions detailed in this notice for stakeholder input. These questions are only guideposts for comments. Input on all aspects of the Draft Environmental Justice Strategic Plan are welcome. Written input to the docket as well as verbal input during the virtual meetings are strongly encouraged. Verbal input received during the listening sessions will be considered equally to written comments.

1. Do the Draft Environmental Justice Strategic Plan vision, strategic goals, and objectives discussed in this notice address your interests and concerns about the advancement of environmental justice by the U.S. Army Corps of Engineers? Why or why not?

2. What actions should the U.S. Army Corps of Engineers undertake to advance environmental justice?

3. What performance measures or metrics should the U.S. Army Corps of Engineers establish to monitor progress towards advancing environmental justice?

IV. Public Meetings and Outreach

The Corps will hold a series of public virtual meetings intended to solicit input to inform its preparation of the Draft Environmental Justice Strategic Plan. At the virtual meeting, a brief presentation will be provided to give an overview of the Draft Environmental Justice Strategic Plan Vision, Goals and Objectives. The rest of the time is for participants to provide input. The introductory presentation in each virtual meeting will be recorded and posted on the Army Civil Works website and on the Corps' Environmental Justice website <https://www.usace.army.mil/Missions/Environmental-Justice/>.

The Corps will hold 2 virtual meetings open to all stakeholders and an additional 1 virtual meeting specific for Tribal input. Registration information for the public and Tribal virtual meetings is included in this notice. Separate notification to Tribal leaders is also being provided.

Registration of members of the public who wish to attend the virtual meeting is required. Spots are limited and those unable to attend are encouraged to provide written comments to the docket which will be given equal consideration. Attendees will be asked to provide their name and contact information to include email address. Registration instructions can be found at

the following website: <https://www.usace.army.mil/Missions/Environmental-Justice>.

Persons or organizations wishing to provide verbal input during the meetings will be selected on a first-come, first-serve basis. Due to the expected number of participants, individuals will be asked to limit their spoken presentation to three minutes. Once the speaking slots are filled, participants may be placed on a standby list to speak or continue to register to listen to the input. Supporting materials and written feedback from those who do not have an opportunity to speak can be submitted to the docket as described above. The schedule for the 3 virtual meetings is as follows:

Public Virtual Meetings

September 17, 2:00–3:30 p.m. ET:
<https://usace1.webex.com/webink/register/r36c21ff92925df01db195f735ad21871>.

September 19, 10:30–12:00 p.m. ET:
<https://usace1.webex.com/webink/register/r0ff400b54abeffff21ee493b057e782d>.

Tribal Virtual Meeting

Wednesday, September 18, 2024—2:00–3:30 p.m. ET: <https://usace1.webex.com/webink/register/r61e3be2c29453bf62518275359ee3dea>.

Michael L. Connor,

Assistant Secretary of the Army (Civil Works).

[FR Doc. 2024–20678 Filed 9–11–24; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

[Permit No. NAE–2021–01301]

Notice of Final Federal Agency Action on the Authorization for the New England Wind Farm and New England Wind Project

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of limitation on claims for judicial review of actions by the U.S. Army Corps of Engineers (USACE).

SUMMARY: USACE announces final agency action on the USACE authorization for the proposed construction and maintenance of the New England Wind Farm and New England Wind Project Phase I (New England Wind Phase I Project) offshore Massachusetts. USACE has issued a permit authorizing the construction and maintenance of the New England Wind

Phase I Project under section 10 of the Rivers and Harbors Act of 1899 (RHA) and section 404 of the Clean Water Act (CWA). The New England Wind Phase I Project is a “covered project” under title 41 of the Fixing America’s Surface Transportation Act.

DATES: A claim seeking judicial review of the USACE authorization of construction and maintenance of the New England Wind Phase I Project will be barred unless the claim is filed not later than two years after this notice’s publication date. If the Federal law that allows for judicial review of the USACE authorization specifies a shorter time period for filing such a claim, then that shorter time period will apply.

FOR FURTHER INFORMATION CONTACT:

Christine Jacek, 696 Virginia Road, Concord, Massachusetts 01742, 978–318–8026, cenae-r-offshorewind@usace.army.mil.

SUPPLEMENTARY INFORMATION: Notice is hereby given that USACE has taken final agency action on its authorization for the proposed New England Wind Phase I Project by issuing a permit authorizing construction and maintenance of the Project under section 10 of the RHA and section 404 of the CWA. A majority of the work will occur in the Atlantic Ocean within the Bureau of Ocean Energy Management (BOEM) Renewable Energy Lease Area OCS–A 0534, which is approximately eighteen (18) nautical miles (NM) south of Martha’s Vineyard, Massachusetts. Export cable work would occur within a forty two (42) NM long offshore export cable corridor extending from the lease area, through the Muskeget Channel and Nantucket Sound with cable landfall at Craigville Beach, Barnstable, Massachusetts. The export cables would also cross the Centerville River in Barnstable, Massachusetts.

The work authorized under the USACE permit includes the construction and maintenance of a commercial-scale offshore wind facility within a 63,012 acre BOEM Renewable Energy Lease Area OCS–A 0534. The work includes: (1) the installation of up to sixty two (62) wind turbine generators (WTGs) and up to two (2) electrical service platforms (ESPs) with up to seventy four (74) acres associated scour protection for the structures, (2) the installation of approximately 133 NM of inter-array cables connecting the WTGs and inter-link cable connecting the ESPs to the WTGs with eleven (11) acres of associated scour protection for the cables, (3) the installation up to two (2) export transmission cables within a single forty two (42) NM offshore export cable corridor (OECC) with

approximately 2.5 acres of cable scour protection on the outer continental shelf (OCS) and 21.5 acres of subtidal fills associated with cable scour protection and sand wave relocation activities. Each export transmission cable will have a 12 foot (ft.) wide disturbance zone associated with installation and an estimated disturbance area involving up to 75 acres of subtidal waters., (4) the refilling of two horizontal directional drilling (HDD) exit pits to be excavated for the HDD work associated with the shore to landfall work. Each HDD exit pit will be approximately 10,000 square feet (sq. ft.) in size with approximately 20,000 sq. ft. of total impacts associated with the discharge of excavated material back into the HDD pits, and (5) HDD installation of the transmission cables under the Centerville River.

The USACE’s decision to issue a permit, and the laws under which the action was taken, are described in the New England Wind Project Final Environmental Impact Statement (FEIS) published in March 2024, in the joint Record of Decision (ROD) issued on April 1, 2024, and in other project records. The FEIS, ROD, and other documents can be viewed and downloaded from the BOEM project website at <https://www.boem.gov/renewable-energy/state-activities/new-england-wind-1-and-2>. The USACE permit can be viewed and downloaded from the USACE website at <https://www.nae.usace.army.mil/Missions/Regulatory/permits-Issued/>. By this notice, USACE is advising the public of final agency action subject to 42 U.S.C. 4370m–6(a)(1)(A).

Authority: 42 U.S.C. 4370m–6(a)(1)(A).

John P. Lloyd,

Brigadier General, USA, Commanding.

[FR Doc. 2024–20642 Filed 9–11–24; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

Department of the Navy Science and Technology Board; Notice of Federal Advisory Committee Meeting

AGENCY: Department of the Navy (DoN), Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Department of the Navy Science and Technology Board (DoN S&T Board) will take place.

DATES: A partially closed meeting will be held on Thursday September 12, 2024 from 8 a.m. to 4 p.m. and an open session to the public from 8:15 a.m. to 9:15 a.m. (Eastern Daylight Time (EDT)).

ADDRESSES: The Closed session will be held at Naval Surface Warfare Center Carderock, Bethesda, Maryland. The open session may be accessed by videoconference. Information for accessing the videoconference will be provided after registering. (Pre-meeting registration is required. See guidance in **SUPPLEMENTARY INFORMATION** “Meeting Accessibility.”)

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Biehn, Alternate Designated Federal Officer (ADFO), Office of the Assistant Secretary of the Navy (Research, Development & Acquisition), Navy Pentagon, Washington, DC 20350–1000, 703–614–1635, don-stb@us.navy.mil.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of chapter 10 of title 5 U.S.C. (commonly known as the Federal Advisory Committee Act (FACA), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), title 41 of the Code of Federal Regulations (CFR), §§ 102–3.140 and 102–3.150, and covered by 5 U.S.C. 552b(c)(1). Due to circumstances beyond the control of the Designated Federal Officer, the Department of the Navy Science and Technology Board was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its September 12, 2024, meeting. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Purpose of the Meeting: The purpose of the meeting will be to review recommendations for the topics of Innovation, Ship Maintenance, Additive Manufacturing, and Electronic Warfare.

Agenda: On September 12, 2024, the chair of the board will open the Open public session of the meeting, where an Executive Summary will be discussed, and then the Chair will proceed to open the Closed session to proceed with classified discussions.

Availability of Materials for the Meeting: A copy of the agenda or any updates to the agenda for the meeting on September 12, 2024, as well as supporting documents, can be found on the website: <https://www.secnav.navy.mil/donsandtboard/Pages/default.aspx>.

Meeting Accessibility: Pursuant to section 552b(c)(1) of 5 U.S.C., this meeting will be partially closed to the

public. The public open session will be held by videoconference. All members of the public who wish to attend must register by contacting the DoN S&T Board at don-stb@us.navy.mil. Once registered, the web address and/or audio number will be provided. For any questions or concerns, please contact don-stb@us.navy.mil no later than September 5, 2024.

Written Statements: Pursuant to 41 CFR 102–3.105 and 102–3.140, and section 1009(a)(3) of title 5 U.S.C., written statements to the committee may be submitted at any time or in response to a stated planned meeting agenda by email to don-stb@us.navy.mil with the subject line, “Comments for DON STB Meeting.”

Dated: September 9, 2024.

A.J. Gioiello,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2024–20680 Filed 9–9–24; 4:15 pm]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0063]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Early Childhood Longitudinal Study, Kindergarten Class of 2023–24 (ECLS–K:2024) August 2024 Materials Revision Request

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before October 15, 2024.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link www.reginfo.gov/public/do/PRAMain to access the site. Find this information collection request (ICR) by selecting “Department of Education” under “Currently Under Review,” then check the “Only Show ICR for Public Comment” checkbox. Reginfo.gov provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by

clicking on the “View Information Collection (IC) List” link. Supporting statements and other supporting documentation may be found by clicking on the “View Supporting Statement and Other Documents” link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carrie Clarady, (202) 245–6347.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Early Childhood Longitudinal Study, Kindergarten Class of 2023–24 (ECLS–K:2024) August 2024 Materials Revision Request.

OMB Control Number: 1850–0750.

Type of Review: Revision of a currently approved ICR.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 157,586.

Total Estimated Number of Annual Burden Hours: 84,093.

Abstract: The Early Childhood Longitudinal Study (ECLS) program, conducted by the National Center for Education Statistics (NCES) within the Institute of Education Sciences (IES) of the U.S. Department of Education (ED), draws together information from multiple sources to provide rich, descriptive data on child development, early learning, and school progress. The ECLS program studies deliver national data on children’s status at birth and at various points thereafter; children’s transitions to nonparental care, early care and education programs, and school; and children’s experiences and growth through the elementary grades. The Early Childhood Longitudinal Study, Kindergarten Class of 2023–24 (ECLS–K:2024) is the fourth cohort in the series of early childhood longitudinal studies. The study will advance research in child development and early learning by providing a detailed and comprehensive source of current information on children’s early learning and development, transitions

into kindergarten and beyond, and progress through school. The ECLS–K:2024 will provide data about the population of children in kindergarten during the 2023–24 school year.

The request to conduct the first three national data collection rounds for the ECLS–K:2024 was approved in April 2023 (OMB# 1850–0750 v26). Revisions to procedures and materials for the first two rounds of data collection were submitted and approved in three subsequent revisions requests (OMB# 1850–0750 v27 was approved in July 2023; OMB# 1850–0750 v29 was approved in February 2024; and OMB#1850–0750 v30 was approved in July 2024). The ECLS–K:2024 fall kindergarten data collection was conducted August 2023–January 2024 and the spring kindergarten round was conducted March–July 2024. These two kindergarten data collections will be followed by a spring (March–July 2025) first-grade round. Each of these rounds of data collection involves advance school contacts, for example to conduct student sampling activities, collect teacher and school information, and locate families whose children may have moved schools. Future OMB packages are planned for the third-grade pilot test (March–July 2026), as well as for the future currently-planned round, that is the national spring (March–July 2027) third-grade round.

This current revision request (accompanied by 30 days of public comment) is to update study respondent materials, surveys, and website designs that will be used in the spring 2025 first-grade data collection activities. Many of the revisions in this package were based on analyses of the fall 2022 field test data (OMB# 1850–0750 v25) and experiences in the field from the national kindergarten rounds of collection, as well as additional discussions with design experts, all of which informed changes to the design of the surveys and assessments. Changes have been made to respondent materials to remove references to the fifth-grade round, as this collection is no longer planned. Revisions to the study instruments, the respondent materials, and websites are limited to changes to the spring first-grade materials. The current revision request contains updates to the school staff and parent survey instruments made as the specifications were programmed.

This revision request also contains the specifications for the Spanish and Mandarin translations of some parent materials. Finally, this request revises the race/ethnicity items in the web and hard-copy first-grade survey instruments in line with the new federal

statistical standard released on 3/28/24 (Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity (SPD 15)). The requested changes in this revision request reflect a slight increase in the cost to the federal government, but do not change the estimated respondent burden for conducting this study.

Dated: September 6, 2024.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–20644 Filed 9–11–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Privacy Act of 1974; System of Records

AGENCY: Department of Energy.

ACTION: Notice of a modified system of records.

SUMMARY: As required by the Privacy Act of 1974 and the Office of Management and Budget (OMB) Circulars A–108 and A–130, the Department of Energy (DOE or the Department) is publishing notice of a modification to an existing Privacy Act System of Records. DOE proposes to amend System of Records DOE–71, *The Radiation Accident Registry*. This System of Records Notice (SORN) is being modified to align with new formatting requirements, published by the OMB, and to ensure appropriate Privacy Act coverage of business processes and Privacy Act information. While there are no substantive changes to the “Categories of Individuals” or “Categories of Records” sections covered by this SORN, substantive changes have been made to the “System Locations,” “Routine Uses,” and “Administrative, Technical and Physical Safeguards” sections to provide greater transparency. Changes to “Routine Uses” include new provisions related to responding to breaches of information held under a Privacy Act SORN as required by OMB’s Memorandum M–17–12, “Preparing for and Responding to a Breach of Personally Identifiable Information” (January 3, 2017). Language throughout the SORN has been updated to align with applicable Federal privacy laws, policies, procedures, and best practices.

DATES: This modified SORN will become applicable following the end of the public comment period on October

15, 2024 unless comments are received that result in a contrary determination.

ADDRESSES: Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW, Washington, DC 20503 and to Ken Hunt, Chief Privacy Officer, U.S. Department of Energy, 1000 Independence Avenue SW, Rm. 8H–085, Washington, DC 20585, by facsimile at (202) 586–8151, or by email at privacy@hq.doe.gov.

FOR FURTHER INFORMATION CONTACT: Ken Hunt, Chief Privacy Officer, U.S. Department of Energy, 1000 Independence Avenue SW, Rm. 8H–085, Washington, DC 20585 or by facsimile at (202) 586–8151, or by email at privacy@hq.doe.gov, or by telephone at (240) 686–9485.

SUPPLEMENTARY INFORMATION: On January 9, 2009, DOE published a Compilation of its Privacy Act Systems of Records, which included System of Records DOE–71, *The Radiation Accident Registry*. In the “Routine Uses” section, this modified notice deletes a previous routine use concerning efforts responding to a suspected or confirmed loss of confidentiality of information as it appears in DOE’s compilation of its Privacy Act Systems of Records (January 9, 2009) and replaces it with one to assist DOE with responding to a suspected or confirmed breach of its records of Personally Identifiable Information (PII), modeled with language from OMB’s Memorandum M–17–12, “Preparing for and Responding to a Breach of Personally Identifiable Information” (January 3, 2017). Further, this notice adds one new routine use to ensure that DOE may assist another agency or entity in responding to the other agency’s or entity’s confirmed or suspected breach of PII, as appropriate, as aligned with OMB’s Memorandum M–17–12. Updates to the routine uses includes aligning them with the 2004 and 2015 amendments to The Energy Employees Occupational Illness Compensation Program Act (EEOICPA) of 2000 by Subtitle E of Division C of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375) and Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113–291). These changes include removing two categories of obsolete users and modifying a category to include advisory boards. The routine use formerly numbered four has been deleted as its governing Memorandum

of Understanding is no longer valid. An administrative change required by the FOIA Improvement Act of 2016 extends the length of time a requestor is permitted to file an appeal under the Privacy Act from 30 to 90 days. Both the "System Locations" and "Administrative, Technical and Physical Safeguards" sections have been modified to reflect the Department's usage of cloud-based services for records storage. Language throughout the SORN has been updated to align with applicable Federal privacy laws, policies, procedures, and best practices.

SYSTEM NAME AND NUMBER:

DOE-71, *The Radiation Accident Registry*.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Systems leveraging this SORN may exist in multiple locations. All systems storing records in a cloud-based server are required to use government-approved cloud services and follow National Institute of Standards and Technology (NIST) security and privacy standards for access and data retention. Records maintained in a government-approved cloud server are accessed through secure data centers in the continental United States.

U.S. Department of Energy, Office of Science, Consolidated Service Center, P.O. Box 2001, Oak Ridge, TN 37831.

SYSTEM MANAGER(S):

Manager, U.S. Department of Energy, Office of Science, Consolidated Service Center, P.O. Box 2001, Oak Ridge, TN 37831.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; The Energy Employees Occupational Illness Compensation Program Act (EEOICPA) of 2000, Public Law 106-398, 42 U.S.C. 7384 *et seq.*, as amended, including by Subtitle E of Division C of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375) and Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113-291); DOE order 151.1D Chg1 (MinChg), Comprehensive Emergency Management System, October 4, 2019; 42 U.S.C. 7274i. Program to monitor Department of Energy workers exposed to hazardous and radioactive substances, 50 U.S.C. 2733 *et seq.*

PURPOSE(S) OF THE SYSTEM:

Records in this system are maintained and used by the Department to provide

a current record of radiation accidents; to identify specific populations for use in epidemiological and clinical studies; and to conduct medical surveillance during the lifetime of the registrants.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Those persons accidentally exposed to acute dose of ionizing radiation as defined by exposure dose criteria agreed to by DOE, including the National Nuclear Security Administration (NNSA) and the Nuclear Regulatory Commission (NRC), by an interagency agreement. The dose criteria established by this agreement include one or more of the following: Greater than or equal to 25 REM (Roentgen Equivalent in Man) to the whole body, active blood forming organs or gonads; greater than or equal to 600 REM to skin of the whole body or extremities; greater than or equal to 75 REM to other tissues or organs from an external source; and greater than or equal to 1/2 National Council on Radiation Protection (NCRP) maximum permissible organ burden internally; all those medical administrations of radioisotopes that result in a dose or organ burden equal to or greater than those given above.

CATEGORIES OF RECORDS IN THE SYSTEM:

Official accident reports including reports of those accidents that have occurred within the jurisdiction of the NRC and have been transferred to the DOE for the Accident Registry according to the DOE/NRC agreement; names, addresses, Social Security numbers, unique identifiers for the Department employees and applicants for employment with the Department (*e.g.*, DOE OneID, employee number, and any other government identifier), date of birth, and sex; medical records compiled at the time of the accident (such records include physician and hospital records, diagnostic and laboratory test reports, radiographs, electrocardiograms, and radiation exposure reports); medical records of illnesses, examinations, including routine follow-up examinations, and investigations that have occurred since the radiation exposure; photographs or facsimiles of radiation-induced injuries; search and contact information for registrants not identified or located; consent to release information forms completed by registrants; death certificates; anecdotal information; and correspondence relating to the accident or the individuals involved.

RECORD SOURCE CATEGORIES:

The individual, medical records, physicians, medical institutions, and

reports of incident/accident/accident investigations from private and public sources, radiation dosimetry records, security clearance records, and employment records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use to a member of Congress submitting a request involving a constituent when the constituent has requested assistance from the member concerning the subject matter of the record. The member of Congress must provide a copy of the constituent's signed request for assistance.
2. A record from this system may be disclosed to contractor personnel, grantees, and cooperative agreement holders of components of the Department of Health and Human Services, including the National Institute for Occupational Safety and Health (NIOSH) and the National Center for Environmental Health of the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry (ATSDR) to facilitate health hazard evaluations, epidemiological studies, or public health activities required by law pursuant to a Memoranda of Understanding between the Department and the Department of Health and Human Services or its components. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.
3. A record from this system may be disclosed as a routine use to DOE contractors, grantees, participants in cooperative agreements, and collaborating researchers, or the employees of these parties, in performance of health studies or related health or environmental duties pursuant to their contracts, grants, and cooperating or collaborating research agreements; Federal, state, and local health and medical agencies or authorities; to subcontractors in order to determine a subject's vital status or cause of death; to health care providers to verify a diagnosis or cause of death; or to third parties to obtain current addresses for participants in health-related studies, surveys and surveillances. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.
4. A record from this system may be disclosed as a routine use for the

purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to: (1) persons representing the Department in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; (3) witnesses, potential witnesses, or their representatives and assistants; and (4) any other persons who possess information pertaining to the matter when it is necessary to obtain information or testimony relevant to the matter.

5. A record from this system may be disclosed as a routine use in court or administrative proceedings to the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings, or discussion in open court) when such disclosure: (1) is relevant to, and necessary for, the proceeding; (2) is compatible with the purpose for which the Department collected the records; and (3) the proceedings involve:

a. The Department, its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components; or

b. A current or former employee of the Department and its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, who is acting in an official capacity, or in any individual capacity where the Department or other United States Government agency has agreed to represent the employee.

6. A record from this system may be disclosed as a routine use to the appropriate local, tribal, state, or Federal agency when records, alone or in conjunction with other information, indicate a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

7. A record from this system may be disclosed to foreign governments or international organizations, in accordance with treaties, international conventions, or executive agreements.

8. A record from this system may be disclosed to the Department of Labor, the Department of Health and Human Services, their contractors, advisory boards, grantees, and cooperative agreement holders, pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000, to estimate radiation doses and other workplace exposures received by the

Department of Energy and contractor employees. Those provided information under this routine use are subject to the same limitations applicable to the Department officers and employees under the Privacy Act.

9. A record from this system may be disclosed as a routine use to other state and Federal agencies or entities whose mission entails reviewing or managing workers' compensation claims or administering other benefits programs. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

10. A record from this system may be disclosed as a routine use to appropriate agencies, entities, and persons when: (1) the Department suspects or has confirmed that there has been a breach of the System of Records; (2) the Department has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DOE (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

11. A record from this system may be disclosed as a routine use to another Federal agency or Federal entity, when the Department determines that information from this System of Records is reasonably necessary to assist the recipient agency or entity in: (1) responding to a suspected or confirmed breach; or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records may be stored as paper records, microfilm, or electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by name or Social Security number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Retention and disposition of these records are unscheduled. This requires the records to be retained as permanent until the National Archives and Records

Administration approves a DOE Records Disposition Schedule.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Electronic records may be secured and maintained on a cloud-based software server and operating system that resides in the Federal Risk and Authorization Management Program (FedRAMP) and the Federal Information Security Modernization Act (FISMA) hosting environment. Data located in the cloud-based server is firewalled and encrypted at rest and in transit. The security mechanisms for handling data at rest and in transit are in accordance with DOE encryption standards. Records are protected from unauthorized access through the following appropriate safeguards:

- *Administrative:* Access to all records is limited to lawful government purposes only, with access to electronic records based on role and either two-factor authentication or password protection. The system requires passwords to be complex and to be changed frequently. Users accessing system records undergo frequent training in Privacy Act and information security requirements. Security and privacy controls are reviewed on an ongoing basis.

- *Technical:* Computerized records systems are safeguarded on Departmental networks configured for role-based access based on job responsibilities and organizational affiliation. Privacy and security controls are in place for this system and are updated in accordance with applicable requirements as determined by NIST and DOE directives and guidance.

- *Physical:* Computer servers on which electronic records are stored are located in secured Department facilities, which are protected by security guards, identification badges, and cameras. Paper copies of all records are locked in file cabinets, file rooms, or offices and are under the control of authorized personnel. Access to these facilities is granted only to authorized personnel and each person granted access to the system must be an individual authorized to use or administer the system.

RECORD ACCESS PROCEDURES:

The Department follows the procedures outlined in 10 CFR 1008.4. Valid identification of the individual making the request is required before information will be processed, given, access granted, or a correction considered, to ensure that information is processed, given, corrected, or records

disclosed or corrected only at the request of the proper person.

CONTESTING RECORD PROCEDURES:

Any individual may submit a request to the System Manager and request a copy of any records relating to them. In accordance with 10 CFR 1008.11, any individual may appeal the denial of a request made by him or her for information about or for access to or correction or amendment of records. An appeal shall be filed within 90 calendar days after receipt of the denial. When an appeal is filed by mail, the postmark is conclusive as to timeliness. The appeal shall be in writing and must be signed by the individual. The words "PRIVACY ACT APPEAL" should appear in capital letters on the envelope and the letter. Appeals relating to DOE records shall be directed to the Director, Office of Hearings and Appeals (OHA), 1000 Independence Avenue SW, Washington, DC 20585.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, 10 CFR part 1008, a request by an individual to determine if a System of Records contains information about themselves should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer. The request should include the requester's complete name and the time period for which records are sought.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

This SORN was last published in the **Federal Register**, 74 FR 1072–1073, on January 9, 2009.

Signing Authority

This document of the Department of Energy was signed on September 5, 2024, by Ann Dunkin, Senior Agency Official for Privacy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on September 6, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2024–20622 Filed 9–11–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Request for Information (RFI) on Frontiers in AI for Science, Security, and Technology (FASST) Initiative

AGENCY: Office of Critical and Emerging Technologies, Department of Energy.

ACTION: Request for information (RFI).

SUMMARY: The Department of Energy's Office of Critical and Emerging Technologies (CET) seeks public comment to inform how DOE and its 17 national laboratories can leverage existing assets to provide a national AI capability for the public interest.

DATES: Responses to the RFI are requested by November 11, 2024.

ADDRESSES: Interested parties may submit comments electronically to FASST@hq.doe.gov and include "FASST RFI" in the subject line of the email.

FOR FURTHER INFORMATION CONTACT: Further questions may be addressed to Charles Yang through FASST@hq.doe.gov or (202) 586–6116.

SUPPLEMENTARY INFORMATION:

I. Background

This is an RFI issued by the U.S. Department of Energy's (DOE) Office of Critical and Emerging Technologies (CET). This RFI seeks public input to inform our ongoing work and DOE's proposed Frontiers in AI for Science, Security, and Technology (FASST) initiative,¹ which seeks to build the world's most powerful, integrated scientific AI models for scientific discovery, applied energy deployment, and national security applications.

DOE seeks input from:

- Academic institutions interested in partnering with DOE to leverage AI for scientific research
- For-profit and non-profit AI developers and research labs
- Data center and compute infrastructure providers
- Startups and investors
- Small businesses involved in the development or provision of AI technologies and services
- Civil society organizations potentially impacted by AI

- Labor training and technical workforce development organizations
- Think tanks and research organizations
- And other interested entities

II. Purpose

FASST is DOE's proposed initiative to build the world's most powerful, integrated scientific AI systems. This initiative leverages DOE's demonstrated history of capability building for the U.S. government, as well as key enabling infrastructure already housed at the DOE's Office of Science and Applied Energy facilities, and facilities operated by National Nuclear Security Administration (NNSA), including:

- **Data:** DOE is the leading generator of classified and unclassified scientific data through the world's largest collection of advanced experimental facilities, including particle accelerators, powerful light sources, specialized facilities for genomics and nanoscience, and neutron scattering sources.

- **Computing Infrastructure:** For decades, DOE has built and operated the world's fastest, most powerful, and highly energy efficient supercomputers. These supercomputers are strategic components of the nation's defensive capabilities, drive innovation through open access to the scientific community, and are the basis upon which to build safe and trustworthy AI capability for the nation.

- **Workforce:** DOE and its national labs host over 40,000 physicists, chemists, biologists, materials scientists, and computer scientists, who tackle some of the most urgent challenges in the national interest.

- **Partnerships:** DOE has unparalleled experience in mission-driven public-private collaborations. Through the Exascale Computing Project, DOE worked with industry partners to co-design and develop critical components of the computer chips that power today's leading AI models and partnered with leading academic institutions to develop scalable high-performance software libraries.

This RFI seeks public input to inform how DOE can partner with outside institutions and leverage its assets to implement and develop the roadmap for FASST, based on the four pillars of FASST: AI-ready data; Frontier-Scale AI Computing Infrastructure and Platforms; Safe, Secure, and Trustworthy AI Models and Systems; and AI Applications; as well as considerations for workforce and FASST governance.

¹ www.energy.gov/fasst.

III. Questions

1. Data

(a) What kinds of data governance practices, risks, and opportunities should DOE take into consideration, particularly for open sourcing scientific corpuses to the community or interested parties?

(b) What types of scientific and energy data should DOE prioritize for large-scale tokenization?

(c) Are there partner organizations with relevant scientific or energy-related data that DOE should work with?

(d) What are additional data-related tools and technologies DOE should invest in to promote AI-ready data and fuel continued US leadership in AI?

2. Compute

(a) How can DOE ensure FASST investments support a competitive hardware ecosystem and maintain American leadership in AI compute, including through DOE's existing AI and high-performance-computing testbeds?²

(b) How can DOE improve awareness of existing allocation processes for DOE's AI-capable supercomputers and AI testbeds for smaller companies and newer research teams?³ How should DOE evaluate compute resource allocation strategies for large-scale foundation-model training and/or other AI use cases?

(c) How can DOE continue to support development of energy-efficient AI hardware, algorithms, and platforms?

(d) How can DOE continue to support the development of AI hardware, algorithms, and platforms tailored for science and engineering applications in cases where the needs of those applications differ from the needs of commodity AI applications? How can DOE partner with other compute capability providers, including both on-premises and cloud solution providers, to support various hardware technologies and provide a portfolio of compute capabilities for its mission areas?

3. Models

(a) How should DOE consider the benefits of open sourcing of scientific and applied energy AI models for the scientific community while fully addressing research security and other national-security concerns?

(b) How can DOE support investment and innovation in energy efficient AI model architectures and deployment,

including potentially through prize-based competitions?

(c) What considerations should inform DOE's ongoing AI red-teaming and safety tests, particularly for Chemical, Biological, Radiological and Nuclear (CBRN) risks?

4. Applications

(a) What are application areas in science, applied energy, and national security that are primed for AI breakthroughs?

(b) How can DOE ensure foundation AI models are effectively developed to realize breakthrough applications, in partnership with industry, academia, and other agencies?

5. Workforce

(a) DOE has an inventory of AI workforce training programs underway through our national labs.⁴ What other partnerships or convenings could DOE host or develop to support an AI ready scientific workforce in the United States?

6. Governance

(a) How can DOE effectively engage and partner with industry and civil society? What are convenings, organizational structures, and engagement mechanisms that DOE should consider for FASST?

(b) What role should public-private partnerships play in FASST? What problems or topics should be the focus of these partnerships?

IV. Response Guidelines

Commenters are welcome to comment on any question. RFI responses shall include:

1. RFI title;
2. Name(s), phone number(s), and email address(es) for the principal point(s) of contact;
3. Institution or organization affiliation and postal address; and
4. Clear indication of the specific question(s) to which you are responding.

Responses to this RFI must be submitted electronically to FASST@hq.doe.gov with the subject line "FASST RFI" no later than 5:00 p.m. (ET) on November 11, 2024. Responses must be provided as attachments to an email. It is recommended that attachments with file sizes exceeding 25 MB be compressed (*i.e.*, zipped) to ensure message delivery. Responses must be provided as a Microsoft Word (*.docx) or Adobe Acrobat (*.pdf) attachment to the email and should be

no more than 15 pages in length, 12-point font, 1-inch margins. Only electronic responses will be accepted. Only one response per individual or organization will be accepted.

A response to this RFI will not be viewed as a binding commitment to develop or pursue the project or ideas discussed. DOE may engage in post-response conversations with interested parties.

Confidential Business Information

Because information received in response to this RFI may be used to structure future programs and/or otherwise be made available to the public, respondents are strongly advised NOT to include any information in their responses that might be considered business sensitive, proprietary, or otherwise confidential.

Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked "confidential" including all the information believed to be confidential, and one copy of the document marked "non-confidential" with the information believed to be confidential deleted. Failure to comply with these marking requirements may result in the disclosure of the unmarked information under the Freedom of Information Act or otherwise. The U.S. Government is not liable for the disclosure or use of unmarked information and may use or disclose such information for any purpose. If your response contains confidential, proprietary, or privileged information, you must include a cover sheet marked as follows identifying the specific pages containing confidential, proprietary, or privileged information:

Notice of Restriction on Disclosure and Use of Data

Pages [list applicable pages] of this response may contain confidential, proprietary, or privileged information that is exempt from public disclosure. Such information shall be used or disclosed only for the purposes described in this RFI. The Government may use or disclose any information that is not appropriately marked or otherwise restricted, regardless of source.

In addition, (1) the header and footer of every page that contains confidential, proprietary, or privileged information must be marked as follows: "Contains, Confidential, Proprietary, or Privileged Information Exempt from Public Disclosure" and (2) every line and

² www.energy.gov/cet/artificial-intelligence-testbeds-doe.

³ <https://science.osti.gov/ascr/Facilities/Accessing-ASCR-Facilities>.

⁴ www.energy.gov/cet/supercharging-americas-ai-workforce.

paragraph containing proprietary, privileged, or trade secret information must be clearly marked with [[double brackets]] or highlighting. Submissions containing CBI should be sent to: FASST@hq.doe.gov.

Signing Authority

This document of the Department of Energy was signed on September 6, 2024, by Helena Fu, Director, Office of Critical and Emerging Technologies, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on September 9, 2024.

Treena V. Garrett,

*Federal Register Liaison Officer, U.S.
Department of Energy.*

[FR Doc. 2024-20676 Filed 9-11-24; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14787-004]

Black Canyon Hydro, LLC; Notice of Application Accepted for Filing, Scoping Meetings, and Environmental Site Review; Soliciting Motions To Intervene and Protests; and Soliciting Scoping Comments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original major license.

b. *Project No.:* 14787-004.

c. *Date Filed:* January 18, 2023.

d. *Applicant:* rPlus Hydro, LLLP, on behalf of Black Canyon Hydro, LLC (BCH).

e. *Name of Project:* Seminole Pumped Storage Project (Seminole Project or project).

f. *Location:* The proposed project would be located at the U.S. Bureau of Reclamation's (Reclamation) Seminole Reservoir on the North Platte River in Carbon County, Wyoming, approximately 35 miles northeast of

Rawlins, Wyoming. The project would occupy 1,025.94 acres of land managed by the Bureau of Land Management (BLM) and 77.00 acres managed by Reclamation.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Lars Dorr, Program Manager for rPlus Hydro, LLLP. Address: Black Canyon Hydro, LLC c/o rPlus Hydro, LLLP 201 S. Main St. Suite 2100 Salt Lake City, Utah 84111. Phone: (858) 925-3743. Email: ldorr@rplusenergies.com.

i. *FERC Contact:* Michael Tust at (202) 502-6522; or email at michael.tust@ferc.gov.

j. *Deadline for filing scoping comments and motions to intervene and protests:* November 5, 2024.

The Commission strongly encourages electronic filing. Please file scoping comments and motions to intervene and protests using the Commission's eFiling system at <https://ferconline.ferc.gov/FEROnline.aspx>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <https://ferconline.ferc.gov/QuickComment.aspx>. For assistance, please contact FERC Online Support at FEROnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Seminole Pumped Storage Project (P-14787-004).

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. *Project Description:* The Seminole Project would utilize Reclamation's existing 1,017,280 acre-feet Seminole reservoir on the North Platte River as

the lower reservoir and would include the following new facilities: (1) a 8,498-foot-long circumference, 20-foot wide, 65 to 180-foot-high, roller-compacted concrete dam impounding a 10,800-acre-foot upper reservoir at a crest elevation of 7,445 feet; (2) the dam would have a 200-foot-long concrete, ungated, ogee crest emergency spillway with a crest elevation of 7,446 feet; (3) a 75-foot-diameter, covered bell-mouth intake set near the southwestern edge of the upper reservoir at elevation of 7,295 feet; (4) an approximately 680-foot-long, 32-foot-diameter concrete lined-headrace tunnel connecting to a 615-foot-long, 24-foot-diameter aboveground steel conduit which would extend underground for an additional 2,470 feet before discharging to a 30-foot-diameter vertical, concrete-lined shaft; (5) the vertical shaft then connects to a 165-foot-long, 17-foot-diameter concrete, steel-lined penstock and then to the pump-turbines; (6) three pump-turbines each rated at 324 megawatts (MW) for a combined total generating capacity of 972 MW located in the underground powerhouse (machine hall); (7) an approximately 4,350 foot-long, concrete tailrace channel discharging water to a lower intake structure within the existing Seminole Reservoir at normal maximum water surface elevation of 6,357 feet; (8) a transformer cavern containing 18 kilovolt (kV) generator step-up transformers for each unit, and a gas-insulated switchgear switchyard; (9) power would be transmitted from the transformer gallery via 765-foot-long horizontal tunnel to a vertical cable shaft up to a take-off structure at the surface, and then via two separate, 500 kV, overhead primary transmission lines extending to the 500 kV interconnection at Aeolus Substation, approximately 30 miles to the southeast of Seminole Reservoir; (10) an approximately 32-foot-diameter main access tunnel would provide access to the machine hall; (11) a 15-foot-wide, 16-foot-high surge chamber access tunnel lined with shotcrete; (12) an approximately 2.6-mile-long access road around the reservoir; (13) a 40-foot-wide road to the main access tunnel portal, including a new bridge over the tailrace of Seminole Dam; and (14) appurtenant facilities. In addition, portions of Western Area Power Administration's Miracle Mile-Snowy Range 1 115 kV and Miracle Mile-Snowy Range 2 230 kV transmission lines would be relocated around the upper reservoir. Additionally, the existing Bennett Mountain Road (also called Dry Lake Road) for accessing the proposed upper reservoir site and a section of an

existing powerline road for accessing the proposed lower intake structure at Seminoe Reservoir would be upgraded (*i.e.*, widened to 24 feet and realigned in places to reduce steep grades) to accommodate two-way traffic and heavy equipment.

BCH would draw 13,400 acre-feet of water from Seminoe Reservoir to initially fill the new upper reservoir and would need 672 acre-feet of water each year to replenish water lost through evaporation. BCH states it would either make contractual arrangements or potentially purchase an additional water right for the annual refill water. BCH states that generation would depend on grid conditions and market demands but that the project is designed to generate for up to approximately 10 hours each day at maximum generating capacity of 972 MW, or for longer durations at reduced generating output. In generating mode, the project would have an estimated maximum operating flow rate of 12,600 cubic feet per second (cfs) at maximum hydraulic capacity with all three turbine units operating. In pumping mode, the project would have an estimated maximum pumping flow rate of 10,500 cfs with all three pumps operating against an upper reservoir minimum operating elevation of 7,350 feet. The pumping capacity decreases to 8,298 cfs at the upper reservoir maximum operating elevation of 7,445 feet. The full pumping cycle to recharge the upper reservoir is estimated at approximately 14.6 hours and the maximum generation is 13 hours.

m. A copy of the application can be viewed on the Commission's website at <https://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support (see item j above).

You may also register at <https://ferconline.ferc.gov/FEROnline.aspx> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, please contact FERC Online Support (see item j above).

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

o. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

p. The Commission's scoping process will help determine the required level of analysis and satisfy the National Environmental Policy Act (NEPA) scoping requirements, irrespective of whether the Commission issues an environmental assessment or an environmental impact statement.

Scoping Meetings

In addition to written comments solicited by this notice, Commission staff will hold three public scoping meetings at the times and locations noted below. All interested individuals, resource agencies, Native American Tribes, and NGOs are invited to attend any of the meetings to assist Commission staff in identifying the scope of environmental issues that should be analyzed in the NEPA document. The times and locations of these meetings are as follows:

Daytime Scoping Meeting

Date: Tuesday, September 24, 2024.

Time: 10:00 a.m. to 12:00 p.m. MDT.

Location: Hilton Garden Inn Casper.

Address: 1150 N Poplar Street, Casper, Wyoming 82601.

Evening Scoping Meeting

Date: Tuesday, September 24, 2024.

Time: 6:30 p.m. to 8:30 p.m. MDT.

Location: Hilton Garden Inn Casper.

Address: 1150 N Poplar Street, Casper, Wyoming 82601.

Evening Scoping Meeting

Date: Wednesday, September 25, 2024.

Time: 6:30 p.m. to 8:30 p.m. MDT.

Location: Jeffrey Memorial Community Center.

Address: 315 W Pine Street, Rawlins, Wyoming 82301.

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the web at <http://www.ferc.gov>, using the "eLibrary" link. Follow the directions for accessing information in paragraph m.

Environmental Site Review

BCH and Commission staff will conduct an environmental site review of the project beginning at 8:00 a.m. on Wednesday, September 25, 2024. All interested individuals, resource agencies, Native American Tribes, and NGOs are invited to attend the site review. Participants will initially meet in the lobby at the Hilton Garden Inn at 1150 N Poplar Street, Casper, Wyoming 82601 before traveling to the site. The applicant will provide a detailed site visit agenda that includes approximately 7 stops, and will take up to 8 hours to complete. Attendees are responsible for their own vehicle transport and should wear appropriate outdoor clothing. The existing road to the upper reservoir site is steep and rocky; therefore, attendees wishing to see the upper reservoir site should plan on driving their own 4x4, high clearance, off-road capable vehicle to access that particular site. Please contact Lars Dorr, Program Manager at rPlus at (858) 925-3743 or via email at ldorr@rplusenergies.com no later than Friday September 20, 2024, to register for the environmental site review.

Meeting Procedures

Individuals, NGOs, Native American Tribes, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the NEPA document. At the start of each meeting, Commission staff will provide a brief overview of the meeting format

and objectives. Individual oral comments will be taken on a one-on-one basis with a court reporter (with Commission staff present). This format is designed to receive the maximum number of oral comments in a convenient way during the timeframe allotted. If you wish to speak, Commission staff will hand out numbers in the order of your arrival. If all individuals who wish to provide comments have had an opportunity to do so, Commission staff may conclude the meeting a half hour earlier than the scheduled time. Please see appendix 1 for additional information on the session format and conduct.¹

Scoping comments will be recorded by the court reporter and become part of the public record for this proceeding. Transcripts will be publicly available on FERC's eLibrary system. If a significant number of people are interested in providing oral comments in the one-on-one settings, a time limit of 5 minutes may be implemented for each commentor.

It is important to note that the Commission provides equal consideration to all comments received, whether filed in writing or provided orally at a scoping session. Although there will not be a formal presentation, Commission staff will be available throughout the scoping session to answer your questions about the environmental review process. Representatives from BCH will also be present to answer project-specific questions.

q. *Procedural Schedule:* The application will be processed according to the following anticipated processing schedule. Revisions to the schedule will be made as appropriate. The schedule for issuing draft and final NEPA documents is consistent with the Commission's Notice of Revised Schedule issued January 10, 2024: Scoping Document 1 Issued—September 2024

Acceptance and Scoping Notice Issued—September 2024

Scoping Document 1 Comments Due—November 2024

Issue Scoping Document 2 (if needed)—December 2024

Issue Notice of Ready for Environmental Analysis—December 2024

Comments, Recommendations and Agency Terms and Conditions/Prescriptions Due—February 2025

Applicant's Reply Comments Due—March 2025

Commission Issues Draft NEPA Document—August 2025

Commission Issues Final NEPA Document—March 2026

Dated: September 6, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

Appendix 1

FERC Session Format and Conduct

Session Format

FERC is conducting the session to solicit your scoping comments. There will not be a formal presentation by Commission staff; however, FERC staff is available to answer questions about the environmental review process. The session format is as follows:

- Tickets are handed out on a "first come, first serve" basis starting at the time listed in the Notice.
- Individuals are called in ticket number order to provide oral comments to be transcribed by a court reporter for the public record.
- Time limits on oral comments may be enforced to ensure that all those wishing to comment have the opportunity to do so within the designated session time.
- Additional materials about FERC and the environmental review process are available at information stations at the session.

Session Conduct

Proper conduct will help the sessions maintain a respectful atmosphere for attendees to learn about the FERC Environmental Review Process and to be able to provide comments effectively.

- Loudspeakers, lighting, oversized visual aids, or other visual or audible disturbances are not permitted.
- Disruptive video and photographic equipment may not be used.
- Conversations should be kept to a reasonable volume. Attendees should be respectful of those providing oral comments to the court reporters.
- Recorded interviews are not permitted within the session space.
- FERC reserves the right end the session if disruptions interfere with the opportunity for individuals to provide oral comments or if there is a safety or security risk.

[FR Doc. 2024–20768 Filed 9–11–24; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–12091–01–R8]

Clean Air Act Operating Permit Program; Order on Petition for Objection to State Operating Permit for Mountain Coal Company—West Elk Mine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition.

SUMMARY: The Environmental Protection Agency (EPA) Administrator signed an order dated May 24, 2024, granting in part and denying in part a petition dated January 30, 2024, from Center for Biological Diversity and WildEarth Guardians. The petition requested that the EPA object to a Clean Air Act (CAA) operating permit issued by the Colorado Department of Public Health and Environment (CDPHE) to Arch Coal, Inc. for its West Elk Coal Mine located in Gunnison County, Colorado.

FOR FURTHER INFORMATION CONTACT: Julia Witteman, EPA Region 8, telephone number: (303) 312–6156, email address: witteman.julia@epa.gov. The final order and petition are available electronically at: <https://www.epa.gov/title-v-operating-permits/title-v-petition-database>.

SUPPLEMENTARY INFORMATION: The EPA received a petition from the Center for Biological Diversity and WildEarth Guardians dated January 30, 2024, requesting that the EPA object to the issuance of operating permit no. 20OPGU411, issued by CDPHE to Arch Coal, Inc. in Gunnison County Colorado. On December 8, 2023, the EPA Administrator issued an order granting in part and denying in part the petition. The order itself explains the basis for the EPA's decision.

Sections 307(b) and 505(b)(2) of the CAA provide that a petitioner may request judicial review of those portions of an order that deny issues in a petition. Any petition for review shall be filed in the United States Court of Appeals for the appropriate circuit no later than November 12, 2024.

KC Becker,

Regional Administrator, Region 8.

[FR Doc. 2024–20673 Filed 9–11–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1261; FR ID 243492]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or

¹ The appendix referenced in this notice will not appear in the **Federal Register**. Copies of the appendix were sent to all those receiving this notice in the mail and are available at www.ferc.gov using the "eLibrary" link. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll free, (886) 208–3676 or TTY (202) 502–8659.

the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before November 12, 2024. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email PRA@fcc.gov and to nicole.ongele@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418-2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-1261.
Title: Creation of Interstitial 12.5 KiloHertz Channels in the 800 MHz Band Between 809-817/854-862 MHz.
Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents and Responses: 456 respondents; 228 responses.

Estimated Time per Response: 1 hour.
Frequency of Response: One-time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection is contained in 47 U.S.C. 151, 154, 301, 303, and 332 of the Communications Act of 1934.

Total Annual Burden: 456 hours.

Total Annual Cost: No Cost.

Needs and Uses: This collection will be submitted as an extension of a currently approved collection after this 60-day comment period to the Office of Management and Budget (OMB) in order to obtain the full three-year clearance. The purpose of requiring applicants to obtain letters of concurrence if their application causes contour overlap under a forward analysis or receives contour overlap under a reciprocal analysis is to ensure incumbents in the 800 MHz Mid-Band are aware of the contour overlap before an application is granted.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024-20692 Filed 9-11-24; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL MARITIME COMMISSION

[Docket No. FMC-2024-0008]

Extension of Time for Decision in Investigation Into Conditions Affecting United States Carriers in Connection With Canadian Ballast Water Regulation in the United States/Canada Great Lakes Trade

AGENCY: Federal Maritime Commission.

ACTION: Notice of extension of time and request for comments.

SUMMARY: The Federal Maritime Commission (Commission) has extended by 90 days the time for decision in its investigation into conditions created by the Government of Canada (Canada) in connection with regulation of ballast water management systems that may adversely affect the operation of United States carriers in the United States/Canada Great Lakes trade.

DATES: Submit comments on or before October 15, 2024.

ADDRESSES: You may submit comments, identified by Docket No. FMC-2024-0008, by the following method:

Federal eRulemaking Portal: Your comments must be written and in English. You may submit your comments electronically through the Federal eRulemaking Portal at www.regulations.gov. To submit comments on that site, search for Docket No. FMC-2024-0008 and follow the instructions provided.

FOR FURTHER INFORMATION CONTACT: For questions regarding submitting comments or the treatment of any confidential information, contact David Eng, Secretary; Phone: (202) 523-5725; Email: Secretary@fmc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

On May 22, 2024, the Federal Maritime Commission (Commission) initiated an investigation, pursuant to 46 U.S.C. 42302, of whether conditions created by the Government of Canada (Canada) in connection with regulation of ballast water management systems adversely affect the operation of United States carriers in the United States/Canada Great Lakes trade, in particular the carriers operating vessels that may become subject to regulation in September 2024, within the meaning of 46 U.S. Code, chapter 423 (Foreign Shipping Practices) (46 U.S.C. 42301-307). Having determined that the investigation would be enhanced by gathering and reviewing additional information, the Commission now extends by 90 days, from September 19, 2024, to December 18, 2024, the time for decision under 46 U.S.C. 42302(c).

II. Summary of Status of Investigation

On May 22, 2024, the Commission on its own motion initiated a Chapter 423 investigation into Canadian ballast water management regulation in the Great Lakes. *See* Investigation into Conditions Affecting United States Carriers in Connection with Canadian Ballast Water Regulation in the United States/Canada Great Lakes Trade, FMC-2024-0008, 89 FR 44979 (May 22, 2024) (May 2024 Notice of Investigation). In 2020, the Commission had opened an investigation under 46 U.S. Code, chapter 421 following a petition by the Lake Carriers Association (LCA). *See* FMC Docket No. 20-10. The petition alleged that Canadian regulation set to take effect in September 2024 would create conditions unfavorable to shipping by requiring U.S. vessels to install new ballast water management systems. Meanwhile, it became apparent that the U.S. Environmental Protection Agency (EPA), in its rulemaking to implement the Vessel Incidental Discharge Act (VIDA), is likely to issue rules that are less restrictive than those of Canada. May 2024 Notice of Investigation, 89 FR 44979. In a February 2024 letter, the LCA had noted that only a small group of U.S. Lakers built after 2008 (five vessels) would be affected by the Canadian regulation in 2024, with about 50 older Lakers not subject to it until 2030. *Id.* The Commission's Notice of Investigation was issued on May 22, 2024 which, under the 120-day time limit set by 46 U.S.C. 42302(c), means the current deadline to complete the investigation is September 19, 2024.

After the May 2024 Notice of Investigation, the investigation proceeded, and the FMC received 14 comments in June 2024. The Canadian government and those representing the interests of Canadian carriers, as well as those representing environmental interests, opposed the potential imposition of sanctions. On the other hand, those representing the interests of U.S. carriers and workers were supportive of such measures. At the same time Transport Canada, the responsible Canadian agency, established a procedure for seeking exemptions that became available to affected U.S. carriers in late July 2024, although the Commission understands that a comparable process had been available to Canadian carriers much earlier. *See* Procedure to request an exemption to install Ballast Water Management Systems under Ballast Water Regulations for foreign-flagged vessels in Canadian waters, Transport Canada (July 25, 2024) (Exemption Procedure), available at <https://tc.canada.ca/en/marine-transportation/marine-safety-management-system-tp-13585-e-tier-ii-procedures/tier-ii-procedure-request-exemption-install-ballast-water-management-systems-under-ballast-water-regulations-foreign-flagged-vessels-canadian-waters>. The Commission also understands that the relevant Canadian rule is due to take effect as to U.S. carriers shortly, specifically on September 8, 2024.

In light of the above, the Commission now extends the time for decision in its Chapter 423 investigation by 90 days, from the current deadline of September 19, 2024, to December 18, 2024, and it establishes a new comment period to gather more information on the apparent disparity between the exemption processes available to U.S. and Canadian carriers, including the difference in when the exemption procedures became available. In particular, the Commission seeks to gather and review more information about whether the exemption processes may have themselves led to adverse conditions in violation of 46 U.S.C. 42302(a), including information about developments occurring after the end of the initial comment period in June 2024. That will help the Commission continue to investigate whether the laws, rules, policies, or practices of Canada result in conditions that “adversely affect the operations of United States carriers in United States oceanborne trade” and that “do not exist for foreign carriers of [Canada] in the United States under the laws of the United States.” 46 U.S.C. 42302(a).

If the agency concludes that the standard of section 42302(a) is met, it is authorized to take certain actions to encourage remediation of those conditions. *See* May 2024 Notice of Investigation, 89 FR 44979–80. Specifically, the Commission may take actions “against any foreign carrier that is a contributing cause, or whose government is a contributing cause, to those conditions.” 46 U.S.C. 42304(a). Potential actions include imposing limits and/or fees on Canadian-flagged vessels that visit U.S. ports and requesting that the U.S. Department of Homeland Security and the U.S. Coast Guard refuse clearance and deny entry of such vessels into the U.S., or detain such vessels. *See* 46 U.S.C. 42304, 42305. Any such fees could be substantial, as they are authorized by law at a level up to \$2,559,636 per voyage. *See* 46 CFR 506.4. Before any action is taken under 46 U.S.C. 42304 or 42305, the relevant determination is submitted for Presidential review, within 10 days of receipt, under 46 U.S.C. 42306.

III. New Request for Comments

As explained above, the Commission determined that the above situation meets the threshold requirements for consideration under the relevant statutory and regulatory authority, and in May 2024, it initiated a Chapter 423 investigation into whether the situation has created conditions that adversely affect the operations of United States carriers. *See* 46 U.S.C. 42302; 46 CFR 555.3, 555.5, 555.6.

The Commission now finds that it would enhance its investigation to ask interested persons to submit written comments containing arguments, experiences, and/or data relevant to the options that have been available for carriers to seek an exemption from the Canadian ballast water management regulations going into effect in September 2024. In particular, the Commission seeks information about the extent to which such processes have differed based on whether the carrier is a U.S. carrier or a Canadian carrier, including but not limited to when the exemption processes became available for affected carriers in those categories; information that was unavailable when the last comment period closed in June 2024; and information about when specific carriers were granted or denied exemptions from the requirements at issue, as well as the basis for such decisions.

The Commission’s jurisdiction under 46 U.S.C. 42302 is broad, and the agency welcomes comments not only from the Government of Canada, but

also from container shipping interests, bulk cargo interests, vessel owners, individuals and groups with relevant information on commercial and environmental considerations, and anyone else with relevant information or perspectives on this matter.

As the Commission proceeds with this investigation, it may determine to request additional comment or gather information through other means as authorized under 46 U.S.C. 42303 and 46 CFR 555.5, 555.6.

By the Commission.

David Eng,

Secretary.

[FR Doc. 2024–20615 Filed 9–11–24; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2 p.m., Thursday, September 19, 2024.

PLACE: The United States Department of Labor Auditorium, Frances Perkins Building, 200 Constitution Avenue NW, Washington, DC 20210.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument in the matter of *Geneva Rock Products, Inc.*, Docket No. WEST 2022–0097. (Issues include whether the Judge abused his discretion when he ordered a stay of the case for an indefinite duration because of a pending criminal matter.)

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Phone Number for Listening to Meeting: 1 (866) 236–7472, Passcode: 678–100.

(Authority: 5 U.S.C. 552b)

Dated: September 9, 2024.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2024–20792 Filed 9–10–24; 11:15 am]

BILLING CODE 6735–01–P

FEDERAL RESERVE SYSTEM**Formations of, Acquisitions by, and Mergers of Bank Holding Companies**

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551-0001, not later than October 15, 2024.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Head of Bank Applications) 33 Liberty Street, New York, New York 10045-0001. Comments can also be sent electronically to Comments.applications@ny.frb.org:

1. *The Bank of Nova Scotia, Toronto, Canada*; to acquire up to 14.99 percent of the voting shares of KeyCorp, and thereby indirectly acquire voting shares of KeyBank National Association, both of Cleveland, Ohio.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,
Associate Secretary of the Board.

[FR Doc. 2024-20716 Filed 9-11-24; 8:45 am]

BILLING CODE P

GENERAL SERVICES ADMINISTRATION

[Notice—ME—2024—04; Docket No.2024—0002; Sequence No. 41]

Seeking Public Input for the 6th U.S. Open Government National Action Plan

AGENCY: Office of Government-wide Policy (OGP); General Services Administration (GSA).

ACTION: Notice; request for public comment.

SUMMARY: This notice informs the public that the United States Federal Government is initiating the co-creation process for its 6th U.S. Open Government National Action Plan. The GSA is inviting input from a wide and diverse array of stakeholders from the public, private, advocacy, not-for-profit, and philanthropic sectors, including State, local, Tribal, and territorial governments. This Request for Information (RFI) aims to gather ideas, suggestions, and recommendations for commitments that could be included in the 6th U.S. Open Government National Action Plan.

DATES: Responses to this Request for Information should be received by Tuesday, November 12, 2024.

ADDRESSES: Submit comments in response to Notice “Docket GSA—GSA—2024—0016” by <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for “GSA—GSA—2024—0016.” Select the link “Comment Now” that corresponds with “GSA—GSA—2024—0016.” Follow the instructions provided at the screen. Please include your name, organization name (if any), and “Docket GSA—GSA—2024—0016” on your attached document. All received public comments are subject to the Freedom of Information Act and will be posted in their entirety at [regulations.gov](https://www.regulations.gov), including any personal and business confidential information provided. Do not include any information you would not like to be made publicly available.

Instructions for Submission: Please review and follow the guidelines in the attached public commenting policy within Docket GSA—GSA—2024—0016. Written comments should not exceed two (2) pages. Attachments or linked

resources or documents are not included in the two-page limit. Please use concise, plain language in a narrative or bullet format. GSA has provided some key questions on which public insights would be most valuable (see Supplementary Information, Part III). You may respond to some or all of these questions. Any links you provide to online materials or presentations must be publicly accessible. Each submitted response should include:

- The name of the individual(s) or organization(s) responding.
- A brief description of the responding individual(s) or organization(s)'s mission and areas of experience and expertise.
- Optional—Contact information for questions and other follow-up on your response.
- RFI question(s), topic(s), and policy suggestions that your submission and materials address.

Please feel free to share this RFI with colleagues or others for feedback.

FOR FURTHER INFORMATION CONTACT:

Alexis Masterson, U.S. Open Government Secretariat, Office of Government-wide Policy, by email at opengovernmentsecretariat@gsa.gov or by phone at 703-627-4850.

SUPPLEMENTARY INFORMATION:**I. Background**

The United States is a founding member of the Open Government Partnership (OGP), a voluntary, global alliance between governments and civil society to bolster democracy through openness, transparency, and public engagement. At the core of OGP is a belief in community-centered governance, and a pledge to transform the way the public sector serves and is accountable to its people. As a multi-tiered platform, OGP includes country-level and local government-level members, as well as thousands of civil society organization partners. OGP members are required to work and collaborate with civil society to create national or local action plans every two to three years, implement meaningful transparency and accountability commitments, publicly report on progress, and submit to independent monitoring and reporting. This RFI will provide input into the 6th U.S. Open Government National Action Plan the United States is developing under this initiative. You can access the previous U.S. Open Government National Action Plans in the resource section of the new U.S. Open Government Secretariat website at <https://www.gsa.gov/usopengov>.

The Open Government Secretariat, in collaboration with the White House

Office of Science and Technology Policy (OSTP) and the new Open Government Federal Advisory Committee, is leading the development of the 6th U.S. Open Government National Action Plan. The U.S. Open Government Secretariat is responsible for coordinating this effort and ensuring the plan reflects the input and priorities of diverse stakeholders.

This RFI is intended to gather diverse ideas and suggestions for the U.S.'s 6th Open Government National Action Plan. Your input is crucial in shaping a plan that reflects the needs and priorities of the American people. In addition to, or as an alternative to, submitting written feedback in response to this RFI, you are invited to attend a virtual listening session hosted by GSA on Wednesday, October 9, 2024 from 2 p.m. to 4 p.m. ET. This on-the-record and recorded session offers an opportunity to gain further insight and provide live input. Registration is required. Please register for the event at <https://gsa.zoomgov.com/meeting/register/vJltceygrDMqHB0la7An4tyg9Gx3xIKFVQA>.

II. Considerations for Responses

When submitting your ideas, please keep in mind that all potential commitments must align with the resource constraints of the U.S. government. This includes considerations such as budget, personnel, and the feasibility of implementation. Commitments included in the 6th U.S. Open Government National Action Plan will need to be specific, measurable, achievable, relevant, and time-bound (SMART).

Respondents are encouraged to structure their ideas around one of the 10 challenge themes in the Open Government Challenge, available at <https://www.opengovpartnership.org/the-open-gov-challenge>. These themes provide a comprehensive framework to structure responses and ensure all aspects of open government are considered.

The U.S. Open Government Secretariat values all contributions and will carefully review each submission based on the above criteria. GSA will review and consider the usability and applicability of each of the responses to this RFI in shaping the 6th U.S. Open Government National Action Plan. That being said, all RFI responses will be made available to the Open Government Federal Advisory Committee as input into their official recommendations to the commitments that should be included in the 6th U.S. Open Government National Action Plan. To help refine your proposals, respondents

may wish to review previous U.S. Open Government National Action Plans (<https://www.gsa.gov/governmentwide-initiatives/us-open-government/resources#tab--National-Action-Plans>) to see if similar ideas have been addressed before.

III. Topics and Key Questions

You are invited to provide ideas for new topics and commitments that could be included in the 6th U.S. Open Government National Action Plan. Respondents do not need to respond to every question and may provide additional feedback for the U.S. Open Government Secretariat to consider in developing and implementing the 6th U.S. Open Government National Action Plan. Specifically, GSA is looking for:

1. *Problem Identification:* Please explain a specific problem that open government can address. Identify unmet needs, broken processes, and problems around transparency, participation, and accountability. Explain how open government commitments can deliver a more responsive, equitable, and accountable government for and by the people.

2. *Opportunities to Build on Existing Work:* Identify existing work by a federal government agency or outside of the government, such as by civil society individuals or nongovernmental organizations, that can be built upon to support open government efforts. How can these efforts be expanded or enhanced to create meaningful commitments?

3. *Innovative Approaches:* What innovative approaches or emerging technologies could the government explore to enhance transparency, public participation, and accountability? How could these be integrated into the 6th U.S. Open Government National Action Plan?

4. *Resources and Recommendations:* Suggest existing reports, collections of recommendations, and landscape analyses that can help inform a comprehensive, responsive, and evidence-based co-creation process for the 6th U.S. Open Government National Action Plan.

Mehul Parekh,

Acting Associate Administrator, Office of Government-wide Policy, General Services Administration.

[FR Doc. 2024-20702 Filed 9-11-24; 8:45 am]

BILLING CODE 6820-UA-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-24-24DU]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled "Generic Clearance for the Collection of Minimal Data Necessary for Case Data During an Emergency Response" to the Office of Management and Budget (OMB) for review and approval. CDC previously published a "Proposed Data Collection Submitted for Public Comment and Recommendations" notice on March 22, 2024 to obtain comments from the public and affected agencies. CDC received one comment related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639-7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting

“Currently under 30-day Review—Open for Public Comments” or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Generic Clearance for the Collection of Minimal Data Necessary for Case Data During an Emergency Response—New—Office of Public Health Data, Surveillance, and Technology (OPHDST), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

During a public health emergency response, state, tribal, local, and territorial (STLT) health departments and CDC need to exchange data on confirmed, probable, and suspected cases rapidly. Timely notifications of cases from STLT to CDC are critical to provide situational awareness at the federal level to support decision making, particularly for public health threats that escalate quickly and cross jurisdictions. To this end, collecting the

minimum data necessary will provide standardization and consistency among technical approaches and Agency-wide processes. The harmonization across CDC programs and STLTs will reduce the burden on STLTs and healthcare providers from ad hoc requests for case data from CDC programs.

Section 319D of the Public Health Service Act (as amended Through Pub. L. 118–35, enacted January 19, 2024) states that CDC shall define the minimum data necessary as the Agency collaborates with STLTs and other partners to improve the appropriate near real-time electronic transmission of interoperable public health data for situational awareness and response to public health emergencies. In addition, the CDC Advisory Committee to the Director (ACD) recommends that CDC should establish the minimum data necessary for core data sources including case data to be transmitted to CDC from STLTs.

CDC requests a three-year approval for a new Generic Information Collection Request (ICR), Clearance for the Collection of Minimal Data Necessary for Case Data During an Emergency Response. This new ICR includes a request for approval for CDC to collect the minimum data necessary for confirmed, probable, and suspected

cases of any disease or condition that is the subject of an emergency response. Data may be sent to CDC by STLT Health Departments through Data Collation and Integration for Public Health Event Response (DCIPHER) or other automated or non-automated mechanisms including but not limited to fax, email, secure file upload, and data entry to a secure website.

Data will be used for ongoing situational awareness and to monitor the occurrence and spread of the disease or condition. Other uses may include identifying populations or geographic areas at high risk; planning prevention and control programs and policies; and allocating resources appropriately. The data may also be used by CDC to obtain travel histories and other information to describe and manage outbreaks and conduct public health follow-up to minimize the spread of disease. The burden estimates include the time that states, territories, freely associated states, and cities will incur to submit confirmed, probable, and suspected case data for diseases or conditions that are the subject of an emergency response.

CDC requests OMB approval for an estimated 10,951 annualized burden hours for the 60 respondents. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
States	Submission of case data	50	365	30/60
Territories	Submission of case data	5	365	30/60
Freely Associated States	Submission of case data	3	365	30/60
Cities	Submission of case data	2	365	30/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office,
Office of Public Health Ethics and
Regulations, Office of Science, Centers for
Disease Control and Prevention.

[FR Doc. 2024–20717 Filed 9–11–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2024–OS–0035]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Intelligence and Security (OUSD(I&S)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by October 15, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Reginald Lucas, (571) 372–7574,
whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

SUPPLEMENTARY INFORMATION:

Title: Associated Form; and OMB
Number: Certificate Pertaining to
Foreign Interests; SF–328; OMB Control
Number 0704–0579.

Type of Request: Revision.
Number of Respondents: 62,950.
Responses per Respondent: 1.
Annual Responses: 62,950.
Average Burden per Response: 100
minutes.

Annual Burden Hours: 104,917.
Needs and Uses: Information
collection via the Standard Form (SF)
328, “Certificate Pertaining to Foreign
Interests,” is necessary to support the
execution of 32 CFR part 117, “National
Industrial Security Program (NISPO),”

dated December 21, 2020, or equivalent. Executive Order (E.O.) 12829, as amended, “National Industrial Security Program (NISP),” section 202 (a) stipulates that the Secretary of Defense serves as the Executive Agent for inspecting and monitoring the contractors, licensees, and grantees who require or will require access to, or who store or will store classified information; and for determining eligibility for access to classified information of contractors, licensees, and grantees and their respective employees. Section 202 (e) also authorizes the Executive Agent to issue, after consultation with affected agencies, standard forms that will promote the implementation of the NISP.

E.O. 12829 was amended by E.O. 13691, adding the Secretary of Homeland Security as the fifth Cognizant Security Agency. Section 202 (d) of E.O. 12829 stipulates that the Secretary of Homeland Security may determine the eligibility for access to Classified National Security Information of contractors, licensees and grantees and their respective employees under a designated critical infrastructure protection program, including parties to agreements with such programs. The Secretary of Homeland Security also may inspect and monitor the contractors, grantees or licensees and facilities or may enter into written agreements with the Secretary of Defense, as Executive Agent or with the office of the Director of Intelligence/ Director of Central Intelligence Agency to inspect and monitor these programs in whole or in part on behalf of the Secretary of Homeland Security. The specific requirements necessary to protect classified information released to private industry are found in NISPOM; found in DoDI 5220.31 “National Industrial Security Program (NISP),” which incorporates and cancels DoD Instruction 5220.22, “National Industrial Security Program,” March 18, 2011, as amended. The SF 328 incorporates its usage for the NISP portion of the Classified Critical Infrastructure Protection Program as stipulated under E.O. 12829, as amended by E.O. 13691. Revisions to the SF 328 will also incorporate its usage under the DoD’s Innovation initiative through the DoD Enhanced Security Program (DESP), pursuant to section 951 of Public Law 114–328 (10 U.S.C. 1564 note). The DESP is a DoD only initiative and is not part of the NISP. Companies participating under the DESP do not require a DoD contract but are required to enter into a Memorandum of Agreement.

Completion of the SF 328 and submission of supporting documentation (e.g., company or entity charter documents, board meeting minutes, stock or securities information, descriptions of organizational structures, contracts, sales, leases and/or loan agreements and revenue documents, annual reports and income statements, etc.) is part of the eligibility determination for access to classified information and/or issuance of an Entity Eligibility Determination (also known as a Facility Security Clearance).

Section 847 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116–92), “Mitigating Risks Related to Foreign Ownership, Control, or Influence of Department of Defense Contractors or Subcontractors,” requires the Secretary for Defense to improve the process and procedures for the assessment and mitigation of risks related to FOCI of contractors and subcontractors doing business with the DoD, in conjunction with the Departments efforts to develop and implement an improved analytical framework for mitigating risk relating to ownership structure, as required by 10 U.S.C. 2509 and section 847 of Public Law 116–92. To fulfill the requirements of sec. 847, contractors and subcontractors must disclose to DCSA their beneficial ownership and whether they are under FOCI, and to update those disclosures when changes occur to information previously provided consistent with the requirements of the NISPOM. In addition, sec. 847 provides for the creation of other measures as necessary to be consistent with other relevant authorities, including the NISP.

The Small Business Innovation Research and Small Business Technology Transfer (SBIR/STTR) Extension Act of 2022, Public Law 117–183, section 4, “Foreign Risk Management” (DoD SBIR/STTR programs), requires the head of each Federal agency required to establish a SBIR or STTR program to implement a due diligence program to assess security risks presented by small business concerns seeking federal awards. These security risks includes, among other things, foreign interested-related risks. The DoD intends to utilize the SF 328 as the basis for information collection for DoD SBIR/STTR program participants to disclose their foreign interests, and to report any future changes, as appropriate. For DoD SBIR/STTR, the DoD will use this form to collect information to conduct a risk-based due diligence review and assess security risks presented by small business concerns seeking a federally funded award through the DoD SBIR/

STTR programs. The submission will be required to be submitted as part of the SBIR/STTR solicitation package, and details concerning its submission will be included in the solicitation published to perspective submitters.

The use of the SF 328 will also be required by the forthcoming Cybersecurity Maturity Model Certification (CMMC) program, which is currently in the Rulemaking process under 32 CFR part 170. The CMMC program will require CMMC Level 2 Certification Assessments be conducted by a CMMC Third Party Assessment Organization (C3PAO), accredited by the DoD approved CMMC Accreditation Body (AB). To be accredited, the CMMC AB and all C3PAOs must receive a favorable adjudication and not be subject to a level of risk from Foreign Ownership, Control, or Influence (FOCI) as determined by the CMMC Program Management Office (PMO). DCSA will conduct the FOCI assessments for the CMMC AB and C3PAOs after they are nominated by the CMMC PMO.

The multiple authorized uses of this form will create uniformity among numerous authorities responsible for the vetting or review of companies or entities for foreign interest-related risks. In addition, it will establish more consistency among industry concerning their basic information submission requirements regarding foreign interest information.

The submission of the SF–328, and supporting documentation, may be done electronically through a government approved system of record.

Affected Public: Business or other for profit; Not-for-profit institutions.

Frequency: On occasion.

Respondent’s Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Sehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Mr. Reginald Lucas.

Requests for copies of the information collection proposal should be sent to Mr. Lucas at whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

Dated: September 4, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024-20650 Filed 9-11-24; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2024-N-3945]

The Food and Drug Administration's Draft Strategy Document on Innovative Manufacturing Technologies

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the publication of a draft Strategy Document for public comment outlining specific actions FDA will take during fiscal years 2023–2027 to facilitate the use of innovative manufacturing technologies. As part of the Prescription Drug User Fee Act (PDUFA) Reauthorization Performance Goals and Procedures Fiscal Years 2023–2027 (PDUFA VII), FDA committed to advance the use and implementation of innovative manufacturing. In connection with this effort, on June 8, 2023, FDA participated in a public workshop on the use of innovative manufacturing technologies for products regulated by the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER), including barriers to their adoption. FDA also committed to issuing this draft Strategy Document for public comment. The actions described in the draft Strategy Document are based on lessons learned from FDA's experiences with submissions involving advanced manufacturing technologies as well as feedback from the workshop and other public input.

DATES: Either electronic or written comments on the draft Strategy Document must be submitted by November 12, 2024.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing

system will accept comments until 11:59 p.m. Eastern Time at the end of November 12, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2024-N-3945 for "FDA's Strategy Document on Innovative Manufacturing Technologies." Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions:** To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

FOR FURTHER INFORMATION CONTACT:

Elisa A. Nickum, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4521, Silver Spring, MD 20993, 301-796-4226, Elisa.Nickum@fda.hhs.gov; or James Myers, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993-0002, 240-402-7911.

SUPPLEMENTARY INFORMATION:

I. Background

Innovative manufacturing technologies—including but not limited to continuous manufacturing, distributed manufacturing, modern aseptic manufacturing equipment, and

novel analytical methods—can increase product development speed, bolster supply chains, and prevent drug shortages. On June 8, 2023, FDA cosponsored and participated in a public workshop hosted by the Duke-Margolis Center for Health Policy on “Advancing the Utilization and Supporting the Implementation of Innovative Manufacturing Approaches.” At this workshop, interested parties from industry shared feedback on their interactions with FDA’s CDER Emerging Technology Program (ETP) and CBER Advanced Technologies Team (CATT) to guide submissions from persons or organizations using innovative manufacturing technologies. Regulators, academic researchers, and industry representatives discussed the current barriers to using these technologies and shared ideas on how initiatives such as the newly created Advanced Manufacturing Technologies Designation Program (AMTDP) could alleviate these barriers. The workshop fulfilled a PDUFA VII commitment related to advancing utilization and implementation of innovative manufacturing, as well as section 506L(e)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 356L(e)(1)), as amended by section 3213 of the Food and Drug Omnibus Reform Act of 2022 regarding the AMTDP.

Based on lessons learned from the Agency’s experience with submissions involving advanced manufacturing, the topics discussed during the June 8, 2023, workshop, and other public input, FDA developed the draft Strategy Document on Innovative Manufacturing Technologies, which outlines the specific activities FDA intends to undertake to facilitate the use of innovative manufacturing technologies. Specifically, under the draft strategic plan FDA intends to undertake the following activities: continue to enhance the ETP and CATT as a mechanism to support innovation; implement the AMTDP in a manner that reflects feedback on eligibility criteria; continue to identify opportunities for international harmonization in support of advanced manufacturing; support and utilize ongoing initiatives for advanced manufacturing to address potential barriers; and support training in advanced manufacturing for FDA assessment staff.

II. Requested Information and Comments

The draft Strategy Document on Innovative Manufacturing Technologies is available on FDA’s website for Completed PDUFA VII Deliverables (<https://www.fda.gov/industry/>

[prescription-drug-user-fee-amendments/completed-pdufa-vii-deliverables](https://www.fda.gov/industry/prescription-drug-user-fee-amendments/completed-pdufa-vii-deliverables)). Interested persons are invited to provide detailed comments on all aspects of the draft Strategy Document. FDA encourages interested parties to provide the specific rationale and basis for their comments, including any available supporting data and information.

Dated: September 6, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–20665 Filed 9–11–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2023–0822]

Port Access Route Study: Approaches to the Port of Cape Canaveral and Vessel Transit Offshore Jacksonville, Daytona, and Canaveral, Florida

AGENCY: Coast Guard, DHS.

ACTION: Notice of public meeting.

SUMMARY: A meeting will be held on September 19, 2024, to support public interest in the Coast Guard’s Port Access Route Study (PARS) for the Approaches to the Port of Cape Canaveral and Vessel Transit Offshore Jacksonville, Daytona, and Canaveral, Florida. The Coast Guard will discuss the PARS notice of study that was published on April 17, 2024, and next steps for public engagement. This meeting is open to the public, and the Coast Guard invites those attending to bring additional comments that support the goals of the PARS.

Public Meeting: The meeting will be held at the Maritime Center (Commission Room), 445 Challenger Rd., Cape Canaveral, FL 32920 on Thursday, September 19, 2024, from 11 a.m. to 12:30 p.m., Eastern Daylight Time. Closer to the meeting date, guidance on how to join virtually will be published in the Local Notice to Mariners (LNM) for Coast Guard District Seven (D7) and the Sector Jacksonville Marine Safety Information Bulletin (MSIB). If the meeting date or time needs to be adjusted due to unforeseen circumstances, an updated date and time will be communicated via the LNM and MSIB. D7 LNMs can be accessed on the Coast Guard Navigation Center’s website at <https://www.navcen.uscg.gov/local-notice-to-mariners?district=7+0&subdistrict=n>. Sector Jacksonville MSIBs can be accessed on their Homeport page at

<https://homeport.uscg.mil/port-directory/jacksonville>.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of public meeting or the PARS notice of study, call or email Lieutenant Meredith Overstreet, Seventh Coast Guard District (dpw), U.S. Coast Guard; telephone 206–815–5857, email Meredith.D.Overstreet1@uscg.mil.

SUPPLEMENTARY INFORMATION: On April 17, 2024, the Coast Guard published a notice in the **Federal Register** announcing we were conducting a PARS to evaluate safe routes for vessel traffic transiting to and from the Port of Cape Canaveral and within the offshore waters of Jacksonville, Daytona, and Canaveral, Florida.¹ In the notice, we requested public comments on the PARS that closed on July 16, 2024. Additionally, we asked the public to inform us if they wanted a public meeting regarding the study area. We received two public comments requesting a public meeting.² We are scheduling a public meeting. The details on the meeting are located in the “Public Meeting” section of this document.

To access the original notice of study, refer to docket number USCG–2023–0822 in the **Federal Register** by utilizing the search box at <https://www.federalregister.gov/> or by following the direct link: <https://www.federalregister.gov/documents/2024/04/17/2024-08191/port-access-route-study-approaches-to-the-port-of-cape-canaveral-and-vessel-transit-offshore>.

This notice is published under the authority of 46 U.S.C. 70003(c)(1).

Dated: September 9, 2024.

Douglas M. Schofield,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 2024–20746 Filed 9–11–24; 8:45 am]

BILLING CODE 9110–04–P

¹ Coast Guard Notice of study; request for comments document titled, Port Access Route Study: “Approaches to the Port of Cape Canaveral and Vessel Transit Offshore Jacksonville, Daytona, and Canaveral, Florida” (89 FR 27435).

² These comments can be viewed on [regulations.gov](https://www.regulations.gov) at: [Regulations.gov](https://www.regulations.gov). Insert “USCG–2023–0822” in the “search box.” Click on the PARS Study Notice document. Then click on the tab “Document Comments.”

DEPARTMENT OF HOMELAND SECURITY**U.S. Customs and Border Protection****[OMB Control Number 1651–0041]****Agency Information Collection Activities; Extension; Establishment of a Bonded Warehouse (Bonded Warehouse Regulations)**

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than November 12, 2024) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0041 in the subject line and the agency name. Please submit written comments and/or suggestions in English. Please use the following method to submit comments:

Email. Submit comments to: CBP_PRA@cbp.dhs.gov.

FOR FURTHER INFORMATION CONTACT:

Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339,

or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Establishment of a Bonded Warehouse (Bonded Warehouse Regulations).

OMB Number: 1651–0041.

Current Actions: This submission will extend the expiration date validity without a change to the information collected or method of collection.

Type of Review: Extension (w/o change).

Affected Public: Businesses.

Abstract: Owners or lessees desiring to establish a bonded warehouse must make written application to the U.S. Customs and Border Protection (CBP) port director of the port where the warehouse is located. The application must include the warehouse location, a description of the premises, and an

indication of the class of bonded warehouse permit desired. Owners or lessees desiring to alter or to relocate a bonded warehouse may submit an application to the CBP port director of the port where the facility is located. The authority to establish and maintain a bonded warehouse is set forth in 19 U.S.C. 1555, and provided for by 19 CFR 19.2, 19 CFR 19.3, 19 CFR 19.6, 19 CFR 19.14, and 19 CFR 19.36.

Type of Information Collection: Bonded Warehouse Application.

Estimated Number of Respondents: 198.

Estimated Number of Annual Responses per Respondent: 47.

Estimated Number of Total Annual Responses: 9,306.

Estimated Time per Response: 32 minutes.

Estimated Total Annual Burden Hours: 4,963.

Dated: September 9, 2024.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2024–20682 Filed 9–11–24; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY**U.S. Customs and Border Protection****[OMB Control Number 1651–0030]****Agency Information Collection Activities; Extension; Declaration of Unaccompanied Articles (CBP Form 255)**

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than November 12, 2024) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0030 in the subject line and the agency name. Please submit written comments and/or suggestions in English. Please use the following method to submit comments:

Email. Submit comments to: CBP_PRA@cbp.dhs.gov.

FOR FURTHER INFORMATION CONTACT:

Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Declaration of Unaccompanied Articles (CBP Form 255).

OMB Number: 1651–0030.

Form Number: 255.

Current Actions: This submission will renew the expiration validity, without a change to the information requested or method of collection.

Type of Review: Extension (w/o change).

Affected Public: Individuals.

Abstract: CBP Form 255, Declaration of Unaccompanied Articles, is completed by travelers arriving in the United States either directly or indirectly from the U.S. Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands who are declaring merchandise purchases while visiting these locations which are to be sent from these insular

possessions at a later date. It is the only means whereby the CBP officer, when the traveler arrives, can apply the exemptions or 5 percent flat rate of duty to all of the traveler's purchases.

Type of Information Collection: CBP Form 255.

Estimated Number of Respondents: 7,500.

Estimated Number of Annual Responses per Respondent: 2.

Estimated Number of Total Annual Responses: 15,000.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 1,250.

Dated: September 9, 2024.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2024–20688 Filed 9–11–24; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2024–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter

referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at <https://msc.fema.gov>.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacbibit@fema.dhs.gov; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency

(FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

The currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the

floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at <https://msc.fema.gov>.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Nicholas A. Shufro,

Assistant Administrator (Acting) for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Arizona:					
Yavapai (FEMA Docket No.: B-2437).	City of Prescott (22-09-1249P).	The Honorable Phil Goode, Mayor, City of Prescott, 201 South Cortez Street, Prescott, AZ 86303.	Public Works Department, 433 North Virginia Street, Prescott, AZ 86301.	Jul. 31, 2024	040098
Yavapai (FEMA Docket No.: B-2437).	Unincorporated areas of Yavapai County (22-09-1249P).	James Gregory, Chair, Yavapai County Board of Supervisors, 1015 Fair Street, Prescott, AZ 86305.	Yavapai County Hall, 1015 Fair Street, Prescott, AZ 86305.	Jul. 31, 2024	040093
Arkansas:					
Saline (FEMA Docket No.: B-2435).	City of Benton (23-06-1296P).	The Honorable Tom Farmer, Mayor, City of Benton, P.O. Box 607, Benton, AR 72018.	City Hall, 114 South East Street, Benton, AR 72015.	Jul. 25, 2024	050192
Saline (FEMA Docket No.: B-2435).	City of Bryant (23-06-1296P).	The Honorable Rhonda Sanders, Mayor, City of Bryant, 210 Southwest 3rd Street, Bryant, AR 72022.	City Hall, 210 Southwest 3rd Street, Bryant, AR 72022.	Jul. 25, 2024	050308
Colorado:					
Larimer (FEMA Docket No.: B-2437).	City of Fort Collins (22-08-0636P).	The Honorable Jeni Arndt, Mayor, City of Fort Collins, P.O. Box 580, Fort Collins, CO 80522.	City Hall, 700 Wood Street, Fort Collins, CO 80521.	Jul. 24, 2024	080102
Larimer (FEMA Docket No.: B-2435).	City of Loveland (22-08-0336P).	The Honorable Jacki Marsh, Mayor, City of Loveland, 500 East 3rd Street, Suite 330, Loveland, CO 80537.	Public Works Department, 2525 West 1st Street, Loveland, CO 80537.	Aug. 5, 2024	080103
Larimer (FEMA Docket No.: B-2435).	Town of Timnath (23-08-0780P).	The Honorable Mark Soukup, Mayor, Town of Timnath, 4750 Signal Tree Drive, Timnath, CO 80547.	TST, Inc., 748 Whalers Way, Fort Collins, CO 80525.	Aug. 5, 2024	080005
Larimer (FEMA Docket No.: B-2435).	Unincorporated areas of Larimer County (22-08-0336P).	John Kefalas, Chair, Larimer County Board of Commissioners, P.O. Box 1190, Fort Collins, CO 80522.	Larimer County Courthouse, 200 West Oak Street, Suite 3000, Fort Collins, CO 80521.	Aug. 5, 2024	080101
Larimer (FEMA Docket No.: B-2437).	Unincorporated areas of Larimer County (22-08-0636P).	John Kefalas, Chair, Larimer County Board of Commissioners, P.O. Box 1190, Fort Collins, CO 80522.	Larimer County Courthouse, 200 West Oak Street, Suite 3000, Fort Collins, CO 80521.	Jul. 24, 2024	080101
Larimer (FEMA Docket No.: B-2435).	Unincorporated areas of Larimer County (23-08-0780P).	John Kefalas, Chair, Larimer County Board of Commissioners, P.O. Box 1190, Fort Collins, CO 80522.	Larimer County Courthouse, 200 West Oak Street, Suite 3000, Fort Collins, CO 80521.	Aug. 5, 2024	080101
Weld (FEMA Docket No.: B-2431).	City of Evans (22-08-0399P).	The Honorable Mark Clark, Mayor, City of Evans, 1100 37th Street, Evans, CO 80620.	City Hall, 1100 37th Street, Evans, CO 80620.	Jul. 22, 2024	080182

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Weld (FEMA Docket No.: B-2431).	Unincorporated areas of Weld County (22-08-0399P).	Kevin Ross, Chair, Weld County Board of Commissioners, P.O. Box 758, Greeley, CO 80632.	Weld County Administrative Building, 1150 O Street, Greeley, CO 80631.	Jul. 22, 2024	080266
Florida:					
Charlotte (FEMA Docket No.: B-2435).	Unincorporated areas of Charlotte County (23-04-5839P).	Bill Truex, Chair, Charlotte County Board of Commissioners, 18500 Murdock Circle, Suite 536, Port Charlotte, FL 33948.	Charlotte County Building Department, 18400 Murdock Circle, Port Charlotte, FL 33948.	Jul. 29, 2024	120061
Lake (FEMA Docket No.: B-2435).	Unincorporated areas of Lake County (24-04-0040P).	Jennifer Baker, Lake County Manager, 315 West Main Street, Tavares, FL 32778.	Lake County Public Works Department, 323 North Sinclair Avenue, Tavares, FL 32778.	Jul. 22, 2024	125106
Lee (FEMA Docket No.: B-2435).	City of Fort Myers (24-04-1196P).	Marty K. Lawing, Manager, City of Fort Myers, 2200 2nd Street, Fort Myers, FL 33901.	Building Department, 1825 Hendry Street, Fort Myers, FL 33901.	Jul. 22, 2024	125106
Orange (FEMA Docket No.: B-2435).	City of Belle Isle (23-04-6283P).	The Honorable Nicholas Fouraker, Mayor, City of Belle Isle, 1600 Nela Avenue, Belle Isle, FL 32809.	City Hall, 1600 Nela Avenue, Belle Isle, FL 32809.	Jul. 31, 2024	120181
Orange (FEMA Docket No.: B-2435).	City of Orlando (23-04-6283P).	The Honorable Buddy Dyer, Mayor, City of Orlando, 400 South Orange Avenue, Orlando, FL 32801.	Public Works Department, Engineering Division, 400 South Orange Avenue, Orlando, FL 32801.	Jul. 31, 2024	120186
Orange (FEMA Docket No.: B-2435).	Unincorporated areas of Orange County (23-04-6283P).	The Honorable Jerry L. Demings, Mayor, Orange County, 201 South Rosalind Avenue, 5th Floor, Orlando, FL 32801.	Orange County Public Works Department, Stormwater Management Division, 4200 South John Young Parkway, Orlando, FL 32839.	Jul. 31, 2024	120179
Sumter (FEMA Docket No.: B-2431).	Unincorporated areas of Sumter County (24-04-1005X).	Craig A. Estep, Chair, Sumter County Board of Commissioners, 7375 Powell Road, Wildwood, FL 34785.	Sumter County Administration Building, 7375 Powell Road, Wildwood, FL 34785.	Jul. 19, 2024	120296
Maine:					
York (FEMA Docket No.: B-2437).	Town of Kennebunkport (24-01-0144P).	D. Michael Weston, Chair, Town of Kennebunkport Board of Selectmen, 6 Elm Street, Kennebunkport, ME 04046.	Planning and Code Enforcement Department, 6 Elm Street, Kennebunkport, ME 04046.	Jul. 18, 2024	230170
York (FEMA Docket No.: B-2431).	Town of Kittery (24-01-0142P).	Kendra Amaral, Manager, Town of Kittery, 200 Rogers Road, Kittery, ME 03904.	Planning and Development Department, 200 Rogers Road, Kittery, ME 03904.	Jul. 18, 2024	230171
York (FEMA Docket No.: B-2435).	Town of Wells (24-01-0143P).	John K. MacLeod III, Chair, Town of Wells Board of Selectmen, 208 Sanford Road, Wells, ME 04090.	Planning and Development Department, 208 Sanford Road, Wells, ME 04090.	Jul. 18, 2024	230158
Massachusetts:					
Essex (FEMA Docket No.: B-2435).	City of Gloucester (23-01-0783P).	The Honorable Greg Varga, Mayor, City of Gloucester, 9 Dale Avenue, Gloucester, MA 01930.	City Hall, 3 Pond Road, 2nd Floor, Gloucester, MA 01930.	Jul. 18, 2024	250082
Montana: Gallatin (FEMA Docket No.: B-2435).	Unincorporated areas of Gallatin County (23-08-0757P).	Scott McFarlane, Chair, Gallatin County Commission, 311 West Main Street, Room 306, Bozeman, MT 59715.	Gallatin County Courthouse, 311 West Main Street, Bozeman, MT 59715.	Jul. 31, 2024	300027
North Carolina:					
Brunswick (FEMA Docket No.: B-2445).	Town of Leland (23-04-2026P).	The Honorable Brenda Bozeman, Mayor, Town of Leland, 102 Town Hall Drive, Leland, NC 28451.	Planning and Zoning Department, 102 Town Hall Drive, Leland, NC 28451.	Aug. 2, 2024	370471
Brunswick (FEMA Docket No.: B-2445).	Unincorporated areas of Brunswick County (23-04-2026P).	Randy Thompson, Chair, Brunswick County Board of Commissioners, P.O. Box 249, Bolivia, NC 28422.	Brunswick County Planning Department, 75 Courthouse Drive, Bolivia, NC 28422.	Aug. 2, 2024	370295
Buncombe (FEMA Docket No.: B-2445).	Unincorporated areas of Buncombe County (23-04-3408P).	Brownie Newman, Chair, Buncombe County Board of Commissioners, 200 College Street, Suite 300, Asheville, NC 28801.	Buncombe County Planning and Development Department, 46 Valley Street, Asheville, NC 28801.	Aug. 9, 2024	370031
Randolph (FEMA Docket No.: B-2431).	Unincorporated areas of Randolph County (23-04-2820P).	Darrell L. Frye, Chair, Randolph County Board of Commissioners, 725 McDowell Road, Asheboro, NC 27205.	Central Permitting Building, 204 East Academy Street, Asheboro, NC 27205.	Jul. 17, 2024	370195
Union (FEMA Docket No.: B-2431).	Unincorporated areas of Union County (23-04-3292P).	J.R. Rowell, Chair, Union County Board of Commissioners, 500 North Main Street, Suite 914, Monroe, NC 28112.	Union County Planning Department, 500 North Main Street, Suite 70, Monroe, NC 28112.	Jul. 15, 2024	370234
Wake (FEMA Docket No.: B-2431).	City of Raleigh (22-04-5283P).	The Honorable Mary-Ann Baldwin, Mayor, City of Raleigh, P.O. Box 590, Raleigh, NC 27601.	Engineering Services Department, 1 Exchange Plaza, Suite 706, Raleigh, NC 27601.	Jul. 29, 2024	370243
Wilkes (FEMA Docket No.: B-2445).	Town of Wilkesboro (23-04-2093P).	The Honorable Dale L. Isom, Mayor, Town of Wilkesboro, P.O. Box 1056, Wilkesboro, NC 28697.	Town Hall, 203 West Main Street, 2nd Floor, Wilkesboro, NC 28697.	Aug. 16, 2024.	370259
Texas:					

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Bexar (FEMA Docket No.: B-2435).	City of San Antonio (23-06-2542P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Stormwater Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	Jul. 22, 2024	480045
Brazos (FEMA Docket No.: B-2431).	City of Bryan (24-06-0422P).	The Honorable Bobby Gutierrez, Mayor, City of Bryan, P.O. Box 1000, Bryan, TX 77805.	City Hall, 300 South Texas Avenue, Bryan, TX 77803.	Jul. 17, 2024	480082
Collin (FEMA Docket No.: B-2435).	City of Princeton (23-06-1094P).	The Honorable Brianna Chacón, Mayor, City of Princeton, 2000 East Princeton Drive, Princeton, TX 75407.	City Hall, 2000 East Princeton Drive, Princeton, TX 75407.	Aug. 5, 2024	480757
Comal (FEMA Docket No.: B-2435).	City of New Braunfels (23-06-2196P).	Robert Camareno, Manager, City of New Braunfels, 550 Landa Street, New Braunfels, TX 78130.	City Hall, 550 Landa Street, New Braunfels, TX 78130.	Jul. 25, 2024	485493
Dallas (FEMA Docket No.: B-2435).	Town of Sunnyvale (24-06-0020P).	The Honorable Saji George, Mayor, Town of Sunnyvale, 127 North Collins Road, Sunnyvale, TX 75182.	Town Hall, 127 North Collins Road, Sunnyvale, TX 75182.	Aug. 5, 2024	480188
Kaufman (FEMA Docket No.: B-2435).	City of Dallas (24-06-0020P).	T.C. Broadnax, Manager, City of Dallas, 1500 Marilla Street, Room 4EN, Dallas, TX 75201.	Stormwater Operations Department, 2245 Irving Boulevard, 2nd Floor, Dallas, TX 75207.	Aug. 5, 2024	480171
Kaufman (FEMA Docket No.: B-2435).	Unincorporated areas of Kaufman County (24-06-0020P).	The Honorable Jackie Allen, Kaufman County Judge, 1902 U.S. Highway 175, Kaufman, TX 75142.	Kaufman County Development Services Department, 106 West Grove Street, Kaufman, TX 75142.	Aug. 5, 2024	480411
Denton (FEMA Docket No.: B-2435).	City of Denton (23-06-1850P).	Sara Hensley, Manager, City of Denton, 215 East McKinney Street, Denton, TX 76201.	Development Services Center, 401 North Elm Street, Denton, TX 76201.	Aug. 5, 2024	480194
Denton (FEMA Docket No.: B-2435).	Town of Argyle (24-06-0041P).	The Honorable Rick Bradford, Mayor, Town of Argyle, P.O. Box 609, Argyle, TX 76226.	Town Hall, P.O. Box 609, Argyle, TX 76226.	Aug. 5, 2024	480775
Harris (FEMA Docket No.: B-2437).	City of Houston (23-06-1337P).	The Honorable John Whitmire, Mayor, City of Houston, P.O. Box 1562, Houston, TX 77251.	Floodplain Management Department, 1002 Washington Avenue, Houston, TX 77002.	Jul. 29, 2024	480296
Harris (FEMA Docket No.: B-2437).	Unincorporated areas of Harris County (23-06-1337P).	The Honorable Lina Hidalgo, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County Permit Office, 1111 Fannin Street, 8th Floor, Houston, TX 77002.	Jul. 29, 2024	480287
McLennan (FEMA Docket No.: B-2435).	City of Waco (23-06-0341P).	The Honorable Dillon Meek, Mayor, City of Waco, P.O. Box 2570, Waco, TX 76702.	City Hall, 300 Austin Avenue, Waco, TX 76702.	Jul. 29, 2024	480461
Tarrant (FEMA Docket No.: B-2431).	City of Fort Worth (23-06-1364P).	The Honorable Mattie Parker, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Department of Transportation and Public Works, Engineering Vault and Map Repository, 200 Texas Street, Fort Worth, TX 76102.	Jul. 22, 2024	480596
Waller (FEMA Docket No.: B-2435).	City of Brookshire (23-06-1114P).	The Honorable Darrell Branch, Mayor, City of Brookshire, P.O. Box 160, Brookshire, TX 77423.	City Hall, 4029 5th Street, Brookshire, TX 77423.	Jul. 25, 2024	481097
Williamson (FEMA Docket No.: B-2431).	City of Cedar Park (23-06-1438P).	The Honorable Jim Penniman-Morin, Mayor, City of Cedar Park, 450 Cypress Creek Road, Building 1, Cedar Park, TX 78613.	City Hall, 450 Cypress Creek Road, Building 1, Cedar Park, TX 78613.	Jul. 22, 2024	481282
Utah:					
Salt Lake (FEMA Docket No.: B-2435).	City of Holladay (23-08-0730P).	The Honorable Robert M. Dahle, Mayor, City of Holladay, 4580 South 2300 East, Holladay, UT 84117.	Department of Community Development, 4580 South 2300 East, Holladay, UT 84117.	Aug. 5, 2024	490253
Salt Lake (FEMA Docket No.: B-2435).	City of Millcreek (23-08-0730P).	The Honorable Jeff Silvestrini, Mayor, City of Millcreek, 1330 East Chambers Avenue, Millcreek, UT 84106.	Planning and Zoning Department, 1330 East Chambers Avenue, Millcreek, UT 84106.	Aug. 5, 2024	490231
Washington (FEMA Docket No.: B-2435).	City of St. George (24-08-0001P).	The Honorable Michele Randall, Mayor, City of St. George, 175 East 200 North, St. George, UT 84770.	City Hall, 175 East 200 North, St. George, UT 84770.	Jul. 29, 2024	490117
West Virginia:					
Jefferson (FEMA Docket No.: B-2431).	City of Charles Town (23-03-0716P).	The Honorable Bob Trainor, Mayor, City of Charles Town, 101 East Washington Street, Charles Town, WV 25414.	Planning and Zoning Division, 101 East Washington Street, Charles Town, WV 25414.	Jul. 18, 2024	540066
Jefferson (FEMA Docket No.: B-2431).	Unincorporated areas of Jefferson County (23-03-0716P).	Steve Stolipher, President, Jefferson County Commission, P.O. Box 250, Charles Town, WV 25414.	Jefferson County Department of Engineering, 116 East Washington Street, Suite 200, Charles Town, WV 25414.	Jul. 18, 2024	540065

[FR Doc. 2024–20658 Filed 9–11–24; 8:45 am]

BILLING CODE 9110–12–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1374]

Certain Smart Ceiling Fans, Components Thereof, and Associated Systems and Software Thereof; Notice of Commission Determination Not To Review an Initial Determination Terminating the Investigation Based on Withdrawal of the Complaint; Termination of the Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (“ID”) (Order No. 23) of the presiding administrative law judge (“ALJ”) granting the complainant’s unopposed motion to terminate the above-captioned investigation in its entirety based on withdrawal of the complaint. The investigation is terminated in its entirety.

FOR FURTHER INFORMATION CONTACT: Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3228. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On October 26, 2023, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based on a complaint filed by Wangs Alliance Corporation d/b/a, WAC Lighting of Port Washington, New York (“Complainant”). See 88 FR 73620–21 (Oct. 26, 2023). The complaint alleges a violation of section 337 based upon the importation into the United States, sale for importation, or sale after importation into the United States of certain smart ceiling fans,

components thereof, and associated systems and software thereof, by reason of infringement of certain claims of U.S. Patent Nos. 11,028,854 (“the ‘854 patent”); 10,488,897 (“the ‘897 patent”); and 11,598,345 (“the ‘345 patent”). *Id.* The complaint further alleges that a domestic industry exists. *Id.* The notice of investigation names the following respondents: Minka Lighting, LLC of Newport News, Virginia and Tech Lighting LLC and VC Brands, LLC, both of Skokie, Illinois (collectively, “Respondents”). *Id.* The Office of Unfair Import Investigations is not participating in this investigation. *Id.*

The Commission previously terminated the investigation as to claims 2 and 3 of the ‘854 patent, claims 6, 8, 9, 10, 12, 13, and 14 of the ‘345 patent, and all asserted claims of the ‘897 patent. Order No. 16 (Apr. 23, 2024), *unreviewed by Comm’n Notice* (May 15, 2024).

On July 3, 2024, Complainant filed an unopposed motion to terminate the investigation in its entirety based on the parties’ agreement, as detailed in footnote 1 of the motion, to withdraw the complaint. On August 5, 2024, pursuant to Order No. 22, Complainant filed a declaration confirming that the unopposed motion captures the entirety of the parties’ agreements. Respondents did not file a response to the unopposed motion.

On August 14, 2024, the ALJ issued the subject ID (Order No. 23) granting Complainant’s unopposed motion to terminate the investigation in its entirety. Order No. 23 (Aug. 14, 2024). The subject ID finds that Complainant meets the requirements of Commission Rule 210.21(a) (19 CFR 210.21(a)), and that there are no extraordinary circumstances that would prevent the requested partial termination of the investigation. The subject ID further finds that terminating this investigation will not be contrary to the public interest.

No party petitioned for review of the subject ID.

The Commission has determined not to review the subject ID (Order No. 23). The investigation is terminated in its entirety.

The Commission vote for this determination took place on September 9, 2024.

The authority for the Commission’s determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission’s Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: September 9, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–20729 Filed 9–11–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1401]

Certain Firearm Disassembly Tongs; Notice of a Commission Determination Not To Review an Initial Determination Granting a Joint Motion To Terminate the Investigation Based on a Settlement Agreement; Termination of the Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined not to review an initial determination (“ID”) (Order No. 9) of the chief administrative law judge (“CALJ”) granting a joint motion to terminate the investigation based on a settlement agreement. The investigation is terminated in its entirety.

FOR FURTHER INFORMATION CONTACT: Edward S. Jou, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3316. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 20, 2024, based upon a complaint filed on behalf of GTUL LLC (“Complainant”) of Cedar Point, North Carolina. 89 FR 43873–74 (May 20, 2024). The complaint, as amended, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain firearm disassembly tongs by reason of infringement of certain claims of U.S. Patent No. 8,739,915. The Commission’s

notice of investigation named as respondents OFFROADCALI of Livermore, California; ROADRUNNERMATERIALS SPR GROUP INC of Livermore, California; DRP-California of Livermore, California; Eurasiaparts Automotive Parts of Temecula, California; Brementech of Antioch, California; and MTCPARTS.COM of Livermore, California (collectively, “Respondents”). The Office of Unfair Import Investigations (“OUII”) is also a party in this investigation.

On July 18, 2024, Complainant and Respondents filed a joint motion (the “Motion”) to terminate the investigation on the basis of a confidential settlement agreement. On July 26, 2024, OUII filed a response noting that the Motion failed to comply with the Commission Rules requiring a public version of the settlement agreement. On July 29, 2024, the CALJ denied the Motion with leave to refile. Order No. 8 (July 29, 2024). On August 1, 2024 and August 2, 2024, Complainant and Respondents notified the CALJ that they no longer maintained that their settlement agreement was confidential. *See* ID at 2.

On August 16, 2024, the CALJ issued the subject ID granting the Motion. The CALJ found that the Motion complied with the requirements of 19 CFR 210.21(b)(1). ID at 2. The CALJ also found that “any effect that terminating this investigation on the basis of settlement may have on the statutory public interest factors does not counsel against entry of the order.” *Id.* at 3. The subject ID was issued publicly with the settlement agreement attached as Exhibit A. *Id.* at Exhibit A. No petitions for review of the subject ID were filed.

The Commission has determined not to review the subject ID. The investigation is hereby terminated in its entirety.

The Commission vote for this determination took place on September 9, 2024.

The authority for the Commission’s determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission’s Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: September 9, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–20719 Filed 9–11–24; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on Numerical Propulsion System Simulation

Notice is hereby given that, on May 31, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Southwest Research Institute—Cooperative Research Group on Numerical Propulsion System Simulation (“NPSS”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, GKN Aerospace, Trollhattan, SWEDEN, has been added as a party to this venture.

Also, Honeywell International Inc., Tucson, AZ, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NPSS intends to file additional written notifications disclosing all changes in membership.

On December 11, 2013, NPSS filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 20, 2014 (79 FR 9767).

The last notification was filed with the Department on January 4, 2024. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 13, 2024 (89 FR 18439).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–20722 Filed 9–11–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Expeditionary Missions Consortium—Crane

Notice is hereby given that, on June 14, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301

et seq. (“the Act”), Expeditionary Missions Consortium—Crane (“EMC2”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Accurate Energetic Systems LLC, McEwen, TN; Accenture Federal Services LLC, Arlington, VA; Advanced Ground Information Systems, Inc., Jupiter, FL; ANDRO Computational Solutions LLC, Rome, NY; Anduril Industries, Inc., Costa Mesa, CA; Applied Research in Acoustics LLC dba ARIA, Madison, VA; Axient LLC, Huntsville, AL; Azure Summit Technology, Inc., Fairfax, VA; BBN Technologies Corp (A Business of RTX), Cambridge, MA; Blackrock Strategy LLC, Huntsville, AL; Cenith Innovations LLC, Sacramento, CA; Chesapeake Technology International Corp, California, MD; ColdQuanta, Inc. dba Inflection, Boulder, CO; Concentris Systems, Alexandria, VA; Consolidated Resource Imaging LLC, Grand Rapids, MI; Covan Group LLC, Fredericksburg, VA; Defense Industry Advisors LLC, Dayton, OH; Deloitte Consulting LLP, Arlington, VA; Domenix, Chantilly, VA; DroneShield LLC, Warrenton, VA; Edge Case Research, Inc., Pittsburg, PA; Flex Force Enterprises, Inc., Portland, OR; Fortem Technologies, Pleasant Grove, UT; General Atomics Aeronautical Systems, Inc., Poway, CA; General Dynamics Ordnance and Tactical Systems, Inc., St. Petersburg, FL; General Technical Services LLC, Wall Township, NJ; GrammaTech, Ithaca, NY; Hanley Industries, Inc. dba Riverbend Energetics, Alton, IL; Hexagon US Federal, Huntsville, AL; HII Mission Technologies Corp, McLean, VA; HII Unmanned Systems, Inc., Pocasset, MA; iC–1 Solutions LLC, Reston, VA; ICR, Inc., Aurora, CO; Idaho Scientific LLC, Boise, ID; IEC Infrared Systems LLC, Middleburg Heights, OH; Illumination Works LLC, Beavercreek, OH; Indigo Industries LLC, Greenwood, IN; Invariant Corporation, Huntsville, AL; IT Mentor Group, Inc., Poway, CA; Knexus Research LLC, Oxon Hill, MD; L3 Fuzing And Ordnance System, Inc., Cincinnati, OH; L3Harris ForceX, Inc., Nashville, TN; Liteye Systems, Inc., Centennial, CO; ManTech Advanced Systems International, Inc., Herndon, VA; Marvin Engineering Co., Inc., Inglewood, CA; Monterey Technologies, Inc., Park City, UT; Motorola Solutions, Inc., Chicago, IL; Nokia of America

Corporation, Murray Hill, NJ; Numerica Corporation, Fort Collins, CO; Oklahoma State University Oklahoma Aerospace Institute for Education and Research, Stillwater, OK; One World Clean Energy, Inc., Louisville, KY; Optics 1, Inc., Bedford, NH; Parametric Solutions, Inc., Jupiter, FL; Physical Sciences, Inc., Andover, MA; Practical Energetics Research, Inc., Huntsville, AL; Pratt Miller Engineering and Fabrication, New Hudson, MI; Quantum Research International, Inc., Huntsville, AL; Qynergy Corporation, Albuquerque, NM; Radiance Technologies, Inc., Huntsville, AL; Rolls Royce North America, Indianapolis, IN; Saronic Technologies, Inc., Austin, TX; Science Applications International Corporation, Crane, IN; Scientia LLC, Bloomington, IN; Scientific Research Corporation, Atlanta, GA; Shared Spectrum Company, Vienna, VA; Shield AI, Inc., San Diego, CA; Simulation Technologies, Inc., Huntsville, AL; Smart Information Flow Technologies LLC dba SIFT LLC, Minneapolis, MN; SRC, Inc., North Syracuse, NY; SRI, Menlo Park, CA; Stellant Systems, Williamsport, PA; Swarmbotics AI, Inc., Scottsdale, AZ; Teledyne FLIR LLC, Wilsonville, OR; TrellisWare Technologies, Inc., San Diego, CA; Triton Systems, Inc., Chelmsford, MA; University of Notre Dame du Lac, Notre Dame, IN; Utah State University Space Dynamics Laboratory, North Logan, UT; and VT Milcom, Virginia Beach, VA, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and EMC² intends to file additional written notifications disclosing all changes in membership.

On January 11, 2024, EMC² filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 13, 2024 (89 FR 18439).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–20744 Filed 9–11–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Subcutaneous Drug Development & Delivery Consortium, Inc.

Notice is hereby given that, on April 25, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Subcutaneous Drug Development & Delivery Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Comera Life Sciences, Woburn, MA, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Subcutaneous Drug Development & Delivery Consortium, Inc. intends to file additional written notifications disclosing all changes in membership.

On October 26, 2020, Subcutaneous Drug Development & Delivery Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 3, 2020 (85 FR 78148).

The last notification was filed with the Department on February 2, 2024. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on April 16, 2024 (89 FR 26926).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–20745 Filed 9–11–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Armaments Consortium

Notice is hereby given that, on May 6, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301

et seq. (“the Act”), National Armaments Consortium (“NAC”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, Olson Custom Designs, Indianapolis, IN; 1Aardvark LLC, Chantilly, VA; Aerospace Business Development Associates, Inc., Fairborn, OH; Airtonics, Tucson, AZ; Alkemix Corp., Laguna Hills, CA; ApolloTech MSI CORP, Elmwood Park, NJ; Applied Science and Technology Research Organization of America, Bethesda, MD; Bowden Manufacturing Corp., Willoughby, OH; Caesar Creek Software, Miamisburg, OH; Cahaba Federal Solutions, Huntsville, AL; Cambium Biomaterials, Mojave, CA; D. Wheatley Enterprises, Inc. (DWE), Belcamp, MD; Decision Engineering Corp., Freehold, NJ; Discovery Machine, Inc., Williamsport, PA; Edge Case Research, Pittsburgh, PA; Friedman Research Corp., Austin, TX; GN Aerospace GTC, LLC, Fort Worth, TX; GoHypersonic Inc., Dayton, OH; Hermeus Corp., Atlanta, GA; In Space LLC, Lafayette, IN; L3 Harris ForeceX, Nashville, TN; L3 Harris Technologies Integrated Systems LP dba L3 Harris Aeromet, Tulsa, OK; Lacamas Laboratories, Inc., Portland, OR; Millennitek, Knoxville, TN; Modular Genetics, Inc., Lincoln, MA; Multiverse US, Inc., New York, NY; Nautical Structures Industries, Inc., Largo, FL; NCD Technologies, Madison, WI; Odyssey Systems Consulting Group, Wakefield, MA; Ombra, Tampa, FL; Omni Federal, Gainesville, VA; OMP Logistics Corporation, Paramus, NJ; Pratt & Miller Engineering & Fabrication LLC, New Hudson, MI; Precision Products, Inc., Dalton, GA; Radial Solutions, Inc. (RSI), Huntsville, AL; R-DEX Systems, Woodstock, GA; Shifts, Inc., Rosslyn, VA; Sierra Technical Services, Inc., Tehachapi, CA; SIXGEN, LLC, Annapolis, MD; SMI Solutions, Inc., Huntington, WV; Sroka Inc., Strongsville, OH; The Will-Burt Company, Orrville, OH; University of Dayton, Dayton, OH; Wegmann USA, Inc., Lynchburg, VA; Wiggins Lift Co, Inc., Oxnard, CA; WMD Tech LLC, Boise, ID; Woodlawn Manufacturing, Marshall, TX; and Zeus Research and Technology, Inc., Huntsville, AL, have been added as parties to this venture.

Also, 50 BMG Supply LLC, Canton, OH; ADA Technologies, Inc., Littleton, CO; Advanced American Technologies LLC, Oak Ridge, TN; Aerobotix, Inc.,

Madison, AL; Aery Aviation LLC, Newport News, VA; Agile Global Solutions LLC, Denver, NC; AI.Reverie, Inc., New York, NY; AirBorn Interconnect, Inc., Georgetown, TX; Alion Science and Technology Corp., McLean, VA; All Foam Products Company, Middlefield, OH; American Defense International, Washington, DC; American Rheinmetall Vehicles LLC, Sterling Heights, MI; American Warrior Enterprises, Inc., Sioux Falls, SD; Analyst Warehouse LLC, Hanover, MD; Arizona State University Research Enterprise, Scottsdale, AZ; Asymmetric Technologies LLC, Columbus, OH; ATI Flowform Products LLC, Billerica, MA; Avionic Instruments LLC, Avenel, NJ; Boeing Company—AZ, Mesa, AZ; Boston Materials, Inc., Billerica, MA; C-2 Innovations, Inc., Stow, MA; Caelum Innovations LLC, Raleigh, NC; Cambrian Works, Inc., Fairfax, VA; Carbon-Carbon Advanced Technologies, Inc., Arlington, TX; Chenega Defense & Aerospace Solutions LLC, Huntsville, AL; Choctaw Defense Manufacturing LLC, McAlester, OK; Cobham Mission Systems Orchard Park, Inc., Orchard Park, NY; Cohere Solutions LLC, Reston, VA; Converged Security Solutions LLC, Reston, VA; Cova Strategies LLC, Albuquerque, NM; Custom Analytical Engineering Systems, Inc., Flintstone, MD; Cutting Edge Machining Solutions, Inc., Drifting, PA; Davis Defense Group, Inc., Stafford, VA; Decisive Analytics Corp., Arlington, VA; DELTA Resources, Inc., Alexandria, VA; DESAPRO, Inc., Rockledge, FL; DRS Network & Imaging Systems LLC—Dallas, Dallas, TX; DRS Power Technology, Inc., Fitchburg, MA; E&G Associates, Inc., Chattanooga, TN; Engility Corp., Andover, MA; Exyn Technologies, Inc., Philadelphia, PA; Fairbanks Morse LLC, Beloit, WI; Falcon Dancer, Inc., Huntsville, AL; Fiore Industries, Inc., Albuquerque, NM; FLIR Unmanned Ground Systems, Inc., Chelmsford, MA; GE Energy Power Conversion Naval Systems, Inc., Cranberry Township, PA; Geissele Automatics LLC, North Wales, PA; General Technology Systems LLC, Boston, MA; Harris Corp.—Space and Intelligence Systems, Rochester, NY; Heron Systems, Inc., California, MD; Hydracore, Inc., Metuchen, NJ; ICAMR, Inc. dba BRIDG, Kissimmee, FL; IMSAR LLC, Springville, UT; Interlog Corp., Anaheim, CA; IOMAX USA, Inc., Mooresville, NC; Jasper Solutions, Inc., Huntington Station, NY; Kearfott Corp., Little Falls, NJ; L-3 Communications Cincinnati Electronics Corp., Mason, OH; L3 Technologies, Inc. Advanced Laser Systems Technology Division, Orlando, FL; Lacamas Laboratories, Inc.,

Portland, OR; Light Steering Technologies, Inc., Manchester, NH; Lightspeed Technologies, Inc. dba LP3, Fairfax, VA; LMD Power of Light Corp., Rochester, NY; LSINC Corp., Huntsville, AL; M.S.M. Industries, Inc., Riverside, CA; Mad Minute LLC, Detroit, MI; Marine Electric Systems, Inc., South Hackensack, NJ; Maxim Defense Industries LLC, St. Cloud, MN; Maxtek Components Corp., Beaverton, OR; Michael R. Limotta & Co., Inc. dba Proximai.com, Solvang, CA; Micor Industries LLC, Decatur, AL; Microwave Applications Group, Santa Maria, CA; MilDef, Inc., Brea, CA; Millennium Corp., Arlington, VA; Mixed Signal Integration, San Jose, CA; Mobile Virtual Player, Lincoln, MA; Mustang Vacuum Systems, Inc., Sarasota, FL; N2 Imaging Systems LLC, Irvine, CA; Navitas Systems, Ann Arbor, MI; Navus Automation, Inc., Knoxville, TN; nLIGHT, Inc., Vancouver, WA; nVision Technology, Inc., Norton, OH; Onodi Tool & Engineering, Melvindale, MI; On-Point Defense Technologies LLC, Fort Walton Beach, FL; Optimum Parts Company, Inc., Agawam, MA; Parker-Hannifin Corp., Mayfield Heights, OH; Perspecta Engineering, Inc., Chantilly, VA; Phantom Products, Inc., Rockledge, FL; Phase Electronics, Inc., Rockville, MD; Phase IV Engineering, Inc., Boulder, CO; Phygen Coating, Inc., Minneapolis, MN; Pictorvision, Inc., Simi Valley, CA; Plansee USA LLC, Franklin, MA; PolyK Technologies LLC, State College, PA; Power Paragon, Inc., Anaheim, CA; Precision Products, Inc., Dalton, GA; Probus Test Systems, Inc., Lincroft, NJ; PS2 LLC, Waretown, NJ; Quantum Dimension, Inc., Huntington Beach, CA; Quantum Information Extraction, Inc., Huntsville, AL; Quantum Ventura, Inc., San Jose, CA; Radical Firearms LLC, Stafford, TX; Ravyn Technology Corp., El Segundo, CA; Rayn Innovations LLC, Tempe, AZ; Rescue Rover LLC dba AlphaBravo, Gaithersburg, MD; Richter Precision, Inc., East Petersburg, PA; Sabre Global Services, Wharton, NJ; Scaled Power, Inc., San Francisco, CA; SCI Technology, Inc., Huntsville, AL; Science, Engineering, Management Solutions LLC, Albuquerque, NM; Sentenai, Inc., Cambridge, MA; Sierra Nevada Corp., Sparks, NV; SimVentions, Inc., Fredericksburg, VA; Southern Innovative Investments LLC, Montgomery, AL; Space Information Laboratories LLC, Santa Maria, CA; Spear Research LLC, Nashua, NH; Spectre Enterprises, Inc., West Palm Beach, FL; Stevens Engineering Solutions LLC, Short Hills, NJ; Stryke Industries LLC, Warsaw, IN; STS

Technologies LLC, Mahwah, NJ; Tangram Flex, Inc., Dayton, OH; Targeted GeoSystems LLC, Madison, AL; Taylor Devices, Inc., North Tonawanda, NY; Tech Wizards, Inc., Newburg, MD; Tech62, Inc., Fairfax, VA; Technology and Communications Systems, Inc., Clearwater, FL; Technology Assessment and Transfer, Inc., Annapolis, MD; TeleCommunication Systems, Inc., Annapolis, MD; Teledyne Scientific & Imaging LLC, Thousand Oaks, CA; Trident LLC, Odenton, MD; Trion Coatings LLC, South Bend, IN; Trusted Science and Technology, Inc., Bethesda, MD; TSH X3 LLC, Annapolis, MD; Universal Propulsion Company, Inc., Fairfield, CA; Universal Technology Professional LLC, Laurel, MD; University of Hartford, West Hartford, CT; University of Pittsburgh, Pittsburgh, PA; University of South Carolina, Columbia, SC; Vega Technology Group LLC, North Canton, OH; Veloxint Corp., Framingham, MA; VetAble Technologies LLC, Brandon, FL; ViaSat, Inc., Tempe, AZ; Vidrov, Inc., New York, NY; Wavefront Vision, Inc., Basking Ridge, NJ; Wilcox Industries Corp., Newington, NH; Wilder Systems LLC, Austin, TX; Wireless Technology Associates, Inc., Setauket, NY; Wittenstein Motion Control, Inc., Bartlett, IL; and ZedaSoft, Inc., Fort Worth, TX, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NAC intends to file additional written notifications disclosing all changes in membership.

On May 2, 2000, NAC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 30, 2000 (65 FR 40693).

The last notification was filed with the Department on January 10, 2024. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 13, 2024 (89 FR 18441).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024-20742 Filed 9-11-24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Interchangeable Virtual Instruments Foundation, Inc.

Notice is hereby given that, on June 13, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Interchangeable Virtual Instruments Foundation, Inc. (“IVI Foundation”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Avera Technologies, Inc., Ostrava, CZECH REPUBLIC, has been added as a party to this venture.

Also, ELCOM a.s., Ostrava, CZECH REPUBLIC, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IVI Foundation intends to file additional written notifications disclosing all changes in membership.

On May 29, 2001, IVI Foundation filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 30, 2001 (66 FR 39336).

The last notification was filed with the Department on January 6, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on January 25, 2023 (88 FR 4849).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–20741 Filed 9–11–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—MLCommons Association

Notice is hereby given that, on June 13, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), MLCommons

Association (“MLCommons”) filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, tinygrad, Corp., San Diego, CA; Foxconn Industrial internet Co., Ltd., Shenzhen City, PEOPLE’S REPUBLIC OF CHINA; Hot Aisle, Inc., Cheyenne, WY; GATE Overflow Educational Services LLP, Thiruvananthapuram, INDIA; SeonJin Na (individual member), Atlanta, GA; Hashim Shaik (individual member), Monmouth Junction, NJ; David Tweedle (individual member), San Fernando, TRINIDAD AND TOBAGO; André Bertolace (individual member), Oxford, UNITED KINGDOM; Abhinav Moudgil (individual member), London, UNITED KINGDOM; David Hou (individual member), Fremont, CA; Fengxiang He (individual member), Edinburgh, UNITED KINGDOM; Satyapriya Krishna (individual member), Allston, MA; Da Song (individual member), Edmonton, CANADA; Lei Ma (individual member), Bunkyo-Ku, JAPAN; Yuheng Huang (individual member), Bunkyo City, JAPAN; Alin Navas (individual member), Dundrum, IRELAND; and J. Francisco Munoz-Elguezabal (individual member), Guadalajara, MEXICO, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open and MLCommons intends to file additional written notifications disclosing all changes in membership.

On September 15, 2020, MLCommons filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 29, 2020 (85 FR 61032).

The last notification was filed with the Department on April 3, 2024. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on April 16, 2024 (89 FR 26925).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–20734 Filed 9–11–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ODVA, Inc.

Notice is hereby given that, on June 26, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), ODVA, Inc. (“ODVA”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, OPTEX FA Co., Ltd., Kyoto, JAPAN; IDEC Corporation, Osaka, JAPAN; Baumer Electric AG, Frauenfeld, SWITZERLAND; Pizzato Elettrica S.r.l., Marostica, Vicenza, ITALY; Tsubakimoto Chain Co., Kita-ku, Osaka, JAPAN; Voegtlin Instruments GmbH, Muttentz, Basel Land, SWITZERLAND; and ZUKEN ELMIC, Inc., Shinyokohama, Kanagawa, JAPAN, have been added as parties to this venture.

Also, FUTEK Advanced Sensor Technology, Inc., Irvine, CA; Panasonic Software Development Center Dalian Co., Ltd., Dalian, Liaoningsheng, TAIWAN; INGENIA–CAT, SL, Barcelona, SPAIN; SAMWON ACT Co., Ltd., Busan, SOUTH KOREA; Thermo Gamma-Metrics LLC, San Diego, CA; Packet Power, L.L.C., Minneapolis, MN; Shanghai Flexem Technology Co., Ltd., Shanghai, PEOPLE’S REPUBLIC OF CHINA; MIDAS TECHNOLOGY Co., Ltd., Osan-si, Gyeonggi-do, SOUTH KOREA; Power Electronics International, Inc., East Dundee, IL; IPDisplays, Allen, TX; and READY Robotics Corporation, Columbus, OH, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ODVA intends to file additional written notifications disclosing all changes in membership.

On June 21, 1995, ODVA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 15, 1996 (61 FR 6039).

The last notification was filed with the Department on April 4, 2024. A

notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 21, 2024 (89 FR 52092).

Suzanne Morris,

*Deputy Director Civil Enforcement
Operations, Antitrust Division.*

[FR Doc. 2024–20737 Filed 9–11–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Retirement Savings Lost and Found

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employee Benefits Security Administration (EBSA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before October 15, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Michael Howell by telephone at 202–693–6782, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: Section 523(a) of the Retirement Income Security Act of 1974 (ERISA) requires the Department of Labor (Department), in consultation with the U.S. Treasury Department, to establish an online searchable database called the Retirement Savings Lost and Found (Lost and Found) no later than December 29, 2024. The Department has the sole responsibility for establishing and maintaining the Lost and Found. The Lost and Found online searchable database will enable individuals to locate benefits they are owed by providing them with contact information for their plan administrator, the designated trustee or issuer described in section 401(a)(31)(B) of the Internal Revenue Code of 1986 (Code),

or the issuer of an annuity described in section 523(e)(3)(C) of ERISA.

Plan administrators have reported much of the information needed for the establishment of the Lost and Found to the Internal Revenue Service (IRS) on Form 8955–SSA (Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits) and its predecessor Schedule SSA to the Form 5500. However, citing concerns under section 6103 of the Internal Revenue Code (Code), IRS has determined it will not unconditionally authorize release of this data to the Department for the purpose of communicating either directly with participants and beneficiaries about retirement plans that may still owe them retirement benefits or indirectly through the Lost and Found online searchable database. Accordingly, the Department is proposing to request plan administrators to voluntarily furnish the information specified below directly to the Department. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 16, 2024 (89 FR 26932).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency’s estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs

receive a month-to-month extension while they undergo review.

Agency: DOL–EBSA.

Title of Collection: Retirement Savings Lost and Found.

OMB Control Number: 1210–0NEW.

Affected Public: Private sector, Business or other for profits.

Total Estimated Number of

Respondents: 150,920.

Total Estimated Number of

Responses: 150,940.

Total Estimated Annual Time Burden: 26,017 hours.

Total Estimated Annual Other Costs Burden: \$0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michael Howell,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2024–20684 Filed 9–11–24; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Labor Condition Application for H–1B, H– 1B1, and E–3 Nonimmigrants and the Nonimmigrant Worker Information Form

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before October 15, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Michael Howell by telephone at 202–693–6782, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: The application form and other information collection instruments are to be used by employers seeking to use non-immigrants (H–1B, H–1B1, E–3) in

specialty occupations and as fashion models or by those who want to report violations and will permit the Department to meet its statutory responsibilities for program administration, management, and oversight. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 6, 2024 (89 FR 37263).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL-ETA.

Title of Collection: Labor Condition Application for H-1B, H-1B1, and E-3 Nonimmigrants and the Nonimmigrant Worker Information Form.

OMB Control Number: 1205-0310.

Affected Public: Private Sector: Business or other for-profits and not-for-profit institutions; State, Local, and Tribal Governments; Individuals or Households.

Total Estimated Number of Respondents: 138,314.

Total Estimated Number of Responses: 645,353.

Total Estimated Annual Time Burden: 843,989 hours.

Total Estimated Annual Other Costs Burden: \$41,140.

(Authority: 44 U.S.C. 3507(a)(1)(D)).

Michael Howell,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2024-20621 Filed 9-11-24; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Disclosures by Insurers to General Account Policyholders

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employee Benefits Security Administration (EBSA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before October 15, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Michael Howell by telephone at 202-693-6782, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: Section 1460 of the Small Business Job Protection Act of 1996 (Pub. L. 104-188) (SBJPA) amended ERISA by adding section 401(c). This section requires the Department to promulgate a regulation providing guidance, applicable only to insurance policies issued on or before December 31, 1998, to or for the benefit of employee benefit plans, to clarify the extent to which assets held in an insurer's general account under such contracts are "plan assets" within the meaning of ERISA, because the policies are not "guaranteed benefit policies" within the meaning of section 401(b) of ERISA. SBJPA further directed the Department to set standards for how insurers should manage the specified insurance policies (called Transition Policies). Pursuant to the authority and direction given under SBJPA, the Department promulgated a final rule on

January 5, 2000 (65 FR 714) that is codified at 29 CFR 2550.401c-1.

Regulation section 29 CFR 2550.401(c)-1 imposes specific requirements on insurers that are parties to Transition Policies in order to ensure that the fiduciaries acting on behalf of plans have adequate information and understanding of how the Transition Policies work. This information collection requires that an insurer that issues and maintains a Transition Policy to or for the benefit of an employee benefit plan must disclose to the plan fiduciary, initially upon issuance of the policy and on an annual basis, to the extent that the policy is not a guaranteed benefit policy: (1) the methods by which income and expenses of the insurer's general account are allocated to the policy, the actual annual return to the plan, and other pertinent information; (2) the extent to which alternative arrangements supported by the assets of the insurer's separate accounts are available; (3) any rights under the policy to transfer funds to a separate account and the terms governing such right; and (4) the extent to which support by assets of the insurer's separate accounts might pose differing risks to the plan. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 5, 2024 (89 FR 7732).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3)

years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–EBSA.

Title of Collection: Disclosures by Insurers to General Account Policyholders.

OMB Control Number: 1210–0114.

Affected Public: Private sector, Business or other for profits.

Total Estimated Number of Respondents: 316.

Total Estimated Number of Responses: 26,470.

Total Estimated Annual Time Burden: 112,498 hours.

Total Estimated Annual Other Costs Burden: \$960.

(Authority: 44 U.S.C. 3507(a)(1)(D)).

Michael Howell,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2024–20624 Filed 9–11–24; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0043]

TUV SUD America, Inc.: Grant of Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the final decision to expand the scope of recognition for TUV SUD America, Inc. as a Nationally Recognized Testing Laboratory (NRTL).

DATES: The expansion of the scope of recognition becomes effective on September 12, 2024.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: meilinger.francis@dol.gov.

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–1911 or email: robinson.kevin@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Notice of the Application for Expansion

OSHA hereby gives notice of the expansion of the scope of recognition of TUV SUD America, Inc. (TUVAM), as a NRTL. TUVAM's expansion covers the addition of one recognized testing site to the NRTL scope of recognition.

OSHA's recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by its applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification. The agency processes an application by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in appendix A, 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including TUVAM, which details the NRTL's scope of recognition. These pages are available from the OSHA website at: <https://www.osha.gov/nationally-recognized-testing-laboratory-program>.

TUVAM submitted an application to OSHA for expansion of the NRTL scope of recognition. The application, dated August 1, 2023 (OSHA–2007–0043–0061), requested the expansion of the NRTL scope of recognition to include one additional test site located at: 5945 Cabot Parkway, Suite 100, Alpharetta, Georgia 30005. OSHA staff performed an on-site review of TUVAM's testing facilities at TUVAM Alpharetta on November 14–15, 2023, in which assessors found some nonconformances with the requirements of 29 CFR 1910.7. TUVAM has addressed these issues sufficiently, and OSHA staff has

preliminarily determined that OSHA should grant the expansion request to include this additional site.

OSHA published the preliminary notice announcing TUVAM's expansion application in the **Federal Register** on July 29, 2024 (89 FR 60926). The agency requested comments by August 13, 2024, but it received no comments in response to the notice. OSHA now is proceeding with this notice to grant expansion of TUVAM's scope of recognition.

To obtain or review copies of all public documents pertaining to the TUVAM expansion application, go to www.regulations.gov or contact the Docket Office at (202) 693–2350 (TTY (877) 889–5627. Docket No. OSHA–2007–0043 contains all materials in the record containing TUVAM's recognition.

II. Final Decision and Order

OSHA staff examined TUVAM's expansion application, conducted a detailed on-site assessment, and examined other pertinent information. Based on review of this evidence, OSHA finds that TUVAM meets the requirements of 29 CFR 1910.7 for expansion of recognition, subject to the specified limitations and conditions. OSHA, therefore, is proceeding with this final notice to grant TUVAM's expanded scope of recognition. OSHA limits the expansion of TUVAM's recognition to include the site at Alpharetta, Georgia listed above. OSHA's recognition of the site limits TUVAM to performing product testing and certifications only to the test standards for which the site has the proper capability and programs, and for test standards in TUVAM's scope of recognition. This limitation is consistent with the recognition that OSHA grants to other NRTLs that operate multiple sites.

A. Conditions

In addition to those conditions already required by 29 CFR 1910.7, TUVAM also must abide by the following conditions of the recognition:

1. TUVAM must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as a NRTL, and provide details of the change(s);
2. TUVAM must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and
3. TUVAM must continue to meet the requirements for recognition, including all previously published conditions on

TUVAM's scope of recognition, in all areas for which it has recognition.

OSHA hereby expands the NRTL scope of recognition for TUVAM to include one additional test site in Alpharetta, Georgia.

III. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393; Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on September 5, 2024.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024–20691 Filed 9–11–24; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2019–0009]

DEKRA Certification Inc.: Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of DEKRA Certification Inc., for expansion of the recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the application.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before September 27, 2024.

ADDRESSES: Comments may be submitted as follows:

Electronically: You may submit comments, including attachments, electronically at <http://www.regulations.gov>, the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency's name and the docket number for this rulemaking (Docket No. OSHA–2019–0009). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at <https://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting information they do not want made available to the public, or submitting materials that contain personal information (either about themselves or others), such as Social Security numbers and birthdates.

Docket: To read or download comments or other material in the docket, go to <http://www.regulations.gov>. Documents in the docket (including this **Federal Register** notice) are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Extension of comment period: Submit requests for an extension of the comment period on or before September 27, 2024 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:
Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, phone: (202) 693–1999 or email: meilinger.francis2@dol.gov.
General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, phone: (202) 693–1911 or email: robinson.kevin@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Notice of the Application for Expansion

I. Notice of the Application for Expansion

OSHA is providing notice that DEKRA Certification Inc. (DEKRA), is applying for expansion of the current recognition as a NRTL. DEKRA requests the addition of seventeen test standards to the NRTL scope of recognition.

OSHA's recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an

acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes: (1) the type of products the NRTL may test, with each type specified by the applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding. In the second notice, the agency provides a final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including DEKRA, which details the NRTL's scope of recognition. These pages are available from the OSHA website at <http://www.osha.gov/dts/otpc/nrtl/index.html>.

DEKRA currently has two facilities (sites) recognized by OSHA for product testing and certification, with the headquarters located at: DEKRA Certification Inc., 405 Glenn Drive, Suite 12, Sterling, Virginia 20164. A complete list of DEKRA's scope of recognition is available at <https://www.osha.gov/nationally-recognized-testing-laboratory-program/dekra>.

II. General Background on the Application

DEKRA submitted an application to OSHA for expansion of the NRTL scope of recognition on December 24, 2021 (OSHA–2019–0009–0007), requesting the addition of twenty-nine recognized testing standards. The application was amended on February 1, 2023 (OSHA–2019–0009–0008), removing eight standards from the original request, while adding an additional standard to the expansion application. The December 2021 expansion application was amended a second time on June 21, 2023 (OSHA–2019–0009–0009) to withdraw three standards from the December 2021 application. The December 2021 application was

amended a third time on February 28, 2024 (OSHA–2019–0009–0010), to withdraw two standards from the original request. This notice covers the remaining seventeen standards. OSHA staff performed a detailed analysis of the application packets and reviewed other

pertinent information. OSHA performed an on-site review of DEKRA's Arnhem, Netherlands site on June 5–7, 2023, in which assessors found some nonconformances with the requirements of 29 CFR 1910.7. DEKRA addressed these issues sufficiently, and OSHA staff

has preliminarily determined that OSHA should grant the application.

Table 1, below, lists the appropriate test standards found in DEKRA's amended application for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED APPROPRIATE TEST STANDARDS FOR INCLUSION IN DEKRA'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 197	Commercial Electric Cooking Appliances.
UL 499	Electric Heating Appliances.
UL 507	Electric Fans.
UL 508	Industrial Control Equipment.
UL 674	Electric Motors and Generators for Use in Hazardous (Classified) Locations.
UL 749	Household Dishwashers.
UL 921	Commercial Electric Dishwashers.
UL 923	Microwave Cooking Appliances.
UL 1017	Vacuum Cleaners, Blower Cleaners and Household Floor Finishing Machines.
UL 1026	Household Electric Cooking and Food-Serving Appliances.
UL 1082	Household Electric Coffee Makers and Brewing-Type Appliances.
UL 1206	Electric Commercial Clothes-Washing Equipment.
UL 2054	Household and Commercial Batteries.
UL 2158	Electric Clothes Dryers.
UL 60079–28	Explosive Atmospheres—Part 28: Protection of Equipment and Transmission Systems Using Optical Radiation.
UL 60730–2–7 ..	Automatic Electrical Controls for Household and Similar Use: Part 2: Particular Requirements for Timers and Time Switches.
NFPA 496	Purged and Pressurized Enclosures for Electrical Equipment.

III. Preliminary Findings on the Application

DEKRA submitted an acceptable application for expansion of the scope of recognition. OSHA's review of the application files and pertinent documentation indicates that DEKRA has met the requirements prescribed by 29 CFR 1910.7 for expanding the recognition to include the addition of the seventeen test standards for NRTL testing and certification listed in Table 1. This preliminary finding does not constitute an interim or temporary approval of DEKRA's application.

OSHA seeks comment on this preliminary determination.

IV. Public Participation

OSHA welcomes public comment as to whether DEKRA meets the requirements of 29 CFR 1910.7 for expansion of recognition as a NRTL. Comments should consist of pertinent written documents and exhibits.

Commenters needing more time to comment must submit a request in writing, stating the reasons for the request by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer time period. OSHA may deny a request for an extension if it is not adequately justified.

To review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S.

Department of Labor. These materials also are generally available online at <https://www.regulations.gov> under Docket No. OSHA–2019–0009 (for further information, see the “Docket” heading in the section of this notice titled **ADDRESSES**).

OSHA staff will review all comments to the docket submitted in a timely manner. After addressing the issues raised by these comments, staff will make a recommendation to the Assistant Secretary of Labor for Occupational Safety and Health on whether to grant DEKRA's amended application for expansion of the scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of the final decision in the **Federal Register**.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on September 5, 2024.

James S. Frederick

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024–20687 Filed 9–11–24; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2024–0005]

National Advisory Committee on Occupational Safety and Health (NACOSH); Charter Renewal

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Renewal of the NACOSH charter.

SUMMARY: The Acting Secretary of Labor (Secretary) has renewed the charter for NACOSH.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone: (202) 693–1999; email: meilinger.francis2@dol.gov.

For general information: Ms. Lisa Long, Acting Deputy Director, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone: (202) 693–2049; email: long.lisa@dol.gov.

SUPPLEMENTARY INFORMATION: The Secretary has renewed the NACOSH charter. The charter will expire on September 4, 2026.

Congress established NACOSH in section 7(a) of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651, 656) to advise, consult with, and make recommendations to the Secretary and the Secretary of Health and Human Services on matters relating to the administration of the OSH Act. NACOSH is a non-discretionary advisory committee of indefinite duration.

NACOSH operates in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. 1001, *et seq.*), its implementing regulations (41 CFR part 102–3), and OSHA’s regulations on NACOSH (29 CFR part 1912a). Pursuant to FACA (5 U.S.C. 1001, *et seq.*) the NACOSH charter must be renewed every two years.

The new charter increases the estimated annual operational costs for NACOSH by approximately 3 percent (from \$201,715.20 to \$207,766.65).

The new NACOSH charter is available to read or download at <http://www.regulations.gov> (Docket No. OSHA–2024–0005), the federal rulemaking portal. The charter also is available on the NACOSH page on OSHA’s web page at <http://www.osha.gov> and at the OSHA Docket Office, N–3653, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210; telephone (202) 693–2350. In addition, the charter is available for viewing or download at the Federal Advisory Committee Database at <http://www.facadatabase.gov>.

Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice under the authority granted by 29 U.S.C. 656; 5 U.S.C. 10; 29 CFR part 1912a; 41 CFR part 102–3; and Secretary of Labor’s Order No. 8–2020 (85 FR 58393, Sept. 18, 2020).

Signed at Washington, DC, on September 5, 2024.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024–20649 Filed 9–11–24; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2013–0016]

Nemko North America, Inc.: Applications for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the applications of Nemko North America, Inc. (NNA) for expansion of recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency’s preliminary finding to grant the applications.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before September 27, 2024.

ADDRESSES: Comments may be submitted as follows:

Electronically: You may submit comments, including attachments, electronically at <http://www.regulations.gov>, the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency’s name and the docket number for this rulemaking (Docket No. OSHA–2013–0016). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at <https://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting information they do not want made available to the public, or submitting materials that contain personal information (either about themselves or others), such as Social Security numbers and birthdates.

Docket: To read or download comments or other material in the docket, go to <http://www.regulations.gov>. Documents in the docket (including this **Federal Register** notice) are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Extension of comment period: Submit requests for an extension of the

comment period on or before September 27, 2024 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT:

Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor by phone: (202) 693–1999 or email: meilinger.frank2@dol.gov.

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor by phone: (202) 693–1911 or email: robinson.kevin@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Notice of the Applications for Expansion

OSHA is providing notice that Nemko North America, Inc. (NNA) is applying for expansion of the current recognition as a NRTL. NNA requests the addition of one recognized testing standard and one recognized testing site to the NRTL scope of recognition.

OSHA’s recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition. Each NRTL’s scope of recognition includes (1) the type of products the NRTL may test, with each type specified by its applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL’s scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes an application by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in appendix A, 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In

the first notice, OSHA announces the application and provides its preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including NNA, which details the NRTL's scope of recognition. These pages are available from the OSHA website at: <https://www.osha.gov/nationally-recognized-testing-laboratory-program>.

NNA currently has two facilities (sites) recognized by OSHA for product testing and certification, with its headquarters located at: Nemko North America, Inc., 2210 Faraday Avenue,

Suite 150, Carlsbad, California 92008. A complete list of NNA's scope of recognition (including sites recognized by OSHA) is available at: <https://www.osha.gov/nationally-recognized-testing-laboratory-program>.

II. General Background on the Applications

NNA submitted two applications to OSHA for expansion of the NRTL scope of recognition. The first application, dated September 1, 2023 (OSHA–2013–0016–0029), requested the expansion of the NRTL scope of recognition to include one additional test standard. The second application, dated November 27, 2023 (OSHA–2013–0016–0030), requested the expansion of the

NRTL scope of recognition to include an additional recognized testing site located at: 5F, No. 413, Sec. 2, Tiding Blvd., Nei Hu Dist. 11493 Taipei City, Taiwan, R.O.C. OSHA staff performed an on-site review of NNA's testing facilities at NNA Taipei on March 4–5, 2024, in which assessors found some nonconformances with the requirements of 29 CFR 1910.7. NNA has addressed these issues sufficiently, and OSHA staff has preliminarily determined that OSHA should grant the application.

Table 1 below lists the appropriate test standard found in NNA's application for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED APPROPRIATE TEST STANDARD FOR INCLUSION IN NNA'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 2054	Household and Commercial Batteries.

III. Preliminary Findings on the Applications

NNA submitted acceptable applications for expansion of the NRTL scope of recognition. OSHA's review of the application files, and pertinent documentation, indicate that NNA can meet the requirements prescribed by 29 CFR 1910.7 for expanding their recognition to include the addition of one additional testing standard and one additional testing site for NRTL testing and certification. This preliminary finding does not constitute an interim or temporary approval of NNA's applications. OSHA seeks comment on this preliminary determination.

IV. Public Participation

OSHA welcomes public comment as to whether NNA meets the requirements of 29 CFR 1910.7 for expansion of recognition as a NRTL. Comments should consist of pertinent written documents and exhibits.

Commenters needing more time to comment must submit a request in writing, stating the reasons for the request by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer time period. OSHA may deny a request for an extension if it is not adequately justified.

To review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. These materials also are generally available online at <https://www.regulations.gov> under

Docket No. OSHA–2013–0016 (for further information, see the “*Docket*” heading in the section of this notice titled **ADDRESSES**).

OSHA staff will review all comments to the docket submitted in a timely manner. After addressing the issues raised by these comments, staff will make a recommendation to the Assistant Secretary of Labor for Occupational Safety and Health on whether to grant NNA's applications for expansion of the scope of recognition. The Assistant Secretary will make the final decision on granting the applications. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of the final decision in the **Federal Register**.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to section 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393; Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on September 5, 2024.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024–20683 Filed 9–11–24; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2006–0042]

CSA Group Testing & Certification Inc.: Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of CSA Group & Testing Certification Inc., for expansion of the recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the application.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before September 27, 2024.

ADDRESSES: Comments may be submitted as follows:

Electronically: You may submit comments, including attachments, electronically at <http://www.regulations.gov>, the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency's name and the docket number for this rulemaking (Docket No. OSHA–2006–0042). All comments, including any personal information you provide, are placed in the public docket without change and

may be made available online at <https://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting information they do not want made available to the public, or submitting materials that contain personal information (either about themselves or others), such as Social Security numbers and birthdates.

Docket: To read or download comments or other material in the docket, go to <http://www.regulations.gov>. Documents in the docket (including this **Federal Register** notice) are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Extension of comment period: Submit requests for an extension of the comment period on or before September 27, 2024 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:
Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, phone: (202) 693–1999 or email: meilinger.francis2@dol.gov.
General and technical information: Contact Mr. Kevin Robinson, Director,

Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, phone: (202) 693–1911 or email: robinson.kevin@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Notice of the Application for Expansion

OSHA is providing notice that CSA Group Testing & Certification Inc. (CSA), is applying for expansion of the current recognition as a NRTL. CSA requests the addition of one test standard to the NRTL scope of recognition.

OSHA’s recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL’s scope of recognition includes: (1) the type of products the NRTL may test, with each type specified by the applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL’s scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal**

Register in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding. In the second notice, the agency provides a final decision on the application. These notices set forth the NRTL’s scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including CSA, which details the NRTL’s scope of recognition. These pages are available from the OSHA website at <http://www.osha.gov/dts/otpc/nrtl/index.html>.

CSA currently has twenty-two facilities (sites) recognized by OSHA for product testing and certification, with the headquarters located at: CSA Group Testing & Certification Inc., 178 Rexdale Boulevard, Etobicoke, Ontario, M9W 1R3, Canada. A complete list of CSA’s scope of recognition is available at <https://www.osha.gov/nationally-recognized-testing-laboratory-program/csa>.

II. General Background on the Application

CSA submitted an application to OSHA for expansion of the NRTL scope of recognition on May 3, 2024 (OSHA–2006–0042–0042), requesting the addition of one standard to the NRTL scope of recognition. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform an on-site review in response to this application. OSHA staff has preliminarily determined that OSHA should grant the application for test standard expansion.

Table 1, below, lists the appropriate test standard found in CSA’s application for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED APPROPRIATE TEST STANDARD FOR INCLUSION IN CSA’S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 347A	Medium Voltage Power Conversion Equipment.

III. Preliminary Findings on the Application

CSA submitted an acceptable application for expansion of the scope of recognition. OSHA’s review of the application files and pertinent documentation indicates that CSA has met the requirements prescribed by 29 CFR 1910.7 for expanding the recognition to include the addition of the one test standard for NRTL testing and certification listed in Table 1. This

preliminary finding does not constitute an interim or temporary approval of CSA’s application.

OSHA seeks comment on this preliminary determination.

IV. Public Participation

OSHA welcomes public comment as to whether CSA meets the requirements of 29 CFR 1910.7 for expansion of recognition as a NRTL. Comments should consist of pertinent written documents and exhibits.

Commenters needing more time to comment must submit a request in writing, stating the reasons for the request by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer time period. OSHA may deny a request for an extension if it is not adequately justified.

To review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Occupational

Safety and Health Administration, U.S. Department of Labor. These materials also are generally available online at <https://www.regulations.gov> under Docket No. OSHA–2006–0042 (for further information, see the “Docket” heading in the section of this notice titled **ADDRESSES**).

OSHA staff will review all comments to the docket submitted in a timely manner. After addressing the issues raised by these comments, staff will make a recommendation to the Assistant Secretary of Labor for Occupational Safety and Health on whether to grant CSA’s application for expansion of the scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of the final decision in the **Federal Register**.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor’s Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on September 5, 2024.

James S. Frederick

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024–20686 Filed 9–11–24; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0042]

TUV Rheinland of North America, Inc.: Grant of Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the final decision to expand the scope of recognition for TUV Rheinland of North America, Inc., as a Nationally Recognized Testing Laboratory (NRTL).

DATES: The expansion of the scope of recognition becomes effective on September 12, 2024.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone: (202) 693–1999; email: meilinger.francis2@dol.gov.

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor; telephone: (202) 693–1911; email: robinson.kevin@dol.gov. OSHA’s web page includes information about the NRTL Program (see <http://www.osha.gov/dts/otpc/nrtl/index.html>).

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of TUV Rheinland of North America, Inc. (TUVRNA), as a NRTL. TUVRNA’s expansion covers the addition of two test standards to the NRTL scope of recognition.

OSHA’s recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL’s scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL’s scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by NRTLs or applicant organizations for initial recognition, as well as for expansion or renewal of recognition, following requirements in appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in

processing an application. In the first notice, OSHA announces the application and provides the preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL’s scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including TUVRNA, which details that NRTL’s scope of recognition. These pages are available from the OSHA website at <http://www.osha.gov/dts/otpc/nrtl/index.html>.

TUVRNA submitted an application, dated January 6, 2022 (OSHA–2007–0042–0077), to expand recognition as a NRTL to include two additional test standards. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

OSHA published the preliminary notice announcing TUVRNA’s expansion application in the **Federal Register** on July 29, 2024 (89 FR 60927). The agency requested comments by August 13, 2024, but it received no comments in response to this notice. OSHA is now proceeding with this final notice to grant expansion of TUVRNA’s scope of recognition.

To review copies of all public documents pertaining to TUVRNA’s application, go to www.regulations.gov or contact the OSHA Docket Office. Docket No. OSHA–2007–0042 contains all materials in the record concerning TUVRNA’s recognition.

II. Final Decision and Order

OSHA staff examined TUVRNA’s expansion application, their capability to meet the requirements of the test standards, and other pertinent information. Based on its review of this evidence, OSHA finds that TUVRNA meets the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the limitations and conditions listed below. OSHA, therefore, is proceeding with this final notice to grant TUVRNA’s scope of recognition. OSHA limits the expansion of TUVRNA’s recognition to testing and certification of products for demonstration of conformance to the test standards shown below in table 1.

TABLE 1—APPROPRIATE TEST STANDARDS FOR INCLUSION IN TUVRNA’S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 2743	Portable Power Packs.
UL 60320–1	Appliance Couplers for Household and Similar General Purposes—Part 1: General Requirements.

OSHA’s recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, a NRTL’s scope of recognition does not include these products.

A. Conditions

Recognition is contingent on continued compliance with 29 CFR 1910.7, including but not limited to, abiding by the following conditions of recognition:

1. TUVRNA must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as a NRTL, and provide details of the change(s);
2. TUVRNA must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and
3. TUVRNA must continue to meet the requirements for recognition, including all previously published conditions on TUVRNA’s scope of recognition, in all areas for which it has recognition.

OSHA hereby expands the scope of recognition of TUVRNA, subject to the limitations and conditions specified above.

III. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor’s Order No. 8–2020 (85 FR 58393, September 18, 2020) and 29 CFR 1910.7.

Signed at Washington, DC, on September 5, 2024.

James S. Frederick,
Deputy Assistant Secretary of Labor for Occupational Safety and Health.
[FR Doc. 2024–20689 Filed 9–11–24; 8:45 am]
BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2009–0026]

Bureau Veritas Consumer Product Services Inc.: Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.
ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of Bureau Veritas Consumer Product Services Inc., for expansion of the recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency’s preliminary finding to grant the application.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before September 27, 2024.

ADDRESSES: Comments may be submitted as follows:
Electronically: You may submit comments, including attachments, electronically at <http://www.regulations.gov>, the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency’s name and the docket number for this rulemaking (Docket No. OSHA–2009–0026). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at <https://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting information they do not want made available to the public, or submitting materials that contain personal information (either about themselves or others), such as Social Security numbers and birthdates.

Docket: To read or download comments or other material in the docket, go to <http://www.regulations.gov>. Documents in the docket (including this **Federal Register** notice) are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the website.

All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Extension of comment period: Submit requests for an extension of the comment period on or before September 27, 2024 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:
Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, phone: (202) 693–1999 or email: meilinger.francis2@dol.gov.

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, phone: (202) 693–1911 or email: robinson.kevin@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Notice of the Application for Expansion

OSHA is providing notice that Bureau Veritas Consumer Product Services Inc. (BVCPS), is applying for expansion of the current recognition as a NRTL. BVCPS requests the addition of seven test standards to the NRTL scope of recognition.

OSHA’s recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL’s scope of recognition includes: (1) the type of products the NRTL may test, with each type specified by the applicable test standard; and (2) the recognized site(s) that has/have the

technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding. In the second notice, the agency provides a final decision on the

application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including BVCPS which details the NRTL's scope of recognition. These pages are available from the OSHA website at <http://www.osha.gov/dts/otpc/nrtl/index.html>.

BVCPS currently has three facilities (sites) recognized by OSHA for product testing and certification, with the headquarters located at: Bureau Veritas Consumer Product Services Inc., One Distribution Center, Suite #1, Littleton, Massachusetts 01460. A complete list of BVCPS's scope of recognition is available at <https://www.osha.gov/nationally-recognized-testing-laboratory-program/csl>.

II. General Background on the Application

BVCPS submitted an application to OSHA for expansion of the NRTL scope of recognition on November 2, 2023 (OSHA–2009–0026–0089), requesting the addition of seven standards to the NRTL scope of recognition. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform an on-site review related to this application.

Table 1, below, lists the appropriate test standards found in BVCPS's application for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED APPROPRIATE TEST STANDARDS FOR INCLUSION IN BVCPS'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 61010–2–020	Electrical Equipment for Measurement, Control, and Laboratory Use—Part 2–020: Particular Requirements for Laboratory Centrifuges.
UL 61010–2–051	Electrical Equipment for Measurement, Control, and Laboratory Use—Part 2–051: Particular Requirements for Laboratory Equipment for Mixing and Stirring.
UL 61010–2–081	Safety Requirements for Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–081: Particular Requirements for Automatic and Semi-Automatic Laboratory Equipment for Analysis and Other Purposes.
UL 61010–2–101	Safety Requirements for Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–101: Particular Requirements for In Vitro Diagnostic (IVD) Medical Equipment.
UL 61010–2–201	Safety Requirements for Electrical Equipment for Measurement, Control, and Laboratory Use—Part 2–201: Particular Requirements for Control Equipment.
UL 67	Panelboards.
UL 869A	Reference Standard for Service Equipment.

III. Preliminary Findings on the Application

BVCPS submitted an acceptable application for expansion of the scope of recognition. OSHA's review of the application files and pertinent documentation indicates that BVCPS has met the requirements prescribed by 29 CFR 1910.7 for expanding the recognition to include the addition of the seven test standards for NRTL testing and certification listed in Table 1. This preliminary finding does not constitute an interim or temporary approval of BVCPS's application.

OSHA seeks comment on this preliminary determination.

IV. Public Participation

OSHA welcomes public comment as to whether BVCPS meets the requirements of 29 CFR 1910.7 for expansion of recognition as a NRTL. Comments should consist of pertinent written documents and exhibits.

Commenters needing more time to comment must submit a request in writing, stating the reasons for the request by the due date for comments. OSHA will limit any extension to 10

days unless the requester justifies a longer time period. OSHA may deny a request for an extension if it is not adequately justified.

To review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. These materials also are generally available online at <https://www.regulations.gov> under Docket No. OSHA–2009–0026 (for further information, see the “Docket” heading in the section of this notice titled **ADDRESSES**).

OSHA staff will review all comments to the docket submitted in a timely manner. After addressing the issues raised by these comments, staff will make a recommendation to the Assistant Secretary of Labor for Occupational Safety and Health on whether to grant BVCPS's application for expansion of the scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings

prescribed in appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of the final decision in the **Federal Register**.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on September 5, 2024.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024–20685 Filed 9–11–24; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**[Notice (24–061)]****Performance Review Board, Senior Executive Service (SES)****AGENCY:** National Aeronautics and Space Administration (NASA).**ACTION:** Notice of membership of SES Performance Review Board.

SUMMARY: The Civil Service Reform Act of 1978, Public Law 95–454 (Section 405) requires that appointments of individual members to the Performance Review Board (PRB) be published in the **Federal Register**.

The performance review function for the SES in NASA is being performed by the NASA PRB. The following individuals are serving on the Board:

Performance Review Board

Chairperson, Associate Administrator
Deputy Associate Administrator
Chief Human Capital Officer
Director for Executive Services
Associate Administrator for the Office of Diversity and Equal Opportunity
Associate Administrator for the Aeronautics Research Mission Directorate
Chief Information Officer
Center Director, Langley Research Center

Allison Lyons,

Program Manager, Executive Performance Management, Executive Services Division, Office of the Chief Human Capital Officer.

[FR Doc. 2024–20631 Filed 9–11–24; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION**Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978****AGENCY:** National Science Foundation.**ACTION:** Notice of permit applications received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 15, 2024. This

application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314 or ACApermits@nsf.gov.

FOR FURTHER INFORMATION CONTACT: Andrew Titmus, ACA Permit Officer, at the above address, 703–292–4479.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 671), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details**Permit Application: 2025–011**

1. *Applicant:* Robin West, VP & GM Expeditions, Seabourn Quest, Seabourn Cruise Line Ltd., 450 Third Ave. W, Seattle, WA 98119.

Activity for Which Permit is Requested: Waste Management. The applicant proposes to operate small, battery-operated remotely piloted aircraft systems (RPAS) consisting, in part, of a quadcopter equipped with cameras to collect commercial and educational footage of the Antarctic. The quadcopter would not be flown over concentrations of birds or mammals, or over Antarctic Specially Protected Areas or Historic Sites and Monuments. The RPAS would only be operated by pilots with extensive experience, who are pre-approved by the Expedition Leader. Several mitigation measures to reduce environmental impacts and prevent against loss of the quadcopter include painting the them a high-visibility color; only flying when the wind is less than 25 knots; flying for only 15 minutes at a time to preserve battery life; having prop guards on propeller tips, a flotation device if operated over water, and an “auto go home” feature in case of loss of control link or low battery; having an observer on the lookout for wildlife, people, and other hazards; ensuring that the separation between the operator and quadcopter does not exceed an operational range of 500 meters; and implementing biosecurity measures by using disinfecting agents before and

after each flight. The applicant is seeking a Waste Permit to cover any accidental releases that may result from operating the RPAS.

Location: Antarctic Peninsula Region.

Dates of Permitted Activities: October 27, 2024–March 6, 2028.

Permit Application: 2025–013

2. *Applicant:* Heather Lynch, Stony Brook University, IACS 163, Stony Brook, NY 11794.

Activity for Which Permit is Requested: Waste Management. The applicant seeks an Antarctic Conservation Act waste management permit for activities associated with penguin population surveys in the Western Antarctic Peninsula and the South Shetland Islands. The applicant proposes using battery-powered, quadrotor unmanned aerial vehicles (UAVs) to assist in the collection of imagery data for a multi-scale population census of penguin colonies. The UAV will only be flown by a pilot with extensive experience. Mitigation measures will be put in place to prevent loss of aircraft. These measures include UAVs being flown by a trained pilot in fair-weather conditions and having stationed observers maintain visual contact with the aircraft at all times. The applicant proposes various recovery methods in the unlikely event that an aircraft is lost over land or sea. These measures will limit any potential impacts on the Antarctic environment. The applicant seeks a waste permit to cover any accidental release that may result from UAV use.

Location: King George Island, South Shetland Islands; Western Antarctic Peninsula.

Dates of Permitted Activities: December 1, 2024–March 1, 2025.

Alina Pavao,

Administrative Assistant, Office of Polar Programs.

[FR Doc. 2024–20681 Filed 9–11–24; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION**Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978****AGENCY:** National Science Foundation.**ACTION:** Notice of permit applications received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under

the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 15, 2024. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314 or ACApermits@nsf.gov.

FOR FURTHER INFORMATION CONTACT: Andrew Titmus, ACA Permit Officer, at the above address, 703–292–4479.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 670), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2025–012

1. *Applicant:* Heather Lynch, Stony Brook University, IACS 163, Stony Brook, NY 11794

Activity for Which Permit is Requested: Harmful Interference, Enter Antarctic Specially Protected Areas. The applicant would survey chinstrap penguin (*Pygoscelis antarctica*) colonies in the South Shetland Islands including multiple sites on Low Island. The outcomes of the surveys would be useful in determining population abundance and distribution of chinstrap penguins, important consumers of Antarctic krill. Surveys would be completed using direct manual counts (on foot) and by operating small, remotely piloted aircraft systems (RPAS) over colonies. RPAS would be operated by experienced pilots at altitudes of at least 30 meters above wildlife. Although no significant disturbance is expected, both manual counts and RPAS overflights have the potential to disturb chinstrap penguins as well as Adelie penguins (*Pygoscelis adeliae*), Gentoo penguins (*Pygoscelis papua*), the Southern giant petrel (*Macronectes giganteus*), Southern fulmar (*Fulmarus*

glacialisoides), Cape petrel (*Deption capense*), Antarctic blue-eyed shag (*Phalacrocorax atriceps*), Antarctic brown skua (*Catharacta antarctica*), South polar skua (*Catharacta maccormicki*), Kelp gull (*Larus dominicanus*), and the Antarctic tern (*Sterna vittata*) based on the location of the surveys. While conducting visitor site surveys and censuses, the applicant would potentially enter a number of Antarctic Specially Protected Areas (ASPAs) in the Antarctic Peninsula region.

Location: King George Island, South Shetland Islands, Robert Island, Livingston Island; Western Antarctic Peninsula; ASPA 112, Coppermine Peninsula, Robert Island, South Shetland Islands; ASPA 125, Fildes Peninsula, King George Island (25 de Mayo); ASPA 126 Byers Peninsula, Livingston Island, South Shetland Islands; ASPA 128, Western shore of Admiralty Bay, King George Island, South Shetland Islands; ASPA 132, Potter Peninsula, King George Island (Isla 25 de Mayo, South Shetland Islands; ASPA 133, Harmony Point, Nelson Island, South Shetland Islands; ASPA 134, Cierva Point and offshore islands, Danco Coast, Antarctic Peninsula; ASPA 139, Biscoe Point, Anvers Island, Palmer Archipelago; ASPA 150, Ardley Island, Maxwell Bay, King George Island (25 de Mayo); ASPA 151, Lions Rump, King George Island, South Shetland Islands; ASPA 171, Narebski Point, Barton Peninsula, King George Island; ASPA 180, Danger Islands; ASPA 182, Western Bransfield Strait and Eastern Dallman Bay.

Dates of Permitted Activities: December 1, 2024–March 1, 2025

Alina Pavao,

Administrative Assistant, Office of Polar Programs.

[FR Doc. 2024–20690 Filed 9–11–24; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–611 and 50–612; NRC–2023–0138]

Kairos Power LLC; Notice of Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Construction permit application; Notice of uncontested hearing.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) will commence an uncontested hearing, in which the Commission will receive

written evidence in the form of testimony and exhibits regarding the application from Kairos Power LLC (Kairos) for a construction permit (CP) to construct a non-power test reactor termed Hermes 2 in Oak Ridge, Tennessee.

DATES: The Commission may issue written questions to the parties (the NRC staff and the applicant) no later than September 26, 2024. For the full schedule for submitting documents in this hearing, see Sections V and VI of the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: Please refer to Docket ID NRC–2023–0138 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2023–0138. Address questions about Docket IDs in [Regulations.gov](https://www.regulations.gov) to Stacy Schumann; telephone: 301–415–0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individuals listed in the “For Further Information Contact” section of this document.

- *NRC’s Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to PDR.Resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- *NRC’s PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. Eastern Time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Wesley W. Held, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–287–3591; email: Wesley.Held@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission hereby gives notice that, pursuant to Section 189a of the Atomic Energy Act (AEA) of 1954, as amended, it will commence an uncontested hearing, in which the Commission will receive written evidence in the form of testimony and exhibits regarding the application from Kairos for a CP to construct a non-power test reactor facility termed Hermes 2 in Oak Ridge, Tennessee.

Kairos's application was submitted by letter on July 14, 2023, Agencywide Documents Access and Management System (ADAMS) Accession No. ML23195A122.

The NRC staff's Environmental Assessment (including its Finding of No Significant Impact) and Safety Evaluation Report may be viewed at ADAMS Accession Nos. ML24240A034 and ML24200A115, respectively. This mandatory hearing will concern safety and environmental matters relating to the requested construction permit application, as more fully described below.

II. Evidentiary Uncontested Hearing

The Commission will conduct this hearing using written materials only. The schedule and process for submitting written materials to the Commission is detailed in Sections V and VI below. The parties to this proceeding are Kairos and the NRC staff.

III. Presiding Officer

The Commission is the presiding officer for this proceeding.

IV. Matters To Be Considered

The matter at issue in this proceeding is whether the review of the Kairos Hermes 2 construction permit application by the Commission's staff has been adequate to support the findings found in title 10 of the *Code of Federal Regulations* (10 CFR) 50.35, 50.40, 50.50, and 10 CFR 51.105. Those findings are as follows:

Issues Pursuant to the Atomic Energy Act of 1954, as Amended

With respect to the construction permit: (1) whether the applicant has described the proposed design of the facility, including, but not limited to, the principal architectural and engineering criteria for the design, and has identified the major features or components incorporated therein for the protection of the health and safety of the public; (2) whether such further technical or design information as may be required to complete the safety analysis, and which can reasonably be left for later consideration, will be

supplied in the final safety analysis report; (3) whether safety features or components, if any, which require research and development have been described by the applicant and the applicant has identified, and there will be conducted, a research and development program reasonably designed to resolve any safety questions associated with such features or components; (4) whether on the basis of the foregoing, there is reasonable assurance that (i) such safety questions will be satisfactorily resolved at or before the latest date stated in the application for completion of construction of the proposed facility, and (ii) taking into consideration the site criteria contained in 10 CFR part 100, the proposed facility can be constructed and operated at the proposed location without undue risk to the health and safety of the public; (5) whether there is reasonable assurance (i) that the construction of the facility will not endanger the health and safety of the public, and (ii) that construction activities can be conducted in compliance with the Commission's regulations; (6) whether the applicant is technically and financially qualified to engage in the proposed activities in accordance with the Commission's regulations in Chapter I of 10 CFR; (7) whether the issuance of a permit for the construction of the facility to the applicant will not, in the opinion of the Commission, be inimical to the common defense and security or to the health and safety of the public; and (8) whether the application meets the standards and requirements of the AEA and the Commission's regulations, and that notifications, if any, to other agencies or bodies have been duly made.

Issues Pursuant to the National Environmental Policy Act (NEPA) of 1969

With respect to the construction permit: (1) determine whether the requirements of Sections 102(2)(A), (C), and (E) of NEPA and the applicable regulations in 10 CFR part 51 have been met; (2) independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; (3) determine, after weighing the environmental, economic, technical, and other benefits against environmental and other costs, and considering reasonable alternatives, whether the construction permit should be issued, denied, or appropriately conditioned to protect environmental values; and (4) determine whether the

NEPA review conducted by the NRC staff has been adequate.

V. Schedule for Submittal of Written Evidence

All documents to be filed by the parties as described below should be filed in accordance with the requirements of our E-filing rules at 10 CFR 2.304(g) and will be considered exhibits in this proceeding once filed.

No later than October 10, 2024, the NRC staff should E-file the following documents to add them to the docket for this hearing: (1) SECY-24-0075, which will serve as the NRC staff's primary written testimony in this hearing, (2) the construction permit application,¹ (3) the draft construction permit, (4) the safety evaluation, (5) the environmental assessment and finding of no significant impact, and (6) any report submitted by the Advisory Committee on Reactor Safeguards in compliance with section 182(b) of the AEA and 10 CFR 50.58(a) regarding the Hermes 2 construction permit and any NRC staff response thereto. If any of these documents are non-public, then the NRC staff should also file a public version, if practicable.

No later than September 26, 2024, the Commission may issue written questions to one or both of the parties (the NRC staff and the applicant). If such questions are issued, party testimony responding to such questions, and associated exhibits (if any), are due October 10, 2024, unless the Commission directs otherwise. The applicant may also file additional written testimony by October 10, 2024.

VI. Interested Government Participants

No later than September 20, 2024, any interested State, local government body, or Federally recognized Indian Tribe may file with the Commission a statement of any issues or questions that the State, local government body, or Indian Tribe wishes the Commission to give particular attention to as part of the uncontested hearing process. Such statement may be accompanied by any supporting documentation that the State, local government body, or Indian Tribe sees fit to provide. Any statements and supporting documentation (if any) received by the Commission using the agency's E-filing system² by the

¹ If, due to its size, the application is too large to file through the E-filing system, the NRC staff may file a document that lists the ADAMS accession number for the package of each part of the application.

² The process for accessing and using the agency's E-filing system is described in the November 22, 2023, notice of hearing (88 FR 81,439) that was issued by the Commission for this proceeding. Participants who are unable to use the electronic information exchange (EIE), or who will have

deadline indicated above will be made part of the record of the proceeding. The Commission will use such statements and documents as appropriate to inform its questions to the NRC staff and applicant and its hearing decision.

Many of the procedures and rights applicable to the inherently adversarial nature of NRC's contested hearing process are not available in this uncontested hearing. Participation in the NRC's contested hearing process is governed by 10 CFR 2.309 (for persons or entities, including a State, local government, or Indian Tribe seeking to file contentions of their own) and 10 CFR 2.315(c) (for an interested State, local government, or Federally recognized Indian Tribe seeking to participate with respect to contentions filed by others). Participation in this uncontested hearing does not affect the right of a State, a local government, or an Indian Tribe to participate in a separate contested hearing process.

Dated at Rockville, Maryland, this 10th day of September, 2024.

For the Nuclear Regulatory Commission.

Carrie Safford,

Secretary of the Commission.

[FR Doc. 2024-20812 Filed 9-11-24; 8:45 am]

BILLING CODE 7590-01-P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024-628 and CP2024-637; MC2024-631 and CP2024-640; MC2024-635 and CP2024-644]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* September 16, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

difficulty complying with EIE requirements in the time frame provided for submission of written statements, may provide their statements by electronic mail to hearingdocket@nrc.gov.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s):* MC2024-628 and CP2024-637; *Filing Title:* USPS Request

¹ See Docket No. RM2018-3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19-22 (Order No. 4679).

to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 304 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 6, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* September 16, 2024.

2. *Docket No(s):* MC2024-631 and CP2024-640; *Filing Title:* USPS Request to Add Priority Mail & Parcel Select Contract 11 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 6, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* September 16, 2024.

3. *Docket No(s):* MC2024-635 and CP2024-644; *Filing Title:* USPS Request to Add Priority Mail & Parcel Select Contract 12 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 6, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Alain Brou; *Comments Due:* September 16, 2024.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2024-20728 Filed 9-11-24; 8:45 am]

BILLING CODE 7710-FW-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100963; File No. SR-NYSE-2024-49]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Existing Note in the Connectivity Fee Schedule

September 6, 2024.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 ("Act") ² and Rule 19b-4 thereunder, ³ notice is hereby given that on August 27, 2024, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the existing note in the Connectivity Fee Schedule ("Fee Schedule") regarding cabinet and combined waitlists. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The Exchange proposes to amend the existing note in the Fee Schedule regarding cabinet and combined waitlists.

Background

Shortly after the onset of the Covid-19 pandemic, the Exchange began experiencing unprecedented User⁴ demand for cabinets and power at the Mahwah, New Jersey data center ("MDC").⁵ In order to manage its

inventory, in late 2020, the Exchange filed to create purchasing limits and a waitlist for cabinet orders ("Cabinet Waitlist").⁶ In early 2021, the Exchange filed to create additional purchasing limits and a waitlist for orders for additional power in the MDC.⁷

In 2021 and 2022, the Exchange expanded the amount of space and power available in the MDC by opening a new colocation hall (*i.e.*, Hall 4). ICE is currently expanding the amount of colocation space and power available at the MDC through a new colocation hall (*i.e.*, Hall 5).

The Exchange subsequently amended the Fee Schedule to provide an alternative procedure by which the Exchange can allocate power in the Mahwah Data Center via deposit-guaranteed orders from Users made within a 90-day "Ordering Window."⁸ The Ordering Window procedure was designed with the goal of addressing both (a) whether customer demand would support additional expansion projects to provide further power, and (b) the fact that previous procedures in the Fee Schedule were not well-tailored to allocating large amounts of power that become available all at once, such as when a new colocation hall opens.⁹ Orders received during an Ordering Window are not considered finalized until the Exchange has received the User's signed order form and a deposit equal to two months' worth of the monthly recurring costs of the amount of new power ordered.

The Exchange had a power and cabinet waitlist ("Combined Waitlist") in place before the Ordering Window. The Exchange found that when the Combined Waitlist was in effect, approximately $\frac{2}{3}$ of its offers of power were rejected. Users further down the Combined Waitlist received power only after those higher up the Combined

Waitlist were offered the power and rejected it. As a result, the Users that actually wanted power received it only after a delay that lasted weeks or even months.

Proposed Changes

In response, the Exchange proposes to amend Fee Schedule Colocation Note 7 (Cabinet and Combined Waitlists) ("Note 7") to require that Users wanting to be placed on a waitlist must guarantee their order with a deposit.¹⁰ Requiring Users to submit deposits with their orders in order to be placed on the waitlist would help avoid delays for Users further down the list, by encouraging Users to carefully assess their true power and cabinet needs and protecting against Users ordering more power or cabinets than they actually intend to purchase. Requiring Users to submit deposits along with their orders was approved by the Commission in the Exchange's Ordering Window filing,¹¹ and so the deposit requirement here would not be novel.

To implement the change, Note 7(a), which sets forth the practices the Exchange follows for a Cabinet Waitlist, would be revised to provide that a User would be placed on the Cabinet Waitlist based on the date its finalized order is received, and that a User's order would be finalized when the Exchange receives (a) User's signed order form and (b) a deposit equal to two months' worth of the monthly recurring costs of the power requested for the cabinets ordered.¹²

Note 7(b), which sets forth the practices the Exchange follows for a Combined Waitlist, similarly would be revised to provide that a User would be placed on the Combined Waitlist based on the date its finalized order for cabinets and/or additional power is received, and that a User's order would be finalized when the Exchange receives (a) User's signed order form and (b) a deposit equal to two months' worth of the monthly recurring costs of (i) the power requested for the cabinets

Intercontinental Exchange, Inc. ("ICE") operates the MDC. The Exchange and the Affiliate SROs are indirect subsidiaries of ICE.

⁶ See Securities Exchange Act Release No. 90732 (December 18, 2020), 85 FR 84443 (December 28, 2020) (SR-NYSE-2020-73, SR-NYSEAMER-2020-66, SR-NYSEArca-2020-82, SR-NYSECHX-2020-26, and SR-NYSEAT-2020-28) (establishing the procedures in current Colocation Note 6(a) and 7(a)).

⁷ See Securities Exchange Act Release No. 91515 (April 8, 2021), 86 FR 19674 (April 14, 2021) (SR-NYSE-2021-12, SR-NYSEAMER-2021-08, SR-NYSEArca-2021-11, SR-NYSECHX-2021-02, and SR-NYSEAT-2021-03) (establishing the procedures in current Colocation Note 6(b) and 7(b)).

⁸ See Securities Exchange Act Release No. 98937 (November 14, 2023), 88 FR 80795 (November 20, 2023) (SR-NYSE-2023-29, SR-NYSEAMER-2023-39, SR-NYSEArca-2023-53, SR-NYSECHX-2023-16, and SR-NYSEAT-2023-18) ("Ordering Window Approval Order").

⁹ *Id.*, at 80794.

¹⁰ The proposed change would not apply to Users that are already on a waitlist at the time the proposed change becomes operative.

¹¹ See Ordering Window Approval Order, *supra* note 8.

¹² Because monthly charges are calculated based on power, not on cabinets, the Exchange proposes to calculate the deposit based on the power requested for the cabinets ordered. In such a case, the deposit would be calculated as (a) the number of kilowatts allocated to the cabinets the User is ordering, multiplied by (b) the appropriate "Per kW Monthly Fee" as indicated in the Connectivity Fee Schedule. The Per kW Monthly Fee is a factor of the total number of kilowatts allocated to all of a User's dedicated cabinets and varies based on the total kilowatts allocated to a User.

⁴ For purposes of the Exchange's colocation services, a "User" means any market participant that requests to receive colocation services directly from the Exchange. See Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR-NYSE-2015-40). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (together, the "Affiliate SROs"). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSEAMER-2024-52, SR-NYSEArca-2024-71, SR-NYSECHX-2024-27, and SR-NYSEAT-2024-24.

⁵ Through its Fixed Income and Data Services ("FIDS") (previously ICE Data Services) business,

ordered and/or (ii) the additional power ordered.¹³

Note 7(a) and (b) would be revised to provide that:

- If a User changes the size of its order while it is on the Cabinet or Combined Waitlist, as the case may be, and any additional deposit is received by the Exchange, it will maintain its place, provided that the User may not increase the size of its order such that it would exceed the Cabinet Limits or Combined Limits, as applicable.
- If a User wishes to reduce the size of its order while it is on the Cabinet or Combined Waitlist, its deposit would not be reduced or returned, but rather would be applied against the User's first and subsequent months' invoices after cabinets are, and/or the power is, delivered until the deposit is depleted.
- If the User removes its order from the Cabinet Waitlist or Combined Waitlist, its deposit will be returned.
- A User that is removed from the Cabinet or Combined Waitlist but subsequently submits a new finalized order for cabinets and/or additional power will be added back to the bottom of the waitlist.
- The deposit will be applied to the User's first and subsequent months' invoices after the cabinets are and/or additional power is delivered until the deposit is completely depleted.

General

The proposed changes would not apply differently to distinct types or sizes of market participants. Rather, they would apply to all Users equally. As is currently the case, the Fee Schedule would be applied uniformly to all Users. FIDS does not expect that the proposed rule change will result in new Users.

The proposed changes are not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that customers would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Section 6(b)(5)

of the Act,¹⁵ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁶ because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposed change is reasonable because requiring Users to submit deposits with their orders in order to be placed on the waitlist would help avoid delays for Users further down the list, by encouraging Users to carefully assess their true power and cabinet needs and protecting against Users ordering more power or cabinets than they actually intend to purchase. Without firm, guaranteed commitments from waitlisted Users to purchase cabinets or power if made available, the Exchange runs the risk of overestimating waitlisted Users' true demand, creating delays for Users further down the list. The proposed deposit requirement would address this by discouraging waitlisted Users from submitting orders for more cabinets or power than they actually intend to purchase.

The proposed deposit requirement is reasonable because, on the one hand, it is not so onerous as to dissuade Users from submitting orders, and, on the other hand, it is not so trivial that it would fail to deter Users from submitting exaggerated orders. It is substantially similar to the deposit provision already required under the Ordering Window, and as such, the deposit requirement here would not be novel.¹⁷

In addition, the Exchange believes that the proposed change is reasonable because the deposit is proportional to the size of the order, and not a fixed amount. As a result, smaller Users would not be disproportionately affected by the deposit requirement.

Under the proposed procedure, if a User wishes to reduce an order while on a waitlist, its deposit would not be reduced or returned, but rather would be applied against the User's first and subsequent months' invoices after the cabinets are, or the power is, delivered until the deposit is completely depleted. The Exchange believes that this would remove impediments and perfect the mechanism of a free and open market and a national market system because a waitlisted User would be reimbursed for all of its deposit even if it reduces its order. This would remove any incentive a User otherwise might have to understate its needs for cabinets and/or power out of a concern that it would not be reimbursed for the full amount of its deposit.

The Proposed Change Is Equitable and Not Unfairly Discriminatory

The Exchange believes that the proposed change provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed changes would apply equally to all types and sizes of market participants. All Users would receive equal notice of the deposit requirement through the proposed changes to Note 7, and the deposit requirement would be the same for all Users. Smaller Users with more modest power needs would not be disadvantaged by the proposed changes, as the deposit is proportional to the size of the order and not a fixed amount.

The proposed deposit requirement is equitable because, on the one hand, it is not so onerous as to dissuade Users from submitting orders, and, on the other hand, it is not so trivial that it would fail to deter Users from submitting exaggerated orders. It is

application fee as part of the process for listing a new security on the exchange. This fee functions as a deposit that is credited toward the issuer's listing fees after it is listed on the exchange. The deposit functions as "a disincentive for impractical applications by issuers." The deposit is forfeited if the issuer does not ultimately list on the exchange. See Securities Exchange Act Release No. 68470 (December 19, 2021), 77 FR 76116 at 76117 (December 26, 2012) (SR-NYSE-2012-68).

¹³ The deposit would be calculated as (a) the number of kilowatts allocated to the cabinets the User is ordering, if any, plus the number of kilowatts of additional power, multiplied by (b) the appropriate "Per kW Monthly Fee" as indicated in the Connectivity Fee Schedule. The Per kW Monthly Fee is a factor of the total number of kilowatts allocated to all of a User's dedicated cabinets and varies based on the total kilowatts allocated to a User.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ 15 U.S.C. 78f(b)(4).

¹⁷ See Ordering Window Approval Order, *supra* note 8. The NYSE requires market participants to submit deposits in other contexts as well. For example, since 2012, the NYSE has required prospective issuers to pay a \$25,000 initial

substantially similar to the deposit provision already required under the Ordering Window, and as such, the deposit requirement here would not be novel.¹⁸

Under the proposed procedure, if a User wishes to reduce an order while on a waitlist, its deposit would not be reduced or returned, but rather would be applied against the User's first and subsequent months' invoices after the cabinets are, or the power is, delivered until the deposit is completely depleted. The Exchange believes that this is equitable because a waitlisted User would be reimbursed for all of its deposit even if it reduces its order. This would remove any incentive a User otherwise might have to understate its needs for cabinets and/or power out of a concern that it would not be reimbursed for the full amount of its deposit.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms, and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

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

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.¹⁹

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to help avoid delays for waitlisted Users, by encouraging Users to carefully assess their true power and cabinet needs and protecting against Users ordering more power or cabinets than they actually intend to purchase. Without firm, guaranteed commitments from waitlisted Users to purchase cabinets or power if made available, the Exchange runs the risk of overestimating waitlisted Users' true demand, creating delays for Users further down the list. The proposed deposit requirement would address this by discouraging waitlisted Users from submitting orders for more cabinets or power than they actually intend to purchase, thereby

facilitating a more equitable distribution of cabinets and power. Moreover, the Ordering Window already requires a deposit, and as such, the deposit requirement here would not be novel.²⁰

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

No written comments were solicited or received with respect to the proposed rule change.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act²¹ and Rule 19b-4(f)(6) thereunder.²² Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.²³

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)²⁴ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

²⁰ See Ordering Window Approval Order, *supra* note 8.

²¹ 15 U.S.C. 78s(b)(3)(A)(iii).

²² 17 CFR 240.19b-4(f)(6).

²³ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²⁴ 15 U.S.C. 78s(b)(2)(B).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSE-2024-49 on the subject line.

Paper Comments

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

All submissions should refer to file number SR-NYSE-2024-49. This file number should be included on the subject line if email 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 (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSE-2024-49 and should be submitted on or before October 3, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024-20637 Filed 9-11-24; 8:45 am]

BILLING CODE 8011-01-P

¹⁸ See Ordering Window Approval Order, *supra* note 8.

¹⁹ 15 U.S.C. 78f(b)(8).

²⁵ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100960; File Nos. FINRA–2024–002; SR–FINRA–2024–003]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Withdrawal of Proposed Rule Change To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail

September 6, 2024.

On January 2, 2024, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (the “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b–4 thereunder, ² proposed rule changes to establish fees for industry members related to certain historical costs of the National Market System plan governing the Consolidated Audit Trail. The proposed rule changes were immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act. ³ On February 13, 2024, the proposed rule changes were published in the **Federal Register** and the Commission temporarily suspended and instituted proceedings to determine whether to approve or disapprove the proposed rule changes. ⁴ The Commission received six comments on the proposed rule changes and one response to those comments. ⁵ On July

31, 2024, pursuant to Section 19(b)(2) of the Act, ⁶ the Commission designated a longer period within which to approve the proposed rule changes or disapprove the proposed rule changes. ⁷ On September 5, 2024, FINRA withdrew the proposed rule changes (FINRA–2024–002; SR–FINRA–2024–003).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority. ⁸

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024–20634 Filed 9–11–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100958; File No. SR–FICC–2024–003]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Partial Amendment No. 1, Concerning the Adoption of a Minimum Margin Amount at GSD

September 6, 2024.

On February 27, 2024, Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR–FICC–2024–003 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b–4 thereunder. ² The notice of filing of the proposed rule change was published for comment in the **Federal Register** on March 15, 2024. ³ On March 25, 2024, the Commission extended the review period of the proposed rule change, pursuant to section 19(b)(2) of the Act, ⁴ until June 13, 2024, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove the

proposed rule change. ⁵ The Commission has received comments regarding the proposed rule change. ⁶

On April 5, 2024, FICC filed Partial Amendment No. 1 to the proposed rule change to correct errors FICC discovered regarding the impact analysis filed as Exhibit 3 and discussed in the filing narrative, as well as correct a typo in the methodology formula in Exhibit 5b. ⁷ The corrections in Partial Amendment No. 1 do not change the substance of the proposed rule change. ⁸ On May 20, 2024, the Commission published notice of Partial Amendment No. 1 and instituted proceedings, pursuant to Section 19(b)(2)(B) of the Exchange Act, ⁹ to determine whether to approve or disapprove the proposed rule change, as modified by the Partial Amendment No. 1. ¹⁰

⁵ Securities Exchange Act Release No. 99769 (March 19, 2024), 89 FR 20716 (March 25, 2024) (SR–FICC–2024–003).

⁶ Comments on the proposed rule change are available at <https://www.sec.gov/comments/sr-ficc-2024-003/srficc2024003.htm>.

⁷ To promote the public availability and transparency of its post-notice partial amendment, FICC submitted a copy of Partial Amendment No. 1 through the Commission’s electronic public comment letter mechanism. Accordingly, Partial Amendment No. 1 has been posted to the Commission’s website at <https://www.sec.gov/comments/sr-ficc-2024-003/srficc2024003-455611-1167714.pdf> and thus been publicly available since April 5, 2024. FICC has requested confidential treatment pursuant to 17 CFR 240.24b–2 with respect to Exhibit 3 and Exhibit 5b.

⁸ On February 27, 2024, FICC filed the proposed rule change as an advance notice with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (“Clearing Supervision Act”) and Rule 19b–4(n)(1)(i) under the Act. 12 U.S.C. 5465(e)(1); 17 CFR 240.19b–4(n)(1)(i). Notice of the advance notice was published in the **Federal Register** on March 15, 2024. Securities Exchange Act Release No. 99712 (March 11, 2024), 89 FR 18981 (March 15, 2024) (SR–FICC–2024–801). Pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act, the Commission extended the review period of the advance notice for an additional 60 days after finding that the Advance Notice raised novel and complex issues. On March 22, 2024, the Commission requested additional information from FICC pursuant to Section 806(e)(1)(D) of the Clearing Supervision Act, which tolled the Commission’s review period of review of the Advance Notice. 12 U.S.C. 5465(e)(1)(D). On April 26, 2024, the Commission received FICC’s response to the Commission’s request for additional information. On April 5, 2024, FICC filed Partial Amendment No. 1 to the advance notice, which makes the same corrections as Partial Amendment No. 1 to the proposed rule change. Notice of the advance notice, as modified by Partial Amendment No. 1, was published in the **Federal Register** on March 15, 2024. Securities Exchange Act Release No. 100140 (May 14, 2024), 89 FR 43941 (May 20, 2024) (SR–FICC–2024–801).

⁹ 15 U.S.C. 78s(b)(2)(B).

¹⁰ See Securities Exchange Act Release No. 100141 (May 14, 2024), 89 FR 43915 (May 20, 2024) (File No. SR–FICC–2024–003).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as “establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.” 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ Securities Exchange Act Release Nos. 99363 (January 17, 2024), 89 FR 10850 (February 13, 2024) (SR–FINRA–2024–002); 99372 (January 17, 2024), 89 FR 11153 (February 13, 2024) (SR–FINRA–2024–003).

⁵ See letters from: Edward Weisbaum, Executing Broker CBOE Floor, dated February 6, 2024; Howard Meyerson, Managing Director, Financial Information Forum, to Vanessa Countryman, Secretary, Commission, dated March 4, 2024; Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc., to Vanessa Countryman, Secretary, Commission, dated March 5, 2024; Ellen Greene, Managing Director, Equities & Options Market Structure, SIFMA; Joseph Corcoran, Managing Director, Associate General Counsel, SIFMA, to Vanessa Countryman, Secretary, Commission, dated March 5, 2024; Stephen John Berger, Managing Director, Global Head of Government & Regulatory Policy, Citadel Securities, to Vanessa Countryman, Secretary, Commission, dated March 5, 2024; Joanna Mallers, Secretary, FIA Principal Traders Group, to Vanessa Countryman, Secretary, Commission, dated March 9, 2024; and Brandon Becker, CAT NMS Plan Operating Committee Chair,

to Vanessa Countryman, Secretary, Commission, dated June 13, 2024.

⁶ 15 U.S.C. 78s(b)(2).

⁷ See Securities Exchange Act Release Nos. 100628 (Jul. 31, 2024), 89 FR 64010 (Aug. 6, 2024) (SR–FINRA–2024–002); 100627 (Jul. 31, 2024), 89 FR 64024 (Aug. 6, 2024) (SR–FINRA–2024–003); The Commission designated October 10, 2024 as the date by it should approve or disapprove the proposed rule changes.

⁸ 17 CFR 200.30–3(a)(12).

⁹ 15 U.S.C. 78s(b)(1).

¹⁰ 17 CFR 240.19b–4.

¹¹ Securities Exchange Act Release No. 99711 (March 11, 2024), 89 FR 18991 (March 15, 2024) (SR–FICC–2024–003).

¹² 15 U.S.C. 78s(b)(2)(ii).

Section 19(b)(2) of the Exchange Act¹¹ provides that proceedings to determine whether to approve or disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of filing of the proposed rule change. The time for conclusion of the proceedings may be extended for up to 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination.¹² The 180th day after publication of the Notice in the **Federal Register** is September 11, 2024.

The Commission is extending the period for Commission action on the Proposed Rule Change, as modified by Partial Amendment No. 1. The Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change so that the Commission has sufficient time to consider the issues raised by the Proposed Rule Change and to take action on the Proposed Rule Change. Accordingly, pursuant to Section 19(b)(2)(B)(ii)(II) of the Exchange Act,¹³ the Commission designates November 10, 2024, as the date by which the Commission should either approve or disapprove the Proposed Rule Change SR-FICC-2024-003.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024-20632 Filed 9-11-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100967; File No. SR-NYSE-2024-24]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Existing Note in the Connectivity Fee Schedule

September 6, 2024.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on August 27, 2024, NYSE National, Inc. (“NYSE National” or the “Exchange”) filed with

the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the existing note in the Connectivity Fee Schedule (“Fee Schedule”) regarding cabinet and combined waitlists. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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

1. Purpose

The Exchange proposes to amend the existing note in the Fee Schedule regarding cabinet and combined waitlists.

Background

Shortly after the onset of the Covid-19 pandemic, the Exchange began experiencing unprecedented User⁴

⁴ For purposes of the Exchange’s colocation services, a “User” means any market participant that requests to receive colocation services directly from the Exchange. See Securities Exchange Act Release No. 83351 (May 31, 2018), 83 FR 26314 at n.9 (June 6, 2018) (SR-NYSE-2018-07). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the New York Stock Exchange LLC (“NYSE”), NYSE American LLC, NYSE Arca, Inc., and NYSE Chicago, Inc. (together, the “Affiliate SROs”). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2024-49, SR-

demand for cabinets and power at the Mahwah, New Jersey data center (“MDC”).⁵ In order to manage its inventory, in late 2020, the Exchange filed to create purchasing limits and a waitlist for cabinet orders (“Cabinet Waitlist”).⁶ In early 2021, the Exchange filed to create additional purchasing limits and a waitlist for orders for additional power in the MDC.⁷

In 2021 and 2022, the Exchange expanded the amount of space and power available in the MDC by opening a new colocation hall (i.e., Hall 4). ICE is currently expanding the amount of colocation space and power available at the MDC through a new colocation hall (i.e., Hall 5).

The Exchange subsequently amended the Fee Schedule to provide an alternative procedure by which the Exchange can allocate power in the Mahwah Data Center via deposit-guaranteed orders from Users made within a 90-day “Ordering Window.”⁸ The Ordering Window procedure was designed with the goal of addressing both (a) whether customer demand would support additional expansion projects to provide further power, and (b) the fact that previous procedures in the Fee Schedule were not well-tailored to allocating large amounts of power that become available all at once, such as when a new colocation hall opens.⁹ Orders received during an Ordering Window are not considered finalized until the Exchange has received the User’s signed order form and a deposit equal to two months’ worth of the monthly recurring costs of the amount of new power ordered.

The Exchange had a power and cabinet waitlist (“Combined Waitlist”) in place before the Ordering Window.

NYSEAMER-2024-52, SR-NYSEARCA-2024-71, and SR-NYSECHX-2024-27.

⁵ Through its Fixed Income and Data Services (“FIDS”) (previously ICE Data Services) business, Intercontinental Exchange, Inc. (“ICE”) operates the MDC. The Exchange and the Affiliate SROs are indirect subsidiaries of ICE.

⁶ See Securities Exchange Act Release No. 90732 (December 18, 2020), 85 FR 84443 (December 28, 2020) (SR-NYSE-2020-73, SR-NYSEAMER-2020-66, SR-NYSEARCA-2020-82, SR-NYSECHX-2020-26, and SR-NYSE-2020-28) (establishing the procedures in current Colocation Note 6(a) and 7(a)).

⁷ See Securities Exchange Act Release No. 91515 (April 8, 2021), 86 FR 19674 (April 14, 2021) (SR-NYSE-2021-12, SR-NYSEAMER-2021-08, SR-NYSEARCA-2021-11, SR-NYSECHX-2021-02, and SR-NYSE-2021-03) (establishing the procedures in current Colocation Note 6(b) and 7(b)).

⁸ See Securities Exchange Act Release No. 98937 (November 14, 2023), 88 FR 80795 (November 20, 2023) (SR-NYSE-2023-29, SR-NYSEAMER-2023-39, SR-NYSEARCA-2023-53, SR-NYSECHX-2023-16, and SR-NYSE-2023-18) (“Ordering Window Approval Order”).

⁹ *Id.*, at 80794.

¹¹ 15 U.S.C. 78s(b)(2).

¹² 15 U.S.C. 78s(b)(2)(B)(ii)(III).

¹³ *Id.*

¹⁴ 17 CFR 200.30-3(a)(57).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

The Exchange found that when the Combined Waitlist was in effect, approximately $\frac{2}{3}$ of its offers of power were rejected. Users further down the Combined Waitlist received power only after those higher up the Combined Waitlist were offered the power and rejected it. As a result, the Users that actually wanted power received it only after a delay that lasted weeks or even months.

Proposed Changes

In response, the Exchange proposes to amend Fee Schedule Colocation Note 7 (Cabinet and Combined Waitlists) (“Note 7”) to require that Users wanting to be placed on a waitlist must guarantee their order with a deposit.¹⁰ Requiring Users to submit deposits with their orders in order to be placed on the waitlist would help avoid delays for Users further down the list, by encouraging Users to carefully assess their true power and cabinet needs and protecting against Users ordering more power or cabinets than they actually intend to purchase. Requiring Users to submit deposits along with their orders was approved by the Commission in the Exchange’s Ordering Window filing,¹¹ and so the deposit requirement here would not be novel.

To implement the change, Note 7(a), which sets forth the practices the Exchange follows for a Cabinet Waitlist, would be revised to provide that a User would be placed on the Cabinet Waitlist based on the date its finalized order is received, and that a User’s order would be finalized when the Exchange receives (a) User’s signed order form and (b) a deposit equal to two months’ worth of the monthly recurring costs of the power requested for the cabinets ordered.¹²

Note 7(b), which sets forth the practices the Exchange follows for a Combined Waitlist, similarly would be revised to provide that a User would be placed on the Combined Waitlist based on the date its finalized order for cabinets and/or additional power is received, and that a User’s order would

be finalized when the Exchange receives (a) User’s signed order form and (b) a deposit equal to two months’ worth of the monthly recurring costs of (i) the power requested for the cabinets ordered and/or (ii) the additional power ordered.¹³

Note 7(a) and (b) would be revised to provide that:

- If a User changes the size of its order while it is on the Cabinet or Combined Waitlist, as the case may be, and any additional deposit is received by the Exchange, it will maintain its place, provided that the User may not increase the size of its order such that it would exceed the Cabinet Limits or Combined Limits, as applicable.
- If a User wishes to reduce the size of its order while it is on the Cabinet or Combined Waitlist, its deposit would not be reduced or returned, but rather would be applied against the User’s first and subsequent months’ invoices after cabinets are, and/or the power is, delivered until the deposit is depleted.
- If the User removes its order from the Cabinet Waitlist or Combined Waitlist, its deposit will be returned.
- A User that is removed from the Cabinet or Combined Waitlist but subsequently submits a new finalized order for cabinets and/or additional power will be added back to the bottom of the waitlist.
- The deposit will be applied to the User’s first and subsequent months’ invoices after the cabinets are and/or additional power is delivered until the deposit is completely depleted.

General

The proposed changes would not apply differently to distinct types or sizes of market participants. Rather, they would apply to all Users equally. As is currently the case, the Fee Schedule would be applied uniformly to all Users. FIDS does not expect that the proposed rule change will result in new Users.

The proposed changes are not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that customers would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁵ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁶ because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposed change is reasonable because requiring Users to submit deposits with their orders in order to be placed on the waitlist would help avoid delays for Users further down the list, by encouraging Users to carefully assess their true power and cabinet needs and protecting against Users ordering more power or cabinets than they actually intend to purchase. Without firm, guaranteed commitments from waitlisted Users to purchase cabinets or power if made available, the Exchange runs the risk of overestimating waitlisted Users’ true demand, creating delays for Users further down the list. The proposed deposit requirement would address this by discouraging waitlisted Users from submitting orders for more cabinets or power than they actually intend to purchase.

The proposed deposit requirement is reasonable because, on the one hand, it is not so onerous as to dissuade Users from submitting orders, and, on the other hand, it is not so trivial that it would fail to deter Users from submitting exaggerated orders. It is substantially similar to the deposit provision already required under the Ordering Window, and as such, the

¹⁰ The proposed change would not apply to Users that are already on a waitlist at the time the proposed change becomes operative.

¹¹ See Ordering Window Approval Order, *supra* note 8.

¹² Because monthly charges are calculated based on power, not on cabinets, the Exchange proposes to calculate the deposit based on the power requested for the cabinets ordered. In such a case, the deposit would be calculated as (a) the number of kilowatts allocated to the cabinets the User is ordering, multiplied by (b) the appropriate “Per kW Monthly Fee” as indicated in the Connectivity Fee Schedule. The Per kW Monthly Fee is a factor of the total number of kilowatts allocated to all of a User’s dedicated cabinets and varies based on the total kilowatts allocated to a User.

¹³ The deposit would be calculated as (a) the number of kilowatts allocated to the cabinets the User is ordering, if any, plus the number of kilowatts of additional power, multiplied by (b) the appropriate “Per kW Monthly Fee” as indicated in the Connectivity Fee Schedule. The Per kW Monthly Fee is a factor of the total number of kilowatts allocated to all of a User’s dedicated cabinets and varies based on the total kilowatts allocated to a User.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ 15 U.S.C. 78f(b)(4).

deposit requirement here would not be novel.¹⁷

In addition, the Exchange believes that the proposed change is reasonable because the deposit is proportional to the size of the order, and not a fixed amount. As a result, smaller Users would not be disproportionately affected by the deposit requirement.

Under the proposed procedure, if a User wishes to reduce an order while on a waitlist, its deposit would not be reduced or returned, but rather would be applied against the User's first and subsequent months' invoices after the cabinets are, or the power is, delivered until the deposit is completely depleted. The Exchange believes that this would remove impediments and perfect the mechanism of a free and open market and a national market system because a waitlisted User would be reimbursed for all of its deposit even if it reduces its order. This would remove any incentive a User otherwise might have to understate its needs for cabinets and/or power out of a concern that it would not be reimbursed for the full amount of its deposit.

The Proposed Change Is Equitable and Not Unfairly Discriminatory

The Exchange believes that the proposed change provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed changes would apply equally to all types and sizes of market participants. All Users would receive equal notice of the deposit requirement through the proposed changes to Note 7, and the deposit requirement would be the same for all Users. Smaller Users with more modest power needs would not be disadvantaged by the proposed changes, as the deposit is proportional to the size of the order and not a fixed amount.

The proposed deposit requirement is equitable because, on the one hand, it is not so onerous as to dissuade Users from submitting orders, and, on the other hand, it is not so trivial that it would fail to deter Users from submitting exaggerated orders. It is substantially similar to the deposit provision already required under the Ordering Window, and as such, the deposit requirement here would not be novel.¹⁸

Under the proposed procedure, if a User wishes to reduce an order while on a waitlist, its deposit would not be reduced or returned, but rather would be applied against the User's first and subsequent months' invoices after the cabinets are, or the power is, delivered until the deposit is completely depleted. The Exchange believes that this is equitable because a waitlisted User would be reimbursed for all of its deposit even if it reduces its order. This would remove any incentive a User otherwise might have to understate its needs for cabinets and/or power out of a concern that it would not be reimbursed for the full amount of its deposit.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms, and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

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

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.¹⁹

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to help avoid delays for waitlisted Users, by encouraging Users to carefully assess their true power and cabinet needs and protecting against Users ordering more power or cabinets than they actually intend to purchase. Without firm, guaranteed commitments from waitlisted Users to purchase cabinets or power if made available, the Exchange runs the risk of overestimating

waitlisted Users' true demand, creating delays for Users further down the list. The proposed deposit requirement would address this by discouraging waitlisted Users from submitting orders for more cabinets or power than they actually intend to purchase, thereby facilitating a more equitable distribution of cabinets and power. Moreover, the Ordering Window already requires a deposit, and as such, the deposit requirement here would not be novel.²⁰

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

No written comments were solicited or received with respect to the proposed rule change.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act²¹ and Rule 19b-4(f)(6) thereunder.²² Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.²³

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)²⁴ of the Act to determine whether the proposed rule

¹⁷ See Ordering Window Approval Order, *supra* note 8. The NYSE requires market participants to submit deposits in other contexts as well. For example, since 2012, the NYSE has required prospective issuers to pay a \$25,000 initial application fee as part of the process for listing a new security on the exchange. This fee functions as a deposit that is credited toward the issuer's listing fees after it is listed on the exchange. The deposit functions as "a disincentive for impractical applications by issuers." The deposit is forfeited if the issuer does not ultimately list on the exchange. See Securities Exchange Act Release No. 68470 (December 19, 2021), 77 FR 76116 at 76117 (December 26, 2012) (SR-NYSE-2012-68).

¹⁸ See Ordering Window Approval Order, *supra* note 8.

¹⁹ 15 U.S.C. 78f(b)(8).

²⁰ See Ordering Window Approval Order, *supra* note 8.

²¹ 15 U.S.C. 78s(b)(3)(A)(iii).

²² 17 CFR 240.19b-4(f)(6).

²³ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²⁴ 15 U.S.C. 78s(b)(2)(B).

change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSENAT-2024-24 on the subject line.

Paper Comments

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

All submissions should refer to file number SR-NYSENAT-2024-24. This file number should be included on the subject line if email 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 (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSENAT-2024-24 and should be submitted on or before October 3, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-20641 Filed 9-11-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-373, OMB Control No. 3235-0422]

Submission for OMB Review; Comment Request; Extension: Rule 23c-3 and Form N-23c-3

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below.

Rule 23c-3 (17 CFR 270.23c-3) under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) permits a registered closed-end investment company ("closed-end fund" or "fund") that meets certain requirements to repurchase common stock of which it is the issuer from shareholders at periodic intervals, pursuant to repurchase offers made to all holders of the stock. The rule enables these funds to offer their shareholders a limited ability to resell their shares in a manner that previously was available only to open-end investment company shareholders.

A closed-end fund that relies on rule 23c-3 must send shareholders a notification that contains specified information each time the fund makes a repurchase offer (on a quarterly, semi-annual, or annual basis, or, for certain funds, on a discretionary basis not more often than every two years). The fund also must file copies of the shareholder notification with the Commission (electronically through the Commission's Electronic Data Gathering, Analysis, and Retrieval System ("EDGAR")) on Form N-23c-3, a filing that provides certain information about the fund and the type of offer the fund is making.¹ The fund

must describe in its annual report to shareholders the fund's policy concerning repurchase offers and the results of any repurchase offers made during the reporting period. The fund's board of directors must adopt written procedures designed to ensure that the fund's investment portfolio is sufficiently liquid to meet its repurchase obligations and other obligations under the rule. The board periodically must review the composition of the fund's portfolio and change the liquidity procedures as necessary. The fund also must file copies of advertisements and other sales literature with the Commission as if it were an open-end investment company subject to Section 24 of the Investment Company Act (15 U.S.C. 80a-24) and the rules that implement Section 24. Rule 24b-3 under the Investment Company Act (17 CFR 270.24b-3), however, exempts the fund from that requirement if the materials are filed instead with the Financial Industry Regulatory Authority ("FINRA").

The requirement that the fund send a notification to shareholders of each offer is intended to ensure that a fund provides material information to shareholders about the terms of each offer. The requirement that copies be sent to the Commission is intended to enable the Commission to monitor the fund's compliance with the notification requirement. The requirement that the shareholder notification be attached to Form N-23c-3 is intended to ensure that the fund provides basic information necessary for the Commission to process the notification and to monitor the fund's use of repurchase offers. The requirement that the fund describe its current policy on repurchase offers and the results of recent offers in the annual shareholder report is intended to provide shareholders current information about the fund's repurchase policies and its recent experience. The requirement that the board approve and review written procedures designed to maintain portfolio liquidity is intended to ensure that the fund has enough cash or liquid securities to meet its repurchase obligations, and that written procedures are available for review by shareholders and examination by the Commission. The requirement that the fund file advertisements and sales literature as if it were an open-end fund is intended to facilitate the review of these materials by the Commission or FINRA to prevent incomplete, inaccurate, or misleading disclosure

²⁵ 17 CFR 200.30-3(a)(12).

¹ Form N-23c-3, entitled "Notification of Repurchase Offer Pursuant to Rule 23c-3," requires the fund to state its registration number, its full

name and address, the date of the accompanying shareholder notification, and the type of offer being made (periodic, discretionary, or both).

about the special characteristics of a closed-end fund that makes periodic repurchase offers.

The Commission staff estimates that 80 funds make use of rule 23c-3 annually, including 14 funds that are relying upon rule 23c-3 for the first time. The Commission staff estimates that on average a fund spends 89 hours annually in complying with the requirements of the rule and Form N-23c-3, with funds relying upon rule 23c-3 for the first time incurring an additional one-time burden of 28 hours. The Commission therefore estimates the total annual hour burden of the rule's and form's paperwork requirements to be 7,512 hours. In addition to the burden hours, the Commission staff estimates that the average yearly cost to each fund that relies on rule 23c-3 to print and mail repurchase offers to shareholders is about \$38,003.10. The Commission estimates total annual cost is therefore about \$3,040,248.

Estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms. Compliance with the collection of information requirements of the rule and form is mandatory only for those funds that rely on the rule to repurchase shares of the fund. The information provided to the Commission on Form N-23c-3 will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: www.reginfo.gov. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by October 15, 2024 to (i) MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov and (ii) Austin Gerig, Director/Chief Data Officer, Securities and Exchange Commission, c/o Oluwaseun Ajayi, 100 F Street NE, Washington, DC 20549, or by sending an email to: PRA_Mailbox@sec.gov.

Dated: September 9, 2024.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-20700 Filed 9-11-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100966; File No. SR-NYSECHX-2024-27]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Existing Note in the Connectivity Fee Schedule

September 6, 2024.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 ("Act") ² and Rule 19b-4 thereunder, ³ notice is hereby given that on August 27, 2024, NYSE Chicago, Inc. ("NYSE Chicago" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the existing note in the Connectivity Fee Schedule ("Fee Schedule") regarding cabinet and combined waitlists. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The Exchange proposes to amend the existing note in the Fee Schedule

regarding cabinet and combined waitlists.

Background

Shortly after the onset of the Covid-19 pandemic, the Exchange began experiencing unprecedented User ⁴ demand for cabinets and power at the Mahwah, New Jersey data center ("MDC"). ⁵ In order to manage its inventory, in late 2020, the Exchange filed to create purchasing limits and a waitlist for cabinet orders ("Cabinet Waitlist"). ⁶ In early 2021, the Exchange filed to create additional purchasing limits and a waitlist for orders for additional power in the MDC. ⁷

In 2021 and 2022, the Exchange expanded the amount of space and power available in the MDC by opening a new colocation hall (i.e., Hall 4). ICE is currently expanding the amount of colocation space and power available at the MDC through a new colocation hall (i.e., Hall 5).

The Exchange subsequently amended the Fee Schedule to provide an alternative procedure by which the Exchange can allocate power in the Mahwah Data Center via deposit-guaranteed orders from Users made within a 90-day "Ordering Window." ⁸

⁴ For purposes of the Exchange's colocation services, a "User" means any market participant that requests to receive colocation services directly from the Exchange. See Securities Exchange Act Release No. 87408 (October 28, 2019), 84 FR 58778 at n.6 (November 1, 2019) (SR-NYSECHX-2019-12). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the New York Stock Exchange LLC ("NYSE"), NYSE American LLC, NYSE Arca, Inc., and NYSE National, Inc. (together, the "Affiliate SROs"). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2024-49, SR-NYSEAMER-2024-52, SR-NYSEARCA-2024-71, and SR-NYSENAT-2024-24.

⁵ Through its Fixed Income and Data Services ("FIDS") (previously ICE Data Services) business, Intercontinental Exchange, Inc. ("ICE") operates the MDC. The Exchange and the Affiliate SROs are indirect subsidiaries of ICE.

⁶ See Securities Exchange Act Release No. 90732 (December 18, 2020), 85 FR 84443 (December 28, 2020) (SR-NYSE-2020-73, SR-NYSEAMER-2020-66, SR-NYSEARCA-2020-82, SR-NYSECHX-2020-26, and SR-NYSENAT-2020-28) (establishing the procedures in current Colocation Note 6(a) and 7(a)).

⁷ See Securities Exchange Act Release No. 91515 (April 8, 2021), 86 FR 19674 (April 14, 2021) (SR-NYSE-2021-12, SR-NYSEAMER-2021-08, SR-NYSEARCA-2021-11, SR-NYSECHX-2021-02, and SR-NYSENAT-2021-03) (establishing the procedures in current Colocation Note 6(b) and 7(b)).

⁸ See Securities Exchange Act Release No. 98937 (November 14, 2023), 88 FR 80795 (November 20, 2023) (SR-NYSE-2023-29, SR-NYSEAMER-2023-39, SR-NYSEARCA-2023-53, SR-NYSECHX-2023-16, and SR-NYSENAT-2023-18) ("Ordering Window Approval Order").

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

The Ordering Window procedure was designed with the goal of addressing both (a) whether customer demand would support additional expansion projects to provide further power, and (b) the fact that previous procedures in the Fee Schedule were not well-tailored to allocating large amounts of power that become available all at once, such as when a new colocation hall opens.⁹ Orders received during an Ordering Window are not considered finalized until the Exchange has received the User's signed order form and a deposit equal to two months' worth of the monthly recurring costs of the amount of new power ordered.

The Exchange had a power and cabinet waitlist ("Combined Waitlist") in place before the Ordering Window. The Exchange found that when the Combined Waitlist was in effect, approximately 2/3 of its offers of power were rejected. Users further down the Combined Waitlist received power only after those higher up the Combined Waitlist were offered the power and rejected it. As a result, the Users that actually wanted power received it only after a delay that lasted weeks or even months.

Proposed Changes

In response, the Exchange proposes to amend Fee Schedule Colocation Note 7 (Cabinet and Combined Waitlists) ("Note 7") to require that Users wanting to be placed on a waitlist must guarantee their order with a deposit.¹⁰ Requiring Users to submit deposits with their orders in order to be placed on the waitlist would help avoid delays for Users further down the list, by encouraging Users to carefully assess their true power and cabinet needs and protecting against Users ordering more power or cabinets than they actually intend to purchase. Requiring Users to submit deposits along with their orders was approved by the Commission in the Exchange's Ordering Window filing,¹¹ and so the deposit requirement here would not be novel.

To implement the change, Note 7(a), which sets forth the practices the Exchange follows for a Cabinet Waitlist, would be revised to provide that a User would be placed on the Cabinet Waitlist based on the date its finalized order is received, and that a User's order would be finalized when the Exchange receives (a) User's signed order form and (b) a deposit equal to two months' worth of

the monthly recurring costs of the power requested for the cabinets ordered.¹²

Note 7(b), which sets forth the practices the Exchange follows for a Combined Waitlist, similarly would be revised to provide that a User would be placed on the Combined Waitlist based on the date its finalized order for cabinets and/or additional power is received, and that a User's order would be finalized when the Exchange receives (a) User's signed order form and (b) a deposit equal to two months' worth of the monthly recurring costs of (i) the power requested for the cabinets ordered and/or (ii) the additional power ordered.¹³

Note 7(a) and (b) would be revised to provide that:

- If a User changes the size of its order while it is on the Cabinet or Combined Waitlist, as the case may be, and any additional deposit is received by the Exchange, it will maintain its place, provided that the User may not increase the size of its order such that it would exceed the Cabinet Limits or Combined Limits, as applicable.
- If a User wishes to reduce the size of its order while it is on the Cabinet or Combined Waitlist, its deposit would not be reduced or returned, but rather would be applied against the User's first and subsequent months' invoices after cabinets are, and/or the power is, delivered until the deposit is depleted.
- If the User removes its order from the Cabinet Waitlist or Combined Waitlist, its deposit will be returned.
- A User that is removed from the Cabinet or Combined Waitlist but subsequently submits a new finalized order for cabinets and/or additional power will be added back to the bottom of the waitlist.
- The deposit will be applied to the User's first and subsequent months' invoices after the cabinets are and/or

¹² Because monthly charges are calculated based on power, not on cabinets, the Exchange proposes to calculate the deposit based on the power requested for the cabinets ordered. In such a case, the deposit would be calculated as (a) the number of kilowatts allocated to the cabinets the User is ordering, multiplied by (b) the appropriate "Per kW Monthly Fee" as indicated in the Connectivity Fee Schedule. The Per kW Monthly Fee is a factor of the total number of kilowatts allocated to all of a User's dedicated cabinets and varies based on the total kilowatts allocated to a User.

¹³ The deposit would be calculated as (a) the number of kilowatts allocated to the cabinets the User is ordering, if any, plus the number of kilowatts of additional power, multiplied by (b) the appropriate "Per kW Monthly Fee" as indicated in the Connectivity Fee Schedule. The Per kW Monthly Fee is a factor of the total number of kilowatts allocated to all of a User's dedicated cabinets and varies based on the total kilowatts allocated to a User.

additional power is delivered until the deposit is completely depleted.

General

The proposed changes would not apply differently to distinct types or sizes of market participants. Rather, they would apply to all Users equally. As is currently the case, the Fee Schedule would be applied uniformly to all Users. FIDS does not expect that the proposed rule change will result in new Users.

The proposed changes are not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that customers would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁵ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁶ because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposed change is reasonable because requiring Users to submit deposits with their orders in order to be placed on the waitlist would help avoid delays for Users further down the list, by encouraging Users to carefully assess their true power and cabinet needs and protecting against Users ordering more power or cabinets than they actually intend to purchase. Without firm,

⁹ *Id.*, at 80794.

¹⁰ The proposed change would not apply to Users that are already on a waitlist at the time the proposed change becomes operative.

¹¹ See Ordering Window Approval Order, *supra* note 8.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ 15 U.S.C. 78f(b)(4).

guaranteed commitments from waitlisted Users to purchase cabinets or power if made available, the Exchange runs the risk of overestimating waitlisted Users' true demand, creating delays for Users further down the list. The proposed deposit requirement would address this by discouraging waitlisted Users from submitting orders for more cabinets or power than they actually intend to purchase.

The proposed deposit requirement is reasonable because, on the one hand, it is not so onerous as to dissuade Users from submitting orders, and, on the other hand, it is not so trivial that it would fail to deter Users from submitting exaggerated orders. It is substantially similar to the deposit provision already required under the Ordering Window, and as such, the deposit requirement here would not be novel.¹⁷

In addition, the Exchange believes that the proposed change is reasonable because the deposit is proportional to the size of the order, and not a fixed amount. As a result, smaller Users would not be disproportionately affected by the deposit requirement.

Under the proposed procedure, if a User wishes to reduce an order while on a waitlist, its deposit would not be reduced or returned, but rather would be applied against the User's first and subsequent months' invoices after the cabinets are, or the power is, delivered until the deposit is completely depleted. The Exchange believes that this would remove impediments and perfect the mechanism of a free and open market and a national market system because a waitlisted User would be reimbursed for all of its deposit even if it reduces its order. This would remove any incentive a User otherwise might have to understate its needs for cabinets and/or power out of a concern that it would not be reimbursed for the full amount of its deposit.

The Proposed Change Is Equitable and Not Unfairly Discriminatory

The Exchange believes that the proposed change provides for the equitable allocation of reasonable dues,

fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed changes would apply equally to all types and sizes of market participants. All Users would receive equal notice of the deposit requirement through the proposed changes to Note 7, and the deposit requirement would be the same for all Users. Smaller Users with more modest power needs would not be disadvantaged by the proposed changes, as the deposit is proportional to the size of the order and not a fixed amount.

The proposed deposit requirement is equitable because, on the one hand, it is not so onerous as to dissuade Users from submitting orders, and, on the other hand, it is not so trivial that it would fail to deter Users from submitting exaggerated orders. It is substantially similar to the deposit provision already required under the Ordering Window, and as such, the deposit requirement here would not be novel.¹⁸

Under the proposed procedure, if a User wishes to reduce an order while on a waitlist, its deposit would not be reduced or returned, but rather would be applied against the User's first and subsequent months' invoices after the cabinets are, or the power is, delivered until the deposit is completely depleted. The Exchange believes that this is equitable because a waitlisted User would be reimbursed for all of its deposit even if it reduces its order. This would remove any incentive a User otherwise might have to understate its needs for cabinets and/or power out of a concern that it would not be reimbursed for the full amount of its deposit.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms, and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

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

The Exchange believes that the proposal will not impose any burden on

competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.¹⁹

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to help avoid delays for waitlisted Users, by encouraging Users to carefully assess their true power and cabinet needs and protecting against Users ordering more power or cabinets than they actually intend to purchase. Without firm, guaranteed commitments from waitlisted Users to purchase cabinets or power if made available, the Exchange runs the risk of overestimating waitlisted Users' true demand, creating delays for Users further down the list. The proposed deposit requirement would address this by discouraging waitlisted Users from submitting orders for more cabinets or power than they actually intend to purchase, thereby facilitating a more equitable distribution of cabinets and power. Moreover, the Ordering Window already requires a deposit, and as such, the deposit requirement here would not be novel.²⁰

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

No written comments were solicited or received with respect to the proposed rule change.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act²¹ and Rule 19b-4(f)(6) thereunder.²² Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.²³

¹⁹ 15 U.S.C. 78f(b)(8).

²⁰ See Ordering Window Approval Order, *supra* note 8.

²¹ 15 U.S.C. 78s(b)(3)(A)(iii).

²² 17 CFR 240.19b-4(f)(6).

²³ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to

¹⁷ See Ordering Window Approval Order, *supra* note 8. The NYSE requires market participants to submit deposits in other contexts as well. For example, since 2012, the NYSE has required prospective issuers to pay a \$25,000 initial application fee as part of the process for listing a new security on the exchange. This fee functions as a deposit that is credited toward the issuer's listing fees after it is listed on the exchange. The deposit functions as "a disincentive for impractical applications by issuers." The deposit is forfeited if the issuer does not ultimately list on the exchange. See Securities Exchange Act Release No. 68470 (December 19, 20212), 77 FR 76116 at 76117 (December 26, 2012) (SR-NYSE-2012-68).

¹⁸ See Ordering Window Approval Order, *supra* note 8.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)²⁴ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSECHX-2024-27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-NYSECHX-2024-27. This file number should be included on the subject line if email 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 (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official

file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²⁴ 15 U.S.C. 78s(b)(2)(B).

business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSECHX-2024-27 and should be submitted on or before October 3, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-20640 Filed 9-11-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-629, OMB Control No. 3235-0719]

Submission for OMB Review; Comment Request; Extension: Rule 13n-1—13n-12; Form SDR

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the previously approved collection of information provided for in Rules 13n-1 through 13n-12 (17 CFR 240.13n-1 through 240.13n-12) and Form SDR ("Rules"), under the Securities Exchange Act of 1934 (15 U.S.C. 78m(n)(3) *et seq.*).

Under the Rules, security-based swap data repositories ("SDRs") are required to register with the Commission by filing a completed Form SDR (the filing of a completed Form SDR also constitutes an application for registration as a securities information processor ("SIP")). SDRs are also required to abide by certain minimum standards set out in the Rules, including a requirement to update Form SDR, abide by certain duties and core principles, maintain data in accordance with the rules, keep systems in

accordance with the Rules, keep records, provide reports to the Commission, maintain the privacy of security-based swaps ("SBSs") data, make certain disclosures, and designate a Chief Compliance Officer. In addition, there are a number of collections of information contained in the Rules. The information collected pursuant to the Rules is necessary to carry out the mandates of the Dodd-Frank Act and help ensure an orderly and transparent market for SBSs.

Assuming a maximum of three SDRs, the Commission estimates that the total that the total burden for the Rules and Form SDR for all respondents is 127,505 hours annually and approximately 382,511 burden hours for all respondents over three years. In addition, the Commission estimates that the total cost of the Rules and Form SDR for all respondents is approximately \$29,905,416 annually and approximately \$89,716,248 for all respondents over three years.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: www.reginfo.gov. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. Written comments and recommendations for the proposed information collection should be sent by October 15, 2024 to (i) www.reginfo.gov/public/do/PRAMain and (ii) Austin Gerig, Director/Chief Information Officer, Securities and Exchange Commission, c/o Oluwaseun Ajayi, 100 F Street NE, Washington, DC 20549, or by sending an email to: PRA_Mailbox@sec.gov.

Dated: September 9, 2024.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-20695 Filed 9-11-24; 8:45 am]

BILLING CODE 8011-01-P

²⁵ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100965; File No. SR–NYSEARCA–2024–71]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Existing Note in the Connectivity Fee Schedule

September 6, 2024.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b–4 thereunder,³ notice is hereby given that on August 27, 2024, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the existing note in the Connectivity Fee Schedule (“Fee Schedule”) regarding cabinet and combined waitlists. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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

1. Purpose

The Exchange proposes to amend the existing note in the Fee Schedule

regarding cabinet and combined waitlists.

Background

Shortly after the onset of the Covid–19 pandemic, the Exchange began experiencing unprecedented User⁴ demand for cabinets and power at the Mahwah, New Jersey data center (“MDC”).⁵ In order to manage its inventory, in late 2020, the Exchange filed to create purchasing limits and a waitlist for cabinet orders (“Cabinet Waitlist”).⁶ In early 2021, the Exchange filed to create additional purchasing limits and a waitlist for orders for additional power in the MDC.⁷

In 2021 and 2022, the Exchange expanded the amount of space and power available in the MDC by opening a new colocation hall (*i.e.*, Hall 4). ICE is currently expanding the amount of colocation space and power available at the MDC through a new colocation hall (*i.e.*, Hall 5).

The Exchange subsequently amended the Fee Schedule to provide an alternative procedure by which the Exchange can allocate power in the Mahwah Data Center via deposit-guaranteed orders from Users made within a 90-day “Ordering Window.”⁸ The Ordering Window procedure was

⁴ For purposes of the Exchange’s colocation services, a “User” means any market participant that requests to receive colocation services directly from the Exchange. *See* Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR–NYSEArca–2015–82). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the New York Stock Exchange LLC (“NYSE”), NYSE American LLC, NYSE Chicago, Inc. and NYSE National, Inc. (together, the “Affiliate SROs”). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2024–49, SR–NYSEAMER–2024–52, SR–NYSECHX–2024–27, and SR–NYSENAT–2024–24.

⁵ Through its Fixed Income and Data Services (“FIDS”) (previously ICE Data Services) business, Intercontinental Exchange, Inc. (“ICE”) operates the MDC. The Exchange and the Affiliate SROs are indirect subsidiaries of ICE.

⁶ *See* Securities Exchange Act Release No. 90732 (December 18, 2020), 85 FR 84443 (December 28, 2020) (SR–NYSE–2020–73, SR–NYSEAMER–2020–66, SR–NYSEArca–2020–82, SR–NYSECHX–2020–26, and SR–NYSENAT–2020–28) (establishing the procedures in current Colocation Note 6(a) and 7(a)).

⁷ *See* Securities Exchange Act Release No. 91515 (April 8, 2021), 86 FR 19674 (April 14, 2021) (SR–NYSE–2021–12, SR–NYSEAMER–2021–08, SR–NYSEArca–2021–11, SR–NYSECHX–2021–02, and SR–NYSENAT–2021–03) (establishing the procedures in current Colocation Note 6(b) and 7(b)).

⁸ *See* Securities Exchange Act Release No. 98937 (November 14, 2023), 88 FR 80795 (November 20, 2023) (SR–NYSE–2023–29, SR–NYSEAMER–2023–39, SR–NYSEArca–2023–53, SR–NYSECHX–2023–16, and SR–NYSENAT–2023–18) (“Ordering Window Approval Order”).

designed with the goal of addressing both (a) whether customer demand would support additional expansion projects to provide further power, and (b) the fact that previous procedures in the Fee Schedule were not well-tailored to allocating large amounts of power that become available all at once, such as when a new colocation hall opens.⁹ Orders received during an Ordering Window are not considered finalized until the Exchange has received the User’s signed order form and a deposit equal to two months’ worth of the monthly recurring costs of the amount of new power ordered.

The Exchange had a power and cabinet waitlist (“Combined Waitlist”) in place before the Ordering Window. The Exchange found that when the Combined Waitlist was in effect, approximately $\frac{2}{3}$ of its offers of power were rejected. Users further down the Combined Waitlist received power only after those higher up the Combined Waitlist were offered the power and rejected it. As a result, the Users that actually wanted power received it only after a delay that lasted weeks or even months.

Proposed Changes

In response, the Exchange proposes to amend Fee Schedule Colocation Note 7 (Cabinet and Combined Waitlists) (“Note 7”) to require that Users wanting to be placed on a waitlist must guarantee their order with a deposit.¹⁰ Requiring Users to submit deposits with their orders in order to be placed on the waitlist would help avoid delays for Users further down the list, by encouraging Users to carefully assess their true power and cabinet needs and protecting against Users ordering more power or cabinets than they actually intend to purchase. Requiring Users to submit deposits along with their orders was approved by the Commission in the Exchange’s Ordering Window filing,¹¹ and so the deposit requirement here would not be novel.

To implement the change, Note 7(a), which sets forth the practices the Exchange follows for a Cabinet Waitlist, would be revised to provide that a User would be placed on the Cabinet Waitlist based on the date its finalized order is received, and that a User’s order would be finalized when the Exchange receives (a) User’s signed order form and (b) a deposit equal to two months’ worth of the monthly recurring costs of the

⁹ *Id.*, at 80794.

¹⁰ The proposed change would not apply to Users that are already on a waitlist at the time the proposed change becomes operative.

¹¹ *See* Ordering Window Approval Order, *supra* note 8.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

power requested for the cabinets ordered.¹²

Note 7(b), which sets forth the practices the Exchange follows for a Combined Waitlist, similarly would be revised to provide that a User would be placed on the Combined Waitlist based on the date its finalized order for cabinets and/or additional power is received, and that a User's order would be finalized when the Exchange receives (a) User's signed order form and (b) a deposit equal to two months' worth of the monthly recurring costs of (i) the power requested for the cabinets ordered and/or (ii) the additional power ordered.¹³

Note 7(a) and (b) would be revised to provide that:

- If a User changes the size of its order while it is on the Cabinet or Combined Waitlist, as the case may be, and any additional deposit is received by the Exchange, it will maintain its place, provided that the User may not increase the size of its order such that it would exceed the Cabinet Limits or Combined Limits, as applicable.
- If a User wishes to reduce the size of its order while it is on the Cabinet or Combined Waitlist, its deposit would not be reduced or returned, but rather would be applied against the User's first and subsequent months' invoices after cabinets are, and/or the power is, delivered until the deposit is depleted.
- If the User removes its order from the Cabinet Waitlist or Combined Waitlist, its deposit will be returned.
- A User that is removed from the Cabinet or Combined Waitlist but subsequently submits a new finalized order for cabinets and/or additional power will be added back to the bottom of the waitlist.
- The deposit will be applied to the User's first and subsequent months' invoices after the cabinets are and/or additional power is delivered until the deposit is completely depleted.

¹² Because monthly charges are calculated based on power, not on cabinets, the Exchange proposes to calculate the deposit based on the power requested for the cabinets ordered. In such a case, the deposit would be calculated as (a) the number of kilowatts allocated to the cabinets the User is ordering, multiplied by (b) the appropriate "Per kW Monthly Fee" as indicated in the Connectivity Fee Schedule. The Per kW Monthly Fee is a factor of the total number of kilowatts allocated to all of a User's dedicated cabinets and varies based on the total kilowatts allocated to a User.

¹³ The deposit would be calculated as (a) the number of kilowatts allocated to the cabinets the User is ordering, if any, plus the number of kilowatts of additional power, multiplied by (b) the appropriate "Per kW Monthly Fee" as indicated in the Connectivity Fee Schedule. The Per kW Monthly Fee is a factor of the total number of kilowatts allocated to all of a User's dedicated cabinets and varies based on the total kilowatts allocated to a User.

General

The proposed changes would not apply differently to distinct types or sizes of market participants. Rather, they would apply to all Users equally. As is currently the case, the Fee Schedule would be applied uniformly to all Users. FIDS does not expect that the proposed rule change will result in new Users.

The proposed changes are not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that customers would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁵ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁶ because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposed change is reasonable because requiring Users to submit deposits with their orders in order to be placed on the waitlist would help avoid delays for Users further down the list, by encouraging Users to carefully assess their true power and cabinet needs and protecting against Users ordering more power or cabinets than they actually intend to purchase. Without firm, guaranteed commitments from waitlisted Users to purchase cabinets or power if made available, the Exchange

runs the risk of overestimating waitlisted Users' true demand, creating delays for Users further down the list. The proposed deposit requirement would address this by discouraging waitlisted Users from submitting orders for more cabinets or power than they actually intend to purchase.

The proposed deposit requirement is reasonable because, on the one hand, it is not so onerous as to dissuade Users from submitting orders, and, on the other hand, it is not so trivial that it would fail to deter Users from submitting exaggerated orders. It is substantially similar to the deposit provision already required under the Ordering Window, and as such, the deposit requirement here would not be novel.¹⁷

In addition, the Exchange believes that the proposed change is reasonable because the deposit is proportional to the size of the order, and not a fixed amount. As a result, smaller Users would not be disproportionately affected by the deposit requirement.

Under the proposed procedure, if a User wishes to reduce an order while on a waitlist, its deposit would not be reduced or returned, but rather would be applied against the User's first and subsequent months' invoices after the cabinets are, or the power is, delivered until the deposit is completely depleted. The Exchange believes that this would remove impediments and perfect the mechanism of a free and open market and a national market system because a waitlisted User would be reimbursed for all of its deposit even if it reduces its order. This would remove any incentive a User otherwise might have to understate its needs for cabinets and/or power out of a concern that it would not be reimbursed for the full amount of its deposit.

The Proposed Change Is Equitable and Not Unfairly Discriminatory

The Exchange believes that the proposed change provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly

¹⁷ See Ordering Window Approval Order, *supra* note 8. The NYSE requires market participants to submit deposits in other contexts as well. For example, since 2012, the NYSE has required prospective issuers to pay a \$25,000 initial application fee as part of the process for listing a new security on the exchange. This fee functions as a deposit that is credited toward the issuer's listing fees after it is listed on the exchange. The deposit functions as "a disincentive for impractical applications by issuers." The deposit is forfeited if the issuer does not ultimately list on the exchange. See Securities Exchange Act Release No. 68470 (December 19, 2021), 77 FR 76116 at 76117 (December 26, 2012) (SR-NYSE-2012-68).

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ 15 U.S.C. 78f(b)(4).

discriminate between customers, issuers, brokers, or dealers because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed changes would apply equally to all types and sizes of market participants. All Users would receive equal notice of the deposit requirement through the proposed changes to Note 7, and the deposit requirement would be the same for all Users. Smaller Users with more modest power needs would not be disadvantaged by the proposed changes, as the deposit is proportional to the size of the order and not a fixed amount.

The proposed deposit requirement is equitable because, on the one hand, it is not so onerous as to dissuade Users from submitting orders, and, on the other hand, it is not so trivial that it would fail to deter Users from submitting exaggerated orders. It is substantially similar to the deposit provision already required under the Ordering Window, and as such, the deposit requirement here would not be novel.¹⁸

Under the proposed procedure, if a User wishes to reduce an order while on a waitlist, its deposit would not be reduced or returned, but rather would be applied against the User's first and subsequent months' invoices after the cabinets are, or the power is, delivered until the deposit is completely depleted. The Exchange believes that this is equitable because a waitlisted User would be reimbursed for all of its deposit even if it reduces its order. This would remove any incentive a User otherwise might have to understate its needs for cabinets and/or power out of a concern that it would not be reimbursed for the full amount of its deposit.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms, and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

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

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or

appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.¹⁹

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to help avoid delays for waitlisted Users, by encouraging Users to carefully assess their true power and cabinet needs and protecting against Users ordering more power or cabinets than they actually intend to purchase. Without firm, guaranteed commitments from waitlisted Users to purchase cabinets or power if made available, the Exchange runs the risk of overestimating waitlisted Users' true demand, creating delays for Users further down the list. The proposed deposit requirement would address this by discouraging waitlisted Users from submitting orders for more cabinets or power than they actually intend to purchase, thereby facilitating a more equitable distribution of cabinets and power. Moreover, the Ordering Window already requires a deposit, and as such, the deposit requirement here would not be novel.²⁰

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

No written comments were solicited or received with respect to the proposed rule change.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act²¹ and Rule 19b-4(f)(6) thereunder.²² Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.²³

¹⁹ 15 U.S.C. 78f(b)(8).

²⁰ See Ordering Window Approval Order, *supra* note 8.

²¹ 15 U.S.C. 78s(b)(3)(A)(iii).

²² 17 CFR 240.19b-4(f)(6).

²³ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)²⁴ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2024-71 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-NYSEARCA-2024-71. This file number should be included on the subject line if email 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 (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official

days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²⁴ 15 U.S.C. 78s(b)(2)(B).

¹⁸ See Ordering Window Approval Order, *supra* note 8.

business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEARCA-2024-71 and should be submitted on or before October 3, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-20639 Filed 9-11-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100959; File No. SR-CboeEDGX-2024-055]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fee Schedule

September 6, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 26, 2024, Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX Options”) proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/options/regulation/rule_filings/edgx/), at the Exchange’s Office of the

Secretary, and at the Commission’s Public Reference Room.

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

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

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

1. Purpose

The Exchange proposes to amend its fee schedule for its equity options platform (“EDGX Options”) relating to logical connectivity fees.³

By way of background, the Exchange offers a variety of logical ports, which provide users with the ability within the Exchange’s System to accomplish a specific function through a connection, such as order entry, data receipt or access to information. The Exchange currently assesses, among other things, the following logical port connectivity fees on a monthly basis: \$500 per port for Logical Ports;⁴ \$500 per port for Multicast PITCH Spin Server Ports (“Spin Ports”) and GRP Ports;⁵ and \$600 per port for Ports with Bulk Quoting Capabilities⁶ (“Bulk Ports”). The Exchange proposes to increase the monthly fees for the foregoing ports to the following rates: \$750 per port for Logical Ports, Spin Ports and GRP Ports and \$1,000 per port for Bulk Ports. The

³ The Exchange initially filed the proposed fee change on January 2, 2024 (SR-CboeEDGX-2024-006). On March 1, 2024, the Exchange withdrew that filing and submitted SR-CboeEDGX-2024-017. On April 30, 2024, the Exchange withdrew that filing and submitted SR-CboeEDGX-2024-023. On June 28, 2024, the Exchange will be withdrawing that filing and submitting SR-CboeEDGX-2024-040. On August 26, the Exchange withdrew that filing and submitted this filing.

⁴ Logical Ports include FIX and BOE ports (used for order entry), drop logical port (which grants users the ability to receive and/or send drop copies) and ports that are used for receipt of certain market data feeds.

⁵ Spin Ports and GRP Ports are used to request and receive a retransmission of data from the Exchange’s Multicast PITCH data feeds.

⁶ Bulk Quoting Capabilities Ports provide users with the ability to submit and update multiple bids and offers in one message through logical ports enabled for bulk-quoting.

Exchange notes the proposed fee change better enables it to continue to maintain and improve its market technology and services. Additionally, the proposed fee amounts for Logical Ports, Spin Ports and GRP Ports are the same as the fees assessed on two of the Exchange’s affiliated options exchanges for the same corresponding logical connectivity and the proposed fee amount for Bulk Ports is even lower than the fees assessed by the same affiliated options exchanges for the same corresponding Bulk Port connectivity.⁷ The proposed fees are also in line with amounts assessed by other exchanges for similar connections, including the Exchange’s affiliated options exchanges.⁸

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with

⁷ See Cboe Options Exchange Fee Schedule, Logical Connectivity Fees, which assesses a monthly fee between \$750–\$800 per port for Logical Ports, Spin Ports, \$750 per port for GRP Ports and between \$1,500–\$3,000 per port for Bulk Ports and see Cboe BZX Options Exchange Fee Schedule, Options Logical Port Fees and Cboe Exchange Fees Schedule, Logical Connectivity Fees, which assesses a monthly fee of \$750 per port for Logical Ports, Spin Ports and GRP Ports and between \$1,500–\$2,500 per port for Bulk Ports.

⁸ See, e.g., The Nasdaq Stock Market Options Pricing Schedule, Section 3 Nasdaq Options Market—Ports and Other Services, which assesses a monthly fee of \$650 per port for FIX Ports, which is analogous to the Exchange’s Logical Ports, up to \$1,500 per port for SQF Ports which are similar functionality as the Exchange’s Bulk Ports. See also BOX Exchange LLC (“BOX”) Fee Schedule, Section III, B. (Technology Fees), which assesses up to \$500 per port per month for FIX Ports which are analogous to the Exchange’s Logical Ports and \$1,000 for Market Making SOLA Access Information Language (“SAIL”) Ports which are analogous to the Exchange’s Bulk Ports.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

²⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

the Section 6(b)(5)¹¹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4)¹² of the Act, which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

The Exchange believes the proposed fees are reasonable as they are the same, or even lower than, the amounts assessed by affiliated options exchanges for the same functionality (and which were similarly adopted via the rule filing process and filed with the Commission). The proposed fees are also in line with fees assessed by other exchanges, for analogous connections.¹³ Further, the Exchange notes that an affiliated options exchange and other exchanges that offer similar pricing for similar or the same connections have a comparable, or even lower, market share as the Exchange.¹⁴

Additionally, the Exchange believes the proposed fee increase is reasonable in light of recent and anticipated connectivity-related upgrades and changes. The Exchange and its affiliated exchanges recently launched a multi-year initiative to improve Cboe Exchange Platform performance and capacity requirements, including for its U.S. options markets, to increase competitiveness, support growth and advance a consistent world class platform. The goal of the project, among other things, is to provide faster and more consistent order handling and matching performance for options, while ensuring quicker processing time and supporting increasing volumes. For example, the Exchange is currently performing order handler and matching engine hardware upgrades across its markets to advance this goal. The Exchange anticipates that upgrades to its matching engines may result in a latency reduction up to 40% to 50% on the Exchange and that upgrades to its order handlers may offer lower variability in the processing of message, which can reduce the time a message

takes to get to the matching engine. The Exchange expended, and will continue to expend, resources to innovate and modernize technology so that it may benefit its Members and continue to compete among other options markets. The Exchange also notes that neither it—nor its options exchange affiliates—have passed through or offset current or projected costs associated with these upgrades. The ability to continue to innovate with technology and offer new products to market participants allows the Exchange to remain competitive in the options space which currently has 18 options markets and potential new entrants. The Exchange also notes market participants may continue to choose the method of connectivity based on their specific needs, and no broker-dealer is required to become a Member of, let alone connect directly to, the Exchange. There is also no regulatory requirement that any market participant connect to any one particular exchange. Market participants may voluntarily choose to become a member of one or more of a number of different exchanges, of which, the Exchange is but one choice.

Additionally, any Exchange member that is dissatisfied with the proposal is free to choose not to be a member of the Exchange and send order flow to another exchange. Moreover, direct connectivity is not a requirement to participate on the Exchange. The Exchange also believes substitutable products and services are available to market participants, including, among other things, other options exchanges to which a market participant may connect in lieu of the Exchange and/or trading of any options product, such as within the Over-the-Counter (OTC) markets, which do not require connectivity to the Exchange. Indeed, there are currently 18 registered options exchanges that trade options (14 of which are not affiliated with Cboe), some of which have similar or lower connectivity fees.¹⁵ Based on publicly available information, no single options exchange has more than approximately 19% of the market share and currently the Exchange represents only approximately 7% of the market share.¹⁶ Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete

with the Exchange and the products it offers. For example, there are 5 exchanges that have been added in the U.S. options markets in the last 5 years (*i.e.*, Nasdaq MRX, LLC, MIAAX Pearl, LLC, MIAAX Emerald LLC, MEMX LLC and most recently MIAAX Sapphire LLC).

As for market participants that determine to continue to maintain membership or to join the Exchange for business purposes, those business reasons presumably result in revenue capable of covering the proposed fee. Further, for such market participants that choose to connect to the Exchange, the Exchange believes the proposed fees continue to provide flexibility with respect to how to connect to the Exchange based on each market participants' respective business needs. For example, the amount and type of logical ports are determined by factors relevant and specific to each market participant, including its business model, costs of connectivity, how its business is segmented and allocated and volume of messages sent to the Exchange. Moreover, the Exchange notes that it does not have unlimited system capacity and the proposed fees are also designed to encourage market participants to be efficient with their respective logical port usage and discourage the purchasing of large amounts of superfluous ports. There is also no requirement that any market participant maintain a specific number of logical ports and a market participant may choose to maintain as many or as few of such ports as each deems appropriate. Further, market participants may reduce or discontinue use of these ports in response to the proposed fees. Indeed, when the Exchange last increased pricing for logical ports in 2018, the Exchange observed within the first two months that market participants did in fact reduce the number of logical ports they maintained. Particularly, Logical Port quantities were reduced by approximately 20%. The Exchange similarly saw a decline in logical port quantities after the current proposed rate change in January 2024. Specifically, as of May 2024, Logical Port quantities have been reduced by approximately 8% since the announcement of the proposed fee change. This demonstrates that market participants can and do choose to disconnect, or reduce, their connectivity from the Exchange, including in response to fee increases. The Exchange also does not assess any termination fee for a market participant to drop its connectivity or membership, nor is the Exchange aware of any other costs that

¹¹ *Id.*

¹² 15 U.S.C. 78f(b)(4).

¹³ *Supra* notes 7 and 8.

¹⁴ See Cboe Global Markets U.S. Options Market Volume Summary (August 20, 2024), available at https://markets.cboe.com/us/options/market_statistics/. For example, the Exchange's affiliate Cboe BZX Options Exchange represents approximately 4% of the market share, BOX Options has a market share of approximately 6% and Nasdaq Options Market has a market share of approximately 5% compared to the Exchange's approximate 7% market share.

¹⁵ *Supra* note 7 and 8. See also NYSE American Options Fee Schedule, Section V (Technology and System Access Fees), which has a similar market share of 6% and offers lower fees for analogous Logical Ports than proposed by the Exchange.

¹⁶ See Cboe Global Markets U.S. Options Market Volume Summary (August 20, 2024), available at https://markets.cboe.com/us/options/market_statistics/.

would be incurred by a market participant to do so.

As noted above, there is no regulatory requirement that any market participant connect to any one options exchange, nor that any market participant connect at a particular connection speed or act in a particular capacity on the Exchange, or trade any particular product offered on an exchange. Moreover, membership is not a requirement to participate on the Exchange. Indeed, the Exchange is unaware of any one options exchange whose membership includes every registered broker-dealer. By way of example, while the Exchange has 51 members that trade options, Cboe BZX has 61 members that trade options, and Cboe C2 has 52 Trading Permit Holders (“TPHs”) (*i.e.*, members). There is also no firm that is a Member of EDGX Options only. Further, based on previously publicly available information regarding a sample of the Exchange’s competitors, NYSE American Options has 71 members,¹⁷ and NYSE Arca Options has 69 members,¹⁸ MIAX Options has 46 members¹⁹ and MIAX Pearl Options has 40 members.²⁰ Accordingly, excessive fees would simply serve to reduce demand for these products, which market participants are under no regulatory obligation to utilize.

The Exchange lastly notes that it is not required by the Exchange Act, nor any other rule or regulation, to undertake a cost-of-service or rate-making approach with respect to fee proposals. Moreover, Congress’s intent in enacting the 1975 Amendments to the Act was to enable competition—rather than government order—to determine prices. The principal purpose of the amendments was to facilitate the creation of a national market system for the trading of securities. Congress intended that this “national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.”²¹ Other provisions of the Act confirm that intent. For example, the Act provides that an exchange must design its rules “to remove impediments to and perfect the mechanism of a free and open market and a national market system,

and, in general, to protect investors and the public interest.”²² Likewise, the Act grants the Commission authority to amend or repeal “[t]he rules of [an] exchange [that] impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.”²³ In short, the promotion of free and open competition was a core congressional objective in creating the national market system.²⁴ Indeed, the Commission has historically interpreted that mandate to promote competitive forces to determine prices whenever compatible with a national market system. Accordingly, the Exchange believes it has met its burden to demonstrate that its proposed fee change is reasonable and consistent with the immediate filing process chosen by Congress, which created a system whereby market forces determine access fees in the vast majority of cases, subject to oversight only in particular cases of abuse or market failure. The Exchange also believes that, even if it were possible as a matter of economic theory, cost-based pricing for the proposed fee would be so complicated that it could not be done practically. Indeed, the Exchange believes that classification of costs could likely not be done without ongoing debate over formulas for allocation,²⁵ continual auditing, and

considerable expense. The Exchange also believes cost-based analysis could create disincentives to reduce costs through efficient operation or innovation. Moreover, the industry could experience frequent rate increases based on escalating expense levels. The Exchange lastly cautions that as disputes arise regarding the appropriate measure and calculation of relevant costs and allocation of common costs, the Commission could find itself engaging in the kind of rigid ratemaking not contemplated by Section 11A of the Exchange Act and which the Commission has historically sought to avoid.

The Exchange also believes that the proposed fee change is not unfairly discriminatory because it would be assessed uniformly across all market participants that purchase the respective logical ports. All Members have the option to select any connectivity option, and there is no differentiation among Members with regard to the fees charged for the services offered by the Exchange.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed fee change will not impact intramarket competition because it will apply to all similarly situated market participants equally (*i.e.*, all market participants that choose to purchase the relevant logical ports).

The Exchange believes the proposed fees will not impact intermarket competition because they are also in line with, or even lower than some fees for similar connectivity on other exchanges, and therefore may stimulate intermarket competition by attracting additional firms to connect to the Exchange or at least should not deter interested participants from connecting directly to the Exchange. Further, if the changes proposed herein are unattractive to market participants, the Exchange can, and likely will, see a decline in usage of these ports as a result. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect directly to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative venues that they may participate on and direct their order flow, including 13 (soon to be 14) non-Cboe affiliated options markets, as well as off-exchange venues, where

²² 15 U.S.C. 78f(b)(5).

²³ 15 U.S.C. 78f(8).

²⁴ See also 15 U.S.C. 78k–l(a)(1)(C)(ii) (purposes of Exchange Act include to promote “fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets”); Order, 73 FR 74781 (“The Exchange Act and its legislative history strongly support the Commission’s reliance on competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.”).

²⁵ See, e.g., letter from Brian Sopinsky, General Counsel, Susquehanna International Group, LLP (“SIG”), to Vanessa Countryman, Secretary, Commission, dated February 7, 2023, letters from Gerald D. O’Connell, SIG, to Vanessa Countryman, Secretary, Commission, dated March 21, 2023, May 24, 2023, July 24, 2023 and September 18, 2023, and letters from John C. Pickford, SIG, to Vanessa Countryman, Secretary, Commission, dated January 4, 2024, and March 1, 2024 and letters from Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc. (“Virtu”), to Vanessa Countryman, Secretary, Commission, dated November 8, 2023 and January 2, 2024. See also Securities Exchange Act Release No. 93883 (December 30, 2021), 87 FR 523 (January 5, 2022) (SR–IEX–2021–14) (Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Its Fee Schedule for Market Data Fees) and Securities Exchange Act Release No. 94888 (May 11, 2022), 87 FR 29892 (May 17, 2022) (SR–PEARL–2022–18) (Notice of Filing of a Proposed Rule Change To Amend the MIAX PEARL Options Fee Schedule To Increase Certain Connectivity Fees and To Increase the Monthly Fees for MIAX Express Network Full Service Port; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change).

¹⁷ See <https://www.nyse.com/markets/american-options/membership#directory>.

¹⁸ See <https://www.nyse.com/markets/arca-options/membership#directory>.

¹⁹ See https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Options_Exchange_Members_April_2023_04282023.pdf.

²⁰ See https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Exchange_Members_01172023_0.pdf.

²¹ See H.R. Rep. No. 94–229, at 92 (1975) (Conf. Rep.) (emphasis added).

competitive products are available for trading. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²⁶ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”²⁷ Accordingly, the Exchange does not believe its proposed change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange neither solicited nor received comments on the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²⁸ and paragraph (f) of Rule 19b-4²⁹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of

investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission’s internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeEDGX-2024-055 on the subject line.

Paper Comments

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

All submissions should refer to file number SR-CboeEDGX-2024-055. This file number should be included on the subject line if email 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 (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

All submissions should refer to file number SR-CboeEDGX-2024-055 and should be submitted on or before October 3, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100968; File No. PCAOB-2024-002]

Public Company Accounting Oversight Board; Order Granting Approval of QC 1000, A Firm’s System of Quality Control, and Related Amendments to PCAOB Standards, Rules, and Forms

September 9, 2024.

I. Introduction

On May 24, 2024, the Public Company Accounting Oversight Board (the “Board” or the “PCAOB”) filed with the Securities and Exchange Commission (the “Commission”), pursuant to Section 107(b)¹ of the Sarbanes-Oxley Act of 2002 (“SOX”) and Section 19(b)² of the Securities Exchange Act of 1934 (the “Exchange Act”), a proposal to adopt Quality Control (“QC”) 1000, *A Firm’s System of Quality Control* (“QC 1000”), and supersede existing PCAOB QC standards; adopt EI 1000, *Integrity and Objectivity*, and supersede existing ET 102, *Integrity and Objectivity*; and amend several other related existing auditing standards, rules, and forms (collectively, the “Amendments”).³

The Amendments were published for comment in the **Federal Register** on June 11, 2024.⁴ On July 1, 2024, the Commission extended the public comment period until July 16, 2024, and extended the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the Amendments to August

³⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 7217(b).

² 15 U.S.C. 78s(b).

³ See *Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules on A Firm’s System of Quality Control and Related Amendments to PCAOB Standards*, Release No. 34-100277 (June 5, 2024) [89 FR 49588 (June 11, 2024)] (“Notice of Filing of Proposed Rules”), available at <https://www.sec.gov/files/rules/pcaob/2024/34-100277.pdf>.

⁴ *Id.*

²⁶ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

²⁷ *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

²⁸ 15 U.S.C. 78s(b)(3)(A).

²⁹ 17 CFR 240.19b-4(f).

25, 2024.⁵ On August 13, 2024, the Commission further extended the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the Amendments to September 9, 2024.⁶ The Commission received over 20 comment letters from the public regarding the Amendments and one response to comments from the PCAOB (“PCAOB response letter”).⁷ This order approves the Amendments, which we find to be consistent with the requirements of Title I of SOX and the rules and regulations issued thereunder and necessary or appropriate in the public interest or for the protection of investors.⁸ The Amendments and the Commission’s findings with respect thereto are discussed in further detail below.

II. Description of the Amendments

On May 13, 2024, the Board adopted the Amendments.⁹ The Amendments were preceded by a 2019 concept release,¹⁰ a proposal in November 2022,¹¹ and other outreach engaged in

by the PCAOB.¹² QC 1000 would replace current PCAOB QC standards that were developed decades ago by the American Institute of Certified Public Accountants (“AICPA”), before the PCAOB was established, and which were adopted by the Board on an interim, transitional basis in 2003.¹³

In the Notice of Filing of Proposed Rules, the PCAOB stated that it was proposing a new QC standard that it believes will lead registered public accounting firms to significantly improve their QC systems and thereby protect investors by facilitating the consistent preparation and issuance of informative, accurate, and independent audit reports.¹⁴ As described by the Board, QC 1000 is an integrated, risk-based standard that mandates quality objectives and key processes for all firms’ QC systems.¹⁵ While QC 1000 requires all public accounting firms that are registered with the PCAOB to design a QC system that meets the requirements of QC 1000, firms are only required to implement and operate the QC system in compliance with QC 1000 when they lead an engagement under PCAOB standards, play a substantial role in the preparation or furnishing of an audit report (as defined in PCAOB rules),¹⁶ or have current responsibilities under “applicable professional and legal

requirements”¹⁷ regarding any such engagement.¹⁸

According to the Board, QC 1000 provides a framework for a QC system that is grounded in the ongoing practice of proactively identifying and managing risks to audit quality, with a feedback loop from ongoing monitoring, an explicit focus on firm governance and leadership, firm culture, and individual accountability, and specific direction in a number of areas the current PCAOB standards do not address.¹⁹ QC 1000 consists of two process components: (1) the firm’s risk assessment process and (2) the monitoring and remediation process.²⁰ It also consists of six components that address aspects of the firm’s organization and operations: (1) governance and leadership; (2) ethics and independence; (3) acceptance and continuation of engagements; (4) engagement performance; (5) resources; and (6) information and communication.²¹ The risk assessment process applies to these six components, requiring firms to: (i) establish outcome-based “quality objectives,” including those specified throughout the standard (*i.e.*, the desired outcomes to be achieved by the firm with respect to that component); (ii) identify and assess “quality risks” to the quality objectives; (iii) design and implement “quality responses” (*i.e.*, policies and procedures to address the quality risks); and (iv) establish policies and procedures to monitor internal and external changes that may require modifications to the quality objectives, quality risks, or quality responses.²² The monitoring and remediation process applies to all of the components of the QC system, including monitoring and remediation itself (*i.e.*, firms are required to identify and remediate deficiencies that are observed in their monitoring and remediation activities).²³

⁵ See *Public Company Accounting Oversight Board; Extension of Comment and Approval Periods for Proposed Rules on General Responsibilities of the Auditor in Conducting an Audit and Amendments to PCAOB Standards and A Firm’s System of Quality Control and Related Amendments to PCAOB Standards*, Release No. 34–100451 (July 1, 2024) [89 FR 55993 (July 8, 2024)], available at <https://www.sec.gov/files/rules/pcaob/2024/34-100451.pdf>.

⁶ See *Public Company Accounting Oversight Board; Extension of Approval Periods for Proposed Rules on A Firm’s System of Quality Control and Related Amendments to PCAOB Standards, Proposed Rules on Amendments Related to Aspects of Designing and Performing Audit Procedures that Involve Technology-Assisted Analysis of Information in Electronic Form, and Proposed Rules on Amendment to PCAOB Rule 3502 Governing Contributory Liability*, Release No. 34–100724 (Aug. 13, 2024) [89 FR 67117 (Aug. 23, 2024)], available at <https://www.sec.gov/files/rules/pcaob/2024/34-100724.pdf>.

⁷ Copies of the comment letters received on the Commission notice of the Amendments are available on the Commission’s website at <https://www.sec.gov/comments/pcaob-2024-02/pcaob202402.htm>.

⁸ See Section 107(b)(4)(A)–(B) of SOX, 15 U.S.C. 7217(b)(4)(A)–(B).

⁹ See *A Firm’s System of Quality Control and Other Amendments to PCAOB Standards, Rules, and Forms*, PCAOB Release No. 2024–005 (May 13, 2024) (“Adopting Release”), available at https://assets.pcaobus.org/pcaob-dev/docs/default-source/rulemaking/docket046/2024-005-qc1000.pdf?sfvrsn=355bf24_2.

¹⁰ See PCAOB, *Concept Release: Potential Approach to Revisions to PCAOB Quality Control Standards* (Dec. 17, 2019) (“Concept Release”), available at https://assets.pcaobus.org/pcaob-dev/docs/default-source/rulemaking/docket046/2019-003-quality-control-concept-release.pdf?sfvrsn=5856398d_0.

¹¹ See *Proposed Quality Control Standard—A Firm’s System of Quality Control and Other Proposed Amendments to PCAOB Standards, Rules,*

and Forms, PCAOB Release No. 2022–006 (Nov. 18, 2022) (“Proposing Release”), available at https://assets.pcaobus.org/pcaob-dev/docs/default-source/rulemaking/docket046/2022-006-qc.pdf?sfvrsn=b89546e2_4.

¹² See, e.g., Briefing Paper for the Standard Advisory Group (“SAG”), *Quality Control: Governance and Leadership* (Nov. 29, 2018). The materials for the November 29, 2018 SAG meeting are available at https://pcaobus.org/news-events/events/event-details/standing-advisory-group-meeting_1137.

¹³ See *Establishment of Interim Professional Auditing Standards*, PCAOB Release No. 2003–006 (Apr. 18, 2003), available at https://assets.pcaobus.org/pcaob-dev/docs/default-source/rulemaking/interim_standards/release2003-006.pdf?sfvrsn=2424c91_0; *Order Regarding Section 103(A)(3)(B) of the Sarbanes-Oxley Act of 2002*, Release No. 33–8222 (Apr. 25, 2003) [68 FR 23335 (May 1, 2003)] (Commission order approving PCAOB’s interim standards). See *infra* note 32 for a discussion of the AICPA’s new quality control standard, which will become effective on December 15, 2025.

¹⁴ See Adopting Release, *supra* note 9, at 5.

¹⁵ *Id.*

¹⁶ See PCAOB Rule 1001(p)(ii) (defining the phrase “play a substantial role in the preparation or furnishing of an audit report”) and Rule 2100 (requiring each public accounting firm that (a) prepares or issues any audit report with respect to any issuer, broker, or dealer; or (b) plays a substantial role in the preparation or furnishing of an audit report with respect to any issuer, broker, or dealer to be registered with the Board).

¹⁷ QC 1000 defines “applicable professional and legal requirements” as “(1) Professional standards, as defined in PCAOB Rule 1001(p)(vi); (2) Rules of the PCAOB that are not professional standards; and (3) To the extent related to the obligations and responsibilities of accountants or auditors in the conduct of engagements or in relation to the QC system, rules of the SEC, other provisions of U.S. federal securities law, ethics laws and regulations, and other applicable statutory, regulatory, and other legal requirements.” See QC 1000, Appendix A, .A2.

¹⁸ Adopting Release, *supra* note 9, at 10. Circumstances where firms are only required to design a QC system that meets the requirements of QC 1000, but not implement or operate it, are sometimes referred to as being subject to the “design-only requirement” or “design-only firms.”

¹⁹ *Id.* at 8.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 40.

²³ *Id.*

QC 1000 also requires an annual evaluation of the effectiveness of the QC system and reporting to the PCAOB on the QC system evaluation by the registered public accounting firm for any period in which it is required to implement and operate a QC system.²⁴ The standard includes requirements regarding individual roles and responsibilities in the QC system and documentation requirements.²⁵

As noted above, firms are required to design and implement quality responses as part of the risk assessment process. Although QC 1000 requires firms to design and implement their own quality responses to respond to their particular assessed quality risks, QC 1000 also includes some specified quality responses, which are mandatory for the firms to which they apply.²⁶ Some specified quality responses carry requirements from current PCAOB standards into QC 1000 or provide new requirements that the PCAOB stated were important to a firm's QC system.²⁷

For example, with respect to the governance and leadership component, QC 1000 includes a specified quality response that requires firms with larger PCAOB audit practices (firms that issue audit reports for more than 100 issuers in the prior calendar year) to adopt and implement an external quality control function ("EQCF") that is composed of one or more persons who are not principals or employees of the firm and do not otherwise have a relationship with the firm that would interfere with the exercise of independent judgment with regard to matters related to the QC system.²⁸ The EQCF is required to evaluate the significant judgments made and related conclusions reached by the firm when evaluating and reporting on the effectiveness of its QC system. Firms have flexibility in how the role is structured, depending on their governance structure or other factors. In addition, firms may, at their discretion, assign additional responsibilities to the EQCF and those could vary across firms.²⁹ As noted above, the EQCF requirement only applies to firms that issue audit reports for more than 100 issuers in the prior calendar year, which currently is 13 out of the approximately 1,600 PCAOB-registered firms.³⁰ A

number of these firms have stated publicly that they have independent representation in their governance structure or plan to add such a role in the near term.³¹ The EQCF role is discussed and analyzed in greater detail in Section III.B, below.

The Board described the QC 1000 framework as having commonalities

firms. See PCAOB response letter (Aug. 16, 2024) at 3 & n.7. However, one of these 14 firms has since filed an application for withdrawal from registration with the PCAOB. See PCAOB, Registered Public Accounting Firms—Withdrawal Request Pending (Aug. 15, 2024), available at https://assets.pcaobus.org/pcaob-dev/docs/default-source/registration/firms/documents/withdrawal-requests.pdf?sfvrsn=d30aab29_459 (listing BF Borgers CPA PC among the firms that have filed a request for withdrawal from registration).

³¹ See EY, *How Our Independent Audit Quality Committee Strengthens Our Focus on Audit Quality* (Feb. 20, 2023) (stating that EY's Independent Audit Quality Committee consists of three external senior leaders and "provides independent advice to EY US senior leadership on all matters related to the Firm's system of quality control that affect audit quality, including its business, operations, culture, talent strategy, governance, and risk management"), available at https://www.ey.com/en_us/insights/assurance/independent-audit-quality-committee-strengthens-our-focus-on-audit-quality; KPMG LLP (US), *KPMG U.S. Appoints Katrina Helmkamp and Harit Talwar to Serve on its U.S. Board* (Jan. 8, 2024) (stating that it has three independent directors on its U.S. Board of Directors), available at <https://kpmg.com/us/en/media/news/helmkamp-talwar-us-board-2024.html>; KPMG US Announces Formation of Independent Audit Quality Advisory Committee to Build on the Success of Quality Initiatives (Aug. 28, 2024) (stating that the committee is responsible for advising KPMG on matters including "the firm's efforts to meet new quality standards from regulatory bodies and respond to PCAOB inspections, including root cause analysis, and the design, development, implementation and measurement of strategic audit quality initiatives"), available at <https://kpmg.com/us/en/media/news/kpmg-announces-iaqac-2024.html>; Chris Johnson, *Deloitte follows PwC in search for independent board members*, Riotact (Apr. 9, 2024) (stating that PwC Australia has announced plans to increase the number of independent directors to three on its nine-person board), available at <https://the-riotact.com/deloitte-follows-pwc-in-search-for-independent-board-members/758971>; Deloitte, *Leadership and Governance* (stating that the Deloitte Global Chair and Deputy Chair receive input from the Deloitte Global Independent Non-Executive (INE) Advisory Council, which provides advice and insights on a variety of matters, including strategy, planning, public policy, quality, risk and regulatory matters, and broader stakeholder engagement), available at <https://www.deloitte.com/global/en/about/story/purpose-values/leadership-governance.html>; Grant Thornton, *Audit Quality & Transparency Report 2022* (stating that its audit quality advisory council includes two independent council members and its purpose is to advise the board regarding ways to maintain and improve the firm's system of quality control in accordance with applicable professional legal standards), available at <https://www.grantthornton.com/content/dam/grantthornton/website/assets/content-page-files/audit/pdfs/2023/audit-quality-transparency-report-2022.pdf>; and BDO USA P.C., *2023 Audit Quality Report* (stating that it has an "Audit Quality Advisory Council" comprised of five (5) members that includes two (2) Independent Council Members), available at *ASSR-BDO-2023-Audit-Quality-Report-web.pdf*. See also *infra* note 112.

with other international and domestic standards for firm QC systems, though it goes beyond those requirements in some areas.³² QC 1000, ISQM 1, and SQMS 1 (the latter two collectively, the "Other QC Standards")³³ share the same basic framework, with the same eight components and risk-based approach to quality control.³⁴ Both QC 1000 and the Other QC Standards include requirements to design, implement, and operate specified quality objectives, risks, and responses on an annual basis;³⁵ and specify structures of governance, including requiring the assignment of individuals to the same specified roles.³⁶ A discussion of the similarities and differences between QC 1000 and the Other QC Standards is included below in Section III.

The Amendments also include expanding the auditor's responsibility to respond to deficiencies on completed engagements under an amended and retitled AS 2901, *Responding to Engagement Deficiencies After Issuance of the Auditor's Report*. These changes would extend the scope of AS 2901 to cover engagement deficiencies in audits

³² Adopting Release, *supra* note 9, at 7. The International Auditing and Assurance Standards Board ("IAASB") released a suite of new quality management standards, including ISQM 1, which became effective on December 15, 2022. ISQM 1 is the international quality control standard and it applies to firms that perform audits of companies (non-SEC registrants) in jurisdictions that have adopted IAASB standards. See IAASB Fact Sheet, *Introduction to ISQM 1, Quality Management for Firms that Perform Audits or Reviews of Financial Statements, or Other Assurance or Related Engagements* (Dec. 2020) ("ISQM 1"), available at <https://www.ifac.org/flysystem/azure-private/publications/files/IAASB-ISQM-1-Fact-Sheet.pdf>. In May 2022, the Auditing Standards Board of the AICPA adopted new quality management standards, including Statement of Quality Management Standards No. 1, *A Firm's System of Quality Management* ("SQMS 1"), which will become effective on December 15, 2025. SQMS 1 applies to accounting firms in the United States that perform audits under generally accepted auditing standards ("GAAS") for non-issuers. See AICPA Statement on Quality Management Standards No. 1 (June 2022), available at <https://www.aicpa-cima.com/resources/download/aicpa-statement-on-quality-management-standards-no-1>.

³³ ISQM 1 and SQMS 1 are substantially similar to each other.

³⁴ See, e.g., QC 1000.02–03; ISQM 1.06; and SQMS 1.07.

³⁵ *Id.*

³⁶ See, e.g., QC 1000.12; SQMS 1.21; and ISQM 1.20. All three standards require assignment of individuals to three roles of operational responsibility that are substantively the same. QC 1000.12 requires assignment of operational responsibility for: (1) the QC system as a whole, (2) compliance with ethics and independence requirements, and (3) the monitoring and remediation process. SQMS 1.21 and ISQM 1.20 require assignment of operational responsibility for: (1) the system of quality management, (2) compliance with independence requirements, and (3) monitoring and remediation process.

²⁴ *Id.*

²⁵ *Id.* at 8.

²⁶ *Id.* at 42 (stating that the "specified quality responses are not intended to be comprehensive" and "alone will not be sufficient to enable the firm to achieve all established quality objectives").

²⁷ *Id.*

²⁸ *Id.* at 10.

²⁹ *Id.*

³⁰ The PCAOB response letter states that, as of 2023, the EQCF requirement would apply to 14

of internal control over financial reporting, incorporate the concepts and terminology introduced in QC 1000, and bring the standard into alignment with the auditor's existing responsibility to obtain sufficient appropriate audit evidence to support the opinion.³⁷ The changes also include related amendments to AT No. 1, *Examination Engagements Regarding Compliance Reports of Brokers and Dealers*, and AT No. 2, *Review Engagements Regarding Exemption Reports of Brokers and Dealers*, which would prompt auditors of registered brokers-dealers to take appropriate action if they discover that the opinion or conclusion in a previously issued attestation report was not supported.³⁸ Finally, the Amendments replace existing standard ET 102, *Integrity and Objectivity*, with a new standard, EI 1000, *Integrity and Objectivity*, to better align PCAOB ethics requirements with the scope, approach, and terminology of QC 1000.³⁹

The Amendments will be effective on December 15, 2025. The first annual evaluation period will cover the period beginning on the effective date of the standard (i.e., December 15, 2025) and ending on September 30, 2026. Subsequent evaluation periods will cover the 12-month period ending on September 30. The PCAOB has proposed application of the Amendments to include audits of emerging growth companies ("EGCs"),⁴⁰ as discussed in Section IV below.

III. Discussion and Commission Findings

The Commission continues to observe concerning indications that registered firms' QC systems are inadequate to ensure the high level of audit quality necessary for investor protection. Recent PCAOB inspection reports indicate that inspection deficiency rates are continuing to rise, with 46% of the engagements reviewed in 2023 having at least one Part I.A deficiency,⁴¹ compared to 40% in 2022 and 34% in

2021.⁴² While PCAOB inspection deficiency rates are not the only measure of audit quality and cannot necessarily be generalized to all PCAOB audits, these high deficiency rates place investors in harm's way. Effective QC systems provide firms with reasonable assurance that their audit engagements will be performed in compliance with applicable legal and professional requirements. The continuing rise in deficiency rates supports the need for the Amendments as they would enhance registered audit firms' QC systems to help ensure firms are able to perform their gatekeeper function, which is critical to investor protection and the functioning of our capital markets.

As noted above, in response to the Notice of Filing of Proposed Rules, to date the Commission has received over 20 comment letters from the public and one response to comments from the PCAOB.⁴³ Several commenters expressed support for the Amendments, stating that they would improve upon existing standards and lead to better protection of investors.⁴⁴ For example, one commenter stated that the Amendments "would better protect the interests of investors, consistent with the mandate set forth in SOX."⁴⁵ Similarly, another commenter stated that it expected the Amendments "will enhance the quality of audits, raising the level of trust and confidence investors can place in the accuracy and reliability of public company financial disclosures."⁴⁶ This commenter also stated that "[c]urrent quality control systems at many firms are not achieving

an even minimally acceptable level of audit quality, let alone the high level of audit quality that investors have a right to expect and on which the reliability of our financial reporting system depends."⁴⁷ Another commenter stated that "the PCAOB has done a good job of articulating why the improvements to the Quality Control Standards are warranted."⁴⁸ One commenter stated that it "strongly supported" the Amendments, highlighting requests by the investor community over the years to update "outdated quality control standards" that were written in a pre-SOX era when the profession was self-regulated.⁴⁹ This commenter stated that many areas of the PCAOB's existing QC standards have not been updated to reflect fundamental changes in the profession.⁵⁰ Some commenters who supported the proposal also stated that they did not believe the requirements in the Amendments went far enough.⁵¹

Other commenters stated that the Commission should not approve the Amendments.⁵² While several

⁴⁷ *Id.* See also letters from AFL-CIO ("The need for enforceable quality control standards is demonstrated by the fact that approximately 40 percent of audits inspected by the PCAOB in 2022 contained deficiencies where the auditor failed to obtain sufficient appropriate audit evidence to support its opinion."); Better Markets (stating that "the PCAOB's recent Staff Inspection Briefs indicate that significant improvements to firms' quality control systems are necessary and long overdue" and that "the deficiencies that inspection staff describe do not simply involve arcane, highly technical issues that could trip up even the most experienced, ethical auditor—they involve foundational issues of critical importance to high quality audit").

⁴⁸ See letter from R. Conway.

⁴⁹ See letter from L. Turner.

⁵⁰ *Id.* (listing fundamental changes such as the change from peer reviews by other audit firms to PCAOB inspections for audits of issuers, significant growth in the size of audit firms, expansion of consulting and other non-audit services, international expansion, increased efforts by partners and leadership to monetize their investment in an audit firm, and firms establishing external QC advisory committees).

⁵¹ See, e.g., letters from Better Markets (stating that although "it is pleased that the PCAOB has adopted improvements to auditing quality control standards" that it is "disappointed that the Proposal does not sufficiently ensure high-quality audits or adequate transparency and accountability"); Consumer Federation of America (stating "while these amendments do not go as far as we would have liked, we nonetheless expect that they will benefit investors"); and L. Turner (recommending that the PCAOB adopt an approach of requiring an independent board of directors for audit firms as proposed by the U.S. Treasury Advisory Committee on the Auditing Profession ("ACAP") and used by the U.K. Financial Reporting Council ("FRC") and the Japan Financial Services Agency).

⁵² See, e.g., letters from BDO USA, P.C. (July 2, 2024) ("BDO"); Ernst & Young, LLP (Aug. 26, 2024) ("EY"); Forvis Mazars, LLP (July 2, 2024) ("Forvis Mazars"); Moss Adams, LLP (July 2, 2024) ("Moss Adams"); and Tom Quaadman, Executive Vice President, Center for Capital Markets

⁴² See *Spotlight Staff Update and Preview of 2022 Inspection Observations* (July 2023), available at <https://assets.pcaobus.org/pcaob-dev/docs/default-source/documents/spotlight-staff-preview-2022-inspection-observations.pdf> (pcaobus.org). Figures exclude registered broker-dealer audits in all periods.

⁴³ See *supra* note 7.

⁴⁴ See, e.g., letters from American Federation of Labor and Congress of Industrial Organizations (July 1, 2024) ("AFL-CIO"); Better Markets (July 2, 2024) ("Better Markets"); Sherrod Brown, Chairman, U.S. Senate Committee on Banking, Housing, and Urban Affairs (Aug. 15, 2024) ("S. Brown"); CFA Institute (July 1, 2024) ("CFA Institute"); Jack Ciesielski, CPA (July 2, 2024) ("J. Ciesielski"); Consumer Federation of America (July 1, 2024) ("Consumer Federation of America"); Robert A. Conway, CPA (June 26, 2024) ("R. Conway"); Council of Institutional Investors (June 27, 2024) ("CII"); Members of the Investor Advisory Group (July 28, 2024) ("Members of IAG"); and Lynn E. Turner (Aug. 20, 2024) ("L. Turner") (discussing the history of quality control standards in the audit profession).

⁴⁵ See letter from CII. See also letter from Members of IAG ("We believe the Amendments, if approved by the SEC, would provide enhanced protections for investors, consistent with the mandate set forth in SOX.").

⁴⁶ See letter from Consumer Federation of America.

³⁷ See AS 2901, as amended.

³⁸ See AT No. 1 and AT No. 2, as amended.

³⁹ See EI 1000.

⁴⁰ The term "emerging growth company" is defined in Section 3(a)(80) of the Exchange Act (15 U.S.C. 78c(a)(80)). See also *Inflation Adjustments under Titles I and III of the JOBS Act*, Release No. 33-11098 (Sept. 9, 2022) [87 FR 57394 (Sept. 20, 2022)], available at <https://www.sec.gov/files/rules/final/2022/33-11098.pdf>.

⁴¹ See PCAOB Posts 2023 Annual Inspection Reports Alongside Staff Observations and New Charts To Boost Transparency, available at <https://pcaobus.org/news-events/news-releases/news-release-detail/pcaob-posts-2023-annual-inspection-reports-alongside-staff-observations-new-charts-to-boost-transparency>.

commenters stated that they supported the Board's efforts and goal to modernize quality control standards, they did not support certain aspects of the Amendments.⁵³ For example, one commenter stated that it was concerned that the Amendments "could potentially have unintended negative consequences to the profession, including significant costs without notable improvement to audit quality."⁵⁴ One commenter expressed its "overall support for the project and the large majority of the provisions of the standard" but stated that the Commission should not approve the standard in its final form because the EQCF function "raises significant concerns," including being inconsistent with SOX, and because, in the commenter's view, the PCAOB did not adequately address concerns it and others raised regarding the ability for small firms to comply with QC 1000, in particular the design-only requirement.⁵⁵ Another commenter stated that "the SEC should reject the PCAOB's final QC 1000 standard because it contains fundamental failures and flaws."⁵⁶ Commenters also provided feedback on specific aspects of the Amendments as described below, which informed their general views discussed above.

We have considered the information contained in the Notice of Filing of Proposed Rules and the PCAOB's response letter⁵⁷ as well as the comments received by the Commission. Having carefully weighed all of the information before us, we find that the Amendments are consistent with the requirements of Title I of SOX and the rules and regulations thereunder and are necessary or appropriate in the public interest or for the protection of investors. In particular, we believe the Amendments as a whole will further the Board's statutory mandate under SOX and enhance investor protection by creating an integrated, risk-based QC standard that can be applied by firms of varying sizes and complexities and is compatible with Other QC Standards

that either have already been or are required to be implemented by the vast majority of registered public accounting firms. The Amendments will lead registered public accounting firms to significantly improve their quality control systems, thereby improving audit quality and investor protection. The existing interim QC standards—which were adopted on an interim basis in 2003 and were developed by the audit profession under an environment of self-regulation—do not adequately reflect the risks and requirements of the current auditing environment, overly focus on evaluating firms' compliance with their own internally-developed policies designed in a peer review environment, and do not require evaluation or reporting that ultimately enhances audit quality and investor protection.

The Amendments emphasize the importance of accountability and firm governance and a QC system that is proactive and responsive to risks. Replacing interim standards with permanent standards provides additional regulatory certainty that may have an incremental benefit of allowing audit firms to make long-term investments in their QC systems. Further, the Amendments will promote compliance by registered public accounting firms with applicable professional and legal requirements (including PCAOB auditing standards), which should help eliminate information asymmetries and expectation gaps for issuers, registered broker-dealers, and investors regarding whether audit firms are complying with such requirements. Improved compliance by registered public accounting firms with PCAOB auditing standards, among other professional and legal requirements, would result in improved financial reporting quality, which would further benefit investors.

In addition, the Amendments share a common framework with Other QC Standards that are widely implemented by auditing firms across the globe, with specific enhanced requirements for the U.S. regulatory environment, which allows firms to leverage costs already expended or that will be expended to comply with these standards. In addition to the overarching structure and the eight components being the same among QC 1000 and the Other Standards as noted above in Section II, the requirements within the components are also aligned.

Specifically, the required quality objectives (*i.e.*, the outcomes specified by the standards that drive the firm's responses) generally are substantively

similar⁵⁸ although some of QC 1000's quality objectives contain additional prescriptive requirements⁵⁹ that the Board considered to be relevant to the U.S. public company legal and regulatory environment as discussed in more detail below.⁶⁰ Both QC 1000 and the Other QC Standards provide firms with flexibility to design responses to achieve these quality objectives taking into account the particular risks and circumstances faced by the firm. Further, there is overlap in the limited number of specified quality responses (*i.e.*, individual responses required by QC 1000 and the Other QC Standards). In other words, the quality objectives that firms establish (and their resulting responses) under QC 1000 are expected to be sufficiently responsive to those of the Other QC Standards.⁶¹

QC 1000 does go beyond the Other QC Standards in that it contains relatively more prescriptive requirements than the Other QC Standards.⁶² The Board

⁵⁸ We note that QC 1000's quality objectives may use different terminology from the Other QC standards to align with other PCAOB standards and requirements (*e.g.*, using the term "QC system" instead of "system of quality management").

⁵⁹ For example, in establishing quality objectives in the *Governance and Leadership* component, QC 1000.25.e requires firms to establish an objective that "The firm's organizational and governance structure and the assignment of roles, responsibilities, and authority enable the design, implementation, and operation of the firm's QC system and support performance of the firm's engagements in accordance with applicable professional and legal requirements" (emphasis added). ISQM 1.28 requires firms to establish an objective that "The organizational structure and assignment of roles, responsibilities and authority is appropriate to enable the design, implementation and operation of the firm's system of quality management." These objectives are substantively the same, but QC 1000 places more emphasis on supporting the firm's engagements, which is inherent in the operation of the firm's QC system, and therefore implicitly included in both standards. The additional specificity in QC 1000 is not expected to result in substantively different responses (*i.e.*, policies and procedures) between the two standards.

⁶⁰ See Adopting Release, *supra* note 9, at 38. Many of the prescriptive requirements in QC 1000 that are incremental to those that are in the Other QC Standards relate to existing PCAOB standards that the PCAOB determined were still relevant. See, *e.g.*, QC 20.10, .13a, .13b, and .15a.

⁶¹ For example, the specified responses to determine the nature, timing, and extent of monitoring in the *Monitoring and Remediation Processes* (see QC 1000.64 and ISQM 1.37) are substantively similar, except QC 1000.64(d) and (f) specifically require firms to consider characteristics of particular engagements and partners. When a firm designs its monitoring process, as long as a firm considers the characteristics of particular engagements and partners, the same policies and procedures would likely be suitable for both QC 1000 and ISQM 1.

⁶² For example, QC 1000.33.a and ISQM 1.34(a)(i) both require firms to establish policies and procedures to identify threats to independence; however, QC 1000.34 provides specific procedures the firm should establish in order to do so, including, for example, maintaining and making

Competitiveness, U.S. Chamber of Commerce (July 15, 2024) ("Chamber").

⁵³ See, *e.g.*, letters from BDO; EY; Forvis Mazars; Johnson Global Advisory (June 26, 2024) ("Johnson Global"); Moss Adams; Pennsylvania Institute of CPAs (June 24, 2024) ("PICPA"); PricewaterhouseCoopers LLP (July 1, 2024) ("PWC"); and RSM US LLP (July 16, 2024) ("RSM").

⁵⁴ See letter from Forvis Mazars.

⁵⁵ See letter from PWC.

⁵⁶ See letter from Chamber.

⁵⁷ As discussed below, the Commission views the statements in the PCAOB response letter as being on par with statements made by the Board in the Adopting Release about the scope and application of the QC 1000 requirements. See Section III.G.

considered these requirements to be relevant to the U.S. regulatory environment and investors.⁶³ Many of these additional requirements only apply to firms that issue audit reports for more than 100 issuers in the prior calendar year.⁶⁴ Because QC 1000 provides more precise and prescriptive requirements that drive accountability, it will enhance the Board's ability to perform its inspections and to enforce its standards, which will further incentivize firms to design, implement, and operate effective QC systems.⁶⁵ It is the Board's view that building on the well-understood basic framework of the Other QC Standards, appropriately tailored and strengthened to address the U.S. legal and regulatory environment and our investor protection mandate, will enable firms to implement and comply with QC 1000 more effectively.⁶⁶ In designing, implementing, and operating their QC systems, firms that are subject to both PCAOB standards and the Other QC Standards, which the Commission estimates to be 88% of registered firms that have performed engagements under PCAOB standards for an issuer or registered broker-dealer ("PCAOB engagements") in the past year and 72% of registered firms that have not,⁶⁷ will be able to leverage the work they have already done and the investments they have already made to comply with such Other QC Standards.⁶⁸ In support of this conclusion, neither the Commission staff nor commenters have identified aspects of QC 1000 that are incompatible with the Other QC Standards.

A. Requirements Related to the Design of QC System

As discussed above, QC 1000 includes a design-only requirement. The PCAOB stated in the Adopting Release that the design-only requirement may facilitate timely implementation and operation of a compliant QC system.⁶⁹ The Board also stated that not requiring all registered public accounting firms to design their QC system would create a risk that firms could be unprepared to

accept and perform such engagements in compliance with applicable professional and legal requirements.⁷⁰ Finally, the PCAOB stated that because registering with the PCAOB enables a firm to issue audit reports or play a substantial role on audits performed under PCAOB standards for issuers and registered broker-dealers, and because investors and companies considering engaging the firm could reasonably expect that any firm that could pursue such an engagement would already have a PCAOB-compliant QC system designed and ready for implementation and operation, it believes that imposing a design requirement on all registered firms promotes its mission of protecting investors and promoting the public interest.⁷¹

General

A number of commenters expressed concerns regarding the design-only requirement.⁷² Commenters stated that this requirement will increase the barriers to entry for small firms to take on audits of small publicly-held companies, including EGCs, or registered broker-dealers and will incentivize firms to de-register.⁷³ A few commenters stated they agreed with concerns expressed by PCAOB Board Member Ho in her statement accompanying the adoption of QC 1000 indicating that the design-only requirement appears to be inconsistent with both the statutory text of SOX and a statement the PCAOB made to Congress in 2023, and that the requirement would impose undue burdens on competition.⁷⁴ The PCAOB response letter responds to commenter feedback on the design-only requirement, including addressing why applying such a requirement to firms that do not presently have obligations with respect to PCAOB engagements is consistent with the PCAOB's statutory mandate.⁷⁵

While we acknowledge the concerns raised by commenters, we find that the design-only requirement is consistent with the requirements of Title I of SOX

and the rules and regulations issued thereunder and is necessary or appropriate in the public interest or for the protection of investors. Allowing registered firms to design their QC system only upon entering into an audit engagement would create a risk that registered firms could be unprepared to accept and perform engagements in compliance with applicable professional and legal requirements, which in turn risks a reduction in audit quality to the detriment of investors. For example, one component of a well-designed QC system is policies and procedures around the acceptance of an engagement. Without having designed a QC system in advance, such firms would not be in a position to ensure that their QC system is effective in order to evaluate and take on a new PCAOB engagement.

Below we discuss the views of commenters with respect to specific aspects of QC 1000's design-only requirement, as well as the Commission's findings regarding those matters.

Statutory Authority

We have considered comments on the statutory authority questions raised in Board Member Ho's statement as well as the PCAOB's response letter and find that the Board has the authority to require that all registered firms design a QC system that complies with QC 1000. The Supreme Court has stated that, in cases of statutory construction, a court's analysis begins with "the language of the statute" and "where the statutory language provides a clear answer, it ends there as well."⁷⁶ SOX Section 103(a)(2)(B) refers to quality control standards that the Board adopts with respect to the issuance of audit reports.⁷⁷ This section of SOX requires the PCAOB to include, in the quality control standards that it adopts with respect to the issuance of audit reports, seven requirements for *every registered public accounting firm* relating to: (i) monitoring of professional ethics and independence from issuers, brokers, and dealers on behalf of which the firm issues audit reports; (ii) consultation within such firm on accounting and auditing questions; (iii) supervision of audit work; (iv) hiring, professional development, and advancement of personnel; (v) the acceptance and continuation of engagements; (vi)

available the list of restricted entities. While maintaining a list of restricted entities is likely a common way of complying with ISQM 1.34(a)(i), it is not explicitly required.

⁶³ See *supra* note 60.

⁶⁴ See, e.g., QC 1000.28.

⁶⁵ See, e.g., QC 1000.14(d) (requiring a firm's principal executive officer to certify the firm's report to the PCAOB on its annual evaluation of the QC system).

⁶⁶ Adopting Release, *supra* note 9, at 7.

⁶⁷ See details of Commission staff analysis in Section III.C.

⁶⁸ See Adopting Release, *supra* note 9, at 7.

⁶⁹ *Id.* at 60–61.

⁷⁰ *Id.* at 368.

⁷¹ See PCAOB response letter at 25–26.

⁷² See, e.g., letters from BDO; Chamber; Forvis Mazars; PICPA; and PWC.

⁷³ See, e.g., letters from BDO; Chamber; PICPA; and PWC.

⁷⁴ See letters from BDO and PICPA (citing Board Member Ho, *Statement on the QC 1000 Adoption—Demise to Audit Competition* (May 13, 2024) ("C. Ho Statement"), available at <https://pcaobus.org/news-events/speeches/speech-detail/statement-on-the-qc-1000-adoption---demise-to-audit-competition>). See also letters from Chamber ("The Chamber urges the Commission to heed the serious concerns raised by Board Member Ho's statement.") and RSM (same).

⁷⁵ See PCAOB response letter at 25–27.

⁷⁶ See *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 438 (1999); see also *Loper Bright Enter. v. Raimondo*, 144 S. Ct. 2244 (June 28, 2024) ("Courts interpret statutes, no matter the context, based on the traditional tools of statutory construction, not individual policy preferences.").

⁷⁷ See 15 U.S.C. 7213(a)(2)(B).

internal inspections; and (vii) such other requirements as the Board may prescribe (subject to the general rulemaking authority provided to the PCAOB in SOX Section 103(a)(1)).⁷⁸ QC 1000 is a quality control standard with respect to the issuance of audit reports that includes each of these seven statutory requirements. Moreover, the fact that one of the statutory requirements relates to the acceptance of engagements implies that the PCAOB's QC standards must address firms that have not yet accepted engagements and not just firms that currently issue audit reports.

Furthermore, we find the use of the term "every" in Section 103(a)(2)(B) significant, because it is the only place in SOX that uses that term. In other sections of SOX, such as Sections 101, 104 and 106, Congress used narrower language when it wanted to apply a particular regulation to a smaller universe of public accounting firms or registered public accounting firms.⁷⁹ Further, requiring all registered public accounting firms to design a system of quality control that complies with QC 1000 is consistent with the Congressional directive in SOX Section 102, which requires applicant firms that want to register with the PCAOB to provide for review a description of "the quality control policies of the firm for its accounting and auditing practices."⁸⁰ We therefore find the

Amendments are within PCAOB's authority under Title I of SOX.

Barriers to Entry

As noted above, several commenters expressed concerns that the design-only requirement will increase the barriers to entry for small firms to take on audits of smaller issuers or registered broker-dealers and incentivize firms to de-register. Some commenters suggested the requirement be revised to require the system to address only elements of QC covered by the professional QC standards the firm is currently subject to for the type of engagements they currently perform (e.g., the Other QC Standards).⁸¹ Similarly, one commenter suggested the Commission defer the effective date of QC 1000 for inactive firms until they become active.⁸² In the PCAOB response letter, the Board reiterated that the design-only requirement would benefit investors and explained why it believed the alternatives proposed by commenters would not achieve the same level of investor protection as QC 1000.⁸³ The Board further stated that the design-only requirement comports with its historical practice of requiring firms to provide a summary of the design of their QC system upon registration, regardless of whether such firms perform engagements under PCAOB standards.⁸⁴

We acknowledge concerns that the design-only requirement could create barriers to entry or otherwise impact the decision to either register, or remain registered, with the PCAOB for firms that do not perform PCAOB engagements, and as discussed more fully in Section III.C below, we have considered the overall competitive effects of the Amendments on the market for audit services. These concerns must be weighed against the investor protection benefits of the design-only requirement. In particular, as the Board noted in the Adopting Release, if a registered firm that has not led an engagement or played a substantial role on an engagement in the past anticipates the possibility of transitioning to performing engagements, the design-only

requirement may facilitate timely implementation and operation of their QC 1000 compliant QC system.⁸⁵ As would be the case in any profession or industry when quickly adopting business-wide quality control processes, allowing registered firms to design their QC system only upon entering into an audit engagement would create a risk that registered firms could be unprepared to accept and perform engagements in compliance with applicable professional and legal requirements, which in turn risks a reduction in audit quality.⁸⁶

We further considered the alternatives raised by commenters, including allowing for compliance with Other QC Standards, or delaying the effective date until firms accept an engagement under PCAOB standards. However, we do not believe that either of these alternatives sufficiently addresses the risks to investors of a firm entering into audit engagements with an issuer or registered broker-dealer without a QC system in place that provides reasonable assurance the firm could conduct the engagement in accordance with applicable professional and legal requirements. An audit firm's failure to conduct an engagement in accordance with applicable professional and legal standards undermines audit quality, puts at risk capital formation, and places investors and issuers at risk.

Further, there are reasons to believe that the design-only requirement will not be a significant barrier to entry or cause for smaller firms to deregister, primarily due to the expected costs to the majority of registered firms being substantially mitigated by investments made by those firms to comply with the Other QC Standards, which have already been adopted by the IAASB and AICPA and will be effective at or before the effective date of QC 1000. In the Adopting Release, the PCAOB stated that QC 1000 shares a basic structure and approach with the Other QC Standards, so designing for the incremental features unique to QC 1000 is not expected to be unduly burdensome for firms that are subject to either or both of those Other QC standards.⁸⁷ The PCAOB also stated in the Adopting Release that it believes most audit firms will have either already implemented or be implementing one or both of the Other QC Standards when QC 1000 goes into effect on December 15, 2025.⁸⁸ The Commission staff compared the

⁷⁸ See 15 U.S.C. 7213(a)(2)(B).

⁷⁹ See 15 U.S.C. 7211(c)(1) ("... register public accounting firms that prepare audit reports for issuers, in accordance with section 102. . .") (emphasis added); 15 U.S.C. 7214(a)(2)(A) ("The Board may, by rule, conduct and require a program of inspection in accordance with paragraph (1), on a basis to be determined by the Board, of registered public accounting firms that provide one or more audit reports for a broker or dealer.") (emphasis added); 15 U.S.C. 7216 ("Any foreign public accounting firm that prepares or furnishes an audit report with respect to any issuer, broker, or dealer shall be subject to this Act . . .") (emphasis added).

⁸⁰ 15 U.S.C. 7212. We also disagree that the design-only requirement is contrary to the statements in the PCAOB's February 2023 letter to Senators Warren and Wyden. See C. Ho Statement (citing <https://www.warren.senate.gov/imo/media/doc/2023-02-08%20PCAOB%20Chair%20Erica%20Williams%20response%20letter%20to%20Senators%20Warren%20and%20Wyden.pdf>). The PCAOB's letter specifically addressed the PCAOB's statutory authority as it relates to the cryptocurrency industry and stated, among other things, that "[a]s a general matter, audit firms registered with the PCAOB must follow PCAOB standards and rules specifically in connection with their audits of SEC-registered issuers, brokers or dealers only." The letter does not specifically address whether an accounting firm that does not perform audits for issuers, brokers, or dealers that chooses to register with the PCAOB must comply with statutory requirements related to systems of quality control.

⁸¹ See letters from Chamber and Forvis Mazars.

⁸² See letter from PWC. See also letters from PICPA (recommending that an "inactive firm . . . not have to design its quality control system until after it decided to accept an engagement with a public company, broker, or dealer"); RSM (recommending that firms be required to design, implement, and test the effectiveness of their system of quality control in compliance with QC 1000 prior to being engaged to issue public company audit reports rather than upon registration).

⁸³ See PCAOB response letter at 26–27.

⁸⁴ *Id.* at 26.

⁸⁵ See Adopting Release, *supra* note 9, at 60–61.

⁸⁶ *Id.* at 368.

⁸⁷ *Id.* at 61.

⁸⁸ See, e.g., *id.* at 330–31.

requirements of QC 1000 with the requirements of the Other QC Standards and similarly concluded that there is significant overlap and did not identify anything that is incompatible with those other requirements. Further, no commenters identified any aspects of QC 1000 that are incompatible with these other requirements. Many of the specified requirements in QC 1000 that are not in the Other QC Standards are applicable *only* to firms issuing audit reports for more than 100 issuers. Therefore, with respect to these incremental requirements, any firms required to design but not implement a QC system under QC 1000 would not be required to adopt those specified requirements. Further, any other incremental requirements over Other QC Standard requirements that are applicable to such firms are not expected to be burdensome to design, especially given the inherent scalability of QC 1000. The Commission staff also performed an analysis of registered firms and determined, consistent with the PCAOB's evaluation, that most registered firms will be subject to the Other QC Standards by the time QC 1000 is effective.⁸⁹ Based on the Commission staff's assessment, we believe that these existing standards are likely to mitigate compliance costs for a very substantial majority of registered firms.

Furthermore, other factors may serve to mitigate any adverse competitive effects from the design-only requirement for smaller firms. For example, some registered firms currently participate in PCAOB engagements at a level below that of a "substantial role," with the level of involvement varying, with some of those firms participating at a level approaching a "substantial role."⁹⁰ Larger firms could have a greater

incentive to use the work of registered public accounting firms that are currently participating at a level below that of a "substantial role," or that are not participating in PCAOB engagements at all, if the larger firms knew that such firms had already designed a QC system in accordance with QC 1000. Therefore, such smaller firms may have more opportunity to participate in audits pursuant to PCAOB standards in the future. Other firms that would have been subject to the design-only requirement may indeed choose to deregister. Such deregistration may, nevertheless, not have an adverse competitive effect if such firms were only intending to continue to compete for work that does not require PCAOB registration, such as participating in an audit pursuant to PCAOB standards at a level below that of a "substantial role," as their registration status would not impact their eligibility for this work. Accordingly, for these reasons and the reasons discussed in Section III.C, the Commission does not believe this aspect of the Amendments is likely to have a significant negative impact on the market for audit services or the pool of registered audit firms.

B. EQCF Role

As described above, QC 1000 includes a requirement for the small number of firms that issue audit reports for more than 100 issuers during the prior calendar year to implement an EQCF. Composed of one or more persons who are not principals or employees of the firm and do not otherwise have a commercial, familial or other relationship with the firm that would interfere with the exercise of independent judgment with regard to the matters related to the QC system, the EQCF is required to evaluate the significant judgments made and related conclusions reached by the firm when the firm is evaluating and reporting on the effectiveness of its QC system.⁹¹ The PCAOB stated in the Adopting Release that an external oversight function should enhance the discipline with which the firm carries out its own QC system evaluation.⁹² The PCAOB also stated that, based on comments it received on the Concept Release and the Proposing Release and experience with inspections of firms' systems of quality control, it believes that investors, audit committees, and other stakeholders will benefit from the EQCF's evaluation.⁹³

General

Some commenters stated that they specifically supported the EQCF role.⁹⁴ One commenter emphasized the importance of the EQCF role.⁹⁵ This commenter stated that it made sense to require firms that issue audit reports for more than 100 issuers per year to be subject to incremental requirements, such as the EQCF role, "given such firms' greater involvement in the U.S. capital markets and their impact on investors."⁹⁶ This commenter further stated that it appreciated that the Amendments stressed "the independence of the external oversight function."⁹⁷ Another commenter stated that the creation of the EQCF "is necessary in light of ongoing instances around the globe which suggest the firms suffer from a lack of ethics throughout the firms, including senior leadership."⁹⁸

On the other hand, several commenters stated that they do not support the requirement to incorporate an EQCF within the QC system.⁹⁹ Among other concerns, commenters asserted that the EQCF requirement included prescriptive elements that were not exposed for public comment; that the costs and benefits of the EQCF requirement had not been adequately considered; that the requirement could vitiate confidentiality protections under SOX; and that the requirement raised personal liability and other concerns that could render the requirement unworkable. Several commenters expressed the view that the requirement would necessitate disclosure of firm deficiency information included in Part II of PCAOB inspection reports to the person or persons serving in the EQCF role in conflict with SOX and PCAOB rules or Congressional intent.¹⁰⁰ More

⁸⁹ Commission staff estimate that approximately 77% of registered firms are subject to the requirements of one or both of the Other QC Standards. Details on this analysis can be found in Section III.C.

⁹⁰ Commission staff reviewed the publicly available PCAOB Form AP database, "FirmFilings," and filtered for Forms AP with an "Audit Report Date" between April 1, 2022 to March 31, 2023 to identify "other participant" firms listed in column "Audit Not Divided Percent Information," available at <https://pcaobus.org/resources/auditorsearch>. For purposes of this analysis, staff assumed that only "other participant" firms with a "Firm ID" in the database were registered. Staff then compared this information to the corresponding publicly available Form 2 data related to audit reports filed between April 1, 2022 to March 31, 2023 to identify firms that did not perform issuer audits, broker-dealer audits, or perform any substantial role work based on responses to questions in Part III, indicating that while not required to register, these firms are registered. Staff then filtered the Form AP data to isolate these firms, noting their roles are at less than a "substantial role" to varying degrees from 5–10% to 20–30% of total audit hours in many cases.

⁹¹ See Adopting Release, *supra* note 9, at 118.

⁹² *Id.* at 124.

⁹³ *Id.*

⁹⁴ See letters from Consumer Federation of America and L. Turner.

⁹⁵ See letter from Consumer Federation of America.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ See letter from L. Turner.

⁹⁹ See, e.g., letters from BDO; CAQ; Chamber; EY; Forvis Mazars; Moss Adams; PICPA; and PWC.

¹⁰⁰ See, e.g., letters from BDO; CAQ; Chamber; Forvis Mazars; and PWC. See also letter from the Center for Audit Quality (Aug. 29, 2024) ("CAQ Supplemental Letter") (stating that the PCAOB response letter did not address "certain other key matters" raised by commenters, such as "the PCAOB's authority to compel disclosure of information afforded confidential and privileged by The Sarbanes-Oxley Act (e.g., Part II of PCAOB Inspection Reports)"); letter from RSM ("The SEC should consider whether SOX restrictions on public disclosure of Part II inspection findings and confidentiality of communications with inspection

generally, commenters stated that it was unclear “how the EQCF would function within a firm’s system of quality control”¹⁰¹ and suggested that the standard the PCAOB adopted “expanded the professional obligations and responsibilities” of the EQCF role, which would impose additional liability costs for those professionals.¹⁰² Another commenter stated that the EQCF requirement is “neither realistic nor needed” given that the QC systems of firms are complex and involve a multitude of judgments and conclusions and the PCAOB already inspects large firms annually.¹⁰³ One commenter stated that “[f]irms that are close to or just above the 100-issuer mark may feel compelled to consider reducing their issuer count below this threshold” as a result of the EQCF requirement.¹⁰⁴ One commenter raised concerns about the EQCF role in its initial comment letter to the Commission and stated, in a subsequent supplemental comment letter, that the PCAOB response letter “provides additional clarity on several of our questions,” including with regard to the EQCF role,¹⁰⁵ but stated the PCAOB response “did not address certain other key matters raised by commenters”¹⁰⁶ and that the letter “raises additional questions.”¹⁰⁷ Specifically, this commenter stated “it is not clear how to square the Board’s stated belief that requiring the EQCF will ‘improve audit quality’ and ‘drive improvement in a firm’s QC system’ with the view that EQCF members

would only be considered ‘supervisory persons’ if the EQCF had the ‘responsibility, ability, or authority to affect the conduct of . . . associated persons. . . .’”¹⁰⁸

While we acknowledge the concerns raised by commenters about the EQCF requirement, the Commission finds that the EQCF role is consistent with the requirements of Title I of SOX and the rules and regulations issued thereunder and is necessary or appropriate in the public interest or for the protection of investors. We believe that an independent oversight function for the small number of firms subject to the requirement will enhance the effectiveness of a registered firm’s QC system, ultimately leading to improvements in audit quality. In support of the EQCF requirement, one commenter pointed to the importance of independence to “high quality corporate governance in the United States” and stated that “as independence has been implemented, enhanced and monitored, it has led to investors relying to a greater extent on corporate boards.”¹⁰⁹ We agree with this commenter’s views on the benefits of independence to governance structures and concur with the PCAOB that adding an independent perspective to an annually inspected firm’s QC system self-evaluation will promote a more rigorous evaluation process by those firms and drive improvements in audit quality.¹¹⁰ In fact, the PCAOB stated that, in connection with its oversight, “certain firms have acknowledged the limitations of internal QC functions led by non-independent firm employees and have touted the benefits of independent review.”¹¹¹ The PCAOB further stated that some firms have already created leadership or advisory roles for independent third parties.¹¹²

¹⁰⁸ *Id.*

¹⁰⁹ See letter from L. Turner.

¹¹⁰ See PCAOB response letter at 3, 9. In 2008, one of ACAP’s recommendations was to urge the PCAOB and the SEC, in consultation with others, to “analyze, explore, and enable, as appropriate, the possibility and feasibility of firms appointing independent members with full voting power to firm boards and/or advisory boards with meaningful governance responsibilities to improve governance and transparency of audit firms.” See letter from L. Turner (citing and quoting from ACAP recommendations).

¹¹¹ See PCAOB response letter at 3.

¹¹² *Id.* (including, for example, one firm that disclosed it had “robust discussions” regarding its initial QC system evaluation under ISQM 1 with its external quality advisors and another firm that indicated its audit advisory council, which includes two independent members, addresses matters related to the QC system, including inspection results and remediation efforts). See also PWC, 2023 *Audit Quality Report*, at 31 (describing its “independent Assurance Quality Advisory Committee” as providing advice “on aspects of the

We find this evidence persuasive and therefore conclude that requiring an external quality control function for registered firms will serve the public interest and the protection of investors.

One commenter expressed doubts that the EQCF would improve audit quality or drive improvements in a firm’s QC system given the PCAOB’s view that the EQCF would only be considered a supervisory person if it had responsibility, ability, or authority to affect the conduct of associated persons.¹¹³ We understand this commenter to be suggesting that the EQCF role will not result in improvements unless the EQCF has some control with respect to decision-making at the firm. To the extent the registered public accounting firms subject to the EQCF requirement share the concern raised by this commenter, the Amendments provide firms with flexibility to vest the EQCF with decision-making authority to the extent they see fit. However, even absent decision-making or other authority, we believe that the EQCF role will be able to drive improvements in audit quality and a firm’s QC system. An independent perspective on the significant judgments made and conclusions reached by the firm during its annual evaluation will help firms identify areas of improvement in their QC systems that they can consider when operating their QC systems. It is not uncommon for businesses to seek external perspectives on a variety of topics or issues and the fact that the business is the ultimate decision-maker does not mean that the input provided is not valuable or beneficial to the process. In addition, as noted above, some audit firms have voluntarily added independent oversight to their governance structures, indicating that they see a benefit to having an independent perspective.

Relatedly, we do not believe that imposing an independent QC monitor or independent QC consultant for a prescribed period of time as remedial relief in a PCAOB enforcement action would serve as a viable substitute for the EQCF requirement for the small number of firms subject to the requirement, as suggested by one commenter.¹¹⁴ Based on our experience with Commission enforcement actions,

business, operations, culture, governance, and risk management approach that are reasonably expected to impact audit and assurance quality” and stating that such committee “made us the first firm with both a Board that includes external members and an independent advisory committee focused on quality”), available at <https://www.pwc.com/us/en/services/audit-assurance/library/audit-quality-report.html>.

¹¹³ See CAQ Supplemental Letter.

¹¹⁴ See letter from PWC.

teams create complexities for effectuating the PCAOB’s intention with respect to the EQCF’s role.”).

¹⁰¹ See letter from Forvis Mazars.

¹⁰² See letter from BDO.

¹⁰³ See letter from Chamber. See also letter from PWC (stating “[w]e do not believe that firms should be viewed as incapable of performing their own evaluations and conclusions on their QC systems with full transparency to the PCAOB through its inspections process but without third-party involvement”).

¹⁰⁴ See letter from Moss Adams.

¹⁰⁵ This commenter stated that, for example, the PCAOB comment letter clarified the Board’s belief that those serving in an EQCF role would meet the definition of an “associated person.” See CAQ Supplemental Letter.

¹⁰⁶ This commenter stated that, for example, the PCAOB response letter did not address the point raised in several comment letters that the Amendments would require firms to disclose confidential and privileged information to “individuals a firm is not otherwise even required to employ or contract.” *Id.* In addition, the commenter stated that the Board “does not address concerns raised by commenters about the new EQCF requirements being stated by the Board to be analogous in some ways to an Engagement Quality Reviewer.” *Id.*

¹⁰⁷ *Id.* The commenter asked the Commission to clarify whether the PCAOB response letter “can be viewed as equally authoritative as the Final Standard and Adopting Release.” We respond to this comment in Section III.G below.

audit quality and investor protection benefits are greater with a prophylactic requirement aimed at preventing such violations from occurring in the first place—before investors are potentially placed at risk—than with only remedial relief in a handful of enforcement actions for limited periods of time.¹¹⁵

In addition to the overall benefits that an independent oversight function would provide, we find that the Board's approach to mandating this requirement in QC 1000 appropriately balances the need to enhance the effectiveness of registered firms' QC systems with an approach that provides flexibility in internal governance structures to minimize cost and disruption. As adopted by the Board, the EQCF requirement will provide significant flexibility for firms to design procedures that work best for their individual firm governance structure and requirements. QC 1000 does not specify where within the registered public accounting firm the EQCF must be housed or to whom the EQCF must report.¹¹⁶ These determinations are left to the discretion of the firm. This flexibility will allow an independent EQCF¹¹⁷ to also serve, for example, as an independent member of a firm's advisory committee or audit quality committee or governance body, including one that has a majority of non-independent members.¹¹⁸ Furthermore, to the extent that firms have existing QC advisory committees, nothing in the rule would prevent those committees, or independent members of those committees, from serving as EQCF, provided they meet the rule's independence standard and can discharge the assigned duties.

The Amendments also do not prescribe specific procedures to be followed by the EQCF and require only one EQCF activity.¹¹⁹ The EQCF must

evaluate “the significant judgments made and the related conclusions reached by the firm when evaluating and reporting on the effectiveness of the QC system.”¹²⁰ Notably, the EQCF's responsibility does not extend to all of the firm's QC-related judgments and conclusions, but only to *significant* ones made in connection with the firm's annual QC-system evaluation and reporting.¹²¹ Firms may, *but are not required* to, consider additional oversight functions for the EQCF, such as reviewing the firm's remediation actions and monitoring plan, or identifying and monitoring emerging risks or trends that could potentially affect the firm's QC system.¹²² Similar to the flexibility provided to audit firms in determining how the EQCF will perform its responsibilities, audit firms would have flexibility to consider, based on their individual firm needs, what other functions, if any, would be beneficial. Along these lines, one commenter noted that the PCAOB has pointed out the flexibility of its approach and how a firm implementing it can apply that flexibility. The commenter further stated that, based on the commenter's experience with the auditing profession, the commenter believes that the PCAOB is correct and that the approach the PCAOB took with respect to the EQCF “should, and will ultimately, allay the concerns of audit firm commenters.”¹²³ Below we discuss the views of commenters with respect to specific aspects of QC 1000's EQCF requirement, as well as the Commission's findings regarding those matters.

Notice and Comment

Several commenters expressed the view that the EQCF requirement was not included in the Proposing Release and therefore was not properly exposed for public comment before being adopted by the Board.¹²⁴ One commenter stated that the change from requiring an “oversight function for the audit practice” in the Proposing Release to requiring an “oversight function for the QC system” in the Adopting Release represents a significant change that “effectively deprives us of an opportunity for public input into the revised requirement.”¹²⁵ Another commenter stated that the requirement for the EQCF to evaluate all “significant

judgments” introduces “prescriptive elements not included in the original proposal.”¹²⁶ Conversely, one commenter stated that “[c]learly anyone who read and responded to the Concept Release and exposure draft were aware that the PCAOB was moving to adopt such a function in its final rule.”¹²⁷

As a threshold matter, we find that the public had a meaningful opportunity to comment on the Amendments both as they were being developed by the PCAOB and after they were filed with the Commission for approval. The PCAOB received and considered comments in connection with both the 2019 Concept Release and 2022 Proposing Release. The comment period for the Proposing Release was open for 75 days, but the PCAOB continued to accept comments up until its adoption of the Amendments. The PCAOB considered all comments it received. After the Amendments were filed with the Commission for approval, the Commission published a notice to solicit comment on the Amendments with comments due 21 days after the Notice of Filing of Proposed Rules was published in the **Federal Register**. To provide additional time for consideration of the Amendments and the issues raised therein, the Commission twice extended the date by which it must act on the Amendments. During this time, the Commission received additional input from both the Board and public commenters. We have considered all of these comments in deciding to approve the Amendments.

The Commission finds that the Board's process for approving the Amendments complied with all applicable requirements. Although the Board is not “an agency or establishment of the United States Government,”¹²⁸ for statutory purposes and therefore is not subject to the requirements of the Administrative Procedure Act (“APA”),¹²⁹ the Board as

¹²⁶ See letter from Grant Thornton LLP (July 16, 2024) (“GT”) (explaining that although the firm has an Audit Quality Advisory Counsel, it does not meet the EQCF requirements in QC 1000, particularly regarding the necessary authority and review of all “significant judgments”).

¹²⁷ See letter from L. Turner (discussing the relevant history of the proposed QC standard, including the 2008 ACAP recommendation, 2019 Concept Release, and 2022 Proposing Release, and stating that the PCAOB has gone through an “extensive process of outreach” to both its Investor Advisory Groups and Standards Advisory Groups with respect to quality control standards and noting that members of the Standards Advisory Groups include members of the “Big Four” as well as smaller firms).

¹²⁸ 15 U.S.C. 7211(b).

¹²⁹ See 5 U.S.C. 551(1) (defining an “agency” as “each authority of the Government of the United

Continued

¹¹⁵ See PCAOB response letter at 10.

¹¹⁶ See QC 1000.28.

¹¹⁷ The EQCF must be independent in accordance with the requirements in QC 1000.28. See Adopting Release, *supra* note 9, at 122 (stressing the importance of the independence requirement but otherwise providing firms with discretion to determine the specific credentials the EQCF must have as long as they have the experience, competence, authority, and time necessary to carry out their assigned responsibilities); PCAOB response letter at 8 (“As long as the firm incorporates into its governance structure an EQCF that can appropriately discharge its single prescribed responsibility (and any additional responsibilities the firm might voluntarily assign to it) in accordance with the QC 1000 standard, the firm would have wide latitude to decide—in its discretion and based on its particular circumstances—how best to design its EQCF.”).

¹¹⁸ A number of the audit firms that would be subject to the EQCF requirement have stated publicly that they have independent representation in their governance structure or plan to add such a role in the near-term. See *supra* notes 31 and 112.

¹¹⁹ See QC 1000.28.

¹²⁰ *Id.*

¹²¹ See PCAOB response letter at 7.

¹²² See Adopting Release, *supra* note 9, at 119–24.

¹²³ See letter from L. Turner.

¹²⁴ See, e.g., letters from CAQ; Chamber; EY; Forvis Mazars; Moss Adams; and PWC.

¹²⁵ See letter from PWC.

a matter of policy has adopted a notice-and-comment process to inform its decision-making.¹³⁰ The Board followed that process here. The PCAOB response letter details the standard-setting history relating to the EQCF requirement, beginning with the 2008 recommendations from ACAP and including the Concept Release, Proposing Release, consideration of comments received to each, and Adopting Release.¹³¹ The Board describes the outreach it performed and the input it received from a variety of stakeholders over the course of that multi-year process.¹³² The Board's analysis demonstrates that the core tenets of "independent oversight over firm's QC systems" were introduced in the Concept Release,¹³³ and were refined through the Board's stakeholder engagement, including in response to comments received on their Concept Release and Proposing Release.¹³⁴ Accordingly, we find the Board's process for approving the Amendments reasonable and appropriate.

As proposed, consistent with the Concept Release,¹³⁵ the PCAOB contemplated an independent QC oversight function within the governance structure of an audit firm.¹³⁶ Specifically, the PCAOB proposed to require an "oversight function for the audit practice" writ large that included at least one individual who was not a principal or employee of the firm and who did not have a relationship with the firm "that would interfere with the

exercise of independent judgment with regard to *matters related to the QC system*" (emphasis added).¹³⁷ The PCAOB explained in the Proposing Release that the proposed requirements "would not specify how the firm would establish its governance structure or assign authority, other than having one person in an oversight role who would be in a position to exercise independent judgment with regard to *QC matters*" (emphasis added).¹³⁸ The proposed oversight function, coupled with the general requirement relating to the "exercise of independent judgment with regard to matters related to the QC system," reasonably could have been read to include, for example, oversight over *all* aspects of the QC system including design, sufficiency, judgment, and overall effectiveness.

In response to the Proposing Release, commenters requested specificity regarding the function and scope of the responsibilities such an independent QC governance role would entail.¹³⁹ After taking such comments into consideration, the Board adopted an amended QC standard that clarified the EQCF's status and role. Specifically, the PCAOB narrowed the focus of the role from the proposal which, as explained above, would have required an "oversight function for the audit practice" to require an "oversight function for the QC system" and specified a single responsibility for the EQCF: "evaluating the significant judgments made and the related conclusions reached by the firm when evaluating and reporting on the effectiveness of the QC system."¹⁴⁰

One commenter specifically stated that the change from an "oversight function for the audit practice" to an "oversight function for the QC system" was a significant change that was not adequately explained or proposed for public comment.¹⁴¹ We disagree with this commenter. The QC system is the process by which a firm manages and improves its audit practice and therefore is an integral and significant part of the audit practice, so that a role overseeing

the audit practice would necessarily also oversee the QC system in addition to other aspects of a firm's audit operations. Therefore, an "oversight function for the QC system" is a subcomponent of an "oversight function for the audit practice" (e.g., a narrower version of what was proposed). Moreover, the EQCF role was proposed in the context of the PCAOB's new quality control standard and both the PCAOB's proposed and adopted formulations of the oversight requirement required that the individual or individuals who fill the role not have any relationships with the firm "that could interfere with the exercise of independent judgment with regard to *matters related to the QC system*" (emphasis added).¹⁴² In our view, these explicit references to the individual's responsibilities as they relate to the "QC system" weigh against commenters' claims that the EQCF role could not have been anticipated from the proposal.¹⁴³

Moreover, many aspects of the Amendments related to the EQCF role remain unchanged from the proposal. For example, the EQCF requirement only applies to firms that issue audit reports with respect to more than 100 issuers during the prior calendar year.¹⁴⁴ The requirement for independence remained the same with the exception of changing the terminology from the singular to plural form (i.e., a grammatical change).¹⁴⁵ Although the Amendments describe the EQCF role as an "external oversight function," the PCAOB response letter explains that it used the phrase "external" to "underscore that the function is to be carried out by one or more persons who are independent and, necessarily, external to the firm" rather than imposing a separate requirement.¹⁴⁶ The proposal required the EQCF role to be composed of "at least one person" while the Amendments require the EQCF role to be composed of "one or more persons." In either case, only one individual is required but a firm can choose to assign

States"); *id.* § 551(5) (defining "rule making" as "agency process for formulating, amending, or repealing a rule"); *id.* § 553 (setting forth the requirements for agency rule making).

¹³⁰ See PCAOB Staff Guidance on Economic Analysis in PCAOB Standard Setting (2014), available at https://pcaobus.org/oversight/standards/economic-analysis/05152014_guidance.

¹³¹ See PCAOB response letter at 3–5.

¹³² *Id.*

¹³³ *Id.* (noting that the Concept Release included a request for comment asking, "Should a future PCAOB QC standard incorporate mechanisms for independent oversight over firms' QC systems (e.g., boards with independent directors or equivalent)?").

¹³⁴ *Id.* (stating that in response to the Proposing Release "[m]any commenters called for more clarity and specificity about the role of the oversight function").

¹³⁵ See Concept Release, *supra* note 10 ("We are considering whether a future PCAOB QC standard should address mechanisms for *independent oversight over firms' QC systems*.") (emphasis added).

¹³⁶ See Proposing Release, *supra* note 11, at 97 ("[T]he firm's governance structure should incorporate an oversight function for the audit practice that includes at least one person who is not a partner, shareholder, member, other principal, or employee of the firm and does not otherwise have a commercial, familial, or other relationship with the firm that would interfere with the exercise of independent judgment with regard to matters related to the QC system.").

¹³⁷ *Id.* at 97 ("If the firm issued audit reports with respect to more than 100 issuers during the prior calendar year, the firm's governance structure should incorporate an oversight function for the audit practice that includes at least one person who is not a partner, shareholder, member, other principal, or employee of the firm and does not otherwise have a commercial, familial, or other relationship with the firm that would interfere with the exercise of independent judgment with regard to matters related to the QC system.").

¹³⁸ *Id.*

¹³⁹ See Adopting Release, *supra* note 9, at 119–20 (citing relevant commenter feedback on the Proposing Release).

¹⁴⁰ *Id.* at 118.

¹⁴¹ See letter from PWC.

¹⁴² See Proposing Release, *supra* note 11, at 97.

¹⁴³ See letters from CAQ and Chamber.

¹⁴⁴ See Adopting Release, *supra* note 9, at 118–20.

¹⁴⁵ Compare Proposing Release, *supra* note 11, at 97 ("... includes at least one person who is not a partner, shareholder, member, other principal, or employee of the firm and does not otherwise have a commercial, familial, or other relationship with the firm. . .") and Adopting Release, *supra* note 9, at 118 ("... composed of one or more persons who are not partners, shareholders, members, other principals, or employees of the firm and do not otherwise have a commercial, familial, or other relationship with the firm. . .").

¹⁴⁶ See PCAOB response letter at 6.

more than one individual to the role.¹⁴⁷ As discussed in greater detail below, the individual or individuals who fill the EQCF role will be “associated persons of a registered public accounting firm,” and the same would have been true under the proposal. Finally, the Amendments state that the “EQCF should have the experience, competence, authority, and time necessary to enable them to carry out the responsibilities assigned to the EQCF by the firm.” The PCAOB explained in the Adopting Release that this change was made to “conform[] the provision to the descriptions in QC 1000.12 of other specified QC system roles” that require the same qualifications to perform their responsibilities.¹⁴⁸

Therefore, having considered the standard-setting process preceding the EQCF requirement, we find that the public had considerable opportunity to comment on the function and responsibilities of the EQCF role included in the Amendments as well as on the similar, but more broadly focused, independent oversight function in the Proposing Release, on which the EQCF is based. Moreover, we find the changes made to that role in the Adopting Release to be responsive to comments received by the PCAOB from a variety of stakeholders. We also agree with the Board that the only prescriptive requirement of the function—the requirement to evaluate the significant judgments made and the related conclusions reached by the firm when evaluating and reporting on the effectiveness of the firm’s QC system¹⁴⁹—is both responsive to requests for greater clarity and specificity and would benefit investors by enhancing the discipline with which a firm carries out its own QC system evaluation.¹⁵⁰ Overall, we believe the changes described above addressed feedback on the role that the Board received on the Concept Release and

Proposing Release, including that the role did not go far enough; that the role’s undefined authority made it likely to be ineffective; and that more specificity and prescription was needed to avoid overly broad interpretations of the requirements; while maintaining a principles-based approach to allow firms to design the EQCF as appropriate for their audit practice.

In addition, the public had the opportunity to provide comments to the Commission on the Amendments adopted by the PCAOB. One commenter stated that the “time-period for providing comments to the SEC” was “constrained.”¹⁵¹ As discussed above, however, the Commission provided an initial comment period of 21 days, followed by an extension of 14 days. The Commission also extended its period to consider the Amendments two times, for a total of a 90-day period. Over the course of the 90 total days during which the Amendments were under consideration by the Commission, the public was able to continue to submit comment letters. The Commission received over 20 letters in total, several of which addressed the EQCF role in particular.¹⁵² The Commission has considered the concerns raised by commenters and addresses them below.

Alternatives to the EQCF Role

One commenter stated that it was concerned that the EQCF may not achieve the effectiveness and accountability that is necessary because of the flexibility provided to firms, and questioned whether a single person would be able to fulfill the EQCF’s responsibilities inside the largest accounting firms.¹⁵³ The commenter believed that a preferable approach would be to require the creation of an independent board as proposed by the ACAP and used by the FRC and the Japan Financial Services Agency.¹⁵⁴ As the PCAOB states in the Adopting Release, the EQCF role may be carried out by “one or more persons” and therefore larger firms will be able to determine whether it would be appropriate to assign more than one person to the role given their size and complexity.¹⁵⁵ We note that the firms that will be subject to the Amendments are of varying sizes and complexities and we therefore agree with the PCAOB that a “one size fits all” approach is

unwarranted. Furthermore, we note that the PCAOB has stated that it intends to monitor the implementation of QC 1000 through its inspections program and outreach activities and “will remain vigilant” for any information regarding the standard’s effectiveness or implementation challenges.¹⁵⁶ With respect to the commenter’s preferred approach of creating an independent board, although we agree with the commenter that experience has indicated that independent boards of issuers can be very effective, such a requirement is not part of the Amendments and therefore it is beyond the scope of this Order. In addition, we believe that consideration would need to be given to how an independent board requirement would interact with any applicable corporate governance laws, particularly for those registered public accounting firms located outside of the United States.

Disclosure, Confidentiality and Liability

Several commenters stated that the EQCF requirement conflicts with SOX Sections 104(g)(2) or 105(b)(5)(A)¹⁵⁷ because it would compel audit firms to share non-public QC criticisms with the EQCF, who is external to the firm.¹⁵⁸ One commenter stated that the EQCF (or members of the EQCF) would not be an associated person, given the definition of associated persons in PCAOB Rule 1001(p)(i), and considering that the EQCF consists of one or more independent third-parties.¹⁵⁹ This commenter further stated that discussions in the Adopting Release “cloud this issue,” including the discussion of whether the EQCF would be subject to supervisory liability under SOX Section 105(c)(6).¹⁶⁰ One commenter responded to the PCAOB response letter stating that their “objection is in the PCAOB requiring disclosure to individuals a firm is not otherwise even required to employ or contract.”¹⁶¹

SOX Section 104(g)(2) provides that “no portions of [a PCAOB] inspection report that deal with criticisms of or potential defects in the quality control systems of the firm under inspection

¹⁴⁷ See Adopting Release, *supra* note 9, at 118–20.

¹⁴⁸ *Id.* at 120. Both the PCAOB’s proposed and adopted versions of QC 1000.12 stated, “[t]he firm must assign other roles and responsibilities with respect to the QC system to firm personnel who have the experience, competence, authority, and time to enable them to carry out their responsibilities.” See Proposing Release, *supra* note 11, at 68; Adopting Release, *supra* note 9, at 82. The EQCF is a role with respect to the QC system, which is further clarified through the conforming change described above.

¹⁴⁹ QC 1000.28 (“Responsibilities of the EQCF should include, at a minimum, evaluating the significant judgments made and the related conclusions reached by the firm when evaluating and reporting on the effectiveness of the firm’s QC system.”).

¹⁵⁰ See PCAOB response letter at 6.

¹⁵¹ See Chamber letter.

¹⁵² See, e.g., letters from BDO; CAQ; Consumer Federation of America; Chamber; EY; Forvis Mazars; Moss Adams; PICPA; PWC; and L. Turner.

¹⁵³ See letter from L. Turner.

¹⁵⁴ *Id.*

¹⁵⁵ See Adopting Release, *supra* note 9, at 121.

¹⁵⁶ See PCAOB response letter at 24–25.

¹⁵⁷ See 15 U.S.C. 7214(g)(2); 15 U.S.C. 7215(b)(5)(A).

¹⁵⁸ See, e.g., letters from BDO; CAQ; Chamber; Forvis Mazars; PICPA; and PWC.

¹⁵⁹ See letter from Chamber. The CAQ Supplemental Letter stated that the PCAOB response letter provided clarity on whether the EQCF would be considered an associated person.

¹⁶⁰ *Id.* See also letter from PWC (stating that the “adopting release raises the possibility that individuals filling this role could be subject to liability under Section 105(c)(6) of SOX”).

¹⁶¹ See CAQ Supplemental Letter.

shall be made public if those criticisms or defects are addressed by the firm, to the satisfaction of the Board, not later than 12 months after the date of the inspection report.”¹⁶² SOX Section 105(b)(5)(A) provides that, with certain exceptions, “all documents and information prepared or received by or specifically for the Board, and deliberations of the Board and its employees and agents, in connection with an inspection . . . or with an investigation . . . shall be confidential and privileged as an evidentiary matter . . . in any proceeding in any Federal or State court or administrative agency, and shall be exempt from disclosure . . . under the Freedom of Information Act . . . or otherwise.”¹⁶³

The Commission finds that the disclosure of information to the EQCF would not be a public disclosure under Section 104(g)(2) or inconsistent with the confidentiality protections provided by Section 105(b)(5)(A) because those serving in the EQCF role would be associated persons and therefore subject to the same confidentiality requirements as the firm’s partners, employees, and other associated persons.¹⁶⁴ Under SOX Section 2(a)(9), an “associated person of a public accounting firm” includes any “independent contractor” who, “in connection with the preparation or issuance of any audit report,” receives compensation from the firm or “participates as agent or otherwise on behalf of” the firm “in any activity of that firm.”¹⁶⁵ For reasons the PCAOB explained, because individuals serving in an EQCF role cannot be partners, shareholders, members, other principals, or employees of the firm, they are likely to be engaged as independent contractors.¹⁶⁶ And those independent contractors would meet the definition of an “associated person” under SOX Section 2(a)(9) because they are likely to be compensated for their work and, in any event, would participate in the firm’s activities—at least the firm’s evaluation and reporting process—on behalf of the firm.¹⁶⁷

Like all associated persons, such independent contractors are part of the PCAOB inspection or investigation process, not strangers to it. They must cooperate with PCAOB inspections and investigations, comply with related PCAOB requests, and prepare inspection- or investigation-related documents for the PCAOB.¹⁶⁸ Accordingly, such independent contractors are not part of the public, and their involvement in Board inspections and investigations and awareness of information related thereto would not vitiate confidentiality protections.¹⁶⁹ Indeed, as the PCAOB observed, some firms currently share confidential information with external advisors, including those serving in audit quality advisory roles.¹⁷⁰

QC 1000 does not specify what information affected firms must share with the EQCF, giving firms flexibility in determining the responsibilities of the EQCF and what information is needed for the EQCF to fulfill its role, as long as the EQCF complies with the minimum requirement to evaluate all significant judgments made by the firm with respect to its QC system. Also,

establish and maintain an EQCF. As explained above, we believe that such individual or individuals serving in the EQCF would be associated persons—likely independent contractors—and therefore, we expect that firms will enter into contracts to set forth the terms and conditions of the role, including non-disclosure agreements, just as with their other independent contractors.

¹⁶⁸ 15 U.S.C. 7212(b)(3); 15 U.S.C. 7215(b)(5)(A).

¹⁶⁹ See PCAOB response letter at 13 n.55 (citing *In re Bieter Co.*, 16 F.3d 929, 940 (8th Cir. 1994) (addressing the waiver of attorney-client privilege in the context of disclosure to an independent contractor); *In re Flonase Antitrust Litig.*, 879 F. Supp. 2d 454, 459 (E.D. Pa. 2012) (same); *In re Copper Mkt. Antitrust Litig.*, 200 FRD. 213, 219 (S.D.N.Y. 2001) (same); *Am. S.S. Owners Mut. Protection & Indem. Ass’n v. Alcoa S.S. Co.*, 232 FRD. 191, 198 (S.D.N.Y. 2005) (addressing the waiver of attorney-client privilege in the context of disclosure to corporate directors); *Strougo v. BEA Assocs.*, 199 FRD. 515, 525 (S.D.N.Y. 2001) (same, with respect to outside directors)); see also letter from L. Turner (stating that the legislative history of the SOX Section 104(g)(2) indicates that it was intended to prohibit the PCAOB from disclosing information it obtained regarding quality control deficiencies but that the firms could disclose that information to their audit committee if they chose to).

¹⁷⁰ See PCAOB response letter at 12 (citing the 2023 Audit Quality Report of BDO, which states that its audit advisory council addresses matters related to its QC system, including inspection results and remediation efforts, and the 2022 Audit Quality and Transparency Report of Grant Thornton, which states that it grants its audit quality advisory council full access to firm information to help them fully understand the system of quality control). We note that BDO states in its 2023 Audit Quality Report that two members of its audit advisory council are independent and Grant Thornton states in its 2022 Audit Quality and Transparency Report that two members of its audit quality advisory council are independent.

firms may enter other types of independent-contractor arrangements, including with individuals at an affiliated firm within a global network or personnel at shared services centers outside of the firm.¹⁷¹ A determination that the EQCF is not an associated person would have significant consequences for those arrangements. Finally, a firm would be free to impose confidentiality or non-disclosure requirements on the EQCF to the same extent a firm is able to impose such requirements on its other independent contractors.

Although their status as associated persons could result in potential personal liability for individuals that take on the EQCF role, we believe this is appropriate given that the EQCF, like any other associated person, should exercise due professional care when fulfilling their responsibilities—responsibilities that, as we have explained above, serve an important investor protection role. We note that the significant flexibility afforded to firms under the Amendments to design procedures for the EQCF that work best for their individual firm governance structure may help to mitigate concerns that the attendant personal liability could discourage qualified individuals from taking on such a role.

Commenters also raised concerns about the potential liability exposure of the EQCF if the individual serving in that role was considered not only an associated person of the firm, but also a supervisory person. Under SOX Section 105(c)(6), the Board may impose sanctions on a “supervisory person” who “fail[s] reasonably to supervise an associated person” and “such associated person commits a violation” of a relevant law, rule, or standard.¹⁷² The Commission agrees with the PCAOB that the minimum requirements of the EQCF would not, on their own, make the individual or individuals “supervisory persons,” and that the assessment of whether any particular individual serving in the EQCF role is a supervisory person would need to consider any additional responsibilities or authorities the audit firm assigned to them.¹⁷³ Again, however, the flexibility

¹⁶² 15 U.S.C. 7214(g)(2).

¹⁶³ 15 U.S.C. 7215(b)(5)(A).

¹⁶⁴ We note that the external oversight role as described in the Proposing Release similarly would have met the definition of associated person of a public accounting firm.

¹⁶⁵ 15 U.S.C. 7201(a)(9). PCAOB Rule 1001(p)(i) provides a substantially similar definition of “person associated with a public accounting firm.”

¹⁶⁶ PCAOB response letter at 10.

¹⁶⁷ One commenter suggested that its concerns about the disclosure of confidential and privileged information to the EQCF stem from the fact the PCAOB is “requiring disclosure to individuals a firm is not otherwise even required to employ or contract.” See CAQ Supplemental Letter. However, the Amendments require the largest firms to

¹⁷¹ See PCAOB response letter at 13–14.

¹⁷² 15 U.S.C. 7215(c)(6).

¹⁷³ Section 105(c)(6) addresses supervision in terms that are “similar to those that apply to broker-dealers under section 15(b)(4) of the Securities Exchange Act of 1934.” S. Rep. No. 107–205 at 11, 49. Exchange Act Sections 15(b)(4)(E) and 15(b)(6) provide a theory of liability for broker-dealers and their associated persons that have failed reasonably to supervise, with a view to preventing violations of the federal securities laws and the rules thereunder, another person who commits such a violation, if such other person is subject to the

afforded to firms under the Amendments to determine what additional functions, if any, would be performed by EQCF should serve to mitigate concerns.

Relatedly, several commenters raised concerns that potential liability under Section 105(c)(6) of SOX for the person or persons fulfilling the EQCF role could limit the pool of candidates for this role.¹⁷⁴ However, we do not believe that any potential liability will significantly impact the pool of candidates, given the flexibility afforded to firms in the structuring of the role and the impact of such flexibility on liability considerations, as well as the fact that the requirement only applies, as the PCAOB observed, to the small number of firms meeting the 100-issuer threshold¹⁷⁵ and that several of those firms already have independent members of their firm governance or audit quality structure whose responsibilities, in some cases, may already meet the requirements of the EQCF, or who otherwise may be willing to expand such responsibilities.

Other

One commenter stated that firms that are close to or just above the annual 100-issuer audit report threshold may feel compelled to consider reducing their issuer count below this threshold to avoid the EQCF requirement and that such exits would undermine competition.¹⁷⁶ However, we believe

such an effect is unlikely to be significant given that, as the Board observed in the Adopting Release and in the PCAOB response letter, very few firms are close to the 100-issuer threshold. Specifically, PCAOB staff analysis of audit reports included in Commission filings during the 2022 calendar year indicated that two registered public accounting firms audited between 80 and 100 issuers and two registered public accounting firms audited between 100 and 120 issuers.¹⁷⁷ In addition, we expect that the minimum requirements for the EQCF role and the flexibility provided to firms to implement the role would reduce the likelihood that firms would be motivated to stay below the 100-issuer threshold to avoid the requirement. Furthermore, we agree that using the 100-issuer threshold is a reasonable approach because, as the PCAOB noted in the Adopting Release, firms are already familiar with this statutory threshold in the PCAOB inspection context and because we agree with the commenter who stated that the 100-issuer threshold was appropriate “given such firms’ greater involvement in the U.S. capital markets and their impact on investors.”¹⁷⁸ SOX provides that firms that provide audit reports for more than 100 issuers are subject to annual inspection by the PCAOB and firms that provide audit reports for 100 issuers or fewer are subject to inspection triennially.¹⁷⁹ Therefore, not only are firms familiar with the threshold, we believe firms monitor the size of their issuer practice for purposes of monitoring their inspection requirements and using the same threshold would avoid requiring the small number of firms that are close to or above the 100-issuer threshold to track a different threshold for purposes of compliance with QC 1000.

Some commenters raised questions about the Board’s analogy of the EQCF to the Engagement Quality Reviewer (“EQR”).¹⁸⁰ One commenter stated that the analogy the PCAOB made between the EQCF and the EQR was “not well analogized” because the EQR is required to perform a review under specific requirements that are the subject of an auditing standard while the PCAOB has not provided such specific requirements

for the performance of the EQCF’s evaluation.¹⁸¹

The analogy the PCAOB drew between the EQCF and the EQR in the Adopting Release noted certain similarities between the two roles, but also identified important differences between the requirements for the roles, including that the EQCF is not required to provide concurring approval, as is required of an EQR.¹⁸² The EQR’s concurrence instills responsibility and authority over the activities of the audit engagement team and places the EQR in a supervisory position in an audit engagement. On the other hand, as the PCAOB has made clear, the EQCF is not required to approve the firm’s conclusions regarding its significant judgments for the firm to make a conclusion on the effectiveness of the QC system.¹⁸³ As explained above, the requirement to evaluate the significant judgments and conclusions reached does not, by itself, impose supervisory responsibilities on the EQCF nor is the EQCF’s concurrence with the firm’s conclusions required. The EQCF’s evaluation is an input into the firm’s assessment of its QC system and while it may inform the actions of individuals, it does not direct such actions.

Another commenter who addressed the PCAOB’s comparison of the EQCF and EQR roles stated that, unlike the EQR who is governed by the requirements in the PCAOB’s engagement quality review standard, the Amendments do not prescribe certain details regarding the EQCF’s role and responsibilities.¹⁸⁴ Specifically, the commenter stated that the final standard does not, among other things: (1) specify the procedures the EQCF should perform to evaluate the significant judgments made and related conclusions reached; (2) address the nature, timing, and extent of the EQCF’s review; or (3) address how differing judgments made by the EQCF and the firm should be resolved or documented.¹⁸⁵ This commenter stated that this creates uncertainty regarding the application of the responsibilities specified in the standard and raises questions about the potential liability of the EQCF.¹⁸⁶ We disagree with the views expressed by the commenters discussed above. The PCAOB adequately explained this comparison in the Adopting Release, noting

broker-dealer or associated person’s supervision. 15 U.S.C. 78o(b)(4)(E) and (b)(6). In that context, the Commission has explained that “determining if a particular person is a ‘supervisor’ depends on whether, under the facts and circumstances of a particular case, that person has a requisite degree of responsibility, ability or authority to affect the conduct of the employee whose behavior is at issue.” *John H. Gutfreund*, Rel. No. 34–31554, 51 SEC 93, 113 (Dec. 3, 1992) (settled order and Exchange Act 21(a) Report). See also, e.g., *SEC v. Yu*, 231 F.Supp.2d 16 (D.D.C. 2002) (court found individual violated supervisory bar by retaining involvement in hiring and firing, and supervising compliance staff); *Steven E. Muth*, Rel. No. 34–52551, 2005 WL 2428336 (Oct. 3, 2005) (Commission opinion) (individual had requisite degree of control where he participated in decision to hire and later to suspend registered representative).

¹⁷⁴ See, e.g., letters from BDO; CAQ; and PWC.

¹⁷⁵ See PCAOB response letter at 17–21. See also *supra* note 30 (only 14 of the approximately 1,600 PCAOB-registered firms issued audit reports to more than 100 issuers as of 2023 but one of those firms has since filed an application for withdrawal from registration).

¹⁷⁶ See letter from Moss Adams (stating “[f]rom the standpoint of a firm that is subject to annual inspection and marginally exceeds the 100-issuer threshold, the disparity in scale, operational scope, and complexity when compared to other firms under similar scrutiny is substantial. Thus, we encourage the Board conduct a more in-depth economic analysis of the EQCF role, along with qualitative analysis of the proposed impact to audit

quality and the interplay with the PCAOB’s annual inspection of firms’ systems of quality.”).

¹⁷⁷ See Adopting Release, *supra* note 9, at 362; PCAOB response letter at 17 n. 72.

¹⁷⁸ See Adopting Release, *supra* note 9, at 67; letter from Consumer Federation of America. See also, 15 U.S.C. 7214(b)(1)(A).

¹⁷⁹ See 15 U.S.C. 7214(b)(1)(A).

¹⁸⁰ See, e.g., letters from EY; CAQ Supplemental Letter; and PWC.

¹⁸¹ See letter from PWC.

¹⁸² See Adopting Release, *supra* note 9, at 121.

¹⁸³ *Id.*; PCAOB response letter at 7.

¹⁸⁴ See letter from EY.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* We addressed the liability concerns related to the EQCF role earlier in this Order.

similarities between the two roles, but also explaining important differences, which we have highlighted, above.¹⁸⁷ In our view, the referenced discussion sought to clarify aspects of the EQCF without imposing any new requirements on registered public accounting firms or changing the requirements for the EQCF as set forth in the Amendments.

With respect to the commenter's concerns about the lack of prescriptiveness of the EQCF requirement, the PCAOB explained its decision to provide firms with flexibility to design the EQCF role to fit their particular circumstances and firm governance structure in both the Adopting Release and the response letter.¹⁸⁸ As discussed above, we find that the Board's approach to the EQCF requirement in QC 1000 appropriately balances enhancing the effectiveness of audit firm QC systems with flexibility that allows for effective scaling and customization for firms of varying sizes, structures, and risk profiles, as well as minimizing cost and disruption. Regarding the question on resolution of differences, the Amendments provide audit firms with broad flexibility with respect to the implementation of the EQCF role, including applicable internal procedures. As the Amendments do not require that the EQCF have any specific decision-making responsibility or other authority, firms are generally free to determine an approach to any such differing judgments between the EQCF and the firm in the manner that they deem most appropriate for their firm.

To the extent that firms have questions about the implementation of the EQCF role, the PCAOB stated that it anticipates that, consistent with its historical practice, its staff will issue implementation guidance and will engage in other activities to support firms' implementation efforts.¹⁸⁹ We encourage the PCAOB to provide this implementation guidance and other support, which could be useful to firms, with respect to the Amendments generally and in particular for the EQCF role.

Two commenters suggested that the EQCF is unnecessary because a firm's annual self-evaluation of its QC system, coupled with the PCAOB's annual inspections of that QC system, should suffice.¹⁹⁰ We are persuaded, however, that the EQCF requirement will provide meaningful additional safeguards beyond those realized from self-evaluations and inspections. The

EQCF's evaluation should provide the firm with real time, independent feedback, enabling the firm to enhance its quality control system on an ongoing basis whereas any response it receives from the PCAOB during its inspections process occurs at a later point in time. In this way, the EQCF role is consistent with the objective of a quality control standard that fosters continuous improvement—one of the PCAOB's express aims in adopting QC 1000.¹⁹¹

Some commenters stated the requirements for the EQCF are unclear (e.g., requirements around documentation of EQCF's evaluation).¹⁹² The PCAOB response letter addresses the documentation requirements as they relate to the EQCF.¹⁹³ The PCAOB response letter states that, under QC 1000, it is the firm that bears responsibility for complying with documentation requirements related to the EQCF role not the individual or individuals who comprise the EQCF.¹⁹⁴ Indeed, the EQCF could provide its evaluation orally because there is no requirement in QC 1000 that the EQCF must document or provide its evaluation in writing.¹⁹⁵ Further, QC 1000 does not prescribe to whom the EQCF must report, giving firms flexibility to develop the form of reporting and the line of reporting by the EQCF. We note, moreover, that it is typical for implementation questions to arise around new accounting or auditing requirements. To the extent additional clarity on specific requirements related to EQCF is necessary, we believe PCAOB staff implementation or other guidance would sufficiently assist firms with interpreting the requirement. As noted above, the PCAOB stated that it anticipates that, consistent with its historical practice, its staff will issue

implementation guidance and will engage in other activities to support firms' implementation efforts.¹⁹⁶

C. Economic Implications of the Amendments

Commenters expressed concerns that the costs arising from QC 1000 and certain of its requirements are not appropriately described and that a more rigorous economic analysis is necessary before the Amendments can be approved.¹⁹⁷ One commenter stated that the economic analysis conducted by the PCAOB in the Adopting Release was deficient because it did not discuss any plans for post-implementation review or details on how such a review will be conducted.¹⁹⁸ By contrast, another commenter observed that the PCAOB issued a staff white paper in November 2022 identifying research that suggests the PCAOB's proposed QC standard could lead to greater compliance with professional standards and improve financial reporting quality.¹⁹⁹ This commenter also stated that the "costs of deficient failed audits, can and have been significant and even catastrophic to investors, employees, and the U.S. economy."²⁰⁰

The PCAOB response letter addresses commenter feedback on its economic analysis.²⁰¹ The Board stated that, where possible, quantitative data was used and that, when this data was not available, the Board used qualitative factors in its analysis.²⁰² The Board also stated that available data and methods do not permit them to fully quantify all of the benefits and costs of QC 1000 and that commenters on this topic did not provide studies or data that permitted complete quantification of the benefits or costs of QC 1000.²⁰³ When commenters did suggest relevant data or research, the Board stated that it

¹⁹¹ See Adopting Release, *supra* note 9, at 5 ("We are adopting an integrated, risk-based standard, QC 1000, *A Firm's System of Quality Control*, that mandates quality objectives and key processes for all firms' QC systems, with a focus on accountability and continuous improvement.).

¹⁹² See, e.g., letters from CAQ; Forvis Mazars; and GT. See also letter from EY (stating "it is unclear how firms will understand and document the EQCF's identification of and conclusion about the firm's significant judgments").

¹⁹³ See PCAOB response letter at 14–15.

¹⁹⁴ *Id.* at 14.

¹⁹⁵ *Id.* at 15 (stating "QC 1000 imposes a documentation requirement regarding the EQCF's operation on the firm, *not* on the individuals who comprise the EQCF—though the firm's EQCF policies could provide guidance to those individuals about what they should or should not do to facilitate the firm's retention of appropriate documentation about the EQCF's operation" (emphasis added)) and 14 (stating that all of the firm's documentation under QC 1000 must be documented "in sufficient detail to enable an experienced auditor who understands QC systems but has no experience with the firm's QC system to understand how the EQCF is designed").

¹⁹⁶ *Id.* at 28. One commenter stated that subsequent PCAOB staff guidance is an insufficient alternative to or remedy for the lack of notice and comment for the EQCF requirement. See letter from Chamber. However, as explained above, the Board followed its own notice-and-comment process and the EQCF requirement included in the Amendments was the result of changes made in light of commenter feedback on the PCAOB's proposed external oversight function.

¹⁹⁷ See, e.g., letters from BDO; Chamber; PICPA; and PWC.

¹⁹⁸ See letter from Chamber.

¹⁹⁹ See letter from L. Turner (citing Public Company Accounting Oversight Board, Staff White Paper, *The Impact of Quality Control System Remediation on Audit Performance and Financial Reporting Quality* (Nov. 2022), available at https://assets.pcaobus.org/pcaob-dev/docs/default-source/rulemaking/docket046/qc-staff-white-paper-november-2022.pdf?sfvrsn=db22504_4).

²⁰⁰ *Id.*

²⁰¹ See PCAOB response letter at 21–22.

²⁰² *Id.*

²⁰³ *Id.*

¹⁸⁷ See Adopting Release, *supra* note 9, at 121.

¹⁸⁸ *Id.* at 122; PCAOB response letter at 7.

¹⁸⁹ PCAOB response letter at 28.

¹⁹⁰ See letters from PWC and Chamber.

considered it and incorporated that data or research into its economic analysis as appropriate.²⁰⁴

As part of our assessment of the Amendments, we have considered the economic analysis conducted by the PCAOB in the Adopting Release as well as the comments received on this point and the additional information provided in the PCAOB response letter. Below we evaluate the PCAOB's analysis in order to reach our own conclusion about the economic implications of the Amendments. On many points, we find the PCAOB's analysis reasonable; however, where appropriate, we have expanded upon that analysis. Moreover, we have considered the specific concerns raised by commenters about the unintended consequences of the Amendments and, as discussed in more detail below, have concluded that the Amendments are unlikely to have a significant adverse effect on efficiency and competition within the market for audit services.²⁰⁵

The PCAOB's economic analysis addresses the benefits and costs associated with the Amendments, including, but not limited to, the design requirement, which applies to all registered firms, and the EQCF requirement, which applies to a small number of firms. The PCAOB's analysis explains the expected benefits to investors and other financial statement users that will be realized by improving compliance with applicable professional and legal requirements and thereby improving financial reporting quality.²⁰⁶ In addition, the PCAOB's analysis addresses unintended consequences of the Amendments, such as potential effects on human capital, competition concerns, including the concern raised by some commenters that the requirements could diminish the availability of global network resources and that smaller firms around the world could decline to assist U.S. firms with global audits, and the potential negative

consequences related to increased accountability or liability.²⁰⁷ Finally, the Board stated in the PCAOB response letter that it intends to follow its normal practice under which staff in its Office of Economic and Risk Analysis will conduct an analysis and make a recommendation to the Board as to whether to conduct a post-implementation review of the Amendments.²⁰⁸ We encourage the Board to conduct such a post-implementation review.

Below we examine the individual elements of the Board's economic analysis, including its consideration of the effects on efficiency, competition, and capital formation.

Consistent with best practice when conducting an economic analysis,²⁰⁹ the Board includes a baseline assessment of existing audit requirements and practices against which the potential effects of the Amendments can be considered. The Board presents analyses of quantitative proxies for the level of compliance with existing professional standards, including information on Part I.A deficiencies, QC deficiencies related to audit performance, and broker-dealer engagement deficiencies, from the audits or engagements inspected by the PCAOB. Overall, these analyses suggest that some firms' QC systems may not be providing the required reasonable assurance. The Board's analysis indicates that broker-dealer engagements and issuer audits performed by firms other than the U.S. global network firms ("GNFs")²¹⁰ appear to have more room for improvement on average based on the period examined. The Board also presents research that it conducted on existing policies and procedures at U.S. GNFs. This research finds that U.S.

GNFs are already devoting extensive resources to the design, implementation, and operation of QC policies and procedures related to the ISQM 1 requirements.²¹¹ Further, the Board observes that commenters on the Proposing Release indicated that non-GNFs have been devoting resources to the design, implementation, and operation of QC policies and procedures related to ISQM 1 and/or SQMS 1 requirements, though some of these firms may have more narrowly focused their resources on the design component and may not yet be spending resources to operate QC policies in line with SQMS 1. Lastly, the Board's baseline assessment provides information on the evolution of firms' QC policies and procedures and discusses academic research on behaviors that suggest certain weaknesses in QC systems in practice.

Several commenters on the Proposing Release suggested that some firms have already designed and implemented, or are in the process of designing and implementing, QC policies and procedures consistent with the requirements of Other QC Standards.²¹² The Board supported that view, but many commenters on the Proposing Release disagreed with this characterization of the baseline and stated that QC 1000 will impose significant costs.²¹³ The Commission staff independently examined the number of PCAOB-registered audit firms that will be affected by QC 1000, including the extent to which they may be affected.

There are 1554 audit firms registered with the PCAOB as of August 2024.²¹⁴

²¹¹ See Adopting Release, *supra* note 9, at 318–23.

²¹² *Id.* at 331.

²¹³ *Id.* at 351–60.

²¹⁴ Based on Commission staff analysis. Data on firms registered with the PCAOB come from the PCAOB's website: *Registered Firms*, PCAOB, <https://pcaobus.org/oversight/registration/registered-firms>. We identify whether an audit firm has performed an engagement under PCAOB standards for an issuer or registered broker-dealer using the "Audit Report Activity" filter. Staff identified U.S. and non-U.S. firms by using the country variable in the PCAOB data. U.S. firms include those in the United States and Puerto Rico. To identify firms that participate in the AICPA peer review program, staff extracted a list of participating firms from the following website: *Public File Search*, AICPA Peer Review Web Program, https://peerreview.aicpa.org/public_file_search.html. Staff manually matched those firms by auditor name and, if necessary, city and state to the PCAOB data. Staff identified non-U.S. firms that were part of the GNF by collecting data listed at *Global Network Firms*, PCAOB, <https://pcaobus.org/oversight/registration/global-network-firms>, and matching it to the PCAOB data by auditor name, city, state, and manually reviewing the firm summaries to compare Firm IDs. Finally, for non-

Continued

²⁰⁴ *Id.*

²⁰⁵ One commenter stated that Exchange Act Section 3(f), 15 U.S.C. 78c(f), requires the Commission to consider the economic implications of the Amendments before approving or disapproving them. See letter from Chamber. Regardless of whether Section 3(f) applies in Commission review of PCAOB rules, because the PCAOB addressed the economic implications of the Amendments and commenters have raised concerns about that analysis, the Commission has likewise considered the economic implications of the Amendments and addresses those implications here. See *Bloomberg, L.P. v. SEC*, 45 F.4th 462, 476 (D.C. Cir. 2022) (APA requires the Commission to "respond adequately" to "relevant concerns about the direct and indirect costs of" a proposal raised by commenters, regardless of what Section 3(f) requires).

²⁰⁶ See Adopting Release, *supra* note 9, at 341–43.

²⁰⁷ *Id.* at 358–66; see also letter from BDO ("There should be further consideration of the potential impacts of this standard on the competitive landscape of firms outside the U.S. where possible.").

²⁰⁸ See PCAOB response letter at 24.

²⁰⁹ See SEC Staff, *Current Guidance on Economic Analysis in SEC Rulemaking* (Mar. 16, 2012), available at https://www.sec.gov/divisions/riskfin/rsfi_guidance_econ_analy_seculemaking.pdf; PCAOB Staff, *Staff Guidance on Economic Analysis in PCAOB Standard-Setting* (Feb. 14, 2014), available at https://pcaobus.org/oversight/standards/economic-analysis/05152014_guidance.

²¹⁰ See Adopting Release, *supra* note 9, at 54. The six global networks that contain the largest number of registered, non-U.S. firms as reported on Form 2s filed in 2023 are: BDO International Limited, Deloitte Touche Tohmatsu Limited, Ernst & Young Global Limited, Grant Thornton International Limited, KPMG International Cooperative, and PricewaterhouseCoopers International Limited (the member firms of these networks are collectively referred to herein as "GNFs"). The non-affiliated firms ("NAFs") include registered public accounting firms that are not members of global network firms.

Among these, 659 firms performed an engagement under PCAOB standards for an issuer or registered broker-dealer. These firms will have to fully implement QC 1000. Out of these 659 firms, 323 are U.S. firms that issued opinions under AICPA standards and, should they continue to do so, will have to implement SQMS 1; 199 are non-U.S. firms that are GNFs and are therefore likely to implement ISQM 1; and another 60 are non-U.S. firms that have an audit-related membership, affiliation, or similar arrangement. We believe that non-U.S. firms that have an audit-related membership, affiliation, or similar arrangement, especially GNFs, are likely to have implemented ISQM 1 due either to their own issuance of audit reports under International Auditing Standards, or as a recommendation or requirement due to its audit-related membership, affiliation, or similar arrangement.²¹⁵ Hence, in total, we believe that 582 of the 659 firms (*i.e.*, 88%), by the effective date of QC 1000, will already be subject to quality control requirements that share a basic structure with the requirements in QC 1000. This overlap significantly reduces the cost and benefits of the Amendments, to the extent that these firms in fact comply with the Other QC Standards. Recognizing that the Amendments are likely to increase compliance with these shared quality control requirements (*i.e.*, as a result of PCAOB inspections and enforcement of QC 1000), firms may incur costs relative to the baseline, and there may be corresponding benefits to investors stemming from audit quality improvement.

Another 845 firms of the 1,554 firms registered with the PCAOB have not performed an engagement under PCAOB standards for an issuer or registered broker-dealer within the past year and thus would only be subject to the

design-only requirement.²¹⁶ Out of these 845 firms, 259 are U.S. firms that issued opinions under AICPA standards and, should they continue to do so, will have to implement SQMS 1; 98 are non-U.S. firms that are GNFs and are therefore likely to implement ISQM 1; and another 255 are non-U.S. firms that have an audit-related membership, affiliation, or similar arrangement. As discussed above, we believe having an audit-related membership, affiliation, or similar arrangement indicates these firms will likely have implemented ISQM 1. Hence, in total, we believe that 612 of the 845 firms that have not performed an engagement under PCAOB standards for an issuer or registered broker-dealer within the past year (*i.e.*, 72%), by the effective date of QC 1000, will already be subject to quality control requirements that share a basic structure with the design-only requirements in QC 1000. This significantly reduces both the costs and benefits of the Amendments to these firms, as discussed above. Taken together, 1,194 of the 1,554 (*i.e.*, 77%) firms registered with the PCAOB are unlikely to incur significant incremental costs under QC 1000.

One commenter stated that the Board did not adequately consider the extent to which the Amendments could impact entities other than issuers and registered broker-dealers in its assessment of the Amendments' economic effects.²¹⁷ We agree that QC 1000 will indirectly affect parties other than issuers and registered broker-dealers, as the Commission has promulgated rules requiring the use of PCAOB-registered or PCAOB-registered and inspected audit firms by other entities, including, but not limited to, certain investment advisers, pooled investment vehicles, security-based swap data repositories, and clearing agencies.²¹⁸ For example, Rule 206(4)–2 under the Investment Advisers Act of 1940 requires that (1) advisers using a

related person as custodian must obtain their surprise examination and internal control report from a PCAOB-registered and inspected auditor, and (2) advisers relying on the audit exception from the surprise examination requirement with respect to a pooled investment vehicle must have the pooled investment vehicle audited by a PCAOB-registered and inspected auditor.²¹⁹ Below we discuss some of the potential effects of the Amendments on these other regulated entities.

One commenter on the Proposing Release asserted that audit firms' financial incentives to operate too lean undermine audit quality.²²⁰ The Board agreed and, more generally, identified market failures and thus a need for regulatory action. As a general matter, the Board explained that there are information asymmetries between auditors and investors and other financial statement users regarding the services performed by auditors.²²¹ Also there are positive externalities in the audit market. Specifically, while the services of an auditor provide benefits to a variety of investors and financial statement users, auditors do not bargain with all of these parties, but, rather, are appointed, compensated, and retained by the audit committee.²²² The Board stated that some beneficiaries of the auditor's work (*e.g.*, the investing public generally, who benefit from overall confidence in the quality of financial information provided to the market) may have no influence on the auditor at all.²²³

We agree that the information submitted by the PCAOB demonstrates that these market failures exist in the market for audit services. Information asymmetries could create a risk that auditors may under-perform and gather insufficient audit evidence to support their opinion or may otherwise depart from applicable requirements unbeknownst to market participants who rely on financial statements. This risk could be exacerbated as auditors directly contract with issuers (through the audit committee), not investors and financial statement users. The principal-agent relationship between audit firms and issuers could exacerbate the risk that auditors may not be incentivized to gather sufficient audit evidence to support their opinion or otherwise depart from applicable requirements, potentially harming financial statement users or market participants generally.

US firms that were non-GNF, staff determined whether they were members of or affiliated with some other network, arrangement, alliance, partnership, or association using Form 2 (*i.e.*, any audit firm that answered "Yes" for either Item 5.2a.1 or Item 5.2a.2 has an "audit-related membership, affiliation, or similar arrangement").

²¹⁵ For example, each of the following transparency reports state that global network policies require compliance with ISQM 1. *See, e.g., EY Global Audit Quality Report* (June 2024), available at <https://www.ey.com/content/dam/ey-unified-site/ey-com/en-gl/insights/assurance/documents/ey-global-audit-quality-report-06-2024.pdf>; *BDO Transparency Report* (June 2023), available at <https://www.bdo.global/en-gb/about/global-network/transparency-report-2023>; *Crowe Global Transparency Report* (2024), available at https://www.crowe.com/global/-/media/crowe/international/files/about-us/crowe_global_transparency_report.pdf?rev=015641ea64c9491983ed47106226ddcf&hash=492F11006140712E365E07C80FF9CD5E.

²¹⁶ Lastly, 50 of the 1554 firms have not yet filed a Form 2; thus, staff could not determine which of these firms had an audit report or played a substantial role for the audit of at least one issuer or registered broker-dealer. Staff were also unable to determine how many of these 50 firms will already be subject to quality control requirements that share a basic structure with the requirements in QC 1000.

²¹⁷ *See* letter from Chamber.

²¹⁸ *See, e.g.*, 17 CFR 275.206(4)–2 (custody of funds or securities of clients by investment advisers); 17 CFR 240.13n–11 (chief compliance officer of security-based swap data repository; compliance reports and financial reports); 17 CFR 240.17ad–22 (standards for clearing agencies); 17 CFR 240.15c3–1g (conditions for ultimate holding companies of certain brokers or dealers, Appendix G to 17 CFR 240.15c3–1); and 17 CFR 240.18a–1 (net capital requirements for security-based swap dealers for which there is not a prudential regulator).

²¹⁹ *See* 17 CFR 275.206(4)–2.

²²⁰ *See* Adopting Release, *supra* note 9, at 335.

²²¹ *Id.* at 333.

²²² *Id.*

²²³ *Id.* at 334.

As a result, we agree with the Board that the audit market may not provide sufficient economic incentives for all firms to design, implement, and operate QC systems that provide reasonable assurance. Additionally, the Board explains that current PCAOB QC standards do not directly address recent QC developments, so that the current regulatory baseline is not rigorous enough to sufficiently support the Board's ability to address audit performance deficiencies through PCAOB inspection and enforcement activities related to firms' QC systems.²²⁴

Having established the regulatory baseline and need for regulatory action, the PCAOB's analysis then discusses the anticipated economic benefits of the Amendments. With respect to benefits, the Board states that the QC 1000 requirements provide substantial additional direction to firms regarding the design, implementation, and operation of their QC systems. The Board identifies three overarching beneficial features of these requirements. The first feature pertains to the mandate for a more integrated, proactive, and risk-based QC system. The second pertains to the enhancements to accountability within the firm to achieve the reasonable assurance objective. The third pertains to more precise language and more prescriptive requirements in several key areas.²²⁵

We agree with the Board that the QC 1000 requirements will benefit investors and other financial statement users by improving compliance, including through PCAOB inspections and enforcement, with applicable professional and legal requirements via a more risk-based, accountable, and detailed QC standard.²²⁶ Such a QC standard will help improve audit quality resulting in more accurate and more reliable financial statements regarding the financial position and operating results of companies.²²⁷ Investors may, in turn, use this information to improve the efficiency of their capital allocation decisions (*e.g.*, investors may more accurately identify companies with the strongest prospects for generating future risk-adjusted returns and allocate their capital accordingly), thereby also improving market efficiency.²²⁸ Investors may also perceive reduced risk in capital markets generally, promoting capital

formation.²²⁹ The magnitude of these effects will depend on the degree to which auditors improve their QC systems and the degree to which the incremental improvements lead to higher audit quality.

The PCAOB's analysis also discusses the anticipated economic costs of the Amendments. The Board stated that it expects the QC 1000 requirements will result in direct and indirect costs to auditors and, potentially, indirect costs to the companies that they audit. The Board also noted that the extent of these costs will depend on the degree to which firms otherwise have QC systems in place designed to comply with Other QC Standards and the specific policies and procedures adopted by the firm. We agree that audit firms will incur compliance costs, both one-time implementation costs and ongoing operating costs (at the firm level and at the engagement level), associated with the QC 1000 requirements. To the extent that audit firms pass on these cost increases to their clients, these clients would incur indirect costs such as in the form of higher audit fees.

As the Adopting Release acknowledges, the Board received a number of comments stating there will be costs and challenges to implement and operate features of QC 1000 that are incremental to the systems firms have established to comply with Other QC Standards.²³⁰ Several commenters also asserted that firms that audit between 100 and 500 issuers will be significantly impacted by costs associated with some or all of QC 1000's incremental requirements for firms that issue audit reports for more than 100 issuers, and some of the commenters noted resource differences between GNFs and annually-inspected NAFs.²³¹ Other commenters stated that smaller firms may be especially affected by the new QC requirements, including requirements incremental or alternative to ISQM 1 and SQMS 1 standards.²³²

Similarly, the Commission received a number of comments about the potential costs of the Amendments.²³³ One commenter stated that the requirements mean that PCAOB-registered, but not inspected, audit firms must comply with the design-only requirement, although these firms do not render audit reports on issuer or broker-dealer engagements or play a substantial role

in such engagements.²³⁴ The same commenter stated that firms that are registered, but not inspected, are smaller audit firms that serve market segments for entities that become smaller issuers and broker-dealers, including emerging growth companies. Another commenter similarly stated the adopting release's design-only requirement for firms that do not issue audit reports for issuers imposes undue burdens on competition that will hurt smaller issuers (including emerging growth companies), investors, and the competitiveness of the audit marketplace.²³⁵ One commenter expressed concerns over the significant costs of designing a system of QC in accordance with QC 1000 on a hypothetical basis, also stating that even for firms that are performing a small number of engagements under PCAOB standards, the requirement to comply with two standards (*i.e.*, either ISQM 1 or SQMS 1 and QC 1000) with two different sets of deficiency definitions and conclusion frameworks could present similar cost constraints.²³⁶ The same commenter requested that the effective date of QC 1000 implementation for these firms be deferred until such time as they determine they intend to perform engagements in accordance with PCAOB standards and consider whether explicit guidance could be developed that would explain that a registered accounting firm is essentially prohibited from undertaking PCAOB engagements until a system of QC that complies with QC 1000 is in place.

We agree with the Board's assessment that there are costs to designing and implementing a QC system. As discussed above, as of August 2024, 845 firms of the 1,554 firms (*i.e.*, 54%) registered with the PCAOB have not performed an engagement under PCAOB standards for an issuer or registered broker-dealer within the past year and would therefore not bear the costs to implement and operate the QC system.²³⁷ QC systems are resource-

²²⁴ See letter from Chamber.

²²⁵ See letter from PICPA. See also, *e.g.*, letters from BDO and Chamber.

²²⁶ See letter from PWC.

²²⁷ This count does not account for the 50 firms out of 1,554 that have not yet filed a Form 2, as Commission staff could not determine which of these 50 firms issued an audit report or played a substantial role for the audit of at least one issuer or registered broker-dealer. See *supra* note 216. The PCAOB made similar findings in 2023. See Adopting Release, *supra* note 9, at 345 (stating that, based on Form 2 reporting as of June 30, 2023, approximately 60% of registered firms reported that they had not issued an audit report for an audit of an issuer or broker-dealer or played a substantial role in such an engagement during the preceding 12 months).

²²⁹ See *id.* at 344.

²³⁰ See *id.* at 44.

²³¹ See *id.* at 66.

²³² See *id.* at 58.

²³³ See, *e.g.*, letters from BDO; Chamber; PIPCA; and PWC.

²²⁴ *Id.* at 336–37.

²²⁵ *Id.* at 338.

²²⁶ *Id.* at 341–43.

²²⁷ See *id.* at 343.

²²⁸ See *id.* at 343–45.

intensive, and audit firms could incur significant costs to respond to certain provisions in QC 1000 or to otherwise adapt the QC system to the auditing environment for issuers and registered broker-dealers. Furthermore, as noted above, these costs would extend to PCAOB-registered firms providing audits to entities other than issuers and broker-dealers pursuant to SEC rules (including, but not limited to, certain investment advisers, pooled investment vehicles, security-based swap data repositories, and clearing agencies), which may have an indirect impact on such other entities.²³⁸

The Board also acknowledges that the Amendments could disproportionately affect smaller firms and cause some firms to exit the public company audit market or deter other firms from future entry. Entry deterrence could be exacerbated by the fact that being registered with the PCAOB will subject firms to certain QC requirements even if they do not perform engagements. Nevertheless, the Board states that it does not expect the effects on smaller firms to be significant.²³⁹ The Board expressed the view that QC 1000 shares a basic structure and approach with ISQM 1 and SQMS 1,²⁴⁰ so designing for the incremental features unique to QC 1000 should not be unduly burdensome for firms that are subject to either or both of those Other QC standards.

We agree that implementation costs could be disproportionately greater for smaller audit firms than for larger audit firms. The cost of implementing QC 1000 depends in significant part on the degree to which auditors' existing QC systems already comply with QC 1000 requirements. PCAOB-registered, but not inspected, audit firms that decide to comply with the design portions of QC 1000 will incur the design costs. This could, as discussed above in Section III.A, place these firms in a better position to compete for work participating in audits of issuers or registered broker-dealers at a level below that of a "substantial role." This could also position these firms to expand their business into audits of SEC-registered issuers and broker-dealers, but these firms would incur additional implementation and operation costs to do so. Alternatively, these firms could choose to avoid the design costs by withdrawing from PCAOB registration given that they are

not required to be registered with the PCAOB; however, we note that this withdrawal would not impact these firms' eligibility to compete for work participating in audits of issuers or registered broker-dealers at a level below that of a "substantial role." The impact of QC 1000 implementation and operation costs on an audit firm will also depend on the audit firm's ability to absorb those costs or pass them onto their clients (*i.e.*, higher audit fees). Smaller audit firms may be disproportionately vulnerable to implementation costs, because smaller firms will distribute their fixed implementation costs over a smaller number of engagements, thus resulting in a higher average implementation cost per engagement. By contrast, larger PCAOB audit firms, especially those that already have extensive QC systems in place, may benefit from economies of scale or scope when incorporating the new requirements into their existing systems, which would in turn reduce their cost of implementing and operating QC 1000 per engagement. Conversely, larger audit firms are likely to have more complex clients and more diverse client portfolios, which could require higher implementation costs for an effective QC system.

The Commission also received several comments expressing concern that the EQCF requirement, in particular, would be costly or difficult to fulfill, especially for firms that audit between 100 and 500 issuers.²⁴¹ One commenter stated that the proposed EQCF role is "vastly different" from the role that the PCAOB proposed in 2022 and asserted that the economic analysis in the Adopting Release "does not provide substantive analysis to justify the costs, benefits and unintended consequences."²⁴² Another commenter stated the EQCF requirement would involve "significant additional internal and external costs arising from (1) entering into a new arrangements [*sic*] with the same or other individuals who are determined to have sufficient competence for the specific role and who satisfy the rule as adopted, (2) sufficiently compensating individuals fulfilling the EQCF role for their time and potential liability, and (3) the additional resources needed for the firm to enable the EQCF to perform the required duties."²⁴³ This commenter added that these costs would be passed on to issuers (and ultimately investors).

The PCAOB's economic analysis considered the economic implications of the EQCF requirement. The Board states that all U.S. GNFs indicate, as of the 2020 inspection cycle, they already have a governance structure that includes a non-employee, suggesting that, in contrast to commenters' assertions, the costs (as well as the benefits) of this requirement could be attenuated.²⁴⁴ In addition, in response to comments critiquing the Board's analysis of the EQCF requirement, the Board provided in the PCAOB response letter additional data from the U.K., as the independent non-executive ("INE") role for audit firms in the U.K. is partially analogous to the EQCF. The Board reports that, according to transparency reports from six large U.K. audit firms, total per firm compensation for individual INEs ranged from roughly \$80,000 to \$400,000 in 2023.²⁴⁵

The Board has scaled the EQCF requirement to apply to only 13 of the PCAOB-registered firms, namely those that issued audit reports for more than 100 issuers as of 2023.²⁴⁶ Scaling the EQCF requirement in this way, while reducing the benefits, significantly mitigates concerns regarding competition in the audit market. Further, the incremental demand for qualified individuals would be relatively small compared to the available supply, further limiting potential costs to compensate individuals performing the EQCF role.

In addition, as discussed in Section III.B above, the Amendments provide firms with significant flexibility to implement the EQCF requirement in a manner that suits their particular needs and circumstances. For example, the Amendments do not prescribe specific qualifications for the EQCF. Aside from the responsibility of evaluating the significant judgments made and the related conclusions reached by the firm on the effectiveness of its QC system, firms can determine the appropriate scope, responsibilities, and qualifications for the EQCF based on their existing governance structures and the complexity of their QC systems. This flexibility will allow firms to integrate the EQCF into their current practices without the need for significant restructuring or additional resources, thereby minimizing the financial and operational burden of compliance. In addition, the flexibility of the QC 1000 standard will allow firms to focus on addressing their

²³⁸ See *supra* note 218.

²³⁹ See Adopting Release, *supra* note 9, at 354; see also PCAOB response letter at 23.

²⁴⁰ As discussed in Section III above, Commission staff compared QC 1000 with the requirements of ISQM 1 and SQMS 1 and similarly concluded that there is significant overlap.

²⁴¹ See, *e.g.*, letters from BDO; Chamber; PICPA; and PWC.

²⁴² See letter from BDO.

²⁴³ See letter from PWC; see also, *e.g.*, letters from BDO and PICPA.

²⁴⁴ See Adopting Release, *supra* note 9, at 356–57.

²⁴⁵ See PCAOB response letter at 19–20.

²⁴⁶ See *supra* note 30.

unique risks and challenges, reducing the potential for duplicative efforts or unnecessary expenditures.

Relatedly, some commenters noted that, because certain provisions of the Amendments, such as the EQCF requirement, have a 100-issuer threshold, this threshold could deter triennially inspected firms from accepting new public company audit engagements or cause firms to feel compelled to consider reducing their issuer count to avoid crossing the 100-issuer threshold.²⁴⁷ We acknowledge this possibility, but for the reasons discussed below, we believe its economic effect is likely modest, as there is a limited number of firms near the 100-issuer threshold. PCAOB staff analysis of audit reports included in SEC filings identified that, during the 2022 calendar year, only two NAFs audited between 80 and 100 issuers and only two NAFs audited between 100 and 120 issuers. In addition, as discussed above, the Amendments provide firms with significant flexibility to implement the EQCF requirement, which should help to mitigate costs associated with this requirement and thus any potential incentives for firms near the 100-issuer threshold to alter their audit engagement practices.

Several commenters on the Proposing Release expressed the concern that competition in the audit market will be adversely impacted by the requirements.²⁴⁸ One commenter stated that the incremental requirements of QC 1000 relative to Other QC Standards could lead smaller high-quality firms to exit the market. One commenter said that the certification requirement would be an especially significant driver of exit, particularly for smaller firms. Some commenters suggested that the design-only requirement could lead those firms to deregister with the PCAOB or create a barrier to entry. One commenter added that the design-only requirement could impact audit markets beyond the United States by creating a disincentive for foreign firms to serve specific audit markets. One commenter also noted that QC 1000 requirements may serve as an impediment to audit firm mergers and acquisitions and otherwise perturb market activity.

We agree that the compliance costs associated with the QC 1000 requirements could lead some firms to exit the public company audit market, thereby lessening competition in that market. However, as discussed above, many firms already are, or will be,

subject to comparable standards and are unlikely to incur costs so substantial that they exit the public company audit market. Moreover, as also described above, the Amendments are targeted so that the largest firms, which would be less likely to exit the market, are the ones likely to incur the most significant costs. These factors considerably lessen the potential adverse impact on competition in the audit market.

D. Form QC Confidentiality

QC 1000 provides that a firm must report annually to the PCAOB on nonpublic Form QC, in accordance with the instructions to that form, the results of the evaluation of its QC system.²⁴⁹ The PCAOB explained in the Adopting Release that, although it recognized the desire of investors and other stakeholders for information related to audit quality and the effectiveness of QC systems, the Board's ability to require firms to publicly disclose their QC deficiencies is subject to certain legal constraints imposed by SOX as discussed in greater detail below.²⁵⁰

One commenter stated that they are concerned that the confidentiality protections of Section 105(b)(5)(A) of SOX related to information provided to the PCAOB through inspection does not appear to apply to information reported through Form QC and stated that the PCAOB's response to this issue in the Adopting Release appears to acknowledge that it cannot guarantee the confidentiality it promised under the proposed rule.²⁵¹ This commenter also suggested that any information required by QC 1000 should be submitted by firms to the PCAOB only through the inspections process to ensure that it would receive confidential treatment under SOX Section 105(b)(5)(A).²⁵²

We believe these concerns are largely misplaced. Certain information contained within a Form QC may be subject to the protections of SOX Section 105(b)(5)(A), which addresses documents and information prepared or received by or specifically for the Board in connection with an inspection or investigation. Furthermore, in certain circumstances, remedial actions reported in Form QC may be subject to laws relating to the confidentiality of proprietary, personal, or other information, and in such a scenario, the Board, in accordance with SOX Section 102(e) would need to honor a firm's properly substantiated request for

confidential treatment of such information.²⁵³ The PCAOB also adopted Rule 2203A(c), which provides that Form QC will be non-public, in light of the confidentiality provision that applies to quality control criticisms and potential defects identified during a PCAOB inspection in SOX Section 104(g)(2).²⁵⁴ To the extent that certain information contained within a Form QC meets the requirements of the statutory confidentiality protections described above, such protections would apply to that information to the same extent as any other information submitted to the PCAOB. We find such an approach to be appropriate in that it aligns the extent of the confidentiality of information in Form QC with the broader statutory framework created by Congress in SOX.

In response to this commenter's suggestion that any information required by QC 1000 should be submitted by firms to the PCAOB only through the inspections process, we believe that the information provided by Form QC, which in some cases would be provided more frequently than firms are inspected, would provide important information that could inform improvements in the PCAOB's standard-setting, economic and risk analysis, and registration program—separate and apart from the benefits of the PCAOB's inspection program which is focused on audit engagements.²⁵⁵ These improvements, in our view, would have concomitant benefits to audit quality and investors.

E. Evaluation Date

The Amendments require firms to evaluate their QC system annually as of September 30 and conclude whether any unremediated QC deficiencies exist as of that date.²⁵⁶ The PCAOB stated it believed an evaluation date of September 30 would provide firms with enough time to identify and potentially remediate any QC deficiencies identified from the most recent calendar year-end engagements, which might not be possible if an earlier date were selected.²⁵⁷ In addition, the PCAOB adjusted the specified evaluation date from the initially proposed date of November 30th to September 30th to address commenter concerns that the November 30th date would have caused

²⁵³ See 15 U.S.C. 7212(e); PCAOB Rule 2300(b). We understand that firms are accustomed to requesting and receiving confidential treatment from the Board.

²⁵⁴ See PCAOB Rule 2203A(c) as adopted.

²⁵⁵ See Adopting Release, *supra* note 9, at 263–64.

²⁵⁶ *Id.* at 245.

²⁵⁷ *Id.* at 246.

²⁴⁷ See, e.g., letter from Moss Adams.

²⁴⁸ See Adopting Release, *supra* note 9, at 361–62.

²⁴⁹ *Id.* at 258.

²⁵⁰ *Id.*

²⁵¹ See letter from BDO.

²⁵² *Id.*

potential resource limitations during the traditional busy period for many firms.²⁵⁸

Commenters raised concerns with the specified quality control evaluation date of September 30th, citing concerns including that a fixed evaluation date may misalign the assessment of quality with employee or partner compensation to the extent firms have established compensation cycles that do not align with the September 30th date, as well as concerns regarding the timing of the inspection cycle potentially limiting the firms' ability to fully assess the impact of inspections in their QC evaluation.²⁵⁹ One commenter additionally raised a concern that a firm that already chose its evaluation date under ISQM 1 would be required to either change its ISQM 1 evaluation date or perform two QC system evaluations per year.²⁶⁰

We agree with the PCAOB's conclusion that an evaluation date of September 30th would provide the audit firm with sufficient time to identify and potentially remediate QC deficiencies identified from the most recent calendar year-end engagements before the evaluation date. Given the ongoing nature of audits, which are driven by issuers' fiscal year-ends, firms' inspections cycles, and remediation activities, any fixed evaluation date will necessarily result in certain activities being split between QC evaluation years. The PCAOB's selected evaluation date of September 30 addressed the comments the PCAOB received on the proposal, as noted above, and we believe should provide time for a majority of inspections to be completed and considered in the same QC evaluation year. Moreover, including a specified evaluation date across firms provides for consistency and comparability of the firms' quality control reporting, which enhances the PCAOB's ability to assess and respond to firms' QC evaluations and thereby increases investor protection. We do not believe that firms that have already selected an evaluation date under Other QC standards would be required to perform two evaluations. First, QC 1000 allows firms to build on work already done, to the extent applicable, for the purpose of complying with the requirements of Other QC Standards. Second, firms are permitted to change their evaluation date under Other QC Standards so that the evaluation dates coincide.

F. Effective Date

As stated in the PCAOB's Adopting Release, QC 1000 and related amendments to auditing standards, rules, and forms will take effect on December 15, 2025.²⁶¹ The PCAOB stated that it believes an effective date of December 15, 2025 strikes an appropriate balance between the benefits to investors of having QC 1000 take effect as promptly as practicable, and allowing sufficient time for firms to design and implement robust, QC 1000-compliant QC systems.²⁶²

General

Commenters expressed concerns that the effective date would not provide firms with sufficient time to implement the new standard,²⁶³ with one commenter suggesting the Commission require the PCAOB to extend the implementation deadline.²⁶⁴ Another commenter stated that the PCAOB should have reopened the comment period for the Amendments to allow for additional comments on a reasonable effective date in light of the PCAOB's other recently proposed or adopted standards and rules.²⁶⁵

The PCAOB response letter reaffirms the Board's view stated above that the effective date of December 31, 2025 strikes a reasonable balance between providing firms with sufficient time and promptly delivering the benefits to investors.²⁶⁶ The PCAOB acknowledged that, subject to adoption by the PCAOB and approval by the Commission, several PCAOB standards and rules could come into effect over the next few years, and that the relevant audit labor market may be relatively inelastic in the short run. However, the PCAOB explained that implementing multiple PCAOB standards and rules in quick succession could potentially reduce the incremental costs attributable to each change in requirements, if, for example, firms were able to more efficiently implement certain systems or training on an integrated basis, addressing multiple new requirements simultaneously.²⁶⁷ We understand that the PCAOB took into consideration its full standard-setting and rulemaking agenda when selecting the effective date.²⁶⁸

In our view, December 15, 2025, is a reasonable effective date for the Amendments. Commenters on the Proposing Release, which specified an effective date of December 31, 2024, suggested a variety of alternatives, including several that suggested December 31, 2025 or 12 to 18 months after SEC approval. The PCAOB took this feedback into consideration when it revised the effective date to December 15, 2025. Significantly, this date aligns with the implementation date of the AICPA's SQMS 1 QC standard, which will be required for all U.S. audit firms that issue reports under AICPA standards, and which shares a basic structure with QC 1000. As a consequence, aligning the effective date of QC 1000 with SQMS 1 may reduce implementation costs for U.S. firms that are required to implement both. With respect to the commenter's concerns about the effective date as it relates to the EQCF requirement, we note that the PCAOB considered the implementation requirements of the EQCF in determining the appropriate effective date for QC 1000.²⁶⁹ Finally, with respect to the commenter's concerns about sufficient time being provided for the general implementation of other recently proposed and effective PCAOB standards, we acknowledge there are instances where more than one standard becomes effective within a six-month period; however, we think the effective dates are sufficiently staggered such that audit firms will have either already implemented, or largely implemented, some of the standards referenced by the commenter or will have sufficient time to do so before compliance with the Amendments is required.²⁷⁰

²⁶⁹ See Adopting Release, *supra* note 9, at 378.

²⁷⁰ For example, implementation efforts are expected to be largely completed for recently adopted PCAOB standards relating to the Supervision of Audits Involving Other Auditors and Dividing Responsibility for the Audit with Another Accounting Firm (effective for audits of financial statements for fiscal years ending on or after December 15, 2024), available at <https://www.sec.gov/files/rules/pcaob/2022/34-95488.pdf> and Auditor's Use of Confirmation (effective for audits of financial statements for fiscal years ending on or after June 15, 2025), available at <https://www.sec.gov/files/rules/pcaob/2023/34-99060.pdf>, as the fiscal years for which the standards apply have already begun. Certain other recently adopted rules and standards, for example Auditing Standard 1000, General Responsibilities of the Auditor in Conducting an Audit, available at <https://www.sec.gov/files/rules/pcaob/2024/34-100773.pdf> and Amendment to PCAOB Rule 3502 Governing Contributory Liability, available at <https://www.sec.gov/files/rules/pcaob/2024/34-100772.pdf>, are not expected to require significant implementation efforts due to minimal changes to performance requirements.

²⁵⁸ *Id.*

²⁵⁹ See, e.g., letters from BDO; Forvis Mazars; GT; Moss Adams; PICPA; and RSM.

²⁶⁰ See letter from BDO.

²⁶¹ See Adopting Release, *supra* note 9, at 378.

²⁶² *Id.*

²⁶³ See, e.g., letters from Forvis Mazars; Johnson Global; Moss Adams; and PICPA.

²⁶⁴ See letter from Moss Adams.

²⁶⁵ See letter from Chamber.

²⁶⁶ See PCAOB response letter at 21–22.

²⁶⁷ *Id.* at 27–28.

²⁶⁸ See PCAOB response letter at 27–28.

EQCF Considerations

One commenter raised concerns with the effective date specific to the EQCF requirement, stating that the approximately 18-month time period would not provide sufficient time to identify, vet, contract and onboard an EQCF.²⁷¹

The external oversight requirement was included in the standard that the PCAOB proposed for comment. While the PCAOB made some changes to the proposed requirement in response to commenters, such as providing additional specificity and clarity about the role, the changes made did not impact many of the fundamental requirements for the role such as the requirement for the individual or individuals filling the role to be able to exercise independent judgment with regard to matters related to the QC system, the requirement for one or more individuals to fill the role, and the significant flexibility provided to audit firms to design procedures that work best for their individual firm governance structure and requirements. We believe such changes should not have a significant impact on the timeline for firms to complete the hiring process for an EQCF, such that an extended effective date would be necessary (nor does the commenter explain why this would be so). We thus conclude the effective date as adopted is appropriate.

G. Other Comments

One commenter stated that the PCAOB's comment period for the Amendments was inadequate, or should have been reopened, in light of other Board proposals.²⁷² A few commenters stated that if the Amendments are approved, PCAOB engagement with firms during the implementation period is necessary.²⁷³ Several commenters encouraged the PCAOB to undertake a post-implementation review of the Amendments²⁷⁴ or provide implementation guidance.²⁷⁵

We acknowledge the importance of monitoring the implementation of the Amendments, prior and subsequent to their effective date. The PCAOB response letter states that the Board anticipates its staff will issue implementation guidance and will engage in other activities to support firms' implementation efforts.²⁷⁶

Further, the Commission staff works closely with the PCAOB as part of our general oversight mandate. As part of that oversight, Commission staff will keep apprised of the PCAOB's activities for monitoring the implementation of the Amendments, prior and subsequent to the effective date, and update the Commission, as necessary and appropriate. Finally, as discussed above regarding notice and comment considerations around the EQCF requirement, we believe 75 days was an appropriate period for commenters to provide feedback on the Proposing Release and note that, consistent with typical practice, the Board did not limit its consideration of comments to those received during its designated comment period but effectively provided for a longer comment period by considering all comments it received prior to the date of adoption.²⁷⁷

Some commenters reiterated comments made on the Concept Release and Proposing Release, including: concerns regarding the requirement that only one person be assigned operational responsibility for the firm's compliance with ethics and independence requirements;²⁷⁸ a belief that the Amendments are too prescriptive, especially in regards to the specified quality responses;²⁷⁹ disagreement that all engagement deficiencies require remediation;²⁸⁰ concerns that the Amendments differ from Other QC Standards and will require firms to have multiple QC systems;²⁸¹ and a request that smaller firms (e.g., triennially inspected firms that issue 100 or fewer issuer audit reports) be provided with the option to comply with ISQM 1 or SQMS 1 as an acceptable alternative to QC 1000.²⁸²

We acknowledge commenters concerns with these specific aspects of the Amendments and note that the PCAOB considered and addressed all of these matters in the Adopting Release.²⁸³ On balance, we find that the Amendments strike an appropriate balance between specified mandates to

enhance the effectiveness of its QC systems and to ensure they are designed and operated with an appropriate level of rigor, and providing appropriate flexibility to tailor such systems to the specific risks associated with the firm's practice or organizational structure. Further, we do not believe that the Amendments will require firms to maintain multiple systems of quality control. We find that QC 1000 shares the same basic structure as and is consistent with Other QC Standards and firms are able to build upon the work performed for Other QC Standards to implement incremental requirements from QC 1000. Neither we nor any commenters identified anything in QC 1000 that is incompatible with ISQM 1 or SQMS1. At least one registered public accounting firm has recently noted that the evolution of its system of quality management and its implementation of ISQM 1 has positioned the firm well to adapt to future regulatory developments, such as the quality control standard proposed by the PCAOB in November 2022.²⁸⁴

One commenter stated that the PCAOB response letter "addresses and provides additional clarity" on several of the questions it raised in the comment letter it submitted to the Commission, and the commenter asked the Commission to clarify whether the PCAOB response letter "can be viewed as equally authoritative as the Final Standard and Adopting Release."²⁸⁵ We view the statements in the PCAOB response letter as being on par with statements made by the Board in the Adopting Release about the scope and application of the QC 1000 requirements.

Additionally, there were requests for clarification regarding the definitions of "applicable professional and legal requirements,"²⁸⁶ "other participants,"²⁸⁷ "QC deficiency,"²⁸⁸ and "firm personnel"²⁸⁹ and how various requirements of the Amendments apply to non-employee professionals and organizations.²⁹⁰ These definitions and the question about non-employee professionals and organizations were addressed in the

²⁷⁷ The Proposing Release was issued on November 18, 2022, and it requested comments by February 1, 2023. See *supra* note 11. The comment file includes comments that were submitted through March 6, 2023, and the PCAOB stated in the Adopting Release that it considered all forty-two (42) comments it received. See Adopting Release, *supra* note 9, at 35.

²⁷⁸ See letter from BDO.

²⁷⁹ See letter from PICPA (recommending that the standard instead include more specified quality objectives, which would reduce barriers to entry by promoting scalability).

²⁸⁰ See letter from Forvis Mazars.

²⁸¹ See letters from Johnson Global and PICPA.

²⁸² See letter from Johnson Global.

²⁸³ See, e.g., Adopting Release, *supra* note 9, at 83, 42, 63–64, 246, 295, 60, and A1–43.

²⁸⁴ See PWC, 2023 Audit Quality Report at 49, available at <https://www.pwc.com/us/en/services/trust-solutions/library/pdfs/pwc-2023-audit-quality-report.pdf>.

²⁸⁵ See CAQ Supplemental Letter.

²⁸⁶ See letter from PICPA.

²⁸⁷ See letter from Johnson Global.

²⁸⁸ See letter from PICPA (stating that it disagrees that all engagement deficiencies are QC deficiencies and that a root cause analysis is required for a firm to assess whether a simple mistake is in fact a quality control deficiency).

²⁸⁹ See letter from Forvis Mazars.

²⁹⁰ *Id.*

²⁷¹ See letter from Moss Adams.

²⁷² See letter from Chamber.

²⁷³ See, e.g., letters from CAQ and PWC.

²⁷⁴ See, e.g., letters from CII; Consumer Federation of America; L. Turner (stating that the SEC should instruct the PCAOB to conduct a post-implementation review); and Members of the IAG.

²⁷⁵ See letters from GT and RSM.

²⁷⁶ See PCAOB response letter at 28.

Adopting Release,²⁹¹ and to the extent additional clarity is needed, we note that the Board stated in the PCAOB response letter that it anticipates that its staff will issue implementation guidance and will engage in other activities to support firms' implementation efforts.²⁹²

IV. Effect on Emerging Growth Companies

In the Notice of Filing of Proposed Rules, the Board recommended that the Commission determine that the Amendments apply to audits of EGCs.²⁹³ Section 103(a)(3)(C) of SOX requires that any rules of the Board requiring mandatory audit firm rotation or a supplement to the auditor's report in which the auditor would be required to provide additional information about the audit and the financial statements of the issuer (auditor discussion and analysis) shall not apply to an audit of an EGC.²⁹⁴ The provisions of the Amendments do not fall into these categories.

Section 103(a)(3)(C) further provides that "[a]ny additional rules" adopted by the PCAOB after April 5, 2012 do not apply to audits of EGCs "unless the Commission determines that the application of such additional requirements is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation."²⁹⁵ The Amendments fall within this category. Having considered those statutory factors, we find that applying the Amendments to the audits of EGCs is necessary or appropriate in the public interest.

With respect to the Commission's determination of whether the Amendments will apply to audits of EGCs, the PCAOB provided data and analysis of EGCs identified by the Board's staff from public sources that sets forth its views as to why the Amendments should apply to audits of EGCs.²⁹⁶

The Board states that the discussion of economic impacts of the QC 1000 requirements is generally applicable to the audits of EGCs. The benefits to financial reporting quality, including improved efficiency of capital allocation, lower cost of capital, and

enhanced capital formation, are also pertinent to EGCs. The Board states that EGCs tend to be smaller and have a shorter SEC financial reporting history than the broader population of issuers. The Board cites to academic research that suggests that, for several reasons, smaller issuers tend to exhibit greater information asymmetry between management and investors. Also, PCAOB staff gathered information on Part I.A deficiencies for the audits of EGCs between 2013 and 2022, and these data suggest that Part I.A deficiencies are more common among audits of EGCs, raising questions about whether QC systems of firms that audit EGCs are effective in preventing audit deficiencies for these types of audit engagements. We agree that the benefits of the QC 1000 requirements are also relevant to EGCs.

The Board acknowledges that to the extent the compliance costs associated with the QC 1000 requirements lead some smaller audit firms, such as some NAFs, to exit the public company audit market, then EGCs could be adversely impacted. PCAOB staff analysis indicates that, compared to exchange-listed non-EGCs, exchange-listed EGCs are approximately 2.6 times as likely to be audited by an NAF.

The Board presents evidence that a large number of audit firms, including smaller audit firms, serve EGCs. PCAOB staff analysis indicates that, as of November 15, 2022, there were 3,031 companies that self-identified as EGCs and filed audited financial statements with the Commission between May 16, 2021, and November 15, 2022. Of the 263 registered firms that audited EGCs, 227 firms (or 86%) performed audits for both EGC and non-EGC issuers.

Approximately 98% of EGCs were audited by these 227 firms. These data suggest that the impact on EGCs of any exit by some smaller audit firms, as a result of the requirements, would likely be limited. For this reason, we expect that any potential adverse impact on EGCs and their ability to be competitive in their product markets will be modest.

In addition, the Board sought public input on the application of the Amendments to the audits of EGCs. Those commenters that responded to the Board agreed the Amendments should apply to the audits of EGCs.²⁹⁷ In the Adopting Release, the Board

explained that, in general, any new PCAOB standards and amendments to existing standards determined not to apply to the audits of EGCs would require auditors to address differing requirements within their methodologies or policies and procedures with respect to audits of EGCs and non-EGCs, which would create the potential for confusion.²⁹⁸ The Board further stated this may not be practical in the context of the QC standards because while some components of the QC system (such as engagement monitoring) may enable different approaches for audits of EGCs compared to audits of other companies, other elements (for example, resources and governance and leadership) are necessarily firm-wide and cannot easily be differentiated for different types of audits.²⁹⁹ The Board further stated that even where differentiation is possible, maintaining separate components for EGC and non-EGC audits may add cost or lead to confusion, and could run counter to the objective of integrating QC practices into a single continuous cycle of risk assessment, monitoring, and remediation.³⁰⁰

In addition, the Board stated that the benefits of the higher audit quality resulting from the Amendments may be more pertinent for EGCs than for non-EGCs, including improved efficiency of market capital allocation, lower cost of capital, and enhanced capital formation.³⁰¹ The Amendments are expected to enhance audit quality and contribute to an increase in the credibility of financial reporting by EGCs, which are newer to the capital markets than typical non-EGCs.³⁰²

We agree with the Board's analysis and further emphasize the benefits discussed by the PCAOB, including higher audit quality leading to improved efficiency of capital allocation, lower cost of capital, and enhanced capital formation with respect to EGCs. As noted above, these improvements in the quality of the audit may be more pronounced on the audits of EGCs. While improvements in audit quality benefit all investors, such improvements may particularly benefit investors in

²⁹⁸ See Adopting Release, *supra* note 9, at 376.

²⁹⁹ *Id.*

³⁰⁰ *Id.*

³⁰¹ *Id.* at 376–77. Also, PCAOB staff gathered information on Part I.A deficiencies for the audits of EGCs between 2013 and 2022, analyzing the percentage of inspected EGC and non-EGC issuer audits having at least one Part I.A deficiency. These data suggest that Part I.A deficiencies are even more common among audits of EGCs, raising questions about whether QC systems of firms that audit EGCs are effective in preventing audit deficiencies for these types of audit engagements. *Id.* at 375.

³⁰² *Id.* at 377.

²⁹¹ See, e.g., Adopting Release, *supra* note 9, at A1–43, A1–42, A1–43, A1–42, and 47–48.

²⁹² See PCAOB response letter at 28.

²⁹³ See Notice of Filing of Proposed Rules, *supra* note 3.

²⁹⁴ 15 U.S.C. 7213(a)(3)(C).

²⁹⁵ *Id.*

²⁹⁶ See Adopting Release, *supra* note 9, at 374–77.

²⁹⁷ See, e.g., letter received by the PCAOB on the Proposing Release from Ernst and Young, LLP (Feb. 1, 2023) (stating "[w]e believe the proposal should apply to the audits of both emerging growth companies (EGCs) and non-EGC issuers."), available at https://assets.pcaobus.org/pcaob-dev/docs/default-source/rulemaking/docket046/30-ey.pdf?sfvrsn=34762808_4.

EGCs by increasing the credibility of their financial reporting given that they are typically newer to the capital markets and feature a higher degree of information asymmetry between management and investors. Improvements in audit quality provide investors with more accurate information, which helps them make more informed investment decisions. More accurate information in financial statements may also increase investors' confidence and, in turn, facilitate capital formation.

To the extent that an EGC's auditor's existing quality control standards do not meet the requirements under QC 1000 and the changes that auditors make to their quality control system impact the performance of audit engagements, this could lead to a spillover externality effect whereby EGCs themselves may have to incur additional costs. For example, an EGC could have to allocate more resources to its own internal control systems or to additional requests for more extensive or additional evidence from audit firms.³⁰³ While this could be costly to the EGC, enhanced internal control over financial reporting at the EGC and audits that are performed in compliance with applicable professional standards are expected to also benefit investors. Audit firms may also raise audit fees for EGCs as a result of implementing QC 1000. Higher audit-related costs, in the form of EGCs' costs to support the audit and/or in fees paid to auditors, would in turn raise EGCs' overall costs and possibly adversely impact their ability to be competitive in the product markets that they operate. These potential costs to EGCs will be reduced to the extent EGC auditors will already be required to comply with the Other QC Standards or may choose not to pass on their incremental costs arising from the QC 1000 requirements in the form of higher audit fees. As discussed above, Commission analysis shows that approximately 88% of registered firms performing PCAOB engagements will, by the effective date of QC 1000, already be subject to quality control requirements that share a basic structure with the requirements in QC 1000. PCAOB staff analysis also shows that approximately 98% of EGCs were audited by firms that performed audits for both EGC and non-EGC issuers.³⁰⁴

³⁰³ See Alexander, C., S. Bauguess, G. Bernile, Y. A. Lee, and J. Marietta-Westberg (2013) "Economic Effect of SOX Section 404 Compliance: A Corporate Insider Perspective," *Journal of Accounting and Economics*, at 56, 267–290. Based on a survey data, this paper shows the compliance costs of SOX 404 weigh disproportionately on smaller firms.

³⁰⁴ See Adopting Release, *supra* note 9, at 375.

Therefore, for 98% of EGCs being audited, there likely would be minimal incremental costs for QC 1000 to apply to EGCs, either due to their auditor implementing QC 1000, as required to audit its other issuers, or implementing the Other QC Standards.

Accordingly, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation, we believe there is a sufficient basis to determine that applying the Amendments to the audits of EGCs is necessary or appropriate in the public interest.³⁰⁵

V. Conclusion

The Commission has reviewed and considered the Amendments, the information submitted therewith by the PCAOB, the comment letters received, and the recommendation of the Commission's staff. The Commission concludes that the determinations made by the PCAOB as described in the Adopting Release are reasonable. Generally, the Amendments establish an integrated, risk-based quality control standard that can be applied by firms of varying sizes and complexities and that will lead registered public accounting firms to significantly improve their quality control systems, thereby improving audit quality and investor protection. Specifically, the Amendments make the following important changes, among others, to the existing quality control standards, which will advance the Board's investor protection mandate under SOX:

- Replace the current standards, which: (i) were developed by the AICPA, a professional organization for certified public accountants; (ii) were last updated in 1997; (iii) focus on evaluating firms' compliance with their own policies; (iv) do not require evaluation or reporting; and (v) do not contain express obligations for firms to perform any specific monitoring;
- Incorporate a risk-based approach to quality control, driving firms to proactively identify and manage the specific risks associated with their

³⁰⁵ As noted above, during the Commission's comment period, two commenters raised concerns that the design-only requirement would burden smaller firms, which could impact smaller issuers and broker-dealers, including emerging growth companies. See letters from Chamber and PICPA. Although these commenters mentioned EGCs in the context of commenting on the design-only requirement, neither suggested that firms should be required to apply different quality control standards to the audits of EGCs versus non-EGCs. For the reasons stated above, we agree with the Board that QC 1000 should apply to all registered public accounting firms, including with respect to the audits of EGCs, because of the firm-wide nature of QC systems.

practices, along with a set of mandates, tailored to the size of the audit practice, which should assure that the quality control system is designed, implemented, and operated with an appropriate level of rigor;

- Emphasize the importance of accountability and firm governance through requirements around roles and responsibilities, assigning operational responsibility to individuals for particular aspects of the QC system, and the introduction of a certification by certain responsible individuals; and

- Create a framework for evaluation and reporting to the PCOAB which will be consistently applied across all firms operating a QC system under QC 1000.

Therefore, in connection with the PCAOB's filing and the Commission's review,

A. The Commission finds that the Amendments are consistent with the requirements of Title I of SOX and the rules and regulations thereunder and are necessary or appropriate in the public interest or for the protection of investors; and

B. Separately, the Commission finds that the application of the Amendments to the audits of EGCs is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation.

It is therefore ordered, pursuant to section 107 of SOX and section 19(b)(2) of the Exchange Act, that the Amendments (File No. PCAOB–2024–02) be and hereby are approved.

By the Commission.

Vanessa A. Countryman,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100964; File No. SR–NYSEAMER–2024–52]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Existing Note in the Connectivity Fee Schedule

September 6, 2024.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 (“Act”) ² and Rule 19b–4 thereunder, ³ notice is hereby given that on August

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

27, 2024, NYSE American LLC (“NYSE American” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the existing note in the Connectivity Fee Schedule (“Fee Schedule”) regarding cabinet and combined waitlists. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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

1. Purpose

The Exchange proposes to amend the existing note in the Fee Schedule regarding cabinet and combined waitlists.

Background

Shortly after the onset of the Covid-19 pandemic, the Exchange began experiencing unprecedented User ⁴

demand for cabinets and power at the Mahwah, New Jersey data center (“MDC”).⁵ In order to manage its inventory, in late 2020, the Exchange filed to create purchasing limits and a waitlist for cabinet orders (“Cabinet Waitlist”).⁶ In early 2021, the Exchange filed to create additional purchasing limits and a waitlist for orders for additional power in the MDC.⁷

In 2021 and 2022, the Exchange expanded the amount of space and power available in the MDC by opening a new colocation hall (*i.e.*, Hall 4). ICE is currently expanding the amount of colocation space and power available at the MDC through a new colocation hall (*i.e.*, Hall 5).

The Exchange subsequently amended the Fee Schedule to provide an alternative procedure by which the Exchange can allocate power in the Mahwah Data Center via deposit-guaranteed orders from Users made within a 90-day “Ordering Window.”⁸ The Ordering Window procedure was designed with the goal of addressing both (a) whether customer demand would support additional expansion projects to provide further power, and (b) the fact that previous procedures in the Fee Schedule were not well-tailored to allocating large amounts of power that become available all at once, such as when a new colocation hall opens.⁹ Orders received during an Ordering Window are not considered finalized until the Exchange has received the User’s signed order form and a deposit equal to two months’ worth of the monthly recurring costs of the amount of new power ordered.

same proposed rule change to propose the changes described herein. *See* SR-NYSE-2024-49, SR-NYSEARCA-2024-71, SR-NYSECHX-2024-27, and SR-NYSEAT-2024-24.

⁵ Through its Fixed Income and Data Services (“FIDS”) (previously ICE Data Services) business, Intercontinental Exchange, Inc. (“ICE”) operates the MDC. The Exchange and the Affiliate SROs are indirect subsidiaries of ICE.

⁶ *See* Securities Exchange Act Release No. 90732 (December 18, 2020), 85 FR 84443 (December 28, 2020) (SR-NYSE-2020-73, SR-NYSEAMER-2020-66, SR-NYSEARCA-2020-82, SR-NYSECHX-2020-26, and SR-NYSEAT-2020-28) (establishing the procedures in current Colocation Note 6(a) and 7(a)).

⁷ *See* Securities Exchange Act Release No. 91515 (April 8, 2021), 86 FR 19674 (April 14, 2021) (SR-NYSE-2021-12, SR-NYSEAMER-2021-08, SR-NYSEARCA-2021-11, SR-NYSECHX-2021-02, and SR-NYSEAT-2021-03) (establishing the procedures in current Colocation Note 6(b) and 7(b)).

⁸ *See* Securities Exchange Act Release No. 98937 (November 14, 2023), 88 FR 80795 (November 20, 2023) (SR-NYSE-2023-29, SR-NYSEAMER-2023-39, SR-NYSEARCA-2023-53, SR-NYSECHX-2023-16, and SR-NYSEAT-2023-18) (“Ordering Window Approval Order”).

⁹ *Id.*, at 80794.

The Exchange had a power and cabinet waitlist (“Combined Waitlist”) in place before the Ordering Window. The Exchange found that when the Combined Waitlist was in effect, approximately ⅔ of its offers of power were rejected. Users further down the Combined Waitlist received power only after those higher up the Combined Waitlist were offered the power and rejected it. As a result, the Users that actually wanted power received it only after a delay that lasted weeks or even months.

Proposed Changes

In response, the Exchange proposes to amend Fee Schedule Colocation Note 7 (Cabinet and Combined Waitlists) (“Note 7”) to require that Users wanting to be placed on a waitlist must guarantee their order with a deposit.¹⁰ Requiring Users to submit deposits with their orders in order to be placed on the waitlist would help avoid delays for Users further down the list, by encouraging Users to carefully assess their true power and cabinet needs and protecting against Users ordering more power or cabinets than they actually intend to purchase. Requiring Users to submit deposits along with their orders was approved by the Commission in the Exchange’s Ordering Window filing,¹¹ and so the deposit requirement here would not be novel.

To implement the change, Note 7(a), which sets forth the practices the Exchange follows for a Cabinet Waitlist, would be revised to provide that a User would be placed on the Cabinet Waitlist based on the date its finalized order is received, and that a User’s order would be finalized when the Exchange receives (a) User’s signed order form and (b) a deposit equal to two months’ worth of the monthly recurring costs of the power requested for the cabinets ordered.¹²

Note 7(b), which sets forth the practices the Exchange follows for a Combined Waitlist, similarly would be revised to provide that a User would be placed on the Combined Waitlist based

¹⁰ The proposed change would not apply to Users that are already on a waitlist at the time the proposed change becomes operative.

¹¹ *See* Ordering Window Approval Order, *supra* note 8.

¹² Because monthly charges are calculated based on power, not on cabinets, the Exchange proposes to calculate the deposit based on the power requested for the cabinets ordered. In such a case, the deposit would be calculated as (a) the number of kilowatts allocated to the cabinets the User is ordering, multiplied by (b) the appropriate “Per kW Monthly Fee” as indicated in the Connectivity Fee Schedule. The Per kW Monthly Fee is a factor of the total number of kilowatts allocated to all of a User’s dedicated cabinets and varies based on the total kilowatts allocated to a User.

⁴ For purposes of the Exchange’s colocation services, a “User” means any market participant that requests to receive colocation services directly from the Exchange. *See* Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR-NYSEMKT-2015-67). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the New York Stock Exchange LLC (“NYSE”), NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (together, the “Affiliate SROs”). Affiliate SROs. Each Affiliate SRO has submitted substantially the

on the date its finalized order for cabinets and/or additional power is received, and that a User's order would be finalized when the Exchange receives (a) User's signed order form and (b) a deposit equal to two months' worth of the monthly recurring costs of (i) the power requested for the cabinets ordered and/or (ii) the additional power ordered.¹³

Note 7(a) and (b) would be revised to provide that:

- If a User changes the size of its order while it is on the Cabinet or Combined Waitlist, as the case may be, and any additional deposit is received by the Exchange, it will maintain its place, provided that the User may not increase the size of its order such that it would exceed the Cabinet Limits or Combined Limits, as applicable.
- If a User wishes to reduce the size of its order while it is on the Cabinet or Combined Waitlist, its deposit would not be reduced or returned, but rather would be applied against the User's first and subsequent months' invoices after cabinets are, and/or the power is, delivered until the deposit is depleted.
- If the User removes its order from the Cabinet Waitlist or Combined Waitlist, its deposit will be returned.
- A User that is removed from the Cabinet or Combined Waitlist but subsequently submits a new finalized order for cabinets and/or additional power will be added back to the bottom of the waitlist.
- The deposit will be applied to the User's first and subsequent months' invoices after the cabinets are and/or additional power is delivered until the deposit is completely depleted.

General

The proposed changes would not apply differently to distinct types or sizes of market participants. Rather, they would apply to all Users equally. As is currently the case, the Fee Schedule would be applied uniformly to all Users. FIDS does not expect that the proposed rule change will result in new Users.

The proposed changes are not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that

customers would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁵ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁶ because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposed change is reasonable because requiring Users to submit deposits with their orders in order to be placed on the waitlist would help avoid delays for Users further down the list, by encouraging Users to carefully assess their true power and cabinet needs and protecting against Users ordering more power or cabinets than they actually intend to purchase. Without firm, guaranteed commitments from waitlisted Users to purchase cabinets or power if made available, the Exchange runs the risk of overestimating waitlisted Users' true demand, creating delays for Users further down the list. The proposed deposit requirement would address this by discouraging waitlisted Users from submitting orders for more cabinets or power than they actually intend to purchase.

The proposed deposit requirement is reasonable because, on the one hand, it is not so onerous as to dissuade Users from submitting orders, and, on the other hand, it is not so trivial that it would fail to deter Users from submitting exaggerated orders. It is

substantially similar to the deposit provision already required under the Ordering Window, and as such, the deposit requirement here would not be novel.¹⁷

In addition, the Exchange believes that the proposed change is reasonable because the deposit is proportional to the size of the order, and not a fixed amount. As a result, smaller Users would not be disproportionately affected by the deposit requirement.

Under the proposed procedure, if a User wishes to reduce an order while on a waitlist, its deposit would not be reduced or returned, but rather would be applied against the User's first and subsequent months' invoices after the cabinets are, or the power is, delivered until the deposit is completely depleted. The Exchange believes that this would remove impediments and perfect the mechanism of a free and open market and a national market system because a waitlisted User would be reimbursed for all of its deposit even if it reduces its order. This would remove any incentive a User otherwise might have to understate its needs for cabinets and/or power out of a concern that it would not be reimbursed for the full amount of its deposit.

The Proposed Change Is Equitable and Not Unfairly Discriminatory

The Exchange believes that the proposed change provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed changes would apply equally to all types and sizes of market participants. All Users would receive equal notice of the deposit requirement through the proposed changes to Note 7, and the deposit requirement would be the same for all Users. Smaller Users with more modest power needs would not be disadvantaged by the proposed changes, as the deposit is proportional

¹³ The deposit would be calculated as (a) the number of kilowatts allocated to the cabinets the User is ordering, if any, plus the number of kilowatts of additional power, multiplied by (b) the appropriate "Per kW Monthly Fee" as indicated in the Connectivity Fee Schedule. The Per kW Monthly Fee is a factor of the total number of kilowatts allocated to all of a User's dedicated cabinets and varies based on the total kilowatts allocated to a User.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ 15 U.S.C. 78f(b)(4).

¹⁷ See Ordering Window Approval Order, *supra* note 8. The NYSE requires market participants to submit deposits in other contexts as well. For example, since 2012, the NYSE has required prospective issuers to pay a \$25,000 initial application fee as part of the process for listing a new security on the exchange. This fee functions as a deposit that is credited toward the issuer's listing fees after it is listed on the exchange. The deposit functions as "a disincentive for impractical applications by issuers." The deposit is forfeited if the issuer does not ultimately list on the exchange. See Securities Exchange Act Release No. 68470 (December 19, 2021), 77 FR 76116 at 76117 (December 26, 2012) (SR-NYSE-2012-68).

to the size of the order and not a fixed amount.

The proposed deposit requirement is equitable because, on the one hand, it is not so onerous as to dissuade Users from submitting orders, and, on the other hand, it is not so trivial that it would fail to deter Users from submitting exaggerated orders. It is substantially similar to the deposit provision already required under the Ordering Window, and as such, the deposit requirement here would not be novel.¹⁸

Under the proposed procedure, if a User wishes to reduce an order while on a waitlist, its deposit would not be reduced or returned, but rather would be applied against the User's first and subsequent months' invoices after the cabinets are, or the power is, delivered until the deposit is completely depleted. The Exchange believes that this is equitable because a waitlisted User would be reimbursed for all of its deposit even if it reduces its order. This would remove any incentive a User otherwise might have to understate its needs for cabinets and/or power out of a concern that it would not be reimbursed for the full amount of its deposit.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms, and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

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

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.¹⁹

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to help avoid delays for waitlisted Users, by encouraging Users to carefully assess their true power and cabinet needs and protecting against Users ordering more power or cabinets than they actually intend to purchase. Without firm, guaranteed commitments from waitlisted Users to purchase cabinets or

power if made available, the Exchange runs the risk of overestimating waitlisted Users' true demand, creating delays for Users further down the list. The proposed deposit requirement would address this by discouraging waitlisted Users from submitting orders for more cabinets or power than they actually intend to purchase, thereby facilitating a more equitable distribution of cabinets and power. Moreover, the Ordering Window already requires a deposit, and as such, the deposit requirement here would not be novel.²⁰

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

No written comments were solicited or received with respect to the proposed rule change.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act²¹ and Rule 19b-4(f)(6) thereunder.²² Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.²³

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)²⁴ of the Act to determine whether the proposed rule

change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEAMER-2024-52 on the subject line.

Paper Comments

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

All submissions should refer to file number SR-NYSEAMER-2024-52. This file number should be included on the subject line if email 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 (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEAMER-2024-52 and should be submitted on or before October 3, 2024.

¹⁸ See Ordering Window Approval Order, *supra* note 8.

¹⁹ 15 U.S.C. 78f(b)(8).

²⁰ See Ordering Window Approval Order, *supra* note 8.

²¹ 15 U.S.C. 78s(b)(3)(A)(iii).

²² 17 CFR 240.19b-4(f)(6).

²³ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²⁴ 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–20638 Filed 9–11–24; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2024–0031]

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or

fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA. You may submit your comments online through <https://www.reginfo.gov/public/do/PRAMain>, referencing Docket ID Number [SSA–2024–0031].

(SSA) Social Security Administration, OLCA, Attn: Reports Clearance Director, Mail Stop 3253 Altmeyer, 6401 Security Blvd., Baltimore, MD 21235, Fax: 833–410–1631. Email address: OR.Reports.Clearance@ssa.gov. Or you may submit your comments online through <https://www.reginfo.gov/public/do/PRAMain> by clicking on Currently under Review—Open for Public Comments and choosing to click on one of SSA's published items.

Please reference Docket ID Number [SSA–2024–0031] in your submitted response.

The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than November 12, 2024.

Individuals can obtain copies of the collection instruments by writing to the above email address.

1. Work Activity Report—Employee—20 CFR 404.1520(b), 404.1571–404.1576, 404.1584–404.1593, and 416.971–404.976—0960–0059. Section 223(d) of the Social Security Act (Act) defines the term “disability” as the inability to engage in any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment which one expects to result in death, or which lasted or is expected to last for a continuous period of not less than 12 months. Social Security Disability (SSDI) and Supplemental Security Income (SSI) applicants or recipients can become entitled to payments based on their inability to engage in SGA because of a physical or mental condition. SSA uses Form SSA–821–BK to obtain work information during the initial claims process; the continuing disability review process; post-adjudicative work issue actions; and for Supplemental Security Income (SSI) claims involving work issues. SSA reviews and evaluates the data to determine if the applicant or recipient meets the disability requirements of the law. The respondents are applicants or recipients of Title II Social Security Disability, and Title XVI SSI applicants.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office or for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
SSA–821–BK In Office	64,330	1	30	32,165	* \$13.30	** 24	*** 770,030
SSA–821–BK Phone	128,660	1	30	64,330	* 13.30	** 19	*** 1,397,458
SSA–821–BK Returned Via Mail	192,990	1	40	128,660	* 13.30	.....	*** 1,710,380
SSA–821–BK Electronic	25,320	1	45	18,990	* 13.30	.....	*** 252,567
Totals	411,300	.....	.....	244,145	.....	.....	*** 4,130,435

* We based this figure on the average of both DI payments based on SSA's current FY 2024 data (<https://mwww.ba.ssa.gov/legislation/2024FactSheet.pdf>), and U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (https://www.bls.gov/oes/current/oes_nat.htm).

** We based this figure on averaging the average FY 2024 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

2. Claimant's Medication—20 CFR 404.1512, 416.912—0960–0289. To receive Old Age Survivors and Disability Insurance (OASDI) and SSI payments, the relevant State Disability Determination Service (DDS) or field office (FO) must first adjudicate claimants' applications. If the DDS or FO denies an initial application, the claimants may request for

reconsideration of the initial denial. At that time, the claimants may submit additional documentation to further justify their claims. If the DDS denies the claim at the reconsideration level, the claimant may then request a hearing before a judge. Before the hearing, SSA allows the claimant to submit additional evidence to support their claim. In addition, since judges must obtain

information from the claimant to update and complete their medical record and to verify the accuracy of the information, SSA also sends the claimant Form HA–4632, Claimant's Medications, to request information from the claimant regarding the current medications they use. This information helps the judge overseeing the case to fully investigate: (1) the claimant's

²⁵ 17 CFR 200.30–3(a)(12).

medical treatment and (2) the effects of the medications on the claimant's medical impairments and functional capacity. The judge makes the completed form a part of the

documentary evidence of record, placing it in the official record of the proceedings as an exhibit. The respondents are applicants (or their representatives) for OASDI or SSI

payments who request a hearing to contest an agency denial of their claim.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
HA-4632—PDF/paper version	51,000	1	20	17,000	*\$13.30	** 21	***\$463,505
Electronic Records Express Submissions ...	249,000	1	20	83,000	* 31.48	.....	*** 2,612,840
Totals	300,000	.....	.....	100,000	.....	.....	*** 3,076,345

* We based this figure on the average DI payments based on SSA's current data (<https://www.ssa.gov/legislation/2024FactSheet.pdf>) and on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (https://www.bls.gov/oes/current/oes_nat.htm).

** We based this figure on averaging both the average FY 2024 wait times for field offices and teleservice centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

3. Questionnaire for Children Claiming SSI Benefits—20 CFR 416.912(a)—0960–0499. Sections 1614 and 1631 of the Act allows SSA to determine the eligibility of an applicant's claim for SSI payments. Parents or legal guardians seeking to obtain or retain SSI eligibility for their

children use Form SSA-3881-BK to provide SSA with the addresses of non-medical sources such as schools, counselors, agencies, organizations, or therapists who would have information about a child's functioning. SSA uses this information to help determine a child's claim or continuing eligibility

for SSI. The respondents are the parents, guardians, or other caretakers of: (1) applicants who appeal SSI childhood disability decisions; or (2) recipients undergoing a continuing disability review.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA-3881-BK (Paper Version)	98,307	1	30	49,154	*\$31.48	** 24	***\$2,785,256
SSA-3881-BK (Intranet Version)	52,936	1	30	26,468	* 31.48	** 21	*** 1,416,474
Totals	151,243	.....	.....	75,622	.....	.....	*** 4,201,730

* We based this figure on average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (https://www.bls.gov/oes/current/oes_nat.htm).

** We based this figure on the average FY 2024 wait times for field offices and hearings office, as well as by averaging both the average FY 2024 wait times for field offices (24 minutes) and teleservice centers (19 minutes), based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

4. Requests for Self-Employment Information, Employee Information, and Employer Information—20 CFR 422.120—0960–0508. When SSA cannot identify Form W-2 wage data for an individual, we place the data in an earnings suspense file and contact the individual (and certain instances the

employer) to obtain the correct information. If the respondent furnishes the name and Social Security Number (SSN) information that agrees with SSA's records, or provides information that resolves the discrepancy, SSA adds the reported earnings to the respondent's Social Security record. We

use Forms SSA-L2765, SSA-L3365, and SSA-L4002 for this purpose. The respondents are self-employed individuals and employees whose name and SSN information do not agree with their employer's and SSA's records.

Type of Request: Revision of an OMB approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) **		Total annual opportunity cost (dollars) ***
SSA-L2765 *	1	1	10	1	**\$31.48	.....	***\$31.48
SSA-L3365 *	1	1	10	1	** 31.48	.....	*** 31.48
SSA-L4002 *	1	1	10	1	** 31.48	.....	*** 31.48

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) **		Total annual opportunity cost (dollars) ***
Totals	1	.....	.....	3	.....	.....	*** 94

* SSA does not currently send out any of these collections; however, we included 1 hour burden placeholders for each collection, in the event we need to send these notices out in the near future.

** We based this figure on average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (https://www.bls.gov/oes/current/oes_nat.htm).

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

5. Function Report—Child (Birth to 1st Birthday, Age 1 to 3rd Birthday, Age 3 to 6th Birthday, Age 6 to 12th Birthday, Age 12 to 18th Birthday)—20 CFR 416.912 and 416.924a(a)(2)—0960–0542. As part of SSA's disability determination process, we use Forms SSA–3375–BK through SSA–3379–BK to request information from a child's parent or guardian for children applying for SSI. The five different versions of the form contain questions about the child's

day-to-day functioning appropriate to a particular age group; thus, respondents use only one version of the form for each child. The adjudicative team (disability examiners and medical or psychological consultants) of State disability determination services offices collect the information on the appropriate version of this form (in conjunction with medical and other evidence) to form a complete picture of the children's ability to function and

their impairment-related limitations. The adjudicative team uses the completed profile to determine: (1) if each child's impairment(s) results in marked and severe functional limitations; and (2) whether each child is disabled. The respondents are parents and guardians of child applicants for SSI.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion (paper & Intranet versions)	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office or teleservice center (minutes) **	Total annual opportunity cost (dollars) ***
SSA–3375	26,864	1	20	8,955	* \$31.48	** 21	*** \$577,878
SSA–3376	53,347	1	20	17,782	* 31.48	** 21	*** 1,147,540
SSA–3377	108,745	1	20	36,248	* 31.48	** 21	*** 2,339,247
SSA–3378	193,800	1	20	64,600	* 31.48	** 21	*** 4,168,896
SSA–3379	142,006	1	20	47,335	* 31.48	** 21	*** 3,054,725
Totals	524,762	.....	.....	174,921	.....	.....	*** 11,288,286

* We based this figure on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (https://www.bls.gov/oes/current/oes_nat.htm).

** We based this figure on the average FY 2024 wait times for field offices (24 minutes) and Teleservice Centers (19 minutes), based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

6. Representative Payee Report of Benefits and Dedicated Account—20 CFR 416.546, 416.635, 416.640, and 416.665—0960–0576. SSA requires representative payees (RPs) to manage the dedicated account in accordance with our rules, including using the funds for permitted expenditures and reporting on the use of funds. When the SSI recipient requires a dedicated account, SSA notifies the RP to inform them of the need to open the dedicated

account and of the rules for managing a dedicated account, including the required submission of a written report accounting for the use of money paid to Social Security or Supplemental Security Income (SSI) recipients into the dedicated account. SSA allows the respondent to submit their own written report, or use Form SSA–6233, which simplifies the process for the respondents. SSA uses Form SSA–6233 to: (1) ensure the RPs use the payments

for the recipient's current maintenance and personal needs and properly conserves the remainder; and (2) confirm the funds paid into the dedicated account are spent and saved in compliance with the law. Respondents are RPs for SSI and Social Security recipients.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office or for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
SSA-6233	68,000	1	20	22,667	* \$31.48	** 21	*** \$1,462,781

* We based this figure on average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (https://www.bls.gov/oes/current/oes_nat.htm#00-0000).

** We based this figure on averaging both the average FY 2024 wait times for field offices (24 minutes) and teleservice centers (19 minutes), based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

7. Sheltered Workshop Wage Reporting—0960–0771. Sheltered workshops are private non-profit organizations or institutions that implement a recognized program of rehabilitation for handicapped workers or provide such workers with remunerative employment or other occupational rehabilitative activity of an

educational or therapeutic nature. Sheltered workshops perform a service for their clients by reporting monthly wages directly to SSA. SSA uses the information these workshops provide to verify and post monthly wages to SSI recipient's records. Most workshops report monthly wage totals to their local SSA office, so we can adjust the client's

SSI payment amount in a timely manner and prevent overpayments. Sheltered workshops are motivated to report wages voluntarily as a service to their clients. Respondents are sheltered workshops that report monthly wages for services performed in the workshop.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Total number of responses	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
Sheltered Workshop Wage Reporting	244	12	2,928	15	732	* \$23.28	** 24	*** \$19,322

* We based this on average Rehabilitation Counselors hourly salary, as reported in Bureau of Labor Statistics data (<https://www.bls.gov/oes/current/oes211015.htm>).

** We based this figure on the average FY 2024 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

Dated: September 9, 2024.

Naomi Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2024–20713 Filed 9–11–24; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 12534]

Notice of Determinations; Additional Culturally Significant Object Being Imported for Exhibition—Determinations: “Tamara de Lempicka” Exhibition

SUMMARY: On July 10, 2024, notice was published in the **Federal Register** of determinations pertaining to certain objects to be included in an exhibition entitled “Tamara de Lempicka.” Notice is hereby given of the following determinations: I hereby determine that a certain additional object being imported from abroad pursuant to an agreement with its foreign owner or

custodian for temporary display in the aforesaid exhibition at the Fine Arts Museums of San Francisco, de Young Museum, San Francisco, California; the Museum of Fine Arts, Houston, in Houston, Texas; and at possible additional exhibitions or venues yet to be determined, is of cultural significance, and, further, that its temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: section2459@state.gov). The mailing address is U.S. Department of State, L/PD, 2200 C Street, NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me

by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021. The notice of determinations published on July 10, 2024, appears at 89 FR 56784.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2024–20647 Filed 9–11–24; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE**[Public Notice: 12536]****Imposition of Missile Proliferation Sanctions on Three PRC Entities, One PRC Individual, and a Pakistani Entity****ACTION:** Notice.

SUMMARY: A determination has been made that three PRC entities, a PRC individual, and a Pakistani entity have engaged in activities that require the imposition of measures pursuant to the Arms Export Control Act, as amended, and the Export Administration Act of 1979, as amended.

DATES: September 12, 2024.

FOR FURTHER INFORMATION CONTACT: Pam Durham, Office of Missile, Biological, and Chemical Nonproliferation, Bureau of International Security and Nonproliferation, Department of State (202–647–4930). On import ban issues, Lauren Sun, Assistant Director for Regulatory Affairs, Department of the Treasury (202–622–4855). On U.S. Government procurement ban issues, Eric Moore, Office of the Procurement Executive, Department of State (703–875–4079). Email: mooreen@state.gov

SUPPLEMENTARY INFORMATION: Pursuant to Section 73(a)(1) of the Arms Export Control Act [22 U.S.C. 2797b(a)(1)]; Section 11B(b)(1) of the Export Administration Act of 1979 [50 U.S.C. 4612(b)(1)], as carried out under Executive Order 13222 of August 17, 2001 (hereinafter cited as the “Export Administration Act of 1979”); [Note: Although the Export Administration Act of 1979 lapsed in 2001 and was partially repealed in 2018, authorities under Section 11B continue to be carried out under the International Emergency Economic Powers Act, 50 U.S.C. 1701–1708, pursuant to the emergency declared in Executive Order 13222 of August 17, 2001, which has been kept in effect by successive Presidential Notices, the most recent of which was the Notice of August 13, 2024, 89 FR 66187, (Aug. 15, 2024). End Note], the U.S. Government has determined that the following foreign persons have engaged in missile technology proliferation activities that require the imposition of the sanctions described in Sections 73(a)(2)(A) and (C) of the Arms Export Control Act [22 U.S.C. 2797b(a)(2)(A) and (C)] and Sections 11B(b)(1)(B)(i) and (iii) of the Export Administration Act of 1979 [50 U.S.C. app. 2410b(b)(1)(B)(i) and (iii)] on these entities:

Hubei Huachangda Intelligent Equipment Company (PRC Entity), and its sub-units and successors;

Innovative Equipment (Pakistan Entity), and its sub-units and successors;

Luo Dongmei [aka Steed Luo] (PRC national);

Universal Enterprise Limited [aka General Technology Limited, aka Beijing Luo Luo Tech Development Limited, aka Tiger Force Electronics, aka Foshan Nanhai Winhope Trade Company] (Hong Kong Entity), and its sub-units and successors;

Xi'an Longde Technology Development Company Limited [aka Lontek] (PRC Entity), and its sub-units and successors.

Accordingly, the following sanctions are being imposed on these entities for two years:

(A) Denial for at least two years of all new licenses for the transfer to the sanctioned entities of all Missile Technology Control Regime (MTCR) Annex Items (on both the U.S. Munitions List and Commerce Control List (CCL)).

(B) Denial for at least two years of all United States Government contracts relating to MTCR Annex items with the sanctioned entities.

(C) A prohibition on all imports into the United States of products produced by the sanctioned entities for a period of not less than two years

With respect to items controlled pursuant to the ECRA of 2018, the above export sanction only applies to exports made pursuant to individual export licenses.

These measures shall be implemented by the responsible departments and agencies of the United States Government as provided in Executive Order 12851 of June 11, 1993.

Choo S. Kang,

Assistant Secretary for International Security and Nonproliferation, Department of State.

[FR Doc. 2024–20761 Filed 9–11–24; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****[FAA–2024–0396]****Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Reduced Vertical Separation Minimum**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA

invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 21, 2024. The collection involves aircraft operators seeking specific operational approval to conduct Reduced Vertical Separation Minimum (RVSM) operations who must submit application to the FAA for RVSM specific approval. Specific approval is required when aircraft operators intend to operate outside the United States (U.S.) or their aircraft are not equipped with Automatic Dependent Surveillance—Broadcast (ADS–B) Out.

DATES: Written comments should be submitted by October 15, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Douglas DiFrancesco, (FAA), Flight Technologies and Procedures Division by email at: Douglass.DiFrancesco@faa.gov; phone: 202–267–8855.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA’s performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120–0679.

Title: Reduced Vertical Separation Minimum.

Form Numbers: 2120–0679.

Type of Review: Renewal.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 21, 2024 (89 FR 13133). The authority to collect data from aircraft operators seeking operational approval to conduct Reduced Vertical Separation Minimum (RVSM) operations is contained in part 91, section 91.180, as established by a final rule published in the **Federal Register** on October 27, 2003 (68 FR 61304) and

in Part 91, Section 91.706, as established by a final rule published April 9, 1997 (62 FR 17487, Apr 9, 1997). Aircraft operators seeking specific operational approval to conduct RVSM operations outside the U.S. must submit their application to the responsible Flight Standards office. The responsible Flight Standards office registers RVSM approved airframes in the FAA RVSM Approvals Database to track the approval status for operator airframes. Application information includes evidence of aircraft equipment and RVSM qualification information along with operational training and program elements.

Respondents: Operators are required to submit application for RVSM specific approval if they desire to operate in RVSM airspace outside the U.S. or if they do not meet the provisions of title 14 of the Code of Federal Regulations (14 CFR), part 91, appendix G, section 9—Aircraft Equipped with Automatic Dependent Surveillance—Broadcast Out. The FAA estimates processing 900 initial applications annually and 2,136 annual updates to existing approvals.

Frequency: An Operator must make application for initial specific approval to operate in RVSM airspace, or whenever requesting an update to an existing approval.

Estimated Average Burden per Response: 4.00 hours for updates to existing applications and 6.8 hours for application of initial approvals.

Estimated Total Annual Burden: 14,664 hours.

Issued in District of Columbia on September 6, 2024.

Douglas J. DiFrancesco,

Aviation Safety Inspector, FAA Flight Technologies & Procedures Division.

[FR Doc. 2024–20628 Filed 9–11–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2024–0028]

Notice of Request for Information (RFI) on Medium- and Heavy-Duty Electric Charging Technologies and Infrastructure Needs

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice; request for information (RFI).

SUMMARY: The FHWA, along with the Joint Office of Energy and Transportation (Joint Office), invites public comment on this request for

information (RFI) regarding the Medium- and Heavy-Duty Electric Charging Technologies and Infrastructure Needs. This RFI seeks input in four areas to support medium and heavy-duty (MHD) battery electric vehicles (EV) (DOT vehicle classes 4 through 8) including: unique EV charger and station needs; vehicle charging patterns; MHD EV charger technology and standardization; and workforce, supply chain, and manufacturing to support charging of MHD battery EVs. The goal is to inform appropriate future Federal Government activities to support the development and deployment of EV chargers to support the anticipated needs of MHD EV original equipment manufacturers, fleet operators, drivers, charging station operators, and electric utilities. Comments should also address how to balance advances in technology with the need to expeditiously build out the national EV charging infrastructure, including support for MHD segments.

DATES: Responses to the RFI must be received by November 12, 2024. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at www.regulations.gov, under docket number FHWA–2024–0028. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number FHWA–2024–0028, by any of the following methods:

Postal Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590.

Hand Delivery/Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9:00 a.m. and 5:00 p.m. E.T., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

Docket: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at www.regulations.gov. All documents in the docket are listed in the www.regulations.gov index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

FOR FURTHER INFORMATION CONTACT: Questions about this notice may be addressed to Suraiya Motsinger, FHWA

Office of Natural Environment, via email at Suraiya.motsinger@dot.gov or telephone (202) 366–4287 or Sarah Hipel, Joint Office of Energy and Transportation, via email at sarah.hipel@ee.doe.gov or telephone (240) 994–0050.

For legal questions, please contact Dawn Horan, FHWA Office of Chief Counsel, via email at Dawn.M.Horan@dot.gov or telephone (202) 366–9615 or Matthew Schneider, U.S. Department of Energy (DOE), Office of the General Counsel, via email at matthew.schneider@hq.doe.gov or telephone at (240) 597–6265.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

A copy of this notice, all comments received on this notice, and all background material may be viewed online at www.regulations.gov using the docket number listed above. Electronic retrieval assistance and guidelines are also available at www.regulations.gov. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at: www.FederalRegister.gov and the U.S. Government Publishing Office's website at: www.GovInfo.gov.

Background

Vehicle manufacturers and operators are deploying MHD EVs at an increasing rate with a recent report citing the availability of over 160 models and over 17,500 zero emission trucks in operation—a nearly 10-fold increase from just 3 years ago.¹ This trend in MHD EV adoption is driven by a combination of factors, including declining battery costs, improvements in vehicle performance and range, and growing recognition of the economic and environmental benefits associated with electrification.

The regulatory landscape governing MHD EVs (DOT vehicle classes 4 through 8) is evolving rapidly as well, driven in part by imperatives to reduce greenhouse gas emissions and criteria pollutants. Examples of such regulations include performance-based emission standards by the U.S. Environmental Protection Agency² and the Advanced Clean Trucks rule through the California Air Resources Board,³ which other States may elect to adopt consistent with Section 177 of the Clean Air Act (42 U.S.C. 7507).

¹ https://calstart.org/wp-content/uploads/2024/01/ZIO-ZET-2024_010924_Final.pdf.

² <https://www.epa.gov/regulations-emissions-vehicles-and-engines/final-rule-greenhouse-gas-emissions-standards-heavy-duty>.

³ <https://afdc.energy.gov/laws/12473>.

Fleet operators, cognizant of the long-term sustainability and cost advantages offered by electric propulsion, are increasingly embracing EVs as viable alternatives to conventional diesel-powered vehicles. The momentum toward electrification is further propelled by corporate sustainability goals, regulatory compliance pressures, and the emergence of innovative business models that prioritize operational efficiency and environmental stewardship.

Increased adoption by fleets, the need to address the climate crisis, and the compelling total cost of EV ownership create a well-timed backdrop for federal investments in the Bipartisan Infrastructure Law⁴ and the Inflation Reduction Act.⁵ These investments will support the buildout of the electrical generation, distribution, and charging network needed to provide clean, affordable, and reliable energy to a sector that accounts for 23 percent of transportation emissions despite accounting for only five percent of vehicles on the road.⁶ These investments will help meet U.S. federal goals of 100 percent new zero-emission truck and bus sales by 2040, with an interim goal of 30 percent new zero-emission vehicle sales by 2030.⁷

Stakeholders across the public and private sectors are mobilizing efforts to accelerate the expansion of charging infrastructure networks, enhance interoperability standards, and facilitate strategic investments in key infrastructure corridors. For example, the Joint Office of Energy and Transportation, in collaboration with the U.S. Department of Energy, Department of Transportation, and the Environmental Protection Agency, released in March of 2024 an all-of government National Zero-Emission Freight Corridor Strategy.⁸ The Strategy provides a phased approach to prioritizing planning, investment and deployment of MHD vehicle charging and hydrogen refueling infrastructure within freight hubs and along corridors to realize a complete zero-emission freight network by 2040. The privately led Powering America's Commercial Transportation Coalition⁹ (PACT)

brings together vehicle and infrastructure manufacturers, fleets, utilities and other key stakeholders to collaborate on solutions to accelerate the pace of transportation electrification for MHD EVs. By proactively addressing the need for robust charging infrastructure, stakeholders can catalyze the transition to a cleaner, more sustainable transportation ecosystem, while positioning the industry for long-term success in an increasingly electrified future.

The charging requirements for MHD EVs vary widely, reflecting the diverse operational profiles and energy demands within this sector.¹⁰ This spectrum ranges from vehicles engaged in on-demand operations with structured schedules, such as urban delivery trucks and transit buses, to inter-city and regional transit vehicles, like coaches and tractor trailers that cover longer distances between urban centers. In addition, fleet operators can often use vehicles to meet multiple use cases and duty cycles (e.g., municipal sanitation trucks that double as snowplows in the winter months). Shorter haul vehicles can often use centralized charging depots with the opportunity for lower power charging. At the other end of the spectrum, long-haul and over-the-road applications, exemplified by heavy-duty trucks engaged in Interstate freight transportation, may require ultra-fast charging capabilities to allow trucks to quickly get back on the road. These vehicles operate continuously for extended periods, necessitating strategically located charging stations along major transportation corridors to facilitate rapid turnaround times or provide parking facilities with charging. Developing a charging infrastructure ecosystem entails addressing this spectrum of use cases comprehensively, ensuring that solutions are scalable, adaptable, and aligned with the evolving needs of the transportation industry.

Purpose

This RFI seeks input in four areas to support charging of MHD EVs: (1) unique EV charger and station needs; (2) vehicle charging patterns; (3) MHD EV charger technology and standardization; and (4) workforce, supply chain, and manufacturing. The information received from this RFI will inform government activities to support the development and deployment of EV chargers to meet the anticipated needs of MHD EV original equipment manufacturers, fleet operators, drivers,

charging station operators, and electric utilities. This RFI also seeks to understand MHD EV charging as a whole, rather than through transportation and electricity-specific lenses. Increasing understanding and awareness across all relevant sectors is key to ensuring that electric MHD vehicle fleet operators and charging networks:

- Support a modern electric grid and create widespread benefits for fleet operators, communities, and all ratepayers; and
- Are served by energy regulatory environments and public policies that reflect the wide variety of vocational needs, use cases, and duty cycles for electric medium and heavy-duty buses and trucks.

Though hydrogen refueling can provide a zero-emission fuel option for commercial MHD vehicles, this RFI only seeks information on electric charging considerations for MHD EVs.

Disclaimer and Important Notes

This RFI is not a Notice of Funding Opportunity (NOFO) or Funding Opportunity Announcement (FOA). Any information obtained as a result of this RFI is intended to be used by the Government on a non-attribution basis for planning and strategy development and may be shared with other Government agencies; this RFI does not constitute a formal solicitation for proposals or abstracts. Your response to this notice will be treated as information only. FHWA and the Joint Office will both review and consider all responses in formulating program strategies for the identified materials of interest that are the subject of this request. Neither FHWA nor the Joint Office will provide reimbursement for costs incurred in responding to this RFI. Respondents are advised that FHWA and the Joint Office are under no obligation to acknowledge receipt of the information received or provide feedback to respondents with respect to any information submitted under this RFI. Responses to this RFI do not bind FHWA or the Joint Office to any further actions related to this topic.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or

⁴ <https://www.congress.gov/bill/117th-congress/house-bill/3684>.

⁵ <https://www.congress.gov/bill/117th-congress/house-bill/5376>.

⁶ <https://www.epa.gov/greenvehicles/fast-facts-transportation-greenhouse-gas-emissions>.

⁷ <https://www.energy.gov/sites/default/files/2023-01/the-us-national-blueprint-for-transportation-decarbonization.pdf>.

⁸ <https://driveelectric.gov/files/zef-corridor-strategy.pdf>.

⁹ <https://www.pactcoalition.org/>.

¹⁰ <https://www.nrel.gov/docs/fy22osti/81656.pdf>.

responsive to this notice, it is important that you clearly designate the submitted comments as CBI.

You may ask FHWA to give confidential treatment to information you give to the Agency by taking the following steps: (1) Mark each page of the original document submission containing CBI as "Confidential"; (2) send FHWA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. FHWA will make its own determination about the confidential status of the information and treat it according to its determination. FHWA will protect confidential information complying with these requirements to the extent required under applicable law. If DOT receives a FOIA request for the information that the applicant has marked in accordance with this notice, DOT will follow the procedures described in its FOIA regulations at 49 CFR 7.29. Only information that is marked in accordance with this notice and ultimately determined to be exempt from disclosure under FOIA and 49 CFR 7.29 will not be released to a requester or placed in the public docket of this notice. Submissions containing CBI should be sent to: Suraiya Motsinger, FHWA, 1200 New Jersey Avenue SE, HICP-20, Washington, DC 20590 via mail, or Suraiya.motsinger@dot.gov via email. Any comment submissions that FHWA receives that are not specifically designated as CBI will be placed in the public docket for this matter.

Confidential information collected in this RFI will also be shared with the Joint Office consistent with Congressional direction that the minimum standards and requirements for EV chargers be developed in coordination between DOT and DOE. The Joint Office will protect any such shared information in accordance with applicable DOE standards, as DOE serves as host for the Joint Office.

Evaluation and Administration by Federal and Non-Federal Personnel

Federal employees are subject to the non-disclosure requirements of a criminal statute, the Trade Secrets Act, 18 U.S.C. 1905. The Government may seek the advice of qualified non-Federal personnel. The Government may also use non-Federal personnel to conduct routine, nondiscretionary administrative activities. The respondents, by submitting their response, consent to FHWA and the Joint Office providing their response to non-Federal parties. Non-Federal parties given access to responses must be subject to an

appropriate obligation of confidentiality prior to being given the access. Submissions may be reviewed by support contractors and private consultants.

Request for Information Categories and Questions

The following list of questions are of particular interest to FHWA and the Joint Office. Commenters are not required to answer every question and commenters should not view the list as a constraint on sharing additional information relevant to MHD EV charging technologies and infrastructure needs.

Category 1: Unique EV Charger and Station Needs

1. *Market Evaluation:* Please provide any information or plans that you have regarding the adoption of MHD EVs now and anticipated growth over time (by 2030 and 2040) by vehicle type (please refer to FHWA's vehicle classification definitions).¹¹

2. *Station Development Considerations:* What factors should be considered for the siting, location and development of a MHD EV charging station? What features and site design elements need to be considered for a station designed to support MHD EVs deployed in the next five years considering both depot and en-route charging applications? How should grid interconnectivity/capacity be considered in the site design for MHD EV stations? Should certain site design elements be standardized (e.g., number of ports, physical dimensions/spacing between charging ports, pull-through charging bays, co-location with other fuels) or is flexibility needed to accommodate different MHD EV charging scenarios and site constraints?

3. *Public vs. Private Charging Requirements:* What is the anticipated make up of publicly available charging sites vs. charging sites with exclusive or limited access? How are public and private charging sites likely to differ? What are the potential constraints between private and public charging with regards to charger availability?

4. *Safety Considerations:* What are the safety considerations for charging MHD EVs at a public station vs. a private station, including personal safety and safe operations? What specific safety considerations are important to consider for high-power (e.g., megawatt level) charging?

5. *Community Engagement:* What are best practices for engaging communities for the deployment of charging infrastructure for MHD EVs? What community needs should be accounted for when siting a location for a MHD EV charging station?

6. *Distance Requirements between Stations:* What would be an appropriate maximum distance between MHD EV public charging stations along an Interstate highway? From an Interstate highway? What are the typical mileage ranges of MHD EVs? Why and how might this consideration change over time?

7. *MHD EV Charging Times:* What is the expectation of charging and/or dwell times for MHD EVs and how does that vary by use case or other factors?

8. *Overnight Parking/Charging Needs:* What is the anticipated need for overnight or long-duration parking for MHD EVs over the next 3 to 5 years and/or longer-term? Should these spaces be dedicated for electric MHD vehicles that are actively charging? Should these spaces also be made available for electric MHD trucks that are not actively charging or non-electric MHD vehicles?

9. *Delivering Power to a Site:* What actions are currently being taken by electric utilities or can electric utilities take to ensure that necessary power is available in MHD EV charging locations? What actions are currently being taken by MHD fleet owners/operators or can MHD fleet owners/operators take to ensure that necessary power is available in MHD EV charging locations?

10. *Demand Response and Managed Charging:* What demand response or managed charging strategies are needed and/or have been employed successfully for MHD charging locations?

11. *Role of Onsite Energy Storage and Generation:* What role is on-site energy storage and generation playing or could play in supporting MHD EV charging needs? What actions are needed to enable the utilization of cost-effective energy storage and generation?

12. *Grid Interaction:* What scenarios or use cases would be ideal for exporting power from charging sites back to the grid? What actions are needed to enable cost-effective exportable power?

13. *Turning Radius:* What are the turning radii that should be considered to service most MHD EVs at a site?

14. *Driver Amenities:* Where applicable, what driver amenities (such as on-site restrooms, dining, or shopping) or fleet services (such as vehicle inspections) can or should be considered for a station designed to support MHD EVs deployed in the next

¹¹ Chapter 2. Introduction to Vehicle Classification—Verification, Refinement, and Applicability of Long-Term Pavement Performance Vehicle Classification Rules, November 2014—FHWA-HRT-13-091 ([dot.gov](https://www.dot.gov)).

5 years that will charge: (i) at public en-route chargers; (ii) at freight destinations; and (iii) in publicly accessible private or quasi-public depots? Do needs for on- or conveniently located off-site amenities at stations designed for MHD EVs differ from those designed for light-duty EVs?

15. *Fleet Lessons Learned:* For fleets experienced in operating and charging MHD EVs, what are some important lessons learned that should be incorporated in the buildout of national infrastructure to support charging activities?

16. *Equity:* What equity-related challenges or benefits could be associated with MHD EV charging? What strategies could increase those benefits or mitigate those challenges? Are there considerations important to independent owner operators and small fleets?

Category 2: Vehicle Charging Patterns

17. *Minimum Power Requirements:* Is there a preferred minimum power level (including any specific voltage or current requirements), both per charging port and per charging station, to adequately serve MHD EV needs in public locations now? In 5 years? In 10 years? Is there a minimum number of MHD charging ports at a charging station that would make it useful as an MHD charging site? Are there alternative performance-based requirements that should be considered for the provision of a minimum number of MHD charging ports or total power available?

18. *Uptime Reliability:* Should uptime, as a performance-based standard, account for all minimum performance shortfalls, e.g., power sharing, voltage inadequacy, sites relying on supplemental energy storage, incompatible connectors/need for adapters, payment system or network outages, or other EV charger limitations that fail to deliver specified minimum performance requirements? If uptime is insufficient to measure all shortfalls, what parameters should be included to ensure reliable and comprehensive service?

19. *Charge Time Accessibility:* What are the best methods for supporting MHD EV fleets that primarily charge enroute or at destination locations? What considerations should be given for first-come, first-served and/or appointment-based scenarios for vehicle charging at a station?

20. *Charging Needs Across Vehicle Use Case:* How does MHD EV charging vary across different vehicle classes, use cases, and market segments: at private or quasi-public depots, en-route (public)

locations, destinations, or a mix? What does that mix look like to form a coherent national network?

Category 3: MHD EV Charger Technology and Standardization

21. *Megawatt Charging Standard:* What is the anticipated adoption timeline for megawatt charging system (MCS), and other proprietary and non-proprietary connectors, on charging infrastructure in various MHD segments and is there a preferred connector standard? Is it preferable to have multiple connector types at MHD public charging locations or a single type?

22. *MHD EV Controllers and Management System Considerations:* How are EV charge controllers and battery management systems different in MHD EVs than in light-duty passenger EVs? How do charge controllers differ in EV chargers designed for MHD EVs compared to chargers designed for light-duty passenger EV applications?

23. *Cybersecurity Considerations:* How does cybersecurity factor into the product or systems engineering process? Are there specific cybersecurity standards, frameworks, or controls that are commonly used in the industry? What cybersecurity considerations are important in the near-term (12–36 months)? What cybersecurity concerns need to be addressed for MHD EV charging in the longer-term?

24. *Alternative Charging Technology Solutions:* Are there additional standards or technologies, such as inductive charging or bi-directional charging, that should be considered? If so, please provide information about these technologies, their benefits, and their anticipated industry adoption timeframes.

25. *Performance-Based Standards:* Are there performance-based alternatives (i.e., standards that specify a level of service and types of vehicles a charger must support without specifying specific connectors) to specifying charging standards and communications standards by reference that would support a convenient, affordable, reliable, and equitable MHD EV charging network while reducing the need for future refinement to federal regulations?

26. *Key Performance Indicators:* Should performance-based standards include requirements for achieving Key Performance Indicators most important to MHD EV customers? If so, what should those Key Performance Indicators be?

27. *Market Impact of Standardization:* How would standardization affect the

ability of firms to compete?¹² Will proposed or anticipated industry standards favor or disfavor any market participants? Will proposed or anticipated industry standards impact the ability of firms to enter the market? If so, how? How could the process for developing technology standards for EV charging and related technologies be more fair, open, and/or transparent?

Category 4: Workforce, Supply Chain, and Manufacturing

28. *Workforce Needs for MHD EV Charging Infrastructure:* What are the workforce needs associated with manufacturing, installing, and/or maintaining MHD EV chargers? What are the current gaps in workforce development for MHD EV charging infrastructure deployment? Who are the critical stakeholders and what is needed to promote workforce development for MHD EV charging infrastructure? Do training programs exist for workers on the installation of EV chargers with power levels beyond those available today for light-duty vehicles? If yes, please provide details of the program and the availability of a qualified workforce.

29. *High Power Charger Availability for MHD EVs:* What is the expected commercial availability (both timing and volume) of the MCS or other proprietary connectors, cable assemblies, EV chargers, and adaptors? What safety standards will these products be certified against? Please provide any specifics on vehicle class, vocation, expected charging port type, pricing, and timing.

30. *Additional Information:* Is there anything additionally that should be considered related to MHD charging technologies and infrastructure needs that is not covered in the above questions?

Issued in Washington, DC under authority delegated in 49 CFR 1.81 and 1.83.

Shailen P. Bhatt,

Administrator, Federal Highway Administration.

[FR Doc. 2024–20423 Filed 9–11–24; 8:45 am]

BILLING CODE 4910–22–P

¹² See Office of Information and Regulatory Affairs, Guidance on Accounting for Competition Effects When Developing and Analyzing Regulatory Actions (Oct. 2023), <https://www.whitehouse.gov/wp-content/uploads/2023/10/RegulatoryCompetitionGuidance.pdf>.

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration****Notice of Final Federal Agency Actions on Transportation Project in Washington State**

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of limitation on claims for judicial review of actions by FHWA.

SUMMARY: This notice announces actions taken by the FHWA that are final. The action relates to the Central Puget Sound Regional Transit Authority (Sound Transit) plans to build and operate a light rail Operations and Maintenance Facility in its South Corridor (OMF South). The facility will meet Sound Transit's needs for an expanded fleet of light rail vehicles (LRVs) and will support the expansion of the Link light rail system. The Federal Transit Administration (FTA) project is located in the City of Federal Way in King County, in the State of Washington, and is adjacent to the Interstate 5 (I-5) right-of-way. Portions of OMF South will be accommodated within or will affect the I-5 right-of-way, which requires Federal Highway Administration (FHWA) approval.

DATES: A claim seeking judicial review of the Federal agency actions on the listed highway project will be barred unless the claim is filed on or before February 10, 2025. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Lindsey Handel, Urban Engineer, Federal Highway Administration, 360-753-9480, or Washington.FHWA@dot.gov or Erin Littauer, Federal Transit Administration, 206-2220-7521 or erin.littauer@dot.gov; Erin Green, Sound Transit Environmental Manager, South Corridor, (206) 398-5464 or Erin.Green@soundtransit.org.

SUPPLEMENTARY INFORMATION:

Information about the NEPA Record of Decision and associated records are available from FHWA, FTA, and Sound Transit at the addresses provided above and can be found at: <https://www.soundtransit.org/system-expansion/operations-maintenance-facility-south>. This notice applies to all Federal agency decisions related to the Record of Decision as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321-4347]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act, as amended [42 U.S.C. 7401-7671(q)].

3. *Land:* Section 6(f) of the Land and Water Conservation Fund Act of 1965 [16 U.S.C. 4601]; Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531-1544 and 1536]. Fish and Wildlife Coordination Act [16 U.S.C. 661-667(d)]. Migratory Bird Treaty Act [16 U.S.C. 703-712]. Bald and Golden Eagle Protection Act [16 U.S.C. 668-668c]. Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 *et seq.*].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archaeological and Historic Preservation Act [16 U.S.C. 469-469(c)];

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000d *et seq.*]; Farmland Protection Policy Act [7 U.S.C. 4201-4209].

7. *Wetlands and Water Resources:* Clean Water Act (section 319, section 401, section 402, section 404) [33 U.S.C. 1251-1377]. Safe Drinking Water Act [42 U.S.C. 300(f) *et seq.*].

8. *Executive Orders:* Executive Order 11990 Protection of Wetlands; Executive Order 11988 Floodplain Management; Executive Order 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; Executive Order 11593 Protection and Enhancement of Cultural Resources; Executive Order 13007 Indian Sacred Sites; Executive Order 13287 Preserve America; Executive Order 13175 Consultation and Coordination with Indian Tribal Governments; Executive Order 11514 Protection and Enhancement of Environmental Quality; Executive Order 13112 Invasive Species; Executive Order 13166 Improving Access to Services for Persons with Limited English Proficiency; Executive Order 13045 Protection of Children From Environmental Health Risks and Safety Risks; Executive Order 14096 Revitalizing Our Nation's Commitment to Environmental Justice for All.

Authority: 23 U.S.C. 139(l)(1).

Ralph J. Rizzo,

FHWA Division Administrator, Olympia, WA.

[FR Doc. 2024-20662 Filed 9-11-24; 8:45 am]

BILLING CODE 4910-RY-P

DEPARTMENT OF TRANSPORTATION**Federal Transit Administration****Fiscal Year 2025 Solicitation of Proposals for the National Rural Transit Assistance Program**

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of funding opportunity (NOFO).

SUMMARY: The Federal Transit Administration (FTA) announces the opportunity to apply for \$3,250,723 in Fiscal Year (FY) 2024 Rural Transportation Assistance Program funds through a competitive cooperative agreement award. FTA is soliciting proposals under the agency's Formula Grants for Rural Areas Program to select an entity to administer a National Rural Transit Assistance Program (National RTAP). The National RTAP will carry out activities to design and implement training and technical assistance projects and other support services tailored to meet the specific needs of transit operators in rural areas, including tribal transit services. Primary activities will include the development of information and materials for use by local operators and State administering agencies and supporting research and technical assistance projects of national interest.

DATES: Complete proposals for the National RTAP must be submitted electronically through the *Grant.GOV* "Apply" function by 11:59 p.m. Eastern time on November 12, 2024. Late applications will not be accepted. Prospective applicants should register as soon as possible on the *GRANTS.GOV* website to ensure completion of the application process before submission deadline.

ADDRESSES: Instructions for applying can be found on FTA's website at <https://www.transit.dot.gov/notices-funding/fy24-notice-funding-opportunity-national-rural-transit-assistance-program> and in the "FIND" module of *GRANTS.GOV*. The funding opportunity ID is FTA-2024-014-TPM-NRTAP Mail and fax submissions will not be accepted.

FOR FURTHER INFORMATION CONTACT: Heather Edmonds, FTA Office of Program Management at (202) 366-3748; Email heather.edmonds@dot.gov. A TDD is available for individuals who are deaf or hard of hearing at 800.877.8339.

SUPPLEMENTARY INFORMATION:

SUMMARY OF KEY INFORMATION: NATIONAL RURAL TRANSIT ASSISTANCE PROGRAM COMPETITIVE FUNDING OPPORTUNITY

Issuing agency	Federal Transit Administration, U.S. Department of Transportation
Program Overview	The National RTAP provides for the development of information and materials for use by rural and tribal transit operators, State DOTs and State funded transit agencies, and supports research and technical assistance projects of national interest.
Eligible Applicants	Eligible applicants are non-profit organizations with rural and tribal transportation experience that have the capacity to provide public transportation-related technical assistance and the ability to deliver a national technical assistance and training program.
Eligible Projects	The National RTAP is funded under the Formula Grants for Rural Areas Program to enhance the delivery of public transportation services provided by State Departments of Transportation (DOTs) and operators of rural and tribal transit. Rural transit systems and community transit drivers, dispatchers, maintenance workers, managers, and board members need special skills and knowledge to provide quality service to their diverse customers across large, rural service areas. The National RTAP carries out projects of a national scope that provide transportation technical assistance in these areas.
Funding Amount	\$3,250,723 for the first year, including \$500,000 for programs specific to tribal transit.
Cost Share	The maximum Federal share of project costs under this program is 100 percent.
Deadline	November 12, 2024 at 11:59 PM Eastern Time.

Table of Contents

- A. Program Description
- B. Federal Award Information
- C. Eligibility Information
- D. Application and Submission Information
- E. Application Review Information
- F. Federal Award Administration
- G. Federal Awarding Agency Contacts
- H. Other Information

A. Program Description

This Notice of Funding Opportunity (NOFO) supports FTA's strategic goals and objectives by promoting safe, affordable, accessible, and multimodal access to opportunities and services while reducing transportation-related disparities, adverse community impacts, and health effects. FTA is soliciting proposals for a cooperative agreement for a project of national scope under the Rural Transit Assistance Program (49 U.S.C. 5311(b)(3)), Assistance Listing 20.509. The Formula Grants for Rural Areas Program authorizes the Secretary of Transportation to carry out a Rural Transit Assistance Program (RTAP) in rural areas to enhance the delivery of public transportation services provided by State Departments of Transportation (DOTs) and operators of rural and tribal transit. Since 1979, FTA has provided grants to States under the Formula Grants for Rural Areas Program and its predecessor programs to establish and maintain transit systems in communities with populations of less than 50,000 individuals. Rural transit systems and community transit drivers, dispatchers, maintenance workers, managers, and board members need special skills and knowledge to provide quality service to their diverse customers across large, rural service areas. The National RTAP was created in 1997 to carry out projects of a national scope that provide transportation assistance in these areas.

The National RTAP provides for the development of information and materials for use by local operators, State DOTs and State funded transit agencies, and supports research and technical assistance projects of national interest. The FTA carries out the objectives of the National RTAP through a cooperative agreement that establishes and provides financial assistance for these activities. FTA selected the current recipient to administer the National RTAP in 2019. Consistent with the U.S. Department of Transportation's policy to maximize competition in discretionary awards, every five years the FTA competes the administration of the National RTAP.

FTA also supports assistance for local RTAP activities through funding apportionments to the States. The State RTAPs develop and implement training and technical assistance in conjunction with the State's administration of the Formula Grants for Rural Areas Program. The State RTAPs and the National RTAP complement each other, and both are funded under the Formula Grants for Rural Areas Program. The objectives of the National RTAP are:

- *Objective 1:* To promote the delivery of safe, effective and efficient public transportation in rural areas, including tribal transit systems.
- *Objective 2:* To support State and local governments, including tribal governments, in addressing the training and technical assistance needs of the rural and tribal transit community.
- *Objective 3:* To conduct research, including analysis of data reported to FTA's National Transit Database, and to maintain current profiles of the characteristics of rural transit as well as an inventory of rural, tribal and specialized transportation providers.
- *Objective 4:* To develop materials, tools, trainings and network opportunities to address the unique

needs of tribal transit providers and help build sustainable capacity in tribal transit programs.

- *Objective 5:* To implement pilot grants to develop community and state-level transportation innovations focused on increasing access and mobility in rural and tribal areas.

Since its inception, the National RTAP has developed and distributed training materials, provided technical assistance, generated reports, published best practices, produced scholarships, conducted research, and offered peer assistance with the goal of improved mobility for the millions of Americans living in rural communities. The National RTAP also has developed tools for use by rural transit providers in providing their service, and provided access to scholarship, research and training through sponsorship of and participation in conferences attended by a variety of constituents with interest in rural and tribal transit. For more information on the various programs and services provided by the National RTAP, visit the National RTAP website at <https://www.nationalrtap.org>.

B. Federal Award Information

FTA is authorized to use two percent of funds appropriated for the Formula Grants for Rural Areas Program for research, technical assistance, training, and related support services in rural areas. Of this amount, not more than 15 percent can be used for the National RTAP, with the remaining amount apportioned to states for state RTAP activities. FTA intends to fund the National RTAP with \$3,250,723 in Fiscal Year (FY) 2024 funds for the first year. This includes an additional \$500,000 made available through the Consolidated Appropriations Act, 2024 for National RTAP programming specific to tribal transit. FTA may extend funding for this center for up to

five years in total; however, subsequent funding will depend upon: (1) future authorization and appropriations; (2) decisions and program priorities established by the Secretary of Transportation related to implementation of the National Rural Transit Assistance program; and (3) performance of the recipient.

This funding opportunity will be awarded under the terms of a cooperative agreement. This cooperative agreement will be managed from FTA's headquarters office. FTA will participate in activities by negotiating the final statement of work, attending review meetings, commenting on technical reports, maintaining frequent contact with the project manager, approving key decisions and activities, and redirecting project activities, as needed.

FTA will issue specific guidance to the awardee regarding pre-award authority at the time of selection. For more information about FTA's policy on pre-award authority, please see the most recent Apportionment Notice on FTA's website, <https://www.transit.dot.gov/funding/apportionments/current-apportionments>.

C. Eligibility Information

Eligible applicants are non-profit organizations with rural and tribal transportation experience that have the capacity to provide public transportation-related technical assistance and the ability to deliver a national technical assistance and training program. Individuals, for-profit entities, and Federal agencies are ineligible to apply for this funding.

There is no requirement for non-federal matching funds or cost sharing for this program.

D. Application and Submission Information

1. Address To Request Application Package

Applications must be submitted electronically through *GRANTS.GOV*, as described above. General information for registering and submitting applications through *GRANTS.GOV* can be found at <https://www.grants.gov/applicants/grant-applications/how-to-apply-for-grants> along with specific instructions for the forms and attachments required for submission. Mail and fax submissions will not be accepted.

2. Content and Form of Application Submission

A complete proposal submission will consist of at least two files: (1) the

Standard Form (SF) 424 Application for Federal Assistance (downloaded from *GRANTS.GOV* or the FTA website <https://www.transit.dot.gov/notices-funding/fy24-notice-funding-opportunity-national-rural-transit-assistance-program>; and (2) a narrative application document submitted in a Microsoft Word, Adobe Acrobat, or compatible file format, double-spaced using Times New Roman, 12-point font. Once completed, the narrative application must be placed in the attachments section of the SF-424 form. Applicants must attach the narrative application file to their submission in *GRANTS.GOV* to successfully complete the proposal process. The narrative application should be in the format outlined in Section 2 below. A proposal submission may contain additional supporting documentation as attachments.

The application must include responses to all sections of the SF-424 Mandatory Form and all components of the narrative application document unless a section is indicated as optional. FTA will use the information in the narrative application document to determine applicant and project eligibility for the program and to evaluate the proposal against the selection criteria described in part E of this notice.

Applicants must fill in all fields unless stated otherwise on the SF-424 form and include all requested components of the narrative application document. If applicants copy information from another source, they should verify that the form and narrative application document have fully captured pasted text and that it has not truncated the text due to character limits built into the form. Applicants should use both the "Check Package for Errors" and the "Validate Form" buttons on all required fields in the SF-424.

The narrative application must contain the following components and adhere to the specified maximum lengths:

a. Cover sheet (1 page). The cover sheet must include the name of the entity submitting the proposal, the principal's name, title, and contact information (e.g., address, phone, and email), and the name and contact information for the key point of contact for each function of the agreement (if different from principal) referenced under the "Project Description" section of this Notice.

b. Detailed budget proposal and budget narrative (not to exceed 3 pages).

c. Project narrative and qualifications (not to exceed 10 pages) The project narrative should address:

i. The methodology for addressing the project goals, objectives, activities, deliverables, milestones, timeline and intended outcomes for the National Rural Transit Assistance Program;

ii. The methodology to develop performance measures and track the outcomes and benefits of the National Rural Transit Assistance Program, including how applicant will assess success;

iii. The existing and future capacity of the organization to address the issues outlined in the proposal and the organization's ability to implement goals, objectives, activities, milestones, deliverables and intended outcomes;

iv. The applicants' understanding of rural and tribal transit needs; including knowledge and experience with identifying and addressing issues related to funding and operation of rural and tribal transit systems;

v. A detailed plan for communication, technical assistance, and outreach at the state and local levels;

vi. The applicant's experience with grant-making, developing performance measures, tracking performance measures and spending and communicating lessons learned and project benefits to stakeholders;

vii. A plan to work with stakeholders and build partnerships at the national level; including how the applicant will work with State and local partners and stakeholders to promote coordination of transportation services;

viii. Qualifications of lead staff, not to exceed one page per person, including: (1) Prior experience providing technical assistance, especially related to public transit in rural and tribal areas; (2) prior experience implementing the other tasks outlined in this solicitation; (3) staff members' knowledge of issues related to public transit in rural and tribal communities, (4) staff members' experience working directly with tribal entities; and (5) a biographical sketch for each lead staff member.

d. Statement of Activities (not to exceed 10 pages). The application also should discuss how the recipient will perform the following short-term and long-term activities:

Short-Term Activities:

1. Hiring needed staff and setting up the center, including developing an interactive website that houses and delivering a library of tools, topics, articles, best practices for rural and tribal transit providers; acting as a clearinghouse for rural and tribal transit information; and facilitating outreach to

State and local partners and stakeholders.

2. Developing an online fully functional National RTAP Help Desk that will enable email and phone technical assistance inquiries and responses on rural and tribal transit questions/topics; this system should be able to gather performance measures that track web-analytics, technical assistance requests, types of requests, and enable a quarterly report to FTA on what activities have been completed, how many people have received assistance; the cost of that assistance; and the satisfaction of those who sought assistance.

3. Developing a Scope of Work for National RTAP's first year of operations, including but not limited to:

- A communications and outreach plan to promote the center, training and technical assistance products and relevant news through various channels (e.g., social media, newsletter, blogs) and engage stakeholders, partners and State RTAP programs.

- Recommendations to FTA on a planning/pilot grant program that support partnerships and innovative transportation solutions to increase community access in rural and tribal areas.

- A plan for how National RTAP will deliver training and technical assistance and recommendations to FTA on the data needs to help track and assess rural and tribal transit needs.

Long-term/ongoing activities:

1. Providing technical assistance in a variety of ways to rural and tribal transit operators and support to State RTAP programs:

- Operating a toll-free number and email to respond to inquiries from rural and tribal transit operators. Developing a system to track inquiries and responses.

- Developing and promoting written and electronic training materials that assist rural and tribal operators (e.g., online courses, technical briefs, toolkits, case studies, etc.).

- Maintaining a resource library of case studies, promising and best practices, videos, publications, webinars and other training materials.

2. Providing technical assistance to assist recipients, subrecipients, and potential future grantees with challenges around accessing FTA funding programs (e.g., Section 5311 and Tribal Transit Program) to increase transit sustainability.

3. Coordinating with other organizations to build national connections to assist states and rural communities with transit system improvements.

4. Developing a community grant program that offers funding for planning and/or pilot projects to foster partnerships, coordination of services and increased transit access for rural and tribal communities.

5. Providing peer-to-peer meeting exchanges and collaboration opportunities, while expanding dialogue with rural and tribal transit partners and fostering relationships with other non-traditional partners.

6. Developing a feedback system that enables opportunities for improvement of the Center's customer service, programs, and processes.

7. Identifying performance measures, evaluating and reporting on National RTAP activities and outputs.

e. Supplemental Materials. Supplemental materials such as bios and letters of support may be included in an appendices section that is beyond the page limits above but may not exceed 15 additional pages.

3. Unique Entity Identifier and System for Award Management (SAM)

Each applicant is required to: (1) register in *SAM.GOV* before submitting an application; (2) provide a valid unique SAM entity identifier in its application; and (3) continue to maintain an active SAM registration with current information, at all times during which the applicant has an active Federal award or an application or plan under consideration by FTA. FTA may not make an award until the applicant has complied with all applicable unique entity identifier and *SAM.GOV* requirements. If an applicant has not fully complied with the requirements by the time FTA is ready to make an award, FTA may determine that the applicant is not qualified to receive an award and use that determination as a basis for making the award to another applicant. These requirements do not apply if the applicant: (1) Is excepted from the requirements under 2 CFR 25.110(b) or (c); or (2) has an exception approved by FTA under 2 CFR 25.110(d). *SAM.GOV* registration takes approximately 3–5 business days, but FTA recommends allowing ample time, up to several weeks, for completion of all steps. For additional information on obtaining a unique entity identifier, please visit <https://www.sam.gov>.

4. Submission Dates and Times

Project proposals must be submitted electronically through *GRANTS.GOV* and must be received by 11:59 p.m. Eastern time on November 12, 2024. *GRANTS.GOV* attaches a time stamp to each application at the time of

submission. Late applications will not be accepted. Mail and fax submissions will not be accepted. Prospective applicants should initiate the process by registering on the *GRANTS.GOV* website promptly to ensure completion of the application process before the submission deadline.

FTA urges applicants to submit proposals at least 72 hours prior to the due date to allow time to receive the validation messages and to correct any problems that may have caused a rejection notification. *GRANTS.GOV* scheduled maintenance and outage times are announced on the *GRANTS.GOV* website. Deadlines will not be extended due to scheduled website maintenance.

Within 48 hours after submitting an electronic application, the applicant should receive two email messages from *GRANTS.GOV*: (1) Confirmation of successful transmission to *GRANTS.GOV*; and (2) confirmation of successful validation by *GRANTS.GOV*. If confirmation of successful validation is not received or a notice of failed validation or incomplete materials is received, the applicant must address the reason for the failed validation, as described in the email notice, and resubmit before the submission deadline. If making a resubmission for any reason, include all original attachments regardless of which attachments were updated.

Applicants are encouraged to begin the process of registration on the *GRANTS.GOV* site well in advance of the submission deadline. Registration is a multi-step process, which may take several weeks to complete before an application can be submitted. Registered applicants may be required to take steps to keep their registration up to date before submissions can be made successfully. Registration in *SAM.GOV* is renewed annually and persons making submissions on behalf of the Authorized Organization Representative (AOR) must be authorized in *GRANTS.GOV* by the AOR to make submissions.

5. Funding Restrictions

This award is subject to the Governmentwide Uniform Administrative Requirements and Cost Principles (2 CFR part 200) and FTA Circular 5010.1. Capital expenses such as equipment purchases are not considered to be eligible costs unless they directly relate to the technical assistance being supported by FTA funds. Acceptable costs can include but are not limited to technology and start-up costs for information technology systems and website resources, subject

matter expert consultants as needed, salaries and fringe benefits of direct staff, support staff, staff travel to attend relevant conferences and provide on-site technical assistance, office space, program materials and supplies, and indirect costs.

Funds awarded under this notice cannot be used to reimburse projects for otherwise eligible expenses incurred prior to FTA award of a Grant Agreement or Cooperative Agreement unless FTA has issued a "Letter of No Prejudice" for the project before the expenses are incurred. Allowable direct and indirect expenses must be consistent with the Governmentwide Uniform Administrative Requirements and Cost Principles (2 CFR part 200) and FTA Circular 5010.1.

E. Application Review Information

1. Criteria

FTA will evaluate proposals according to the following criteria:

- a. Methodology for Achieving the Objectives of the National RTAP;
- b. Qualifications and Experience of Staff and Key Personnel;
- c. Communication, Technical Assistance, and Outreach Strategy;
- d. Technical, Legal, and Financial Capacity;
- e. Ability to Work with Stakeholders and Build Partnerships at the National Level; and
- f. Plan to Evaluate the National RTAP activities.

The criteria are explained below:

a. Methodology for Achieving the Objectives of the National RTAP

FTA is seeking innovative and effective approaches and strategies to accomplish the project objectives. Proposals will be evaluated based on the proposed methodology for addressing the objectives of the National RTAP, as well as the capacity of the organization to address the issues outlined in the proposal. The proposal should clearly explain the objectives, activities, deliverables, milestones, timeline and intended outcomes for achieving the goals outlined in the scope for the first year, and how the organization intends to implement them.

b. Qualifications and Experience of Staff and Key Personnel

The proposal should demonstrate that staff and key personnel have the appropriate skills and experience to carry out the activities. FTA will evaluate the qualifications and experience of the key staff detailed in the proposal for their: (1) Prior experience providing technical

assistance, especially related to public transit in rural and tribal areas, (2) prior experience implementing the other tasks outlined in this solicitation, (3) knowledge of issues related to public transit in rural and tribal areas.

c. Communication, Technical Assistance, and Outreach Strategy

The proposal should demonstrate the ability to execute a technical assistance program with a national scope, as well as strategies for delivering targeted assistance to State, regional, and local stakeholders. Proposing organizations are encouraged to think innovatively about this technical assistance delivery. The proposal also should demonstrate the ability to carry out outreach, dissemination, and information management activities. These activities will include capturing and sharing useful and best practices in rural and tribal transportation operations, as well as supporting activities related to FTA's tribal transit program. The proposal should demonstrate innovative approaches, such as the use of communication that is accessible through social media and other information technologies, to accomplish effective stakeholder strategies that both manage and plan the engagement. Rural and tribal communities have unique needs, and the proposal should demonstrate effective strategies for providing technical assistance to address community needs, reflect engagement touchpoints and the ability to meaningfully engage with these communities to produce successful transportation outcomes.

d. Technical, Legal, and Financial Capacity

The proposal must include an effective project management plan to administer and manage the National RTAP and must demonstrate that the applicant has the technical, legal, and financial capacity to carry out the plan. FTA will evaluate the applicant's:

1. Technical capacity to administer and manage the proposed activities;
2. Total budget and staffing; and
3. Evidence of understanding of the National RTAP mission and comprehensive technical approach to delivering the National RTAP.

The proposal should indicate a strong organizational capability to address the issues and activities outlined in the proposal. In addition, the proposal should indicate experience in managing and monitoring sub-recipients and contractors, if any are anticipated in the proposal. The recipient selected must be an eligible recipient for a cooperative agreement with FTA and able to sign the

required certifications and assurances. The successful applicant must have no technical, legal or financial issues that would impact its eligibility and authority to apply for and accept FTA funds or carry out the award's scope of work.

e. Ability To Work With Stakeholders and Build Partnerships at the National Level

The proposal must include a plan for effective and meaningful stakeholder engagement. The proposal will be evaluated based in the quality and effectiveness of the plan for engaging and supporting stakeholder engagement to drive the activities of the National RTAP.

f. Plan To Evaluate the National RTAP Activities

FTA will evaluate the effectiveness of proposed performance measures and the plan for collecting and reporting on data related to the National RTAP's products activities, and outcomes.

2. Review and Selection Process

A technical evaluation committee made up of FTA staff will screen each application for eligibility and evaluate proposals based on the published evaluation criteria outlined in this notice. FTA may request additional information from applicants to clarify information contained within the proposal. After consideration of the findings of the technical evaluation committee, the FTA Administrator will determine the final selection.

3. Integrity and Performance Review

Prior to making an award, FTA is required to review and consider any information about the applicant that is in the Federal Awardee Performance and Integrity Information Systems (FAPIIS) accessible through *SAM.GOV*. An applicant may review and comment on information about itself that a Federal awarding agency previously entered. FTA will consider any comments by the applicant, in addition to the other information in FAPIIS, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in 2 CFR 200.206, Federal Awarding Agency Review of Risk Posed by Applicants.

F. Federal Award Administration

1. Federal Award Notices

FTA will notify the successful organization by email or telephone of their status and the selection will be announced FTA's website. Following

notification, the successful entity will be required to submit its application through the FTA Transit Award Management System (Tramps). FTA will work with the successful applicant to develop a detailed cooperative agreement and may require modifications to the proposal before a cooperative agreement is awarded. FTA will award and manage a cooperative agreement through Tramps. The selection of a cooperative agreement recipient under this NOFO will go through the Congressional notification and release process.

2. Administrative and National Policy Requirements

a. Grant Requirements

The successful applicant will execute their cooperative agreement through TrAMS and adhere to the FTA grant requirements of the National RTAP Program. For more information, see FTA Circular 9040.1G: Formula Grants for Rural Areas: Program Guidance and Application Instructions, available here: <https://www.transit.dot.gov/regulations-and-guidance/fta-circular-90401g-formula-grants-rural-areas-program-guidance-and>. Upon notification of intent to award funds, the recipient must execute the Award in TrAMS within 90 days; otherwise, FTA may withdraw its award.

b. Standard Assurances

Selected recipients must comply with all Federal statutes, regulations, executive orders, directives, FTA circulars, and other Federal administrative requirements in carrying out project supported activities by this FTA award. In addition to these requirements, recipients of FTA funds are required to execute the most current Certifications and Assurances before entering into a grant or cooperative agreement.

c. Statement of Work

Once selected for award, the recipient will be asked to outline a plan of action, a Statement of Work (SOW), in a format provided by FTA. The SOW includes estimated milestone dates and performance measures and goals for major activities and products which are SMART—specific, measurable, achievable, relevant, and timebound. Activities should be justified in terms of eligible program activities and proposals should clearly demonstrate the connection between the planned work and at least one of the specific program activities cited. The Statement of Work also should address supporting activities, such as plans for engaging

participants and/or dissemination strategies for sharing the results, if such are critical to the success of the supported program.

d. Measuring Outcomes

The recipient will be required to assist FTA in evaluating the project and its outcomes. FTA will evaluate the project according to the metrics and goals approved in the Statement of Work for the project. FTA anticipates applying metrics, among others, that will demonstrate target audience usage and feedback on the services and resources of the center.

e. Data Access & Data Sharing

Recipients funded under this announcement will be required to gather and share all relevant and required data with FTA within appropriate and agreed-upon timelines, to support any project evaluations.

In Response to the White House Office of Science and Technology Policy memorandum, dated August 25, 2022, titled “Ensuring Free, Immediate, and Equitable Access to Federally Funded Research,” the Department is incorporating Public Access requirements into all funding awarded (e.g., grants, cooperative agreements, etc.) for scientific research. Recipients are required to include these obligations in any sub-awards or other related funding agreements.

Recipients must remove all confidential business information (CBI) or personally identifiable information (PII) information before providing public access to any project data. All appropriate data are to be accessible to FTA and the public for a minimum of five years after the period of performance has expired. Recipients and sub-recipients must make available to FTA copies of all work developed in performance of a project funded under this announcement, including but not limited to software and data.

f. Knowledge Transfer

Recipients and sub-recipients may be asked, during the period of performance, to participate in information exchange meetings, webinars, or outreach events to support FTA’s goal of advancing models of success and information that is helping to address human services transportation coordination.

3. Reporting

Post-award reporting requirements include submission of Federal Financial Reports and Milestone Progress Reports in TrAMS on a quarterly basis. Documentation is required for payment.

Additional reporting may be required specific to the National Rural Transportation Assistance Program.

As part of completing the annual certifications and assurances required of FTA recipients, a successful applicant must report on the suspension or debarment status of itself and its principals. If the award recipient’s active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of an award made pursuant to this Notice, the recipient must comply with the Recipient integrity and Performance Matters reporting requirements described in Appendix XII to 2 CFR part 200.

The Federal Financial Accountability and Transparency Act (FFATA) requires data entry at the FFATA Sub Award Reporting System (<https://www.FSRS.gov>) for all sub-awards and sub-contracts issued for \$25,000 or more, as well as addressing executive compensation for both grantee and subaward organizations. Additionally, FTA may evaluate and report on the success of the program. Applicants may be required to provide information for this purpose indicating the need, problem, or opportunity addressed by activities of the program. The national significance and relevance to the public transportation industry must also be clearly demonstrated.

G. Federal Awarding Agency Contacts

For further information concerning this notice, please contact the Technical Assistance program manager Heather Edmonds by phone at 202–366–3748, or by email at heather.edmonds@dot.gov. A TDD is available for individuals who are deaf or hard of hearing at 800–877–8339.

To ensure that applicants receive accurate information about eligibility or the program, applicants are encouraged to contact FTA directly with questions, rather than through intermediaries or third parties.

H. Other Information

For more information on FTA’s Rural and Tribal Transit Resources, visit <https://www.transit.dot.gov/rural>.

For more information on FTA’s Sponsored Technical Assistance Centers see <https://www.transit.dot.gov/regulations-and-programs/access/ccam/about/federal-transit-administration-sponsored-technical>.

For information on the Rural Transportation Assistance Program, visit <https://www.transit.dot.gov/funding/>

grants/rural-transportation-assistance-program-5311b3.

Veronica Vanterpool,
Acting Administrator.

[FR Doc. 2024–20655 Filed 9–11–24; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD–2018–0088]

Centers of Excellence for Domestic Maritime Workforce Training and Education; Notice of Opportunity To Apply for Designation

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: The National Defense Authorization Act of 2018 (the Act) provided the Secretary of Transportation with the discretionary authority to designate qualified entities as Centers of Excellence (CoEs). CoE designations serve to assist the maritime industry in obtaining and maintaining the highest quality workforce. Upon the Secretary's approval, twenty-seven institutions were designated on May 19, 2021; thirty-two applicants were designated on February 22, 2024. The purpose of this notice is to solicit applications from qualified training entities for the next round of CoE designations. A Center of Excellence designation is valid for five years.

DATES: Applications, including all supporting information and documents, must be submitted by 8:00 p.m. E.T. on November 12, 2024.

ADDRESSES: A training entity seeking designation as a CoE may submit applications, including all supporting information and documents, by email to CoEDMWTE@dot.gov.

FOR FURTHER INFORMATION CONTACT: Gerard Wall, Centers of Excellence for Domestic Maritime Workforce Training and Education (CoE) Program Manager, via electronic mail at gerard.wall@dot.gov or call 202–366–7273.

SUPPLEMENTARY INFORMATION: Section 3507 of the FY 2018 NDAA provided authority to the Secretary to designate qualified entities as CoEs. This authority is codified at 46 U.S.C. 51706. Following the enactment of the FY 2018 NDAA, MARAD developed a procedure to recommend to the Secretary the designation of eligible institutions as CoEs. Section 3532 of the FY 2023 NDAA, enacted on December 23, 2022, revised the criteria for CoE designations by amending the definition of “covered

training entity.” MARAD revised its CoE designation procedure to conform to the amended CoE criteria in the FY 2023 NDAA.

46 U.S.C. 51706(c)(1)(B), provides that a “covered training entity” includes (i) a postsecondary educational institution; (ii) a postsecondary vocational institution; (iii) a public or private nonprofit entity that offers one or more other structured experiential learning training programs for United States maritime industry, including a program that is offered by a labor organization or conducted in partnership with a nonprofit organization or one or more employers in the United States maritime industry; (iv) an entity sponsoring a registered apprenticeship program; or (v) a maritime training center designated prior to the date of enactment of the FY 2023 NDAA. As reflected in the definition of “covered training entity” in the Key Terms section of this notice, to be eligible for CoE designation, an entity must meet one of the criteria under clauses (i) through (v) of 46 U.S.C. 51706(C)(1)(B).

Qualified training entities seeking to be designated as CoEs should apply to MARAD. MARAD developed policy to provide interested parties with comprehensive agency guidance on how to apply for CoE designation and how the CoE program will be administered. Applications should include information to demonstrate that the applicant institution meets certain requirements, selection criteria, and qualitative attributes consistent with section 3532 of the FY 2023 NDAA.

The MARAD application procedure and program details are listed below and are also available to the public on its website at <https://www.maritime.dot.gov/education/maritime-centers-excellence>.

Prior Federal Action

Multiple **Federal Register** Notices were published between May 2018 and March 2020 seeking and responding to public comment on the proposed CoE designation policy. All unabridged comments are available for review electronically at www.regulations.gov by searching DOT Docket “MARAD–2018–0088” or by visiting the DOT Docket, Room PL–401, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except for Federal Holidays.

On March 06, 2020, MARAD published its final CoE designation policy in the **Federal Register** (85 FR 13231). Subsequently, MARAD issued a notice in the **Federal Register** (85 FR 67599) on October 23, 2020, entitled Center of Excellence for Domestic

Maritime Workforce: Notice of Opportunity to Apply for Training and Education Designation, and on the MARAD website at www.MARAD.dot.gov, requesting applications from qualified training entities seeking to be designated as a CoE. The application period closed on December 22, 2020. Thirty applications for designation were received. Upon the Secretary's approval, twenty-seven institutions were designated on May 19, 2021, as 2021 CoEs.

On July 19, 2022, MARAD issued a notice in the **Federal Register** (87 FR 43103), entitled Center of Excellence for Domestic Maritime Workforce: Notice of Opportunity to Apply for Training and Education Designation, and on the MARAD website at www.MARAD.dot.gov, to solicit applications from qualified training entities for CoE designation. The application period closed on September 19, 2022. Thirty-six applications for designation were received. However, before MARAD could complete final agency action on these applications, Congress enacted the FY 2023 NDAA, which amended the CoE designation criteria and required MARAD to terminate action on the 2022 applications.

On July 20, 2023, MARAD issued a notice in the **Federal Register** (88 FR 46829), entitled Center of Excellence for Domestic Maritime Workforce: Designation Policy Update and Notice of Opportunity to Apply for Designation for 2023, and on the MARAD website at www.MARAD.dot.gov, to announce termination of agency action on the 2022 applications, issue an updated CoE designation policy conforming to the FY 2023 NDAA, and to solicit applications from qualified training entities for the next round of CoE designations. The application period closed on September 18, 2023. Thirty-two of the thirty-four entities that submitted applications were designated as CoEs on February 22, 2024.

The purpose of this notice is to solicit applications from qualified training entities under the FY 2023 NDAA for the next round of CoE designation. A Center of Excellence designation is valid for five years.

Applicant Assistance

To assist applicants to be designated as a CoE please find below MARAD's policy to include recommendations on how best to apply.

MARAD Center of Excellence for Domestic Maritime Workforce Training and Education Designation Policy

This policy describes the process through which MARAD will exercise its discretionary authority to designate CoEs in accordance with the FY 2023 NDAA.

How To Be Designated a Center of Excellence for Domestic Maritime Workforce Training and Education

Introduction

The Secretary of Transportation, acting through the Maritime Administrator, may designate certain eligible and qualified training entities as CoEs. MARAD has developed the CoE Program to provide interested parties with comprehensive agency guidance on how best to apply for CoE designation. However, conformity with this CoE applicant guidance, except where explicit in the statute, is voluntary only. MARAD will review and consider all applications it receives and may contact applicants with questions to assist in reviewing their applications. The CoE Program is a voluntary program. Each training entity is free to decide whether it wishes to participate in the program and apply for a CoE designation. Applications should include information to demonstrate that the applicant institution meets certain criteria, designation requirements, and attributes consistent with 46 U.S.C. 51706.

Key Terms

The following list of key terms are either directly taken from the statute or have been developed by MARAD or from comments received from the public during our earlier notice and comment period. The list is intended to assist applicants by providing context and insight into the approval process. If you believe that your institution qualifies for CoE designee status under an alternate interpretation or by qualifications not otherwise clearly articulated in the statute, your application should include a cogent justification for any such alternative and it will be given due consideration during our review.

1. “Afloat career” is a term developed by MARAD to mean a career as a merchant mariner compensated for service aboard a vessel in the U.S. Maritime Industry.

2. “Ashore career” is a term developed by MARAD to mean a shore-based compensated occupation in the United States Maritime Industry.

3. “Covered training entity” means an entity that—

(A) is located in a State that borders on the—

- (i) Gulf of Mexico,
- (ii) Atlantic Ocean,
- (iii) Long Island Sound,
- (iv) Pacific Ocean,
- (v) Great Lakes, or
- (vi) Mississippi River System.

(B) is—

i. a postsecondary educational institution (as such term is defined in section 3(39) of the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2302) with an established maritime training program as part of its curriculum.

ii. a postsecondary vocational institution (as such term is defined in section 102(c) of the Higher Education Act of 1965 (20 U.S.C. 1002(c) with an established maritime training program as part of its curriculum.

iii. a public or private nonprofit entity that offers one or more other structured experiential learning training programs for United States workers in the United States maritime industry, including a program that is offered by a labor organization or conducted in partnership with a nonprofit organization or one or more employers in the United States maritime industry.

iv. an entity sponsoring an apprenticeship program registered with the Office of Apprenticeship of the Employment and Training Administration of the Department of Labor or a State apprenticeship agency recognized by the Office of Apprenticeship pursuant to the Act of August 16, 1937 (commonly known as the ‘National Apprenticeship Act’; 50 Stat. 664, chapter 663; 29 U.S.C. 50; or

v. A maritime training center designated prior to the date of enactment of the FY 2023 NDAA.

(C) has a demonstrated record of success in maritime workforce training and education and

(D) has—

(i) not been subject to a disciplinary or adverse administrative action by Federal, State, or other regulatory bodies;

(ii) no unresolved nonconformities from administrative audits by regulatory bodies; and

(iii) not been subject to any adverse criminal action by a Federal, State, or local law enforcement authority.

4. “Mississippi River System” is interpreted by MARAD to mean the mostly riverine network of the United States which includes the Mississippi River, and all connecting waterways, natural tributaries and distributaries. The system includes the Arkansas, Illinois, Missouri, Ohio, Red, Allegheny, Tennessee, Wabash and Atchafalaya

ivers. Important connecting waterways include the Illinois Waterway, the Tennessee-Tombigbee Waterway, and the Gulf Intracoastal Waterway.

5. “Postsecondary educational institution” means—

(A) an institution of higher education, as defined in 20 U.S.C. 1001, that provides not less than a 2-year program of instruction that is acceptable for credit toward a bachelor’s degree.

(B) a tribally controlled college or university; or

(C) a nonprofit educational institution offering certificate or other skilled training programs at the postsecondary level.

6. “Postsecondary vocational institution” means a postsecondary vocational institution as defined in 20 U.S.C. 1002(c).

7. “State” is interpreted by MARAD to mean a State of the United States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands, and any other territory or possession of the United States.

8. “Training program means a program that provides training services, as described in section 134(c)(3)(D) of the Workforce Innovation and Opportunity Act (Pub. L. 113–128; 29 U.S.C. 3174).

9. “United States maritime industry” (as such term is defined in 46 U.S.C. 51706(c)(6) means the design, construction, repair, operation, manning, and supply of vessels in all segments of the maritime transportation system of the United States, including:

(A) the domestic and foreign trade;

(B) the coastal, offshore, and inland trade;

(C) non-commercial maritime activities, including—

(i) recreational boating; and

(ii) oceanographic and limnological research as described in 46 U.S.C. 2101(24).

Applicant Information

1. *Who is eligible to apply for designation as a center of excellence for domestic maritime workforce training and education (CoE)?*

Participation in the CoE program is entirely voluntary for a covered training entity. A covered training entity is not required to seek a CoE designation. Under the statute, a covered training entity that provides training and education for the domestic maritime workforce may apply so long as it meets the following criteria:

a. The entity is located in a State that borders on at least one of the following bodies of water:

1. Gulf of Mexico,
 2. Atlantic Ocean,
 3. Long Island Sound,
 4. Pacific Ocean,
 5. Great Lakes, or
 6. Mississippi River System.
- b. The entity has a demonstrated record of success in maritime workforce training and education; and
- c. The entity is:
1. A postsecondary educational institution; or
 2. A postsecondary vocational institution; or
 3. A public or private nonprofit entity that offers one or more other structured experiential learning training programs for United States workers in the United States maritime industry, including a program that is offered by a labor organization or conducted in partnership with a nonprofit organization or one or more employers in the United States maritime industry; or
 4. An entity sponsoring an apprenticeship program registered with the Office of Apprenticeship of the Employment and Training Administration of the Department of Labor or a State apprenticeship agency recognized by the Office of Apprenticeship pursuant to the Act of August 16, 1937 (commonly known as the 'National Apprenticeship Act'; 50 Stat. 664, chapter 663; 29 U.S.C. 50); or
 5. A maritime training center designated prior to the date of enactment of the FY 2023 NDAA; or
 6. A group of covered training entities that:
 - i. Consists only of members that meet the eligibility criteria at (1)(a), 1(b) and one of the eligibility criteria listed at (1)(c)(1) through (1)(c)(4), and the selection criteria under (2);
 - ii. Names a member of such group as a lead entity. The lead entity will serve as the primary point of contact with MARAD and will be responsible for all duties, including administrative, legal and financial, as related to the CoE designation. For example, the lead entity is responsible for submitting the CoE application, responding to any inquiries from MARAD, and coordinating and executing any cooperative agreements with MARAD; and
 - iii. Has a legally binding agreement signed by all members. That agreement must include the name of the group, which will receive the CoE designation if one is granted and list the lead entity and its responsibilities consistent with (ii) of this section.

2. How does MARAD interpret the selection criteria for CoE designation?

- I. Assuming no alternative qualifications are provided, MARAD will consider applicants eligible for designation if they can demonstrate compliance with all the following criteria:
- a. The academic programs offered by the entity include:
 1. One or more afloat career preparation tracks in the United States Maritime Industry, and/or
 2. One or more ashore career preparation tracks in the United States Maritime Industry.
 - b. Applicant institutions offering afloat career and/or ashore career tracks have been accredited as follows:
 1. A postsecondary educational institution must hold current accreditation of the institution from a Regional Accreditation Agency or a Nationally Recognized Agency on the list of Accrediting Agencies approved by the U.S. Department of Education.
 2. A postsecondary vocational institution must hold current accreditation of the institution from a Regional Accreditation Agency or a Nationally Recognized Agency on the list of Accrediting Agencies approved by the U.S. Department of Education.
 3. A public or private non-profit entity that offers one or more other structured experiential learning training programs for United States workers in the United States maritime industry, including a program that is offered by a labor organization or conducted in partnership with a nonprofit organization or one or more employers in the United States maritime industry—
 - ii. must have United States Coast Guard (USCG) approval of the mariner training program and mariner training courses offered by the institution, if applicable; or
 - iii. must hold current accreditation of the maritime training program offered by the institution from one or more of the following:
 - A. the State's Department of Education or equivalent State agency; or
 - B. employers in the United States maritime industry; or
 - C. other appropriate external review body which is specifically authorized to review and validate post-secondary education programs and is acceptable to MARAD.
 4. An entity sponsoring a registered apprenticeship program must hold current accreditation from a State Apprenticeship Agency (SAA) in accordance with 29 CFR part 29.
 5. A maritime training center designated prior to the date of

enactment of the FY 2023 NDAA must hold current accreditation—

- i. *either* of the institution, from a Regional Accreditation Agency or a Nationally Recognized Agency on the list of Accrediting Agencies approved by the U.S. Department of Education; *or*
- ii. of the maritime training program offered by the institution from either:
 - A. the State Apprenticeship Agency (SAA) in accordance with 29 CFR part 29,
 - B. the State's Department of Education or equivalent State agency,
 - C. the United States Coast Guard (USCG), or
 - D. other appropriate external review body which is specifically authorized to review and validate post-secondary education programs and is acceptable to MARAD.
6. Each member of a Group must hold current accreditation according to each member's corresponding eligibility category and the accreditation requirements outlined above in (I)(b)(1–5).
- c. As applicable, the applicant maintains USCG approval for the merchant mariner training program and/or merchant mariner training course(s) offered by the institution.
- d. The applicant provides data and statistics to demonstrate record of success in maritime workforce training and education and institutional and/or program effectiveness. This should include, but is not limited to, recruitment data, past/current enrollment (trends), attrition rates, student program completion data, post-program job and placement statistics (to the extent available to the institution), and program effectiveness feedback from students, faculty, alumni, and other stakeholders.
- e. As applicable, the applicant maintains authorization and/or endorsement of the program and/or course(s) by an applicable professional society or industry body (including, but not limited to Welding, Electrician, Electronics, Maritime Construction, Maritime Logistics, Maritime Systems, etc.) to issue industry accepted certifications that reflect professional recognition of the level of educational or technical skill achievement.
- II. Additional factors to be considered include the following qualitative attributes fostered by the institution:
 - a. Supporting workforce needs of the local, state, or regional economy.
 - b. Building Science, Technology, Engineering, and Math (STEM) competencies of local/future workforce through maritime programs to meet emerging local, regional, and national economic interests.

c. Promoting diversity, equity, inclusion, and accessibility within the institution, including among the student body, faculty, and staff.

d. Offering a broad-based curriculum and stackable credentials where applicable.

e. Engaging and/or collaborating with the maritime industry including, but not limited to employers, associations, and other industry organizations or partners.

f. Engaging and/or collaborating with employer-led maritime training practices and programs through Sector Partnerships as authorized in the 2014 Workforce Innovation and Opportunity Act Section 3 (26).

g. Engaging and/or collaborating with local and regional maritime high schools or other high schools with maritime, maritime related, Career Technical Education (CTE) or STEM programs.

h. Engaging and/or collaborating with maritime academies as appropriate and other applicable institutions or organizations for advanced proficiency and higher education; and

i. Conducting other significant domestic maritime workforce development related activities.

Implementation and Administration

MARAD will evaluate the applicant's supporting documentation and either approve or disapprove the request for designation. During the evaluation of the application and the supporting documentation, MARAD may request clarifications or additional information from the applicant. Upon approval, the Maritime Administrator or his/her designee will make a designation. MARAD will thereafter publish the CoE's name and contact information on its website.

3. When and where should I submit my application for designation?

a. MARAD will publish notifications in the **Federal Register** and on its website indicating the application period for the next designation cycle. Applicants will be provided 60 days to prepare and submit their applications.

b. A qualified training entity seeking designation as a CoE may submit applications, including all supporting information and documents, by email to CoEDMWTE@dot.gov.

4. How will I know the outcome of my designation request application?

MARAD will notify each applicant of the status of their designation request. During the evaluation period, MARAD may request clarification or additional information from the applicant.

5. Does my CoE designation expire?

Yes. CoE designation is valid for five years from the year in which the designation is made and is identified by designation year (e.g., X has been designated a Center of Excellence for Domestic Maritime Workforce Training and Education for 2024). Successful applicants from one designation cycle are encouraged to reapply during the designation cycle corresponding with the expiration of their current five-year designation.

How To Apply for a CoE Designation

6. What should be included in my CoE Designation Application?

Special Instructions: To assist MARAD in its review of your application and to ensure that your application is identified as complete, your institution should provide only concise and relevant information and supporting documentation to adequately demonstrate your qualifications and compliance with the statutory designation criteria. To that end, MARAD encourages applicants to ensure that each responsive section and each page of any document or enclosure in their application clearly references the question number(s) and section(s) listed in this guidance and/or the statute. See the below examples:

Example 1. "*Mar Ex*" is eligible for the CoE program as a Postsecondary Educational Institution. (Q3i). Please find enclosed our Articles of Incorporation, Certificate of Status, and State authorization validation document. (Q3, a, b, c)

Example 2. "*Mar Ex*" is enclosing the following supporting documents to demonstrate that our entity is accredited: U.S. Department of Education Accrediting Agency XYZ accreditation (Q5, Section a.i); and our Afloat Track program and courses are approved by the USCG (Q5, Section a.ii).

Note: MARAD will host two (2) "Center of Excellence Application" sessions to provide guidance to prospective applicants on the content of this **Federal Register** notice. The dates, times, and locations of those sessions will be announced on the MARAD CoE homepage within forty-eight hours of the publication of the Notice of Opportunity to Apply. Attendance at either of those information sessions is entirely voluntary and not a requirement of the application process.

Information To Include in Your Application

All submitted documents should clearly reference the question number(s) and section(s) listed in this guidance and/or the statute.

1. Letter applying for CoE designation from the Chief Executive of the applicant institution.

2. Applicant contact information:

a. Legal name of applicant institution and address.

b. Chief executive's name, position title, address, phone number(s) and email.

c. Points of contact (POC) name(s), position titles, phone number(s), emails.

3. Indicate the category under which the applicant entity is claiming qualified for the CoE program:

i. 1(c)(1) Postsecondary Educational Institution; or

ii. 1(c)(2) Postsecondary Vocational Institution; or

iii. 1(c)(3) Public or private nonprofit entity that offers one or more other structured experiential learning training programs for United States workers in the United States maritime industry, including a program that is offered by a labor organization or conducted in partnership with a nonprofit organization or one or more employers in the United States maritime industry; or

iv. 1(c)(4) Entity sponsoring a registered apprenticeship program;

v. 1(c)(5) A maritime training center designated prior to the date of enactment of the FY 2023 NDAA; or

vi. 1(c)(6) A Group of covered training entities.

4. Submit the following supporting information and documents:

a. Charter, Articles of Incorporation, Certificate of Incorporation, or equivalent.

b. Certificate of Status (also known as Certificate of Existence or Certificate of Good Standing), a document issued by a state official (usually the Secretary of State), if applicable.

c. State authorization validation documents, if applicable.

d. Public or Non-Profit status certification.

e. Accreditation approval letter(s) from an accrediting agency(ies)

f. Approval letter from a State Apprenticeship Agency (SAA) in accordance with 29 CFR part 29, if applicable.

g. Approval letter from the State's Department of Education or equivalent State agency, if applicable.

h. Approval letter from the United States Coast Guard (USCG), if applicable.

i. ISO 9001 or other quality management certification, if applicable.

j. Data and statistics to demonstrate record of success in maritime workforce training and education and institutional effectiveness. This should include, but not be limited to, recruitment data, past/

current enrollment (trends), attrition rates, student program completion data, post-program job and placement statistics (to the extent available to the institution), and program effectiveness feedback from students, faculty, alumni, and other stakeholders.

Note: This information corresponds to the types of data commonly collected annually as part of a higher education institution's Performance Accountability Report (PAR).

5. Indicate the total number of afloat career preparation tracks and/or the total number of ashore career preparation tracks your institution offers in the United States Maritime Industry and submit the following supporting information:

- a. Program summary;
- b. A description of applicable courses offered (only relevant maritime related program-specific pages from the catalogue);
- c. If applicable, letters of authorization and/or endorsement of the course/program and/or course(s) by an applicable professional society or industry body (including, but not limited to Welding, Electrician, Electronics, Maritime Construction, Maritime Logistics, Maritime Systems, etc.) to issue industry accepted certifications that reflect a professionally recognized level of educational or technical skill achievement; and
- d. Any other relevant supporting documentation.

Note: Applicant institutions offering both ashore and afloat career tracks should submit supporting information for both tracks.

6. Applicant institutions offering afloat career and/or ashore career tracks should demonstrate that they have satisfied accreditation requirements, as set forth below:

- a. Postsecondary educational institutions and postsecondary vocational institutions—
 - i. are accredited by a Regional Accreditation Agency or a Nationally Recognized Agency on the list of Accrediting Agencies approved by the U.S. Department of Education; and
 - ii. if applicable, the mariner training program and mariner training courses offered by the institution have USCG approval.
- b. A public or private nonprofit entity that offers one or more other structured experiential learning training programs for United States workers in the United States maritime industry, including a program that is offered by a labor organization or conducted in partnership with a nonprofit organization or one or more employers

in the United States maritime industry—

- i. has United States Coast Guard (USCG) approval of the mariner training program and mariner training courses offered by the institution, if applicable; or
- ii. hold current accreditation of the maritime training program offered by the institution from one or more of the following:
 - A. the State's Department of Education or equivalent State agency; or
 - B. employers in the United States maritime industry; or
 - C. other appropriate external review body which is specifically authorized to review and validate post-secondary education programs and is acceptable to MARAD.
- c. An entity sponsoring a registered apprenticeship program holds current accreditation from a State Apprenticeship Agency (SAA) in accordance with 29 CFR part 29.
- d. A maritime training center designated prior to the date of enactment of the FY 2023 NDAA must hold current accreditation—
 - i. *either* of the institution, from a Regional Accreditation Agency or a Nationally Recognized Agency on the list of Accrediting Agencies approved by the U.S. Department of Education; *or*
 - ii. of the maritime training program offered by the institution from either:
 - A. the State Apprenticeship Agency (SAA) in accordance with 29 CFR part 29,
 - B. the State's Department of Education or equivalent State agency,
 - C. the United States Coast Guard (USCG), or
 - D. other appropriate external review body which is specifically authorized to review and validate post-secondary education programs and is acceptable to MARAD.
- e. Each member of a Group must hold current accreditation according to each member's corresponding eligibility category and the accreditation requirements outlined above in (6)(a-d).
- 7. All applicant institutions should submit a brief narrative statement for one or more qualitative attributes fostered by the institution to accomplish the following:
 - a. Support the workforce needs of the local, state, or regional economy;
 - b. Build the STEM (Science, Technology, Engineering, and Math) competencies of local/future workforce to meet emerging local, regional, and national economic interests;
 - c. Promote diversity, equity, inclusion, and accessibility within the institution, including among the student body, faculty, and staff;

d. Offer a broad-based curriculum and stackable credentials, where applicable;

e. Engage and/or collaborate with the maritime industry, including, but not limited to employers, associations, and other industry organizations or partners;

f. Engage and/or collaborate with employer-led maritime training practices and programs through Sector Partnerships as authorized in the 2014 Workforce Innovation and Opportunity Act Section 3(26);

g. Engage and/or collaborate with local and regional maritime high schools with maritime, maritime related, Career Technical Education (CTE) or STEM programs;

h. Engage and/or collaborate with maritime academies and other institutions or organizations for advanced proficiency and higher education; and

i. Conduct other significant domestic maritime workforce development related activities.

8. All applicant institutions may provide any relevant endorsements, awards, recognition, and significant accomplishments in support of their application.

Note: As part of designation, CoE designee institutions are geolocated on MARAD's CoE Interactive Map located on the MARAD website. In addition to identifying geographic location, this map also provides a link to a landing page for each institution and a brief narrative statement, an Institution Overview, about each institution's maritime program. Applicants are encouraged to take into consideration that the information they submit for 6a-6i may serve dual purpose: application support and content for a one-page institutional overview that highlights your institution's achievements and aspirations.

Paperwork Reduction Act

The information collection requirements in the final CoE designation policy have been approved under information collection number 2133-0549 by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.* In accordance with 5 CFR 1320.5(b)(2)(i), persons are not required to provide information to the Government unless the information collection displays a current and valid OMB control number. This application process is operating under the following current and valid OMB control number: 2133-0549.

(Authority: The National Defense Authorization Act for Fiscal Year 2023, Pub. L. 117-263 (December 23, 2022), 46 U.S.C. 51706. The Paperwork Reduction Act of

1995, 44 U.S.C. Chapter 35, as amended, 49 CFR 1.49).

By Order of the Maritime Administrator.
T. Mitchell Hudson, Jr.
Secretary, Maritime Administration.

[FR Doc. 2024-20677 Filed 9-11-24; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2024-0121]

Request for Comments on the Renewal of a Previously Approved Information Collection: Automated Mutual-Assistance Vessel Rescue (AMVER) System

AGENCY: Maritime Administration, Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: The Maritime Administration (MARAD) invites public comments on our intention to request the Office of Management and Budget (OMB) approval to renew an information collection in accordance with the Paperwork Reduction Act of 1995. The proposed collection OMB 2133-0025 (Automated Mutual-Assistance Vessel Rescue (AMVER) System) is used to maintain a current plot of U.S.-Flag and U.S.-owned vessels. Since the last renewal, there was an increase in the total respondents to this collection, which has resulted in more responses and higher burden hours. There are no other changes to this collection. We are required to publish this notice in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments must be submitted on or before November 12, 2024.

ADDRESSES: You may submit comments identified by Docket No. MARAD-2024-0121 through one of the following methods:

- **Federal eRulemaking Portal:** www.regulations.gov. Search using the above DOT docket number and follow the online instructions for submitting comments.

- **Mail or Hand Delivery:** Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Instructions: All submissions must include the agency name and docket number for this rulemaking.

Note: All comments received will be posted without change to

www.regulations.gov including any personal information provided.

Comments are invited on: (a) whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility, and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Alex Sedlacek, 202-366-1031, Division of Sealift Operations and Emergency Response, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590, Email: alexander.sedlacek@dot.gov.

SUPPLEMENTARY INFORMATION:

Title: Automated Mutual-Assistance Vessel Rescue (AMVER) System.

OMB Control Number: 2133-0025.

Type of Request: Extension with Change of a Previously Approved Collection.

Abstract: The collection of information will be used to gather information regarding the location of U.S.-flag vessels and certain other U.S. citizen-owned vessels for the purpose of search and rescue in the saving of lives at sea and for the marshalling of ships for national defense and safety purposes.

Respondents: U.S.-flag and U.S. citizen-owned vessels.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 185.

Estimated Number of Responses: 33,855.

Estimated Hours per Response: .07.

Annual Estimated Total Annual Burden Hours: 2,370.

Frequency of Response: Annually.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.49.)

By Order of the Maritime Administrator.
T. Mitchell Hudson, Jr.,
Secretary, Maritime Administration.

[FR Doc. 2024-20679 Filed 9-11-24; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for Modification To Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for modification of special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before September 27, 2024.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH-13, 1200 New Jersey Avenue Southeast, Washington, DC 20590-0001, (202) 366-4535.

SUPPLEMENTARY INFORMATION: Each mode of transportation for which a particular special permit is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

Copies of the applications are available for inspection in the Records Center, East Building, PHH-13, 1200 New Jersey Avenue Southeast, Washington DC or at <http://www.regulations.gov>.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on September 4, 2024.

Donald P. Burger,

*Chief, General Approvals and Permits
Branch.*

SPECIAL PERMITS DATA

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
970-M	Linde Gas & Equipment Inc ..	173.302a(e)	To modify the special permit to authorize DOT 3AL cylinders. (mode 1).
10427-M	Astrotech Space Operations LLC.	173.61(a), 173.301(g), 173.302(a), 173.336.	To modify the special permit to authorize an additional hazardous material and an additional packaging. (mode 1).
11156-M	Austin Powder Company	173.62(c), 173.212(b)	To modify the special permit to authorize an additional authorized packaging. (modes 1, 3).
13208-M	BTG International Limited	173.302a(a)(1), 173.304(a)	To modify the special permit to authorize persons to repack hazardous materials under the terms of the special permit. (modes 1, 2, 3, 4).
14318-M	Department of Defense US Army Military Surface Deployment & Distribution Command.	178.274(b), 178.275(a), 178.276(b)(1), 180.605(d).	To modify the special permit to authorize an additional stainless steel in the fabrication of the portable tank. (modes 1, 3, 4).
21784-M	Daicel Safety Systems (Jiangsu) Co., Ltd.	173.301(a)(1), 178.65(b), 178.65(c)(3), 178.65(e)(1), 178.65(f)(1), 178.65(g), 178.65(i).	To modify the special permit to authorize cargo vessel and to remove the restriction in paragraph 8.i. (modes 1, 2, 3, 4).

[FR Doc. 2024-20618 Filed 9-11-24; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for New Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety

has received the application described herein.

DATES: Comments must be received on or before October 15, 2024.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH-13, 1200 New Jersey Avenue Southeast, Washington, DC 20590-0001, (202) 366-4535.

SUPPLEMENTARY INFORMATION: Each mode of transportation for which a particular special permit is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

Copies of the applications are available for inspection in the Records Center, East Building, PHH-13, 1200 New Jersey Avenue Southeast, Washington DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on September 4, 2024.

Donald P. Burger,

*Chief, General Approvals and Permits
Branch.*

SPECIAL PERMITS DATA

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
21825-N	Wisconsin Central Ltd	174.85(c), 174.85(d)	To authorize, under certain circumstances, the movement of freight trains utilizing a "light locomotive consist" of not more than three locomotives attached to the rear end of a stalled train without positioning buffer cars separating these locomotives from the rear placarded hazardous materials cars in the train. (mode 2).
21831-N	Boyd Lancaster, Inc	172.101(j), 173.301(f), 173.302a(a)(1), 173.304a(a)(2), 173.306(e).	To authorize the transportation in commerce of non-DOT specification containers (heat pipes) containing certain Class 2 materials for use in specialty cooling applications such as satellites and military aircraft. (modes 1, 2, 4).

SPECIAL PERMITS DATA—Continued

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
21833–N	Cyl-Tec, Inc	172.203(a), 172.301(c), 180.211(c)(2)(i).	To authorize the repair of certain DOT 4L cylinders without requiring pressure testing. (modes 1, 2, 3, 4, 5).
21834–N	Umbra Lab, Inc	173.301(f)(1)	To authorize the transportation in commerce of a spacecraft (satellite) containing compressed xenon in DOT specification cylinders that are not equipped with one or more pressure relief devices. (mode 1).
21837–N	Reckitt Benckiser LLC	172.200(a), 172.301(a), 172.301(a)(3)(i), 172.315(a)(2), 172.315(b), 172.315(b)(1), 172.315(b)(2), 172.315(b)(3).	To authorize the shipments of finished pharmaceutical products (medicines) that are manufactured for personal or household consumption. (modes 1, 2, 4, 5).
21840–N	Lunar Energy, Inc	172.101(j)	To authorize the transportation in commerce of lithium batteries exceeding 35 kg by cargo-only aircraft. (mode 4).
21843–N	DDP Specialty Electronic Materials US, LLC.	172.203(a), 172.301(c), 173.306(a)(3)(v)(A).	To authorize the transportation in commerce of DOT 2Q specification inner containers where the lot size for the alternative hot water bath test is increased to 10,000 cylinders. (modes 1, 3, 4, 5).
21847–N	ispace, Inc	173.185(a)(1), 173.185(e)(7) ...	To authorize the transportation in commerce of prototype and low production lithium batteries contained in equipment (spacecraft) and battery powered vehicles that have not passed the UN-required tests via cargo-only aircraft in a specially designed transport packaging for use in space applications. (modes 1, 4).
21851–N	Peninsula Terminal Company	174.85(d)	To authorize the transportation in commerce of UN1830, sulfuric acid by rail with a placarded car next to the locomotive during “shoving movements.” (mode 2).
21852–N	National Aeronautics and Space Administration.	173.226	To authorize the transportation in commerce of certain Division 6.1 materials in non-specification packaging. (mode 1).
21853–N	Riegel USA Inc	172.301	To authorize the transportation in commerce of butane contained in 2P inner receptacles when classified as “UN2037 Gas cartridges, (flammable) without a release device, non-refillable”. (modes 1, 2, 3).
21854–N	Electronic Fluorocarbons, LLC	173.304(b)	To authorize the transportation in commerce of certain liquified gases in DOT 3AA specification cylinders where the liquid portion completely fills the package. (modes 1, 2, 3, 4).

[FR Doc. 2024–20617 Filed 9–11–24; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Actions on Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of actions on special permit applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of

Transportation’s Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before October 15, 2024.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT:

Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline

and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on September 4, 2024.

Donald P. Burger,
Chief, General Approvals and Permits Branch.

SPECIAL PERMITS DATA—GRANTED

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
11032-M	Aerospace & Defense Oxygen Systems.	178.65(f)(3)	To authorize the manufacture, mark, and sale of a non-DOT specification, non-refillable cylinder conforming with all regulations applicable to DOT specification 39 cylinder for the transportation in commerce of materials authorized by the special permit.
11818-M	Raytheon Company	172.101(j), 173.301(f), 173.302a(a)(1), 173.304a(a)(2).	To modify the special permit to authorize an additional hazardous material and to authorize the military-grade system to be designed and analyzed to MIL-STD-810.
12303-M	Halliburton Energy Services, Inc.	173.201, 173.301(f), 173.304a ...	To modify the special permit to authorize an additional cylinder design.
16563-M	Call2Recycle, Inc	173.185(f)(3)	To modify the special permit to increase the weight of batteries that it can carry in a single package.
21063-M	Mission Systems Orchard Park Inc.	173.302(a)(1)	To modify the special permit to update the maximum service pressure and minimum test pressure from 10,300 psig to 9,125 psig and from 12,875 psig to 11,407 psig respectively.
21513-M	The Chemours Company FC LLC.	173.301(f)(2), 177.840(a)(1)	To modify the special permit to authorize the return of cylinders for refilling and to authorize a package QR code in lieu of retaining a copy of the special permit at each location of use.
21551-M	Bollere Logistics Germany GmbH.	172.101(j), 172.300, 172.400, 173.185(a)(1), 173.220, 173.301(f), 173.302a(a)(1).	To modify the special permit to authorize additional departure airports.
21676-N	Anduril Industries, Inc	172.101(j), 173.185(a)(1)	To authorize the transportation in commerce of prototype lithium ion batteries exceeding 35 kg net weight by cargo-only aircraft.
21677-N	Unipart North America Limited	172.101(j)	To authorize the transportation in commerce of lithium ion batteries exceeding 35 kg net weight by cargo-only aircraft.
21701-N	Shijiazhuang Enric Gas Equipment Co., Ltd.	173.302a(b)(2), 173.302a(b)(3), 173.302a(b)(4), 173.302a(b)(5), 180.205(c), 180.205(f), 180.205(g), 180.205(i), 180.209(a).	To authorize the transportation in commerce of certain gases in DOT specification 3A, 3AA, 3AX, 3AAX, 3T and in UN ISO 11120 cylinders.
21723-N	Leostella LLC	173.185(a)(1), 173.302a	To authorize the transportation in commerce of satellites containing low production lithium batteries and non-DOT specification cylinders filled with xenon by motor vehicle and cargo-only aircraft.
21727-N	United States Postal Service	175.10(a)(18)(ii), 175.10(a)(18)(ii).	To authorize the transportation in commerce of no more than ten spare lithium batteries with watt-hour ratings between 100Wh and 160 Wh in carry-on luggage via passenger-carrying aircraft.
21743-N	Post Warehouse Corp	173.224(b)	To authorize the one-time transportation in commerce of N,N'-dinitrosopentamethylenetetramine that has not been classed for the purpose of disposal.
21774-N	Tym's LLC	172.203(a), 172.301(c), 173.309(c).	To authorize the transportation in commerce of non-specification cylinders exceeding 900 mL in capacity and containing a liquefied gas as fire extinguishers.
21806-N	Iteology Inc	173.185(a)(1)	To authorize the transportation in commerce of prototype lithium cells via cargo-only aircraft.

SPECIAL PERMITS DATA—DENIED

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
21728-N	RSO, Inc	173.431(a)	To authorize the transportation in commerce of one Type A package containing a sealed source of 45 Ci of Cs-137 from Laurel, MD to Oak Ridge, TN and from Oak Ridge, TN to Andrews, TX for the purpose of disposal.

SPECIAL PERMITS DATA—WITHDRAWN

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof

[FR Doc. 2024-20619 Filed 9-11-24; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY**Office of Foreign Assets Control****[Docket No.: OFAC-2024-0003]****Agency Information Collection Activities; Proposed Collection; Comment Request for Reporting, Procedures and Penalties Regulations and Other Information Collections Maintained by the Office of Foreign Assets Control****AGENCY:** Office of Foreign Assets Control, Treasury.**ACTION:** Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the Office of Foreign Assets Control (OFAC) within the Department of the Treasury is soliciting comments concerning OFAC's information collection requirements contained within OFAC's Reporting, Procedures and Penalties Regulations, the Cuban Assets Control Regulations, the Iran Financial Sanctions Regulations, and the Hizballah Financial Sanctions Regulations.

DATES: Written comments must be submitted on or before November 12, 2024 to be assured of consideration.

ADDRESSES: You may submit comments by either of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions on the website for submitting comments.

Email: OFACreport@treasury.gov with Attn: Request for Comments (Reporting, Procedures and Penalties Regulations).

Instructions: All submissions received must include the agency name and refer to Docket Number OFAC-2024-0003 and the Office of Management and Budget (OMB) control number 1505-0164. Comments received will be made available to the public via <https://www.regulations.gov> or upon request, without change and including any personal information provided.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202-622-2480; Assistant Director for Regulatory Affairs, 202-622-4855; or Assistant Director for Compliance, 202-

622-2490 or <https://ofac.treasury.gov/contact-ofac>.

SUPPLEMENTARY INFORMATION:

Title: Reporting, Procedures and Penalties Regulations.

OMB Number: 1505-0164.

Type of Review: Extension of a currently approved collection; consolidation with other approved collections.

Description: The collections of information are contained in sections 501.601 through 501.605, 501.801, and 501.804 through 501.807 of OFAC's Reporting, Procedures and Penalties Regulations (the "Regulations"), and certain other parts of 31 CFR chapter V, and pertain to the operation of various economic sanctions programs administered by OFAC under 31 CFR chapter V. Section 501.601 addresses the maintenance of records, and § 501.602 relates to OFAC demands for information relative to any transaction or property subject to the provisions of 31 CFR chapter V. Section 501.603 imposes reporting requirements pertaining to blocked property and retained funds, as well as property that is unblocked or transferred. This information is required by OFAC to monitor compliance with regulatory requirements, to support diplomatic negotiations concerning the targets of sanctions, to support settlement negotiations addressing U.S. claims, and to respond to Congressional reporting requirements. Section 501.604 requires the filing of reports for compliance purposes by U.S. persons where a transaction is not required to be blocked but where processing or otherwise engaging in the transaction would nonetheless violate, or facilitate a transaction that is prohibited under, other provisions in 31 CFR chapter V. Section 501.605 requires reporting of information pertaining to litigation, arbitration, and other binding alternative dispute resolution proceedings in the United States to prevent the intentional or inadvertent transfer through such proceedings of blocked property or retained funds. Sections 501.801, 501.804, and 501.805 relate to license requests, the procedures for rulemaking, and records requests, respectively. Section 501.806 sets forth the procedures to be followed by a person seeking to unblock funds that the person believes they have blocked due to mistaken identity or typographical or similar errors. Section 501.807 sets forth the procedures to be followed by a person seeking administrative reconsideration of the listing of a person or property (e.g., a vessel) on any list of sanctioned persons or property

maintained by OFAC. OFAC maintains mandatory and voluntary forms for the bulk of these collections and is not making major changes to these existing forms.

In addition, OFAC seeks to consolidate within this information collection five separately approved information collections: OMB Numbers 1505-0167, 1505-0168, 1505-0243, 1505-0255, and 1505-0170. These information collections are relevant to 31 CFR 501.801, 515.572, 561.504, and 566.504. OFAC is also extending from five years to 10 years the recordkeeping requirements codified at 31 CFR 501.601, paragraph IV.B of appendix A to part 501, and 515.572 to align with the extended statute of limitations for civil and criminal violations of the International Emergency Economic Powers Act (IEEPA) or the Trading with the Enemy Act (TWEA).

The reports covered by this information collection will be reviewed by the U.S. Department of the Treasury and may be used for compliance, civil penalty, and enforcement purposes by the agency.

Forms: For filers who have been granted an exception from electronic reporting using the OFAC Reporting System (ORS), OFAC allows the submission of the following, through the following approved forms: the Annual Report of Blocked Property (ARBP), TD-F 90-22.50; Report on Blocked Property—Financial, TD-F 93.02; Report on Blocked Property—Tangible/Real/Other Non-Financial Property, TD-F 93.08; Report on Rejected Transaction, TD-F 93.07. OFAC also maintains the following forms related to licensing: TSRA License Application, TD-F 93.04; Licensing Cover Sheet, TD-F 98-22.61; and Application for the Release of Blocked Funds TD-F 90-22.54. In addition, OFAC issued a new form, REPO for Ukrainians Act Report Form, TD-F 93.09, to implement a new reporting requirement pursuant to the Rebuilding Economic Prosperity and Opportunity for Ukrainians Act for financial institutions holding Russian sovereign assets, if not previously reported to OFAC. The other information collections covered by this notice do not have mandatory or voluntary forms.

Affected Public: Financial institutions, business organizations, nonprofit organizations, individuals, households, nongovernmental organizations, and legal representatives.

Estimated Number of Respondents: OFAC's estimate for the number of unique reporting respondents is approximately 10,900. The significant increase in the number of unique

respondents since OFAC's last information collection submission regarding the Regulations in 2021 is due to OFAC consolidating several information collection requests and, in response to unpredictable foreign policy developments and considerations, and given the ongoing conflict in Ukraine, has added a number of new prohibitions, as well as several thousand new designations, particularly with respect to Ukraine and Russian, resulting in a corresponding increase in related reports. In addition, a May 2024 amendment to the Cuban Assets Control Regulations in 31 CFR 515.584(d) reinstated an authorization for "U-turn" transactions to support independent private sector entrepreneurs in Cuba, by facilitating remittances and payments for authorized transactions in the Cuban private sector, which is expected to lead to an increase in remittances to Cuba over the coming three years.

Frequency of Response: The estimated annual frequency of responses is between 1 and 17,800, varying greatly by entity depending on the size, nature, and scope of business activities of each respondent, with the majority of filers providing a small number of responses and a small number of filers submitting a higher number of responses.

Estimated Total Number of Annual Responses: The estimated total number of responses per year is approximately 2,502,086.

Estimated Time per Response: OFAC assesses that there is an average time estimate for reports associated with forms ranging from 15 minutes to 2 hours and for reports associated with general licenses, Cuba remittances, Cuba travel, closure of correspondent or payable-through accounts, and other miscellaneous reports ranging from 1 minute to 5 hours.

Estimated Total Annual Burden Hours: The estimated total annual reporting burden is approximately 86,223 hours.

Request for Comments

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information

on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: September 9, 2024.

Lisa M. Palluconi,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2024-20675 Filed 9-11-24; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Agency Collection Activities; Requesting Comments on Form 8801

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 8801, Credit for Prior Year Minimum Tax—Individuals, Estates, and Trusts.

DATES: Written comments should be received on or before November 12, 2024 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to pra.comments@irs.gov. Include OMB Control No. 1545-1073 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of this collection should be directed to Jason Schoonmaker, (801) 620-2128, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at jason.m.schoonmaker@irs.gov.

SUPPLEMENTARY INFORMATION: The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Credit for Prior Year Minimum Tax—Individuals, Estates, and Trusts.

OMB Number: 1545-1073.

Form Number: Form 8801.

Abstract: Form 8801 is used by individuals, estates, and trusts to compute the minimum tax credit, if any, available from a tax year beginning after 1986 to be used in the current year or to be carried forward for use in a future year. These burden estimates are only for trust and estate filers (non-individual taxpayers). The burden estimates for other filers are covered under OMB control numbers 1545-0074 for individual filers.

Current Actions: There are no changes to the burden previously approved by OMB. This submission is for renewal purposes.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and households.

Estimated Number of Responses: 20,100.

Estimated Time per Respondent: 7 hours, 4 minutes.

Estimated Total Annual Burden Hours: 142,164.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 9, 2024.

Jason M. Schoonmaker,

Tax Analyst.

[FR Doc. 2024–20709 Filed 9–11–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Agency Collection Activities; Requesting Comments on Form 4684, Casualties and Thefts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 4684, Casualties and Thefts.

DATES: Written comments should be received on or before November 12, 2024 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to pra.comments@irs.gov. Include OMB Control No. 1545–0177 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Jason Schoonmaker, (801)

620–2128, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at jason.m.schoonmaker@irs.gov.

SUPPLEMENTARY INFORMATION: The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Casualties and Thefts.

OMB Number: 1545–0177.

Form Number: 4684.

Abstract: Form 4684 is used by taxpayers to compute their gain or loss from casualties or thefts, and to summarize such gains and losses. The data is used to verify that the correct gain or loss has been computed. These burden estimates are only for tax-exempt, trust and estate filers. The burden estimates for other filers are covered under OMB control numbers 1545–0074 for individual filers and 1545–0123 for business filers.

Current Actions: There is no change to the existing collection. However, the estimated number of responses was updated to eliminate duplication of the burden associated with business filers captured under OMB control number 1545–0123.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, households, and business or other for-profit organizations.

Estimated Number of Responses: 1,860.

Estimated Time per Respondent: 6 hours, 3 minutes.

Estimated Total Annual Burden Hours: 11,253.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 9, 2024.

Jason M. Schoonmaker,

Tax Analyst.

[FR Doc. 2024–20710 Filed 9–11–24; 8:45 am]

BILLING CODE 4830–01–P



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Part II

Securities and Exchange Commission

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100949; File No. SR–MRX–2024–33]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail

September 5, 2024.

Pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b–4 thereunder,² notice is hereby given that on August 23, 2024, Nasdaq MRX, LLC (“MRX” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to establish fees for Industry Members³ related to certain historical costs of the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”) incurred prior to January 1, 2022.

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

On July 11, 2012, the Commission adopted Rule 613 of Regulation NMS, which required the self-regulatory organizations (“SROs”) to submit a national market system (“NMS”) plan to create, implement and maintain a consolidated audit trail that would capture customer and order event information for orders in NMS securities across all markets, from the time of order inception through routing, cancellation, modification or execution.⁴ On November 15, 2016, the Commission approved the CAT NMS Plan.⁵ Under the CAT NMS Plan, the Operating Committee has the discretion to establish funding for CAT LLC to operate the CAT, including establishing fees for Industry Members to be assessed by CAT LLC that would be implemented on behalf of CAT LLC by the Participants.⁶ The Operating Committee adopted a revised funding model to fund the CAT (“CAT Funding Model”). On September 6, 2023, the Commission approved the CAT Funding Model, after concluding that the model was reasonable and that it satisfied the requirements of Section 11A of the Exchange Act and Rule 608 thereunder.⁷

The CAT Funding Model provides a framework for the recovery of the costs to create, develop and maintain the CAT, including providing a method for allocating costs to fund the CAT among Participants and Industry Members. The CAT Funding Model establishes two categories of fees: (1) CAT fees assessed by CAT LLC and payable by certain Industry Members to recover a portion of historical CAT costs previously paid by the Participants (“Historical CAT Assessment” fees); and (2) CAT fees assessed by CAT LLC and payable by Participants and Industry Members to

fund prospective CAT costs (“Prospective CAT Costs” fees).⁸

Under the CAT Funding Model, “[t]he Operating Committee will establish one or more fees (each a ‘Historical CAT Assessment’) to be payable by Industry Members with regard to CAT costs previously paid by the Participants (‘Past CAT Costs’).”⁹ In establishing a Historical CAT Assessment, the Operating Committee will determine a “Historical Recovery Period” and calculate a “Historical Fee Rate” for that Historical Recovery Period. Then, for each month in which a Historical CAT Assessment is in effect, each CEBB and CEBS would be required to pay the fee—the Historical CAT Assessment—for each transaction in Eligible Securities executed by the CEBB or CEBS 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.¹⁰

Each Historical CAT Assessment to be paid by CEBBs and CEBSs is designed to contribute toward the recovery of two-thirds of the Historical CAT Costs. Because the Participants previously have paid Past CAT Costs via loans to the Company, the Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants’ one-third share of Historical CAT Costs will be paid by the cancellation of loans made by the Participants to the Company on a pro rata basis based on the outstanding loan amounts due under the loans, instead of through the payment of a CAT fee.¹¹ In addition, the Participants also will be 100% responsible for certain Excluded Costs (as discussed below).

CAT LLC proposes to charge CEBBs and CEBSs (as described in more detail

⁸ Under the CAT Funding Model, the Operating Committee may establish one or more Historical CAT Assessments. Section 11.3(b) of the CAT NMS Plan. This filing only establishes Historical CAT Assessment 1 related to certain Historical CAT Costs as described herein; it does not address any other potential Historical CAT Assessment related to other Historical CAT Costs. In addition, under the CAT Funding Model, the Operating Committee also may establish CAT Fees related to CAT costs going forward. Section 11.3(a) of the CAT NMS Plan. This filing does not address any potential CAT Fees related to CAT costs going forward. Any such other fee for any other Historical CAT Assessment or CAT Fee for Prospective CAT Costs will be subject to a separate fee filing.

⁹ Section 11.3(b) of the CAT NMS Plan.

¹⁰ In approving the CAT Funding Model, the Commission stated that, “[i]n the Commission’s view, the proposed recovery of the Past CAT Costs via the Historical CAT Assessment is reasonable.” CAT Funding Model Approval Order at 62662.

¹¹ Section 11.3(b)(ii) of the CAT NMS Plan.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ An “Industry Member” is defined as “a member of a national securities exchange or a member of a national securities association.” See Nasdaq Rule General 7(u) (MRX General 7 incorporates The Nasdaq Stock Market LLC Rule General 7 by reference); See also Section 1.1 of the CAT NMS Plan. Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the CAT NMS Plan and/or the CAT Compliance Rule. Nasdaq Rule General 7 (Consolidated Audit Trail Compliance).

⁴ Securities Exchange Act Rel. No. 67457 (July 18, 2012), 77 FR 45721 (Aug. 1, 2012) (“Rule 613 Adopting Release”).

⁵ Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (“CAT NMS Plan Approval Order”).

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

⁷ Securities Exchange Act Rel. No. 98290 (Sept. 6, 2023), 88 FR 62628 (Sept. 12, 2023) (“CAT Funding Model Approval Order”).

below) Historical CAT Assessment 1 to recover certain historical CAT costs incurred prior to January 1, 2022, in accordance with the CAT Funding Model. To implement this fee on behalf of CAT LLC, the CAT NMS Plan requires the Participants to “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.’”¹² The Plan further states that “Participants will be required to file with the SEC pursuant to Section 19(b) of the Exchange Act a filing for each Historical CAT Assessment.”¹³ Accordingly, the purpose of this filing is to implement a Historical CAT Assessment on behalf of CAT LLC for Industry Members, referred to as Historical CAT Assessment 1, in accordance with the CAT NMS Plan.¹⁴

The Exchange previously filed a fee filing to implement Historical CAT Assessment 1. On January 17, 2024, the SEC published this prior filing for

Historical CAT Assessment 1, temporarily suspended the fee filing, and instituted proceedings to determine whether to approve or disapprove the fee filing.¹⁵ The Exchange is withdrawing its original fee filing for Historical CAT Assessment 1. This Historical CAT Assessment 1 replaces the prior Historical CAT Assessment 1 that was previously filed with the Commission.

(1) CAT Executing Brokers

Historical CAT Assessment 1 will be charged to each CEBB and CEBS for each applicable transaction in Eligible Securities.¹⁶ The CAT NMS Plan defines a “CAT Executing Broker” to mean:

(a) with respect to a transaction in an Eligible Security that is executed on an exchange, the Industry Member identified as the Industry Member responsible for the order on the buy-side of the transaction and the Industry Member responsible for the sell-side of the transaction in the equity order trade event and option trade event in the CAT Data submitted to the CAT by the

relevant exchange pursuant to the Participant Technical Specifications; and (b) with respect to a transaction in an Eligible Security that is executed otherwise than on an exchange and required to be reported to an equity trade reporting facility of a registered national securities association, the Industry Member identified as the executing broker and the Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event in the CAT Data submitted to the CAT by FINRA pursuant to the Participant Technical Specifications; provided, however, in those circumstances where there is a non-Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event or no contra-side executing broker is identified in the TRF/ORF/ADF transaction data event, then the Industry Member identified as the executing broker in the TRF/ORF/ADF transaction data event would be treated as CAT Executing Broker for the Buyer and for the Seller.¹⁷

The following fields of the Participant Technical Specifications indicate the CAT Executing Brokers for the transactions executed on an exchange.

EQUITY ORDER TRADE (EOT)¹⁸

No.	Field name	Data type	Description	Include key
12.n.8/13.n.8	member	Member Alias	The identifier for the member firm that is responsible for the order on this side of the trade. Not required if there is no order for the side as indicated by the NOBUYID/NOSELLID instruction. This must be provided if orderID is provided.	C

OPTION TRADE (OT)¹⁹

No.	Field name	Data type	Description	Include key
16.n.13/17.n.13	member	Member Alias	The identifier for the member firm that is responsible for the order ..	R

¹² Section 11.1(b) of the CAT NMS Plan.

¹³ Section 11.3(b)(iii)(B)(I) of the CAT NMS Plan.

¹⁴ Note that there may be one or more Historical CAT Assessments depending on the timing of the completion of the Financial Accountability Milestones, among other things. Section 11.3(b) of the CAT NMS Plan.

¹⁵ Securities Exchange Act Rel. No. 34–99361 (January 17, 2024), 89 FR 10201 (February 13, 2024) (“SR–MRX–2024–01”).

¹⁶ In its approval of the CAT Funding Model, the Commission determined that charging CAT fees to CAT Executing Brokers was reasonable. In reaching this conclusion the Commission noted that the use of CAT Executing Brokers is appropriate because

the CAT Funding Model is based upon the calculation of *executed* equivalent shares, and, therefore, charging CAT Executing Brokers would reflect their executing role in each transaction. Furthermore, the Commission noted that, because CAT Executing Brokers are already identified in transaction reports from the exchanges and FINRA’s equity trade reporting facilities recorded in CAT Data, charging CAT Executing Brokers could streamline the billing process. CAT Funding Model Approval Order at 62629.

¹⁷ Section 1.1 of the CAT NMS Plan. Note that CEBBs and CEBSs may, but are not required to, pass-through their CAT fees to their clients, who may, in turn, pass their fees to their clients until

they are imposed ultimately on the account that executed the transaction. See CAT Funding Model Approval Order at 62649.

¹⁸ See Table 23, Section 4.7 (Order Trade Event) of the CAT Reporting Technical Specifications for Plan Participants, Version 4.1.0–r21 (Apr. 15, 2024), https://www.catnmsplan.com/sites/default/files/2024-04/04.15.2024-CAT_Reporting_Technical_Specifications_for_Participants_4.1.0-r21.pdf (“CAT Reporting Technical Specifications for Plan Participants”).

¹⁹ See Table 51, Section 5.2.5.1 (Simple Option Trade Event) of the CAT Reporting Technical Specifications for Plan Participants.

In addition, the following fields of the Participant Technical Specifications would indicate the CAT Executing Brokers for the transactions executed otherwise than on an exchange.

TRF/ORF/ADF TRANSACTION DATA EVENT (TRF)²⁰

No.	Field name	Data type	Description	Include key
26	reportingExecutingMpid	Member Alias	MPID of the executing party	R
28	contraExecutingMpid	Member Alias	MPID of the contra-side executing party	C

(2) Calculation of Historical Fee Rate 1

The Operating Committee determined the Historical Fee Rate to be used in calculating Historical CAT Assessment 1 (“Historical Fee Rate 1”) by dividing the Historical CAT Costs for Historical CAT Assessment 1 (“Historical CAT Costs 1”) by the projected total executed share volume of all transactions in Eligible Securities for the Historical Recovery Period for Historical CAT Assessment 1 (“Historical Recovery Period 1”), as discussed in detail below. Based on this calculation, the Operating Committee has determined that Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. This rate is then divided by three and rounded to determine the fee rate of \$0.000013 per executed equivalent share that will be assessed to CEBBs and CEBBs, as also discussed in detail below.

(A) Executed Equivalent Shares for Transactions in Eligible Securities

Under the CAT NMS Plan, for purposes of calculating each Historical CAT Assessment, executed equivalent shares in a transaction in Eligible Securities will be reasonably counted as follows: (1) each executed share for a transaction in NMS Stocks will be counted as one executed equivalent share; (2) each executed contract for a transaction in Listed Options will be counted based on the multiplier applicable to the specific Listed Options (i.e., 100 executed equivalent shares or such other applicable multiplier); and

(3) each executed share for a transaction in OTC Equity Securities shall be counted as 0.01 executed equivalent share.²¹

(B) Historical CAT Costs 1

The CAT NMS Plan states that “[t]he Operating Committee will reasonably determine the Historical CAT Costs sought to be recovered by each Historical CAT Assessment, where the Historical CAT Costs will be Past CAT Costs minus Past CAT Costs reasonably excluded from Historical CAT Costs by the Operating Committee. Each Historical CAT Assessment will seek to recover from CAT Executing Brokers two-thirds of Historical CAT Costs incurred during the period covered by the Historical CAT Assessment.”²² As described in detail below, Historical CAT Costs 1 would be \$318,059,819. This figure includes Past CAT Costs of \$401,312,909 minus certain Excluded Costs of \$83,253,090. Participants collectively will remain responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), plus the Excluded Costs of \$83,253,090. CEBBs collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), and CEBBs collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67).

The following describes in detail Historical CAT Costs 1 with regard to four separate historical time periods as well as Past CAT Costs excluded from Historical CAT Costs 1 (“Excluded Costs”). The following cost details are

provided in accordance with the requirement in the CAT NMS Plan to provide in the fee filing “a brief description of the amount and type of Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs.”²³ Each of the costs described below are reasonable, appropriate and necessary for the creation, implementation and maintenance of CAT.

(i) Historical CAT Costs Incurred Prior to June 22, 2020 (Pre-FAM Costs)

Historical CAT Costs 1 would include costs incurred by CAT prior to June 22, 2020 (“Pre-FAM Period”) and already funded by the Participants, excluding Excluded Costs (described further below). Historical CAT Costs 1 would include costs for the Pre-FAM Period of \$124,290,730. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$41,430,243.33), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$41,430,243.33) and CEBBs paying one-third (\$41,430,243.33). These costs do not include Excluded Costs, as discussed further below. The following table breaks down Historical CAT Costs 1 for the Pre-FAM Period into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs 1 for Pre-FAM Period (prior to June 22, 2020)*
Capitalized Developed Technology Costs**	\$51,847,150
Technology Costs	33,568,579
Cloud Hosting Services	10,268,840
Operating Fees	21,085,485

²⁰ See Table 61, Section 6.1 (TRF/ORF/ADF Transaction Data Event) of the CAT Reporting Technical Specifications for Plan Participants.

²¹ Section 11.3(a)(i)(B) and 11.3(b)(i)(B) of the CAT NMS Plan. In approving the CAT Funding

Model, the Commission concluded that “the use of executed equivalent share volume as the basis of the proposed cost allocation methodology is reasonable and consistent with the approach taken

by the funding principles of the CAT NMS Plan.” CAT Funding Model Approval Order at 62640.

²² Section 11.3(b)(i)(C) of the CAT NMS Plan.

²³ Section 11.3(b)(iii)(B)(II)(B) of the CAT NMS Plan.

Operating expense	Historical CAT costs 1 for Pre-FAM Period (prior to June 22, 2020) *
CAIS Operating Fees	2,072,908
Change Request Fees	141,346
Legal	19,674,463
Consulting	17,013,414
Insurance	880,419
Professional and administration	1,082,036
Public relations	224,669
Total Operating Expenses	124,290,730

* The costs described in this table of costs for the Pre-FAM Period were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website. In addition, in accordance with Section 6.6(a)(i) of the CAT NMS Plan, in 2018 CAT LLC provided the SEC with "an independent audit of fees, costs, and expenses incurred by the Participants on behalf of the Company prior to the Effective Date of the Plan that will be publicly available." The audit is available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$2,115,545 incurred during the period prior to June 22, 2020 have been appropriately excluded from the above table.²⁴

The Pre-FAM Period includes a broad range of CAT-related activity from 2012 through June 22, 2020, including the evaluation of the requirements of SEC Rule 613, the development of the CAT NMS Plan, the evaluation and selection of the initial and successor Plan Processors, the commencement of the creation and implementation of the CAT to comply with Rule 613 and the CAT NMS Plan, including technical specifications for transaction reporting and regulatory access, and related technology and the commencement of reporting to the CAT. The following describes the costs for each of the categories for the Pre-FAM Period.

(a) Technology Costs—Cloud Hosting Services

The \$10,268,840 in technology costs for cloud hosting services represent costs incurred for services provided by the cloud services provider for the CAT, Amazon Web Services, Inc. ("AWS"), during the Pre-FAM Period.

As part of its proposal for acting as the successor Plan Processor for the CAT, FCAT selected AWS as a subcontractor to provide cloud hosting services. In 2019, after reviewing the capabilities of other cloud services providers, FCAT determined that AWS was the only cloud services provider at that time sufficiently mature and capable of providing the full suite of necessary cloud services for the CAT, including, for example, the security, resiliency and complexity necessary for

the CAT computing requirements. The use of cloud hosting services is standard for this type of high-volume data activity and reasonable and necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT the fees incurred by the Plan Processor for cloud hosting services provided by AWS as FCAT's subcontractor [sic] on a monthly basis for the cloud hosting services, and FCAT, in turn, pays such fees to AWS. The fees for cloud hosting services were negotiated by FCAT on an arm's length basis with the goals of managing cost and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the expected volume of data, the breadth of services provided and market rates for similar services. The fees for cloud hosting services during the Pre-FAM Period were paid to FCAT by CAT NMS, LLC²⁵ and subsequently Consolidated Audit Trail, LLC (as previously noted, both entities are referred to generally as "CAT LLC"),²⁶ and FCAT, in turn, paid

²⁵ CAT NMS, LLC was formed by FINRA and the U.S. national securities exchanges to implement the requirements of SEC Rule 613 under the Exchange Act. SEC Rule 613 required the SROs to jointly submit to the SEC the CAT NMS Plan to create, implement and maintain the CAT. The SEC approved the CAT NMS Plan on November 15, 2016. CAT NMS Plan Approval Order.

²⁶ On August 29, 2019, the Participants formed a new Delaware limited liability company named Consolidated Audit Trail, LLC for the purpose of conducting activities related to the CAT from and after the effectiveness of the proposed amendment of the CAT NMS Plan to replace CAT NMS, LLC. See Securities Exchange Act Rel. No. 87149 (Sept. 27, 2019), 84 FR 52905 (Oct. 3, 2019).

AWS. CAT LLC was funded via loan contributions by the Participants.²⁷

AWS was engaged by FCAT to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS include storage services, databases, compute services and other services (such as networking, management tools and DevOps tools). AWS also was engaged to provide various environments for CAT, such as development, performance testing, test and production environments.

The cost for AWS services for the CAT is a function of the volume of CAT Data. The greater the amount of CAT Data, the greater the cost of AWS services to the CAT. During the Pre-FAM Period from the engagement of AWS in February 2019 through June 2020, AWS provided cloud hosting services for volumes of CAT Data far in excess of the volume predictions set forth in the CAT NMS Plan. The CAT NMS Plan states, when all CAT Reporters are submitting their data to the CAT, it "must be sized to receive[,] process and load more than 58 billion records per day,"²⁸ and that "[i]t is expected that the Central Repository will grow to more than 29 petabytes of raw, uncompressed data."²⁹ However, the volume of CAT Data for the Pre-FAM Period was far in excess of these predicted levels. By the end of this period, data submitted to the CAT included options and equities

²⁷ For each of the costs paid by CAT NMS, LLC and Consolidated Audit Trail, LLC as discussed throughout this filing, CAT NMS, LLC and Consolidated Audit Trail, LLC paid these costs via loan contributions by the Participants to CAT NMS, LLC and Consolidated Audit Trail, LLC, respectively.

²⁸ Appendix D-4 of the CAT NMS Plan at n.262.

²⁹ Appendix D-5 of the CAT NMS Plan.

²⁴ With respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

Participant Data,³⁰ Phase 2a and Phase 2b Industry Member Data³¹ (including certain linkages), as well as SIP Data,³²

reference data and other types of Other Data.³³ The following chart provides data regarding the average daily volume,

cumulative total events, total compute hours and storage footprint of the CAT during the Pre-FAM Period.³⁴

	Date range: 3/29/19 to 4/12/20 *	Date range: 4/13/20 to 6/21/20 **
Average Daily Volume in Billions:		
Participant—Equities	5	5
Participant—Options	80	981
Industry Member—Equities		3
Industry Member—Options		0.04
SIP—Options & Equities	64	70
Average Total Daily Volume	149	166
Cumulative Total Events for the Period	3,890	4,990
Total Compute Hours for the Period	*** N/A	5,663,247
Storage Footprint at End of Period (Petabytes)	30.57	47.96

* The Participant Equities in RSA format.

** Start of Industry Member reporting on 4/13/2020

*** Note that, although there were compute hours during this period, data related to such compute hours are no longer available in current data

(b) Technology Costs—Operating Fees

The \$21,085,485 in technology costs related to operating fees represent costs incurred with regard to activities of FCAT as the Plan Processor. Operating fees are those fees paid by CAT LLC to FCAT as the Plan Processor to operate and maintain the CAT and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (e.g., management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management as required by the CAT NMS Plan.

FCAT was selected to assume the role of the successor Plan Processor. Prior to this selection, the Participants engaged in discussions with two prior Bidders³⁵ for the successor Plan Processor role. The Operating Committee formed a Selection Subcommittee in accordance with Section 4.12 of the CAT NMS Plan to evaluate and review Bids and to make a recommendation to the Operating Committee with respect to the selection of the successor Plan Processor. In an April 9, 2019 letter to the Commission, the Participants described the reasons for its selection of the successor Plan Processor:

The Selection Subcommittee considered factors including, but not limited to, the following, in recommending FINRA to the Operating Committee as the successor Plan Processor:

a. FINRA's specialized technical expertise and capabilities in the area of broker-dealer technology;

b. The need to appoint a successor Plan Processor with specialized expertise to develop, implement, and maintain the CAT System in accordance with the CAT NMS Plan and SEC Rule 613;

c. FINRA's detailed proposal in response to CATLLC's recent inquiries; and

d. FINRA's data query and analytics systems demonstration to the Participants.

Based on these and other factors, the Selection Subcommittee determined that FINRA was the most appropriate Bidder to become the successor Plan Processor.³⁶

On February 26, 2019, the Operating Committee (with FINRA recusing itself) voted to select FINRA as the successor Plan Processor pursuant to Section 6.1(t) of the CAT NMS Plan.³⁷ On March 29, 2019, CAT LLC and FCAT (a wholly owned subsidiary of FINRA) entered into a Plan Processor Agreement pursuant to which FCAT would perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT a negotiated monthly fixed price for the operation of the CAT. This fixed price contract was negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the breadth of services

provided and market rates for similar types of activity. The operating fees during the Pre-FAM Period were paid to FCAT by CAT LLC.

From March 29, 2019 (the commencement of the Plan Processor Agreement with FCAT) through June 22, 2020 (the end of the Pre-FAM Period), the Plan Processor's activities with respect to the CAT included the following:

- Commenced user acceptance testing with market data provided by Exegy Incorporated ("Exegy"), a market data provider;³⁸

- Published Technical Specifications and related reporting scenarios documents for Phase 2a, 2b and 2c reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;

- Facilitated testing for Phase 2a and 2b reporting for Industry Members;

- Began developing Technical Specifications and related reporting scenarios documents for Phase 2d reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;

- Published Central Repository Access Technical Specifications, and provided regulator access to test data from Industry Members;

- Facilitated Participant exchanges that support options market makers sending Quote Sent Time to the CAT;

- Facilitated the introduction of OPRA and Options NBBO Other Data to CAT;

³⁰ See Section 6.3(d) of the CAT NMS Plan.

³¹ See Securities Exchange Rel. No. 88702 (Apr. 20, 2020), 85 FR 23075 (Apr. 24, 2020) ("Phased Reporting Exemptive Relief Order") for a description of Phase 2a and Phase 2b Industry Member Data.

³² See Section 6.5(a)(ii) of the CAT NMS Plan.

³³ See Appendix C-108 of the CAT NMS Plan.

³⁴ Note that the volume data described in this table does not include CAIS data.

³⁵ The term "Bidder" is defined in Section 1.1 of the CAT NMS Plan.

³⁶ Letter from Michael J. Simon, Chair, CAT NMS, LLC Operating Committee, to Brent J. Fields,

Secretary, SEC (Apr. 9, 2019), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection-040919.pdf>.

³⁷ *Id.*

³⁸ The use of Exegy to provide market data, including the costs and market data provided, is discussed below in Section 3(a)(2)(B)(i)(i).

- Addressed compliance items, including drafting CAT policies and procedures, and addressing requirements under Regulation SCI;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with Participants, the SEC and its staff;
- Operated the FINRA CAT Helpdesk, which is the primary source for answers to questions about CAT, including questions regarding: clock synchronization, firm reporting responsibilities, interpretive questions, technical specifications for reporting to CAT and more;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content;³⁹ and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

The \$2,072,908 in technology costs related to CAIS operating fees represent the fees paid for FCAT's subcontractor charged with the development and operation of CAT's Customer and Account Information System ("CAIS"). The CAT is required under the CAT NMS Plan to capture and store Customer Identifying Information and Customer Account Information in a database separate from the transactional database and to create a CAT-Customer-ID for each Customer.

During the Pre-FAM Period, the CAIS-related services were provided by the Plan Processor through the Plan Processor's subcontractor, Kingland Systems Incorporation ("Kingland"). Kingland had experience operating in the securities regulatory technology space, and as a part of its proposal for acting as the Plan Processor for the CAT, FCAT selected Kingland as a subcontractor to provide certain CAIS-related services.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay to the Plan Processor the fees incurred by FCAT for CAIS-related services provided by FCAT through Kingland on a monthly basis. FCAT negotiated the fees for Kingland's CAIS-related services on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity. The fees for CAIS-related services during the Pre-FAM Period were paid by CAT LLC to FCAT. FCAT, in turn, paid Kingland.

During the Pre-FAM Period, Kingland began development of the CAIS Technical Specifications and the building of CAIS. In addition, Kingland also worked on the build related to the CCID Alternative, an alternative approach to customer information that was not included in the CAT NMS Plan as originally adopted.⁴⁰ Furthermore, Kingland also worked on the acceleration of the reporting of large trader identifiers ("LTID") earlier than originally contemplated during this period, in accordance with exemptive relief granted by the SEC.⁴¹

(d) Technology Costs—Change Request Fees

The technology costs related to change request fees include costs related to certain modifications, upgrades or other changes to the CAT. Change requests are standard practice and necessary to reflect operational changes, including changes related to new market developments, such as new market participants. In general, if CAT LLC determines that a modification, upgrade or other change to the functionality or service is necessary and appropriate, CAT LLC will submit a request for such a change to the Plan Processor. The Plan Processor will then respond to the request with a proposal for implementing the change, including the cost (if any) of such a change. CAT LLC then determines whether to approve the proposed change. The change request costs were paid by CAT LLC to FCAT. During the Pre-FAM Period, CAT LLC incurred costs of \$141,346 related to change requests implemented by FCAT. Such change requests related to a development fee regarding the OPRA

and SIP data feeds, and the reprocessing of certain exchange data.⁴²

(e) Technology Costs—Capitalized Developed Technology Costs

This category of costs includes capitalizable application development costs incurred in the development of the CAT. The capitalized developed technology costs for the Pre-FAM Period of \$51,847,150 relate to technology provided by the Initial Plan Processor and the successor Plan Processor.

Initial Plan Processor: Thesys CAT, LLC. The capitalized developed technology costs related to the Initial Plan Processor include costs incurred with regard to testing for Participant reporting, Participant reporting to the CAT, a security assessment of the CAT, and the development of the billing function for the CAT.

On January 17, 2017, the Selection Committee of the CAT NMS Plan selected the Initial Plan Processor, Thesys Technologies, LLC, for the CAT NMS Plan pursuant to Article V of the CAT NMS Plan.⁴³ The Participants utilized a request for proposal ("RFP") to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan, taking into consideration that the Initial Plan Processor had experience operating in the securities regulatory technology space, among other considerations. On April 6, 2017, CAT LLC entered into an agreement with Thesys CAT LLC ("Thesys CAT"), a Thesys affiliate, to perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT. Under the agreement, CAT LLC would pay Thesys CAT a negotiated, fixed price fee for its role as the Initial Plan Processor. Effective January 30, 2019, the Plan Processor Agreement with Thesys CAT was terminated, and FCAT was subsequently selected as the successor Plan Processor.

From January 17, 2017 through January 30, 2019, the time in which the Thesys CAT was engaged for the CAT,

⁴² Note that CAT LLC also has incurred costs related to specific Industry Members (e.g., reprocessing costs related to Industry Member reporting errors).

⁴³ Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf>.

³⁹ The CAT website is <https://www.catnmsplan.com>.

⁴⁰ For a discussion of the CCID Alternative, see Securities Exchange Act Rel. No. 88393 (Mar. 17, 2020), 85 FR 16152 (Mar. 20, 2020).

⁴¹ Phased Reporting Exemptive Relief Order at 23079–80.

but excluding the period from November 15, 2017 through January 30, 2019, the Initial Plan Processor engaged in various activities with respect to the CAT, including preparing iterative drafts of Participant Technical Specifications, Industry Member Technical Specifications and the Central Repository Access Technical Specifications. In addition, Thesys CAT also developed CAT technology, addressed compliance items, including drafting CAT policies and procedures, addressing Regulation SCI requirements, establishing a CAT Compliance Officer and a Chief Information Security Officer, addressed security-related matters for the CAT, and worked towards the initiation of Participant reporting per the Participant Technical Specifications.

Successor Plan Processor: FCAT. The capitalized developed technology costs related to FCAT include: (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, including the completion of go-live functionality related to options ingestion and validation, equities regulatory services agreement query tool updates and unlinked options data query, options linkages release, Industry Member Phase 2a file submission and data integrity (including error corrections), and Industry Member testing, including reporting relationships, ATS order type management, basic reporting statistics, SFTP data integrity feedback and error correction; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including a one-time development fee for a secure analytics workspace, a one-time development fee of an Industry Member connectivity solution, and a one-time development fee for the acceleration of multi-factor authentication; (3) CAIS implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$19,674,463 represent the fees paid for legal services provided by two law firms, Wilmer Cutler Pickering Hale and Dorr LLP ("WilmerHale") and Pillsbury Winthrop Shaw Pittman LLP ("Pillsbury"), during the Pre-FAM Period. The legal costs exclude those costs incurred from November 15, 2017 through November 15, 2018.

Law Firm: WilmerHale. Following the adoption of Rule 613, the Participants determined it was necessary to engage

external legal counsel to advise the Participants with respect to corporate and regulatory legal matters related to the CAT, including drafting and developing the CAT NMS Plan. The Participants considered a variety of factors in their analysis of prospective law firms, including (1) the firm's qualifications, resources and expertise; (2) the firm's relevant experience and understanding of the regulatory matters raised by the CAT and in advising on matters of similar scope; (3) the composition of the legal team; and (4) professional fees. Following a series of interviews, the Participants acting as a consortium determined that WilmerHale was well qualified given the balance of these considerations and engaged WilmerHale in February 2013.

WilmerHale's billing rates are negotiated on an annual basis and are determined with reference to the rates charged by other leading law firms for similar work. The Participants assess WilmerHale's performance and review prospective budgets and staffing plans submitted by WilmerHale on an annual basis. WilmerHale's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading law firms for similar work.

The legal costs for WilmerHale during the Pre-FAM Period included costs incurred from 2013 until June 22, 2020 to address corporate and regulatory legal matters related to the CAT. The legal fees for this law firm during the period from February 2013 until the formation of the CAT NMS, LLC on November 15, 2016 were paid directly by the exchanges and FINRA to WilmerHale. After the formation of CAT NMS LLC, the legal fees were paid by CAT LLC to WilmerHale.

After WilmerHale was engaged in 2013 through the end of the Pre-FAM Period on June 22, 2020 (excluding the legal costs from November 15, 2017 through November 15, 2018), WilmerHale provided legal assistance to the CAT on a variety of matters, including with regard to the following:

- Analyzed various legal matters associated with the Selection Plan, and drafted an amendment to the Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the Development Advisory Group ("DAG");
- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on CAT NMS Plan;
- Provided legal support for the formation of the legal entity, the

governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan, and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;

- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan and related filings;
- Negotiated and drafted the plan processor agreements with the Initial Plan Processor and the successor Plan Processor;
- Provided assistance with compliance with Regulation SCI;
- Assisted with clock synchronization study;
- Provided assistance with respect to the establishment of CAT security;
- Drafted exemptive requests from CAT NMS Plan requirements, including with regard to options market maker quotes, Customer IDs, CAT Reporter IDs, linking allocations to executions, CAT reporting timeline, FDIDs, customer and account information, timestamp granularity, small industry members, data facility reporting and linkage, allocation reports, SRO-assigned market participant identifiers and cancelled trade indicators, thereby seeking to implement changes that would be cost effective and benefit Industry Members and Participants;
- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Provided advice regarding CAT policies and procedures;
- Analyzed the SEC's amendment of the CAT NMS Plan regarding financial accountability;
- Provided interpretations of and related to the CAT NMS Plan;
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues; and
- Assisted with third-party vendor agreements.

Law Firm: Pillsbury. The legal costs for CAT during the Pre-FAM Period include costs related to the legal services performed by Pillsbury. The Participants interviewed this law firm as

well as other potential law firms to provide legal assistance regarding certain liability matters. After considering a variety of factors in its analysis, including the relevant expertise and fees of the firm, CAT LLC determined to hire Pillsbury in April 2019. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees were paid by CAT LLC to Pillsbury. The legal costs for Pillsbury during the Pre-FAM Period included costs incurred from April 2019 until June 22, 2020 to address legal matters regarding the agreements between CAT Reporters and CAT LLC concerning certain terms associated with CAT Reporting (the "Reporter Agreement"). During that period, Pillsbury advised CAT LLC regarding applicable legal matters, participated in negotiations between the Participants and Industry Members, participated in meetings with senior SEC staff, the Chairman, and Commissioners, represented CAT LLC and the Participants in an SEC administrative proceeding, and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, litigation involving CAT LLC is an expense of operating the CAT, and, therefore, is appropriately an obligation of both Participants and Industry Members under the CAT Funding Model.

(g) Consulting Costs

The consulting costs of \$17,013,414 represent the fees paid to the consulting firm Deloitte & Touche LLP ("Deloitte") as project manager during the Pre-FAM Period, from October 2012 until June 22, 2020. These consulting costs include costs for advisory services related to the operation of the CAT, and meeting facilitation and communications coordination, vendor support and financial analyses.

To help facilitate project management given the unprecedented complexity and scope of the CAT project, the Participants determined it was necessary to engage a consulting firm to assist with the CAT project in 2012, following the adoption of Rule 613. A variety of factors were considered in the analysis of prospective consulting firms, including (1) the firm's qualifications, resources, and expertise; (2) the firm's relevant experience and understanding of the regulatory issues raised by the CAT and in coordinating matters of

similar scope; (3) the composition of the consulting team; and (4) professional fees. Following a series of interviews, the exchanges and FINRA as a consortium determined that Deloitte was well qualified given the balance of these considerations and engaged Deloitte on October 1, 2012.

Deloitte's fee rates are negotiated on an annual basis and are in line with market rates for this type of specialized consulting work. CAT LLC assesses Deloitte's performance and reviews prospective budgets and staffing plans submitted by Deloitte on an annual basis. Deloitte's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading consulting firms for similar work.

The consulting costs for CAT during the period from 2012 until the formation of the CAT NMS, LLC were paid directly by the Participants to Deloitte. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC to Deloitte. CAT LLC reviewed the consulting fees each month and approved the invoices.

After Deloitte was hired in 2012 through the end of the Pre-FAM Period on June 22, 2020 (excluding the consulting costs from November 15, 2017 through November 15, 2018), Deloitte provided a variety of consulting services, including the following:

- Established and implemented program operations for the CAT project, including the program management [*sic*] office and workstream design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participant's independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, analyzing OATS and CAT requirements, and drafting appendices to the Plan;
- Assisted with cost and funding-related activities for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (*e.g.*, Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan and

governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;

- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with industry outreach and communications regarding the CAT, including assistance with industry outreach events, the development of the CAT website, frequently asked questions, and coordinating with the CAT LLC's public relations firm;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress;
- Coordinated efforts regarding the selection of the successor Plan Processor;
- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor, including support for the Operating Committee and successor Plan Processor for the new role; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$880,419 represent the cost incurred for insurance for CAT during the Pre-FAM Period. Commencing in 2020, CAT LLC performed an evaluation of various potential alternatives for CAT insurance policies, which included engaging in discussions with different insurance companies and conducting cost comparisons of various alternative approaches to insurance. Based on an analysis of a variety of factors, including coverage and premiums, CAT LLC determined to purchase cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance from USI Insurance Services LLC ("USI"). Such policies are standard for corporate entities, and cyber security liability insurance is important for the CAT System. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

In adopting the CAT NMS Plan, the Commission amended the Plan to add a requirement that CAT LLC's financial statements be prepared in compliance with GAAP, audited by an independent public accounting firm, and made publicly available.⁴⁴ The professional and administration costs include costs related to accounting and accounting advisory services to support the operating and financial functions of CAT, financial statement audit services by an independent accounting firm, preparation of tax returns, and various cash management and treasury functions. In addition, professional and administration costs for the Pre-FAM Period include costs related to the receipt of market data and a security assessment. The costs for these professional and administration services were \$1,082,036 for the Pre-FAM Period.

Financial Advisory Firm: Anchin Accountants & Advisors ("Anchin"). CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT in April 2018. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The hourly fee rates for this firm were in line with market rates for these financial advisory services. The fees for these services were paid by CAT LLC to Anchin.

After Anchin was hired in April 2018 through the end of the Pre-FAM Period on June 22, 2020 (excluding the period from April 2018 through November 15, 2018), Anchin provided a variety of services, including the following:

- Developed, updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and

financial budgets, including budget to actual fluctuation analyses;

- Addressed accounting and financial reporting matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC, including supporting the dissolution of CAT NMS, LLC;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Accounting Firm: Grant Thornton LLP ("Grant Thornton"). In February 2020, CAT LLC determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the proposed role given the balance of these considerations. Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services. The fees for these services were paid by CAT LLC to Grant Thornton.

Market Data Provider: Exegy. The professional and administrative costs for the Pre-FAM Period included costs related to the receipt of certain market data for the CAT pursuant to an agreement with the CAT LLC, and then with FCAT. Exegy provided SIP Data required by the CAT NMS Plan.

After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy from July 2018 through March 2019. CAT LLC determined that, unlike certain other vendors, Exegy provided market data that included all data elements required by the CAT NMS Plan.⁴⁵ In addition, the

fees were reasonable and in line with market rates for the market data received. Accordingly, the professional and administrative costs for the Pre-FAM Period include the Exegy costs from November 2018 through March 2019. The cost of the market data was reasonable for the market data received. The fees for the market data were paid directly by CAT LLC to Exegy.

Upon the termination of the contract between CAT LLC and Exegy, FCAT entered into a contract with Exegy to purchase the required market data from Exegy in July 2019. All costs under the contract were treated as a direct pass through cost to CAT LLC. Therefore, the fees for the market data were paid by CAT LLC to FCAT, who, in turn, paid Exegy for the market data.

Security Assessment: RSM US LLP ("RSM"). The operating costs for the Pre-FAM Period include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation, and operation of the controls specified by NIST Special Publication 800–53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment. RSM performed the assessment from October 2018 through December 2018. Accordingly, the costs for the Pre-FAM Period include the costs incurred in November and December 2018. The cost for the security assessment were paid directly to RSM by CAT LLC.

(j) Public Relations Costs

The public relations costs of \$224,669 represent the fees paid to public relations firms during the Pre-FAM Period for professional communications services to CAT, including media relations consulting, strategy and execution. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants. Specifically, the public relations firms provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and

⁴⁴ Section 9.2 of the CAT NMS Plan.

⁴⁵ See Section 6.5(a)(ii) of the CAT NMS Plan.

drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). Public relations services were important for various reasons, including monitoring comments made by market participants about CAT and understanding issues related to the CAT discussed on the public record.

The services performed by each of the public relations firms were comparable. The fees for such services were reasonable and in line with market rates. Only one public relations firm was engaged at a time; the three firms were engaged sequentially as the primary public relations contact moved among the three firms during this time period.

Public Relations Firm: Peppercomm, Inc. ("Peppercomm"). The national securities exchanges and FINRA, acting as a consortium, determined to hire the public relations firm Peppercomm in October 2014 and continued to engage this firm through September 2017. The exchanges and FINRA made this engagement decision after considering a variety of factors in its analysis,

including the firm's relevant expertise and fees. The fee rates for this public relations firm were negotiated on an arm's length basis and were in line with market rates for these types of services. The public relations costs during the period from October 2014 until the formation of the CAT NMS, LLC were paid directly by the exchanges and FINRA to the public relations firm. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC.

Public Relations Firm: Sloane & Company ("Sloane"). CAT LLC determined to hire a new public relations firm, Sloane, in March 2018, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Sloane. CAT LLC continued the engagement with Sloane until February 2020.

Public Relations Firm: Peak Strategies. CAT LLC determined to hire a new public relations firm, Peak Strategies, in March 2020, based on, among other things, their expertise and the primary contact's history with the

project. The fee rates for this public relations firm were in line with market rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Peak Strategies.

(ii) Historical CAT Costs Incurred in Financial Accountability Milestone Period 1

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 1 of the Financial Accountability Milestones ("FAM Period 1"),⁴⁶ which covers the period from June 22, 2020–July 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 1 of \$6,377,343. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$2,125,781), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBBs paying one-third (\$2,125,781). The following table breaks down Historical CAT Costs 1 for FAM Period 1 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 1 *
Capitalized Developed Technology Costs **	\$1,684,870
Technology Costs	3,996,800
Cloud Hosting Services	2,642,122
Operating Fees	1,099,680
CAIS Operating Fees	254,998
Change Request Fees	
Legal	481,687
Consulting	137,209
Insurance	
Professional and administration	69,077
Public relations	7,700
Total Operating Expenses	6,377,343

* The costs described in this table of costs for FAM Period 1 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of 362,121 incurred during FAM Period 1 have been appropriately excluded from the above table.⁴⁷

By the completion of FAM Period 1, CAT LLC was required to implement the reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of equities transaction data and options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.⁴⁸ CAT LLC completed the requirements of FAM

Period 1 by July 31, 2020. The following describes the costs for each of the categories for FAM Period 1.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 1 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS

continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production environments, during the FAM 1 Period. Accordingly, the \$2,642,122 in technology costs for cloud hosting

⁴⁶ Section 11.6(a)(i)(A) of the CAT NMS Plan.

⁴⁷ As discussed above, with respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized

over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁴⁸ See definition of "Initial Industry Member Core Equity and Options Reporting" in Section 1.1 of the CAT NMS Plan.

services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 1. The fee arrangement for AWS described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. Moreover, CAT LLC continued to believe that AWS's maturity in the cloud services space as well as the significant cost and time

necessary to move the CAT to a different cloud services provider supported the continued engagement of AWS.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the FAM 1 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included

options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well as SIP Data, reference data and other types of Other Data. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 1.⁴⁹

	Date range: 6/22/20–7/31/20
Average Daily Volume in Billions:	
Participant—Equities	6
Participant—Options	103
Industry Member—Equities	7
Industry Member—Options	0.31
SIP—Options & Equities	74
Average Total Daily Volume	185
Cumulative Total Events for the Period	5,190
Total Compute Hours for the Period	2,612,082
Storage Footprint at End of Period (Petabytes)	57.47

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 1. Accordingly, the \$1,099,680 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 1. The fee arrangement for FCAT described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, FCAT's activities with respect to the CAT included the following:

- Published iterative drafts of draft Technical Specifications for Phase 2d, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Published iterative drafts of CAIS Technical Specifications, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Facilitated Industry Member reporting of Quote Sent Time on Options Market Maker quotes;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;

• Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;

- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 1. Accordingly, the \$254,998 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 1. The fee arrangement for Kingland described above with regard to the Pre-FAM Period continued in place

during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

CAT LLC did not incur costs related to change requests during FAM Period 1.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 1 of \$1,684,870 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include: (1) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including separate production and industry test entitlements, and reprocessing of exchange event timestamps; (2) implementation fees; and (3) license fees.

(f) Legal Costs

The legal costs of \$481,687 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 1.

⁴⁹ Note that the volume data described in this table does not include CAIS data.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 1 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to WilmerHale. During FAM Period 1, WilmerHale provided legal assistance to the CAT including with regard to the following:

- Assisted with the development of the CAT funding model and drafted related amendments and fee filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, verbal activity, options market maker quote sent time, TRF linkages, and allocations;
- Provided interpretations related to CAT NMS Plan requirements, including the Financial Accountability Milestone amendment;
- Assisted with compliance with Regulation SCI;
- Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the drafting of the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Assisted with communications and presentations for the industry regarding CAIS;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for Compliance Subcommittee, including with regard to response to OCIE examinations and the annual assessment;
- Provided guidance regarding CAT technical specifications;
- Assisted with third-party vendor agreements; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to Pillsbury. During FAM Period 1, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability

issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(g) Consulting Costs

The consulting costs of \$137,209 represent the fees paid to Deloitte as project manager during FAM Period 1. CAT LLC continued to employ Deloitte during FAM Period 1 based on, among other things, their expertise and cumulative experience with the CAT. The fee rates for Deloitte during FAM Period 1 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 1 were paid by CAT LLC to the consulting firm. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 1, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

Although insurance was in effect during FAM Period 1, CAT LLC did not incur costs related to insurance during FAM Period 1.

(i) Professional and Administration Costs

Financial Advisory Firm: Anchin. The professional and administration costs of \$69,077 represent the fees paid to Anchin during FAM Period 1. CAT LLC continued to employ Anchin during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these type of financial advisory services.

The fees for these services during FAM Period 1 were paid by CAT LLC to Anchin. During FAM Period 1, Anchin provided a variety of services, including the following:

- Maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups; and
- Prepared monthly and quarterly financial statements.

(j) Public Relations Costs

The public relations costs of \$7,700 represent the fees paid to Peak Strategies during FAM Period 1. CAT LLC continued to employ Peak Strategies during FAM Period 1 based on, among other things, their expertise and history with the project. The fee rates for this firm were reasonable and in line with market rates for these types of services. The fees for these services during FAM Period 1 were paid by CAT LLC to Peak Strategies. During FAM Period 1, Peak Strategies continued to provide professional communications services to CAT LLC, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public

relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(iii) Historical CAT Costs Incurred in Financial Accountability Milestone Period 2

Historical CAT Costs 1 would include costs incurred by CAT LLC and already

funded by Participants during Period 2 of the Financial Accountability Milestones ("FAM Period 2"),⁵⁰ which covers the period from August 1, 2020–December 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 2 of \$42,976,478. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$14,325,493),

and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$14,325,493) and CEBBs paying one-third (\$14,325,493). The following table breaks down Historical CAT Costs 1 for FAM Period 2 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 2 *
Capitalized Developed Technology Costs **	\$6,761,094
Technology Costs	31,460,033
Cloud Hosting Services	20,709,212
Operating Fees	9,108,700
CAIS Operating Fees	1,590,298
Change Request Fees	51,823
Legal	2,766,644
Consulting	532,146
Insurance	976,098
Professional and administration	438,523
Public relations	41,940
Total Operating Expenses	42,976,478

* The costs described in this table of costs for FAM Period 2 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$1,892,505 incurred during FAM Period 2 have been appropriately excluded from the above table.⁵¹

By the completion of FAM Period 2, CAT LLC was required to implement the following with regard to the CAT:

(a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, CustomerID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission.⁵²

CAT LLC completed the requirements of FAM Period 2 by December 31, 2020. The following describes the costs for each of the categories for FAM Period 2.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 2 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production environments, during the FAM 2 Period. Accordingly, the \$20,709,212 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 2.

The fee arrangement for AWS described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the FAM 2 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well as SIP Data, and Other Data, including reference data. In addition, Industry Members began reporting LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 2.⁵³

	Date range: 8/1/20–12/31/20
Average Daily Volume in Billions:	
Participant—Equities	6
Participant—Options	116

⁵⁰ Section 11.6(a)(i)(B) of the CAT NMS Plan.

⁵¹ As discussed above, with respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized

over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁵² See definition of "Full Implementation of Core Equity Reporting Requirements" in Section 1.1 of the CAT NMS Plan.

⁵³ Note that the volume data described in this table does not include CAIS data.

	Date range: 8/1/20–12/31/20
Industry Member—Equities	11
Industry Member—Options	0.98
SIP—Options & Equities	80
Average Total Daily Volume	282
Cumulative Total Events for the Period	2,170
Total Compute Hours for the Period	15,660,392
Storage Footprint at End of Period (Petabytes)	114.59

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 2. Accordingly, the \$9,108,700 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 2. The fee arrangement for FCAT described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, FCAT's activities with respect to the CAT included publishing the Technical Specifications for Phase 2d and overseeing the reporting of firm to firm and intrafirm linkages by Industry Members. In addition, FCAT also continued to engage in the following activities during FAM Period 2:

- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the development and implementation of the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the

use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 2. Accordingly, the \$1,590,298 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 2. The fee arrangement for Kingland described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

During FAM Period 2, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 2, CAT incurred costs of \$51,823 related to a change request regarding the addition of functionality for exchange Participants to report rejected messages to the CAT.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 2 of \$6,761,094 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor; (2) costs related to certain

modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to separate production and industry test entitlements, market maker reference data, and back-processing of exchange exception logic; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$2,766,644 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 2.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 2 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to WilmerHale. During FAM Period 2, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, allocations, exchange activity, OTQT, initial data validation, error corrections and recordkeeping;
- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs and technical specifications;
- Provided support for the Operating Committee, Compliance Subcommittees, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6 of the CAT NMS Plan;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for the Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;

- Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
- Provided guidance regarding SRO rule filings for the retirement of systems;
- Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;
- Assisted with third-party vendor agreements (e.g., with regard to Anchin, Grant Thornton and insurance policies);
- Assisted with change requests; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to Pillsbury. During FAM Period 2, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted and filed a proposed amendment to the CAT NMS Plan regarding liability matters. As discussed above, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(g) Consulting Costs

The consulting costs of \$532,146 represent the fees paid to Deloitte as project manager during FAM Period 2. CAT LLC continued to employ Deloitte during FAM Period 2 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 2 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 2 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 2, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;

- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$976,098 represent the fees paid for insurance during FAM Period 2. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$438,523 represent the fees paid to Anchin and Grant Thornton for financial services provided during FAM Period 2.

Financial Advisory Firm: Anchin. CAT LLC continued to engage Anchin during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these types of financial advisory services. The fees for these services during FAM Period 2 were paid by CAT LLC to Anchin. During FAM Period 2, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated [sic] bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from the Participants;
- Developed and maintained quarterly and annual operating and

financial budgets, including budget to actual fluctuation analyses;

- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audit by an independent auditor; and
- Reviewed historical costs from inception.

Accounting Firm: Grant Thornton. CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 2 based on, among other things, its expertise and cumulative knowledge of CAT LLC. CAT LLC continued to believe that Grant Thornton was well qualified for its role and its fee rates were in line with market rates for these accounting services. The fees for these services during FAM Period 2 were paid by CAT LLC to Grant Thornton. During FAM Period 2, Grant Thornton performed a financial statement audit for CAT LLC as an independent accounting firm.

(j) Public Relations Costs

The public relations costs of \$41,940 represent the fees paid to Peak Strategies during FAM Period 2. CAT LLC continued to employ Peak Strategies during FAM Period 2 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 2 were paid by CAT LLC to Peak Strategies. During FAM Period 2, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public

relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(iv) Historical CAT Costs Incurred in Financial Accountability Milestone Period 3

Historical CAT Costs 1 would include costs incurred by CAT and already

funded by the Participants during Period 3 of the Financial Accountability Milestones (“FAM Period 3”),⁵⁴ which covers the period from January 1, 2021–December 31, 2021. Historical CAT Costs 1 would include costs for FAM Period 3 of \$144,415,268. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$48,138,423),

and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$48,138,423) and CEBBs paying one-third (\$48,138,423). The following table breaks down Historical CAT Costs 1 for FAM Period 3 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 3 *
Capitalized Developed Technology Costs **	\$10,763,372
Technology Costs:	123,639,402
Cloud Hosting Services	94,574,759
Operating Fees	23,106,091
CAIS Operating Fees	5,562,383
Change Request Fees	396,169
Legal	6,333,248
Consulting	1,408,209
Insurance	1,582,714
Professional and administration	595,923
Public relations	92,400
Total Operating Expenses	144,415,268

* The costs described in this table of costs for FAM Period 3 were calculated based upon CAT LLC’s review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$5,108,044 incurred during FAM Period 3 have been appropriately excluded from the above table.⁵⁵

By the completion of FAM Period 3, CAT LLC was required to implement the following requirements with regard the CAT:

(a) reporting to the Order Audit Trail System (“OATS”) is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or

order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)–(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met.⁵⁶

CAT LLC completed the requirements of FAM Period 3 by December 31, 2021. The following describes the costs for each of the categories for FAM Period 3.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 3 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production

environments, during the FAM 3 Period. Accordingly, the \$94,574,759 in technology costs for cloud hosting services represents costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 3. The fee arrangement for AWS described above for the earlier periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During FAM Period 3, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a, Phase 2b, Phase 2c and Phase 2d Industry Member Data (including certain linkages), SIP Data, Other Data, including reference data, and LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 3.⁵⁷

⁵⁴ Section 11.6(a)(i)(C) of the CAT NMS Plan.

⁵⁵ As discussed above, with respect to certain costs that were “appropriately excluded,” such excluded costs relate to the amortization of capitalized technology costs, which are amortized

over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁵⁶ See definition of “Full Availability and Regulatory Utilization of Transactional Database Functionality” in Section 1.1 of the CAT NMS Plan.

⁵⁷ Note that the volume data described in this table does not include CAIS data.

	Date range: 1/1/21 to 4/25/21	Date range: 4/26/21/ to 12/31/21 *
Average Daily Volume in Billions:		
Participant—Equities	9	9
Participant—Options	135	136
Industry Member—Equities	20	19
Industry Member—Options	2	2
SIP—Options & Equities	129	137
Average Total Daily Volume	297	304
Cumulative Total Events for the Period	7,480	5,310
Total Compute Hours for the Period	15,860,304	33,487,318
Storage Footprint at End of Period (Petabytes)	180.22	284.62

* Start of Participant Equities in CAT format and SIP Equities on 4/26/21.

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 3. Accordingly, the \$23,106,091 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 3. The fee arrangement for FCAT described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, FCAT's activities with respect to the CAT included the following:

- Facilitated Phase 2c and Phase 2d testing for Industry Members;
- Oversaw creation of linkages of the lifecycle of order events based on the received data through Phase 2d;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the

use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement with FCAT discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 3. Accordingly, the \$5,562,383 in technology costs for CAIS operating fees represents costs incurred for services provided by Kingland during FAM Period 3. The fee arrangement for Kingland described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs. The full CAIS Technical Specifications were published during FAM Period 3.

(d) Technology Costs—Change Request Fees

During FAM Period 3, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 3, CAT incurred costs of \$396,169 related to change requests, including the following: (1) the addition of functionality for exchange Participants to report rejected messages to the CAT; (2) the migration of MIRS query engine to AWS to reduce operational costs and increase resiliency; and (3) updating the Participant Technical Specifications to allow for two-sided Participant option quote reporting.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 3 of \$10,763,372

include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor, including the transition from equity data received by FINRA pursuant to various regulatory services agreements between FINRA and Participant exchanges to the equity CAT Data, and the completion of the Industry Member Phase 2d options manual and complex orders go-live requirements; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to off-exchange volume concentration, Participant 24-hour trading and an external metastore; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$6,333,248 represent the fees paid for legal services provided by three law firms, WilmerHale, Pillsbury & Covington & Burling LLP ("Covington") during FAM Period 3.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 3 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to WilmerHale. During FAM Period 3, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements, including, for example, verbal activity regarding Phase 2c cutover, error reports, error

corrections, Phase 2d Reporting, unique Order-ID on internal route events, reporting addresses, recordkeeping, and unique CCID for foreign customers;

- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs, CAIS requirements, ADF, and technical specifications;
 - Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
 - Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6(c) of the CAT NMS Plan;
 - Drafted SRO rule filings related to the CAT Compliance Rule;
 - Provided support for Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
 - Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
 - Provided guidance regarding SRO rule filings for the retirement of systems;
 - Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;
 - Provided assistance with change requests;
 - Provided guidance and regulatory support for litigation regarding the response to the SEC's exemptive orders;
 - Assisted with communications with the industry, including CAT Alerts and presentations;
 - Provided guidance regarding the confidentiality of CAT Data, including third-party information requests;
 - Assisted with cost management analysis and proposals; and
 - Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.
- Law Firm: Pillsbury.* CAT LLC continued to employ Pillsbury during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to Pillsbury. During FAM Period 3, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During this period, Pillsbury advised CAT LLC regarding applicable legal matters, reviewed and responded to comment letters regarding the proposed Plan amendment, participated in meetings with senior SEC staff, responded to comments

submitted following the SEC's April 6, 2021 order instituting proceedings,⁵⁸ and assessed legal matters regarding the SEC's October 29, 2021 order denying the proposed Plan amendment.⁵⁹

Law Firm: Covington. CAT LLC hired Covington for litigation with the SEC regarding certain exemptive orders related to the CAT, including orders issued in December 2020.⁶⁰ CAT LLC interviewed this law firm as well as other potential law firms, considering a variety of factors in its analysis for choosing legal assistance, including the relevant expertise and fees of the potential lawyers. CAT LLC approved the engagement of Covington in January 2021. The fee rates for this law firm, which were calculated based on hourly rates, were in line with market rates for specialized services. The legal fees for FAM Period 3 for this firm were paid by CAT LLC to Covington.

After Covington was hired in 2021 through the end of 2021, the firm provided legal assistance regarding the litigation with the SEC regarding the 2020 Orders. These services included researching, drafting, and filing motions to stay the 2020 orders and related materials in proceedings before the SEC, as well as researching, drafting, and filing petitions for judicial review of the 2020 Orders in proceedings before the U.S. Court of Appeals for the D.C. Circuit. Covington oversaw ongoing litigation proceedings on these matters, and also supported WilmerHale with respect to settlement negotiations with the SEC staff regarding the 2020 Orders.

In addition to these services, CAT LLC engaged Covington in November 2021 to provide assistance with respect to the SEC's disapproval of CAT NMS Plan amendments concerning a proposed limitation on liability in the event of a data breach or similar event. Covington provided advice concerning CAT's response to the SEC's disapproval order. This work accounted for a minority of Covington's fees in 2021.⁶¹

⁵⁸ Securities Exchange Act Rel. No. 91487 (Apr. 6, 2021), 86 FR 19054 (Apr. 12, 2021).

⁵⁹ Securities Exchange Act Rel. No. 93484 (Oct. 29, 2021), 86 FR 60933 (Nov. 4, 2021).

⁶⁰ See Securities Exchange Act Rel. No. 90688 (Dec. 16, 2020), 85 FR 83634 (Dec. 22, 2020); and Securities Exchange Act Rel. No. 90689 (Dec. 16, 2020), 85 FR 83667 (Dec. 22, 2020) (collectively, the "2020 Orders").

⁶¹ As discussed above with regard to Pillsbury's work on liability matters, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, such activity is a necessary part of the operation of the CAT.

(g) Consulting Costs

The consulting costs of \$1,408,209 represent the fees paid to Deloitte as project manager during FAM Period 3. CAT LLC continued to employ Deloitte during FAM Period 3 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 3 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 3 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 3, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$1,582,714 represent the fees paid for insurance during FAM Period 3. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$595,923 represent the fees paid to Anchin and Grant Thornton for financial services during FAM Period 3.

Financial Advisory Firm: Anchin. CAT LLC continued to employ Anchin during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for

this firm were in line with market rates for these financial advisory services. The fees for these services during FAM Period 3 were paid by CAT LLC to Anchin. During FAM Period 3, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated [sic] bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Accounting Firm: Grant Thornton. CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 3 based on, among other things, their expertise and cumulative knowledge of CAT LLC. CAT LLC determined that Grant Thornton was well qualified for its role and that its fixed fee rates were in line with market rates for these accountant services. The

fees for these services during FAM Period 3 were paid by CAT LLC to Grant Thornton. During FAM Period 3, Grant Thornton provided audited financial statements for CAT LLC.

(j) Public Relations Costs

The public relations costs of \$92,400 represent the fees paid to Peak Strategies during FAM Period 3. CAT LLC continued to employ Peak Strategies during FAM Period 3 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 3 were paid by CAT LLC to Peak Strategies. During FAM Period 3, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(v) Excluded Costs

Historical CAT Costs 1 would not include three categories of CAT costs ("Excluded Costs"): (1) \$14,749,362 of

costs related to the termination of the relationship with the Initial Plan Processor; (2) \$48,874,937, which are all CAT costs incurred from November 15, 2017 through November 15, 2018; and (3) \$19,628,791, which are costs paid to the the Initial Plan Processor from November 16, 2018 through February 2019 when the relationship with the Initial Plan Processor was concluded. The Participants would remain responsible for 100% of these costs, which total \$83,253,090. CAT LLC determined to exclude these Excluded Costs from Historical CAT Costs 1 because these costs relate to the delay in the start of reporting to the CAT and the conclusion of the relationship with the Initial Plan Processor.⁶²

(a) Costs Related to Conclusion of Relationship With Initial Plan Processor

First, Historical CAT Costs 1 would not include \$14,749,362 of costs related to the conclusion of the relationship with the Initial Plan Processor. Such costs include costs related to the American Arbitration Association, the legal assistance of Pillsbury with regard to the arbitration with the Initial Plan Processor, and the settlement costs related to the arbitration with the Initial Plan Processor. The Participants would remain responsible for 100% of these \$14,749,362 in costs.

(b) Costs Incurred From November 15, 2017 Through November 15, 2018

Second, Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018. CAT LLC determined to exclude all costs during this one-year period of \$48,874,937 from fees charged to Industry Members due to the delay in the start of reporting to the CAT. The Participants would remain responsible for 100% of these \$48,874,937 in costs. The following table breaks down these costs into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Excluded costs for November 15, 2017–November 15, 2018 *
Capitalized Developed Technology Costs	\$37,852,083
<i>Technology Costs</i>	
Cloud Hosting Services	
Operating Fees	
CAIS Operating Fees	
Change Request Fees	

⁶² In approving the CAT Funding Model, the Commission states that the proposed exclusion of the first two categories of Excluded Costs "is reasonable in the Commission's view because it would not require all costs incurred by the Participants to be recovered from Industry Members

through the Historical CAT Assessment, specifically excluding those costs related to the delay in the start of reporting to the CAT and costs related to the conclusion of the relationship with the Initial Plan Processor." CAT Funding Model Approval Order at 62663. In addition to the first two

categories of Excluded Costs, CAT LLC is now proposing a third category of Excluded Costs that would exclude all costs paid to the Initial Plan Processor after November 15, 2018.

Operating expense	Excluded costs for November 15, 2017– November 15, 2018 *
Legal	6,143,278
Consulting	4,452,106
Insurance .....	.....
Professional and administration	340,145
Public relations	87,325
Total Operating Expenses	48,874,937

* The costs described in this table of Excluded Costs were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

The following provides additional detail regarding the Excluded Costs.

(I) Technology Costs—Cloud Hosting Services, Operating Fees, CAIS Operating Fees and Change Request Fees

CAT LLC did not incur technology costs related to the categories of cloud hosting services, operating fees, CAIS operating fees or change requests during the period from November 15, 2017 through November 15, 2018.

(II) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for the period from November 15, 2017 through November 15, 2018 include capitalizable application development costs of \$37,852,083 incurred in the development of the CAT by the Initial Plan Processor. Such costs include development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Initial Plan Processor. Such costs include costs related to Industry Member technical specifications for orders and transactions, the system security plan, testing and production for Participant CAT reporting, third-party security assessment and response, query portal, onboarding of the Chief Information Security Officer, and ingestion of FINRA TRF data and FINRA data related to halts and corporate actions.

(III) Legal Costs

The legal costs of \$6,143,278 represent the fees paid to WilmerHale for legal services from November 15, 2017 through November 15, 2018. During this period, WilmerHale provided legal assistance to the CAT including with regard to the following:

- Provided legal support for the governance of the CAT, including governance support for the Operating Committee, Advisory Committee, Compliance Subcommittee, and CAT working groups;

- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan;

- Provided assistance related to CAT security;

- Drafted exemptive requests, including requests related to PII;

- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;

- Provided interpretations of and related to the CAT NMS Plan;

- Provided advice with regard to regulator access to the CAT;

- Assisted with the Plan Processor transition;

- Provided assistance regarding communications with the industry regarding the CAT;

- Provided advice regarding Customer Account Information and PII;

- Provided support for litigation related to SEC exemptive orders; and

- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretative and implementation issues.

(IV) Consulting Costs

The consulting costs of \$4,452,106 represent the fees paid to Deloitte for their role as project manager for the CAT from November 15, 2017 through November 15, 2018. During this period, Deloitte engaged in the following activities with respect to the CAT:

- Implemented program operations for the CAT project;

- Provided governance support to the Operating Committee, including support for Subcommittees and working groups of the Operating Committee (e.g., Compliance Subcommittee, Cost and Funding Working Group, Technical Working Group, Industry Outreach Working Group, Security Working Group and Steering Committee);

- Assisted with cost and funding issues for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;

- Provided support for updating the SEC on the progress of the development of the CAT; and

- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress.

(V) Insurance

CAT LLC did not incur costs related to insurance during the period from November 15, 2017 through November 15, 2018.

(VI) Professional and Administration Costs

The professional and administration costs of \$340,145 represent the fees paid to Anchin, Exegy and RSM from November 15, 2017 through November 15, 2018.

Financial Advisory Firm: Anchin.

From the commencement of its engagement [sic] in April 2018 through November 15, 2018, Anchin engaged in the following activities with respect to the CAT:

- Developed, updated and maintained internal controls;

- Provided cash management and treasury functions;

- Facilitated bill payments;

- Provided monthly bookkeeping;

- Reviewed vendor invoices and documentation in support of cash disbursements;

- Provided accounting research and consultations on various accounting, financial reporting and tax matters;

- Addressed not-for-profit tax and accounting considerations;

- Prepared tax returns;

- Addressed various accounting, financial reporting and operating inquiries from Participants;

- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;

- Addressed accounting and financial matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC, including supporting the dissolution of CAT NMS, LLC;

- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Market Data Provider: Exegy. From July 2018 through November 15, 2018, CAT LLC purchased market data from Exegy (as described in more detail above).

Security Assessment: RSM. From October 2018 through November 15, 2018, CAT LLC incurred costs for RSM's performance of a security assessment (as described in more detail above).

(VII) Public Relations Costs

The public relations costs of \$87,325 represent the fees paid to Sloane from November 15, 2017 through November 15, 2018. From the commencement of its engagement [*sic*] in March 2018 through November 15, 2018, Sloane provided professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, Sloane provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (*e.g.*, congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (*e.g.*, amendments to the CAT NMS Plan).

(c) Costs Paid to Initial Plan Processor From November 16, 2018 Through February 2019

Third, Historical CAT Costs 1 would not include the \$19,628,791 in costs paid to the Initial Plan Processor from November 16, 2018 through February 2019 when CAT LLC's relationship with the Initial Plan Processor concluded. CAT LLC determined that Historical CAT Costs 1 would not include any fees paid to the Initial Plan Processor after November 15, 2017,⁶³ which was the date by which Participants were

required to begin reporting to the CAT.⁶⁴ As discussed above, the Participants determined that Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Initial Plan Processor costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Initial Plan Processor costs incurred after November 15, 2018 are the \$19,628,791 in costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these \$19,628,791 in costs.

(C) Historical Recovery Period 1

Under the CAT NMS Plan, the Operating Committee is required to reasonably establish the length of the Historical Recovery Period used in calculating each Historical Fee Rate based upon the amount of the Historical CAT Costs to be recovered by the Historical CAT Assessment, and to describe the reasons for its length.⁶⁵ The Historical Recovery Period used in calculating the Historical Fee Rate may not be less than 24 months or more than five years.⁶⁶ The Operating Committee has determined to establish a Historical Recovery Period 1 of 24 months for Historical CAT Assessment 1.

The Operating Committee determined that the length of Historical Recovery Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans to the Participants in a timely fashion. The Operating Committee determined that 24 months for Historical Recovery Period 1 would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to

Section 31.⁶⁷ In addition, in establishing a Historical Recovery Period of 24 months, the Operating Committee recognized that the total costs for Historical CAT Assessment 1 were less than the total costs for 2022 and 2023,⁶⁸ and therefore it would be reasonable and appropriate to recover costs subject to this filing over an approximate two-year period.

The length of the Historical Recovery Period 1 and the reasons for its length are provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.⁶⁹

(D) Projected Total Executed Equivalent Share Volume

The calculation of Historical Fee Rate 1 also requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for Historical Recovery Period 1. Under the CAT NMS Plan, the Operating Committee is required to "reasonably determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each Historical Recovery Period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months."⁷⁰ The Operating Committee is required to base its projection on the prior twelve months, but it may use its discretion to analyze the likely volume for the upcoming year. Such discretion would allow the Operating Committee to use its judgment when estimating projected total executed equivalent share volume if the volume over the prior twelve months was unusual or otherwise unfit to serve as the basis of a future volume estimate.⁷¹

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. The Operating Committee has determined to calculate the projected total executed equivalent share volume for the 24 months of Historical Recovery Period 1 by doubling the executed equivalent share volume for the prior 12 months. The

⁶⁴ The SEC approved the CAT NMS Plan on November 15, 2016, and Participant reporting was required to begin on the first anniversary of this date, November 15, 2017. See Section 6.3 of the CAT NMS Plan and CAT NMS Plan Approval Order.

⁶⁵ Section 11.3(b)(i)(D)(I) and Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

⁶⁶ Section 11.3(b)(i)(D)(I) of the CAT NMS Plan. In the CAT Funding Model Approval Order, the SEC stated that "[i]n the Commission's view, it is reasonable for the Operating Committee to establish the length of the Historical Recovery Period to be no less than 24 months and no more than five years." CAT Funding Model Approval Order at 62664.

⁶⁷ As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model at 62682.

⁶⁸ The total CAT costs for 2022 were approximately \$186 million and the total CAT costs for 2023 were approximately \$233 million.

⁶⁹ Section 11.3(b)(iii)(B)(II)(C) of the CAT NMS Plan.

⁷⁰ Section 11.3(b)(i)(E) of the CAT NMS Plan.

⁷¹ CAT Funding Model Approval Order at 62664.

⁶³ As discussed below, CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. See Section 3(a)(10)(E) below.

Operating Committee determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has remained relatively constant. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395, the executed equivalent share volume for 2022 was 4,039,821,841,560.31, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6. Accordingly, the projected total executed equivalent share volume for Historical Recovery Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.⁷²

The projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1 and a description of the calculation of the projection is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.⁷³

(E) Historical Fee Rate 1

Historical Fee Rate 1 would be calculated by dividing Historical CAT Costs 1 by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1, as described in detail above.⁷⁴ Specifically, Historical Fee Rate 1 would be calculated by dividing \$318,059,819 by 7,961,507,681,810.42. As a result, the Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. Historical Fee Rate 1 is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide the Historical Fee Rate in a fee filing for a Historical CAT Assessment.⁷⁵

(3) Past CAT Costs and Participants

Participants would not be required to pay any fees associated with Historical CAT Assessment 1 as the Participants previously have paid all Past CAT Costs. The CAT NMS Plan explains that:

Because Participants previously have paid Past CAT Costs via loans to the Company,

Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs and such other additional Past CAT Costs as reasonably determined by the Operating Committee will be paid by the cancellation of loans made to the Company on a pro rata basis based on the outstanding loan amounts due under the loans.⁷⁶

The CAT NMS Plan further states that "Historical CAT Assessments are designed to recover two-thirds of the Historical CAT Costs."⁷⁷

(4) Monthly Fees

CEBBs and CEBs would be required to pay fees for Historical CAT Assessment 1 on a monthly basis for the period in which Historical CAT Assessment 1 is in effect.⁷⁸ A CEBB or CEBs's fee for each month would be calculated based on the transactions in Eligible Securities executed by the CEBB or CEBs from the prior month.⁷⁹ Proposed paragraph (a)(1)(A) of the fee schedule would state that each CAT Executing Broker would receive its first invoice in November 2024, and "would receive an invoice each month thereafter in which Historical CAT Assessment 1 is in effect." Proposed paragraph (a)(1)(B) of the fee schedule would state that "Consolidated Audited Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis." In addition, proposed paragraph (b)(1) of the fee schedule states that each CEBB and CEBs is required to pay its CAT fees "each month."

(5) Actual Recovery Period for Historical CAT Assessment 1

The CAT NMS Plan states that, "[n]otwithstanding the length of the Historical Recovery Period used in calculating the Historical Fee Rate, each Historical CAT Assessment calculated using the Historical Fee Rate will remain in effect until all Historical CAT Costs for the Historical CAT Assessment are collected."⁸⁰ Accordingly, Historical CAT Assessment 1 will remain in effect until all Historical CAT Costs 1 have been collected. The actual

recovery period for Historical CAT Assessment 1 may be shorter or longer than Historical Recovery Period 1 depending on the actual executed equivalent share volumes during the time that Historical CAT Assessment 1 is in effect.⁸¹

(6) Consolidated Audit Trail Funding Fees

To implement Historical CAT Assessment 1, a new section would be added to the Exchange's fee schedule for "Consolidated Audit Trail Funding Fees", and it would include the proposed paragraphs described below.

(A) Fee Schedule for Historical CAT Assessment 1

The CAT NMS Plan states that:

Each month in which a Historical CAT Assessment is in effect, each CEBB and each CEBs shall pay a fee for each transaction in Eligible Securities executed by the CEBB or CEBs 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 reasonably determined pursuant to paragraph (b)(i) of this Section 11.3.⁸²

Accordingly, based on the factors discussed above, the Exchange proposes to add paragraph (a)(1) to the Consolidated Audit Trail Funding Fees section of its fee schedule. Proposed paragraph (a)(1) would state the following:

(A) Each CAT Executing Broker shall receive its first invoice for Historical CAT Assessment 1 in November 2024, which shall set forth the Historical CAT Assessment 1 fees calculated based on transactions in October 2024, and shall receive an invoice for Historical CAT Assessment 1 for each month thereafter in which Historical CAT Assessment 1 is in effect.

(B) Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis. Each month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer ("CEBB") and/or the CAT Executing Broker for the Seller ("CEBs") (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of \$0.000013 per executed equivalent share.

⁸¹ In approving the CAT Funding Model, the Commission stated that, "[i]n the Commission's view, it is reasonable for Industry Members to be charged a Historical CAT Assessment until all Historical CAT Costs for the Historical CAT Assessment are collected." CAT Funding Model Approval Order at 62665.

⁸² Section 11.3(b)(iii)(A) of the CAT NMS Plan.

⁷² This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

⁷³ Section 11.3(b)(iii)(B)(II)(D) of the CAT NMS Plan.

⁷⁴ In approving the CAT Funding Model, the Commission stated that "[t]he calculation of the Historical Fee Rate 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 is reasonable." CAT Funding Model Approval Order at 62664.

⁷⁵ Section 11.3(b)(iii)(B)(II)(A) of the CAT NMS Plan.

⁷⁶ Section 11.3(b)(ii) of the CAT NMS Plan.

⁷⁷ *Id.* In approving the CAT Funding Model, the Commission stated that "[t]he proposed allocation of the Historical CAT Assessment solely to CEBBs and CEBs, and ultimately Industry Members, is reasonable. The Historical CAT Assessment will still be divided into thirds," as the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made to the Company. CAT Funding Model Approval Order at 62666.

⁷⁸ See Section 11.3(b)(iii)(A) of the CAT NMS Plan.

⁷⁹ See proposed paragraph (a)(1)(B) of the fee schedule.

⁸⁰ Section 11.3(b)(i)(D)(II) of the CAT NMS Plan.

(C) Historical CAT Assessment 1 will remain in effect until \$212,039,879.34 (two-thirds of Historical CAT Costs 1) are collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time. Consolidated Audit Trail, LLC will provide notice when Historical CAT Assessment 1 will no longer be in effect.

(D) Each CAT Executing Broker shall be required to pay each invoice for Historical CAT Assessment 1 in accordance with paragraph (b).

As noted in the Plan amendment for the CAT Funding Model, “as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee rate.”⁸³ Accordingly, proposed paragraph (a)(1)(B) of the fee schedule would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 of \$0.00003994969693072937 by one-third, and rounding the result to 6 decimal places.⁸⁴ The Operating Committee determined to use six decimal places to balance the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

The proposed language in paragraph (a)(1)(A) of the fee schedule would describe when CAT Executing Brokers would receive their first monthly invoice for Historical CAT Assessment 1. Specifically, CAT Executing Brokers would receive their first monthly invoice for Historical CAT Assessment 1 in November 2024 and the fees set forth in that invoice would be calculated based on transactions executed in the prior month, that is, transactions executed in October 2024. The payment for the first invoice would be required within 30 days after the receipt of the first invoice (unless a longer period is indicated), as described in paragraph (b)(2) of the fee schedule.

Proposed paragraph (a)(1)(A) of the fee schedule also would describe the monthly cadence of the invoices for Historical CAT Assessment 1. Specifically, after the first invoices are provided to CAT Executing Brokers in November 2024, invoices will be sent to CAT Executing Brokers each month

thereafter while Historical CAT Assessment 1 is in effect.

Proposed paragraph (a)(1)(B) of the fee schedule would describe the invoices for Historical CAT Assessment 1. Proposed paragraph (a)(1)(B) of the fee schedule would state that “Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis.” Proposed paragraph (a)(1)(B) of the fee schedule also would describe the fees to be set forth in the invoices for Historical CAT Assessment 1. Specifically, it would state that “[e]ach month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer (“CEBB”) and/or the CAT Executing Broker for the Seller (“CEBS”) (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of \$0.000013 per executed equivalent share.”

Furthermore, proposed paragraph (a)(1)(C) of the fee schedule would describe how long Historical CAT Assessment 1 would remain in effect. It would state that “Historical CAT Assessment 1 will remain in effect until \$212,039,879.34 (two-thirds of Historical CAT Costs 1) are collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time.” This proposed paragraph would further state that “Consolidated Audit Trail, LLC will provide notice when Historical CAT Assessment 1 will no longer be in effect.”

Historical CAT Assessment 1 will be assessed for all transactions executed in each month through the end of the month in which two-thirds of Historical CAT Costs 1 are assessed, and then CAT LLC will provide notice that Historical CAT Assessment 1 is no longer in effect. Since Historical CAT Assessment 1 is a monthly fee based on transaction volume from the prior month, Historical CAT Assessment 1 may collect more than two-thirds of Historical CAT Costs 1. To the extent that occurs, any excess money collected during the final month in which Historical CAT Assessment 1 is in effect will be used to offset future fees and/or to fund the reserve for the CAT.

Finally, proposed paragraph (a)(1)(D) of the fee schedule sets forth the requirement for the CAT Executing Brokers to pay the invoices for Historical CAT Assessment 1. It would

state that “[e]ach CAT Executing Broker shall be required to pay each invoice for Historical CAT Assessment 1 in accordance with paragraph (b).”

(B) Manner of Payment

Paragraph (b)(1) to the “Consolidated Audit Trail Funding Fees” section of its fee schedule describes the manner of payment of Industry Member CAT fees. Paragraph (b)(1) states that “[e]ach CAT Executing Broker shall pay its CAT fees as required pursuant to paragraph (a) each month to the Consolidated Audit Trail, LLC in the manner prescribed by the Consolidated Audit Trail, LLC.” The CAT NMS Plan requires the Operating Committee to establish a system for the collection of CAT fees.⁸⁵ The Plan Processor has established a billing system for CAT fees.⁸⁶ Therefore, the Exchange proposes to require CAT Executing Brokers to pay Historical CAT Assessment 1 in accordance with such system.

(C) Failure To Pay CAT Fees

The CAT NMS Plan further states that:

Participants shall require each Industry Member to pay all applicable fees authorized under this Article XI within thirty (30) days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due (as determined in accordance with the preceding sentence), such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (a) the Prime Rate plus 300 basis points; or (b) the maximum rate permitted by applicable law.⁸⁷

Accordingly, the Exchange previously has added this requirement to the Exchange’s fee schedule. Specifically, paragraph (b)(2) of the fee schedule states:

Each CAT Executing Broker shall pay the CAT fees required pursuant to paragraph (a) within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If a CAT Executing Broker fails to pay any such CAT fee when due, such CAT Executing Broker shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of (i) the Prime Rate plus 300

⁸⁵ Section 11.4 of the CAT NMS Plan.

⁸⁶ The billing process and system are described in CAT Alert 2023-02 as well as the CAT FAQs related to the billing of CAT fees, the Industry Member CAT Reporter Portal User Guide, the FCAT Industry Member Onboarding Guide, the FCAT Connectivity Supplement for Industry Members and the CAT Billing Webinars (dated Sept. 28, 2023, and Nov. 7, 2023), each available on the CAT website.

⁸⁷ Section 11.4 of the CAT NMS Plan.

⁸³ CAT Funding Model Approval Order at 62658, n.658.

⁸⁴ Dividing \$0.00003994969693072937 by three equals \$0.00001331656564357646. Rounding \$0.00001331656564357646 to six decimal places equals \$0.000013.

basis points, or (ii) the maximum rate permitted by applicable law.

The requirements of paragraph (b)(2) would apply to Historical CAT Assessment 1.

(7) Historical CAT Assessment Details

The CAT NMS Plan states that:

Details regarding the calculation of a CAT Executing Broker's Historical CAT Assessment will be provided upon request to such CAT Executing Broker. At a minimum, such details would include each CAT Executing Broker's executed equivalent share volume and corresponding fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.⁸⁸

Such information would provide CEBBs and CEBBs with the ability to understand the details regarding the calculation of their Historical CAT Assessment.⁸⁹ CAT LLC will provide CAT Executing Brokers with these details regarding the calculation of their Historical CAT Assessments on their monthly invoice for the Historical CAT Assessment.

In addition, CAT LLC will make certain aggregate statistics regarding Historical CAT Assessments publicly available. Specifically, the CAT NMS Plan states that, “[f]or each Historical CAT Assessment, at a minimum, CAT LLC will make publicly available the aggregate executed equivalent share volume and corresponding aggregate fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise on an exchange, and (3) by buy-side transactions and sell-side transactions.”⁹⁰ Such aggregate statistics will be available on the CAT website.

Furthermore, CAT LLC will make publicly available on the CAT website the total amount invoiced each month that Historical CAT Assessment 1 is in effect as well as the total amount

invoiced for Historical CAT Assessment 1 for all months since its commencement. CAT LLC also will make publicly available on the CAT website the total costs to be collected from Industry Members for Historical CAT Assessment 1. By reviewing statistics regarding how much has been invoiced and how much remains to be invoiced for Historical CAT Assessment 1, Industry Members would have sufficient information to reasonably track how much longer Historical CAT Assessment 1 is likely to be in place.

(8) Implementation Assistance

To assist Industry Members with compliance with the commencement of Historical CAT Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices prior to the commencement of Historical CAT Assessment 1. Specifically, CAT Executing Brokers have received mock invoices based on transaction data each month since November 2023. The mock invoices are in the same form as the actual, payable invoices, including both the relevant transaction data and the corresponding fee. However, no payments have been required in response to such mock invoices; they have been used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data has provided CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended to facilitate the payment of Historical CAT Assessment 1.

(9) Financial Accountability Milestones

The CAT NMS Plan states that “[n]o Participant will make a filing with the SEC pursuant to Section 19(b) of the Exchange Act regarding any Historical CAT Assessment until any applicable Financial Accountability Milestone described in Section 11.6 has been satisfied.”⁹¹ The CAT NMS Plan further states that “in all filings submitted by the Participants to the Commission under Section 19(b) of the Exchange Act, to establish or implement Post-Amendment Industry Member Fees pursuant to this Article, . . . the Participants shall clearly indicate whether such fees are related to Post-Amendment Expenses incurred during Period 1, Period 2, Period 3, or Period 4.”⁹² As discussed in detail below, all

applicable Financial Accountability Milestones for Historical CAT Assessment 1—that is, Period 1, Period 2 and Period 3 of the Financial Accountability Milestones—have been satisfied. Furthermore, as discussed below, this filing clearly indicates that Historical CAT Assessment 1 relates to Post-Amendment Expenses incurred during Periods 1, 2 and 3 of the Financial Accountability Milestones.

(A) Period 1 of the Financial Accountability Milestones

In accordance with Section 11.6(b) of the CAT NMS Plan, Historical CAT Assessment 1 seeks to recover costs that are related to “all fees, costs, and expenses (including legal and consulting fees, costs, and expenses) incurred by or for the Company in connection with the development, implementation and operation of the CAT from the effective date of [Section 11.6 of the CAT NMS Plan] until such time as Full Implementation of CAT NMS Plan Requirements has been achieved”⁹³ (“Post-Amendment Expenses”) incurred during FAM Period 1. FAM Period 1 began on June 22, 2020, the effective date of Section 11.6 of the CAT NMS Plan, and concluded on July 31, 2020, the date of Initial Industry Member Core Equity and Options Reporting. Section 1.1 of the CAT NMS Plan defines “Initial Industry Member Core Equity and Options Reporting” as:

The reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of both: (a) equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information; and (b) options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants' Quarterly Progress Reports.⁹⁴ As indicated by the Participants' Quarterly Progress Report for the third quarter of 2020,⁹⁵ Initial Industry Member Core Equity and Option Reporting was completed on schedule on July 22, 2020, which is prior to the July 31, 2020 deadline.

Under the FAM Period 1 requirement of Initial Industry Member Core Equity and Options Reporting, Industry

⁸⁸ Section 11.3(a)(iv)(A) of the CAT NMS Plan.

⁸⁹ In approving the CAT Funding Model, the Commission stated that, “[i]n the Commission's view, providing CAT Execut[ing] Brokers information regarding the calculation of their CAT Fees will aid in transparency and permit CAT Execut[ing] Brokers to confirm the accuracy of their invoices for CAT Fees.” CAT Funding Model Approval Order at 62667.

⁹⁰ Section 11.3(a)(iv)(B) of the CAT NMS Plan. In approving the CAT Funding Model, the Commission stated that “[t]he publication of the aggregate executed equivalent share volume and aggregate fee is appropriate because it would allow Participants and CAT Executing Brokers a high-level validation of executed volume and fees.” CAT Funding Model Approval Order at 62667.

⁹¹ Section 11.3(b)(iii)(B)(III) of the CAT NMS Plan.

⁹² Section 11.6(b) of the CAT NMS Plan.

⁹³ Section 11.6 of the CAT NMS Plan.

⁹⁴ The Quarterly Progress Reports are available at <https://www.catnmsplan.com/implementation-plan>.

⁹⁵ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020) and Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021).

Members—excluding Small Industry Members that are not OATS reporters—were required to report two categories of data to the CAT: equities transaction data and options transaction data (both excluding Customer Account Information, Customer-ID, and Customer Identifying Information) by July 31, 2020. Pursuant to exemptive relief provided by the Commission, the Commission authorized the Participants' Compliance Rules to allow core equity reporting for Industry Members (Phase 2a) to begin on June 22, 2020 and core options reporting for Industry Members (Phase 2b) to begin on July 20, 2020.⁹⁶

In adopting the FAMs, the Commission stated that the equities transaction reporting required for FAM Period 1 “is consistent with the functionality that the Participants describe on the CAT NMS Plan website as ‘Production Go-Live for Equities 2a file submission and data integrity validations.’”⁹⁷ The Phase 2a Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order, and includes the following data related to Eligible Securities that are equities:

- All events and scenarios covered by OATS, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions;
- Reportable Events for: (1) proprietary orders, including market maker orders, for Eligible Securities that are equities; (2) electronic quotes in listed equity Eligible Securities (*i.e.*, NMS stocks) sent to a national securities exchange or FINRA’s Alternative Display Facility (“ADF”); (3) electronic quotes in unlisted Eligible Securities (*i.e.*, OTC Equity Securities) received by an Industry Member operating an interdealer quotation system (“IDQS”); and (4) electronic quotes in unlisted Eligible Securities sent to an IDQS or

other quotation system not operated by a Participant or Industry Member;

- Firm Designated IDs (“FDIDs”), which Industry Members must report to the CAT as required by Sections 6.3(d)(i)(A) and 6.4(d)(ii)(C) of the CAT NMS Plan;

- Industry Members would be required to report all street side representative orders, including both agency and proprietary orders and mark such orders as representative orders, except in certain limited exceptions as described in the Industry Member Technical Specifications;

- The link between the street side representative order and the order being represented when: (1) the representative order was originated specifically to represent a single order received either from a customer or another broker-dealer; and (2) there is (a) an existing direct electronic link in the Industry Member’s system between the order being represented and the representative order and (b) any resulting executions are immediately and automatically applied to the represented order in the Industry Member’s system;

- Manual and Electronic Capture Time for Manual Order Events;

- Special handling instructions for the original receipt or origination of an order during Phase 2a; and

- When routing an order, whether the order was routed as an intermarket sweep order (“ISO”).

In Phase 2a, Industry Members were not required to report modifications of a previously routed order in certain limited instances, nor were they required to report a cancellation of an order received from a Customer after the order has been executed.⁹⁸

The Quarterly Progress Report for the third quarter of 2020 states that “Interim Step: Production Go-Live for Equities 2a file submission and data integrity validation (Large Industry Members and Small OATS Reporters)” was completed on June 22, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of “equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information” was completed on June 22, 2020.

In adopting the FAMs, the Commission stated that the options transaction reporting required for FAM Period 1 is “consistent with the functionality that the Participants describe on the CAT NMS Plan website as ‘Production Go-Live for Options 2b

file submission and data integrity validations.’”⁹⁹ The Phase 2b Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order, and includes the Industry Member Data related to Eligible Securities that are options and related to simple electronic option orders, excluding electronic paired option orders. A simple electronic option order is an order to buy or sell a single option that is not related to or dependent on any other transaction for pricing and timing of execution that is either received or routed electronically by an Industry Member. Electronic receipt of an order is defined as the initial receipt of an order by an Industry Member in electronic form in standard format directly into an order handling or execution system. Electronic routing of an order is the routing of an order via electronic medium in standard format from one Industry Member’s order handling or execution system to an exchange or another Industry Member. An electronic paired option order is an electronic option order that contains both the buy and sell side that is routed to another Industry Member or exchange for crossing and/or price improvement as a single transaction on an exchange. Responses to auctions of simple orders and paired simple orders would be reportable in Phase 2b. Furthermore, combined orders in options would be treated in Phase 2b in the same way as equity representative orders are treated in Phase 2a. A combined order would mean, as permitted by SRO rules, a single, simple order in Listed Options created by combining individual, simple orders in Listed Options from a customer with the same exchange origin code before routing to an exchange. During Phase 2b, the single combined order sent to an exchange must be reported and marked as a combined order, but the linkage to the underlying orders is not required to be reported until Phase 2d.¹⁰⁰

The Quarterly Progress Report for the third quarter of 2020 states that “Interim Step: Production Go-Live for Options 2b file submission and data integrity validations” was completed on July 20, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of “options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information” was completed on July 20, 2020.

⁹⁹ FAM Adopting Release at 31330, n.98.

¹⁰⁰ Phased Reporting Exemptive Relief Order at 23078.

⁹⁶ See Phased Reporting Exemptive Relief Order. Under the CAT NMS Plan as adopted, the Participants were required, through their Compliance Rules, to require their Large Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2018, and to require their Small Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2019. Sections 6.7(a)(v) and (vi) of the CAT NMS Plan. The SEC granted exemptive relief from these provisions of the CAT NMS Plan to allow for the phased implementation of Industry Member reporting via five phases addressing the reporting requirements for Phase 2a Industry Member Data, Phase 2b Industry Member Data, Phase 2c Industry Member Data, Phase 2d Industry Member Data and Phase 2e Industry Member Data.

⁹⁷ Securities Exchange Act Rel. No. 88890 (May 15, 2020), 85 FR 31322, 31330 n.97 (May 22, 2020) (“FAM Adopting Release”).

⁹⁸ Phased Reporting Exemptive Relief Order at 23076–78.

As discussed above, the Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from June 22, 2020 through July 31, 2020. The total costs for this period, as discussed above, are \$6,377,343. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBs paying one-third (\$2,125,781).

(B) Period 2 of the Financial Accountability Milestones

Historical CAT Assessment 1 seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 2. FAM Period 2 began on August 1, 2020, and concluded on December 31, 2020, the date of the Full Implementation of Core Equity Reporting. Section 1.1 of the CAT NMS Plan defines “Full Implementation of Core Equity Reporting” as:

the point at which: (a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants’ Quarterly Progress Reports. As indicated by the Participants’ Quarterly Progress Report for the fourth quarter of 2020,¹⁰¹ Full Implementation of Core Equity

Reporting was completed on schedule by December 31, 2020.

Specifically, the Full Implementation of Core Equity Reporting requires the satisfaction of two prongs. The first prong requires Participants to have fully implemented the first phase of equities transaction reporting for Industry Members (excluding Small Industry Members that are not OATS reporters) at an Error Rate of less than 5%. In addition, equities transaction data produced by the CAT at this stage must also be sufficiently interlinked so as to permit full analysis of an order’s lifecycle across the national market, excluding full linkage of representative orders. As CAT LLC reported on its Quarterly Progress Reports, Phase 2a was fully implemented as of October 26, 2020, including intra-firm, inter-firm, national securities exchange, and trade reporting facilities linkages.¹⁰² In addition to the reporting of Phase 2a Industry Member Data as described above with regard to FAM Period 1, the following linkage data was added to the CAT as described in the Quarterly Progress Reports for the third and fourth quarter of 2020:

- “Production Go-Live for Equities 2a Intrafirm Linkage validations” was completed on 7/27/2020;¹⁰³
- “Production Go-Live for Firm to Firm Linkage validations for Equities 2a (Large Industry Members and Small OATS Reporters)” was completed on October 26, 2020; and
- “Production Go-Live for Equities 2a Exchange and TRF Linkage validations (Large Industry Members and Small OATS Reporters)” was completed on October 26, 2020.

Furthermore, as CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2020, the average overall error rate for Phase 2a Industry Member Data was less than 5% as of December 31, 2020. The average overall error rate was calculated by dividing the compliance errors by processed records.

The second prong of this FAM requires that the equities transaction data collected by the CAT at this stage be made available to regulators through two basic query tools required by the CAT NMS Plan—a targeted query tool that will enable regulators to retrieve data via an online query screen with a variety of predefined selection criteria, and a user-defined direct query tool that will provide regulators with the ability to query data using all available

attributes and data sources.¹⁰⁴ As CAT LLC reported on its Quarterly Progress Reports, the query tool functionality incorporating the data from Phase 2a was available to the Participants and the Commission as of December 31, 2020.¹⁰⁵

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.¹⁰⁶

As discussed above, Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from August 1, 2020 through December 31, 2020. The total costs for this period, as discussed above, are \$42,976,478. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remain [*sic*] two-thirds, with CEBBs paying one-third (\$14,325,492.70) and CEBs paying one-third (\$14,325,492.70).

(C) Period 3 of the Financial Accountability Milestones

Historical CAT Assessment 1 seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 3. FAM Period 3 began on January 1, 2021, and concluded on December 31, 2021, the date of the Full Availability and Regulatory Utilization of Transactional Database Functionality. Section 1.1 of the CAT NMS Plan defines “Full Availability and Regulatory Utilization of Transactional Database Functionality” as:

the point at which: (a) reporting to the Order Audit Trail System (“OATS”) is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple

¹⁰⁴ Section 6.10(c)(i)(A) of the CAT NMS Plan requires the Plan Processor to “provide Participants and the SEC with access to all CAT Data stored in the Central Repository” via an “online targeted query tool.” Appendix D, Sections 8.1.1–8.1.3 of the CAT NMS Plan describes the required functionality associated with this regulatory tool. Appendix D, Section 8.2.1 describes the required functionality associated with a user-defined direct query tool that will “deliver large sets of data that can then be used in internal surveillance or market analysis applications.”

¹⁰⁵ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020); Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021); and Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰⁶ Securities Exchange Act Rel. No. 98848 (Nov. 2, 2023), 88 FR 77128, 77129 n.13 (Nov. 8, 2023) (“Settlement Exemptive Order”).

¹⁰¹ Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰² For a description of the requirements of Phases 2a, see Phased Reporting Exemptive Relief Order.

¹⁰³ Q3 2020 Quarterly Progress Report (Oct. 20, 2021).

electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)–(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants' Quarterly Progress Reports. As indicated by the Participants' Quarterly Progress Report for the fourth quarter of 2021,¹⁰⁷ Full Availability and Regulatory Utilization of Transactional Database Functionality was completed on schedule by December 31, 2021.

Specifically, the "Full Availability and Regulatory Utilization of Transactional Database Functionality" requires the satisfaction of five prongs. The first prong requires that reporting to the Order Audit Trail System ("OATS") is no longer required for new orders. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021,¹⁰⁸ FINRA retired OATS effective September 1, 2021.¹⁰⁹ Accordingly, after the retirement of OATS, reporting to OATS was no longer required.

In addition to Phase 2a and Phase 2b Industry Member Data, the second and third prongs of "Full Availability and Regulatory Utilization of Transactional

Database Functionality" require Industry Member reporting of Phase 2c Industry Member Data and Phase 2d Industry Member Data. The Phase 2c Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order. That Order states that "Phase 2c Industry Member Data" is Industry Member Data related to Eligible Securities that are equities other than Phase 2a Industry Member Data, Phase 2d Industry Member Data, or Phase 2e Industry Member Data. Specifically, the Phase 2c Industry Member Data includes Industry Member Data that is related to Eligible Securities that are equities and that is related to: (1) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (2) quotes in unlisted Eligible Securities sent to an IDQS operated by a CAT Reporter (reportable by the Industry Member sending the quotes) (except for quotes reportable in Phase 2d, as discussed below); (3) electronic quotes in listed equity Eligible Securities (*i.e.*, NMS stocks) that are not sent to a national securities exchange or FINRA's Alternative Display Facility; (4) reporting changes to client instructions regarding modifications to algorithms; (5) marking as a representative order any order originated to work a customer order in price guarantee scenarios, such as a guaranteed VWAP; (6) flagging rejected external routes to indicate a route was not accepted by the receiving destination; (7) linkage of duplicate electronic messages related to a Manual Order Event between the electronic event and the original manual route; (8) special handling instructions on order route reports (other than the ISO, which is required to be reported in Phase 2a); (9) quote identifier on trade events; (10) reporting of LTIDs (if applicable) for accounts with Reportable Events that are reportable to CAT as of and including Phase 2c; (11) reporting of date account opened or Account Effective Date (as applicable) for accounts and reporting of a flag indicating the Firm Designated ID type as account or relationship; (12) order effective time for orders that are received by an Industry Member and do not become effective until a later time; (13) the modification or cancellation of an internal route of an order; and (14) linkages to the customer orders(s) being represented for representative order scenarios, including agency average price trades, net trades, aggregated orders, and disconnected Order Management System ("OMS")—Execution Management System ("EMS")

scenarios, as required in the Industry Member Technical Specifications.¹¹⁰

Phase 2c Industry Member Data also includes electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are equities and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: (1) an equity bid or offer is displayed publicly or has been communicated (a) for listed securities to the ADF operated by FINRA; or (b) for unlisted equity securities to an "interdealer quotation system," as defined in FINRA Rule 6420(c); or (2) an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing; *i.e.*, no further manual or electronic action is required by the responder providing the quote in order to execute or cause a trade to be executed). With respect to OTC Equity Securities, OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter (other than such an IDQS that does not match and execute orders) are reportable by the Industry Member sending them in Phase 2c. Accordingly, any response to a request for quote or other form of solicitation response provided in a standard electronic format (*e.g.*, FIX) that meets this quote definition (*i.e.*, an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing) would be reportable in Phase 2c.¹¹¹

The Phase 2d Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order. "Phase 2d Industry Member Data" is Industry Member Data that is related to Eligible Securities that are options other than Phase 2b Industry Member Data, Industry Member Data that is related to Eligible Securities that are equities other than Phase 2a Industry Member Data or Phase 2c Industry Member Data, and Industry Member Data other than Phase 2e Industry Member Data. Phase 2d Industry Member Data includes with respect to the Eligible Securities that are options: (1) simple manual orders; (2) electronic and manual paired orders; (3) all complex orders with linkages to all CAT-reportable legs; (4) LTIDs (if applicable) for accounts with Reportable Events for Phase 2d; (5) date account

¹⁰⁷ Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹⁰⁸ *Id.*

¹⁰⁹ Securities Exchange Act Rel. No. 92239 (June 23, 2021), 86 FR 34293 (June 29, 2021).

¹¹⁰ Phase Reporting Exemptive Relief Order at 23078–79.

¹¹¹ *Id.* at 23079.

opened or Account Effective Date (as applicable) for accounts with an LTID and flag indicating the Firm Designated ID type as account or relationship for such accounts; (6) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (7) the modification or cancellation of an internal route of an order; and (8) linkage between a combined order and the original customer orders. Phase 2d Industry Member Data also would include electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are options and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: a listed option bid or offer which is accessible electronically by customers or other market participants and is immediately actionable (*i.e.*, no further action is required by the responder providing the quote in order to execute or cause a trade to be executed). Accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (*e.g.*, FIX) that meets this definition is reportable in Phase 2d for options.¹¹²

Phase 2d Industry Member Data also includes with respect to Eligible Securities that are options or equities (1) receipt time of cancellation and modification instructions through Order Cancel Request and Order Modification Request events; (2) modifications of previously routed orders in certain instances; and (3) OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter that does not match and execute orders. In addition, subject to any exemptive or other relief, Phase 2d Industry Member Data will include verbal or manual quotes on an exchange floor or in the over-the-counter market, where verbal quotes and manual quotes are defined as bids or offers in Eligible Securities provided verbally or that are provided or received other than via a CAT Reporter's order handling and execution system (*e.g.*, quotations provided via email or instant messaging).¹¹³

The Quarterly Progress Report for the fourth quarter of 2021 states that "Phase 2a was fully implemented as of October 26, 2020;" "Phase 2b was fully implemented as of January 4, 2021;" "Phase 2c was implemented as of April 26, 2021;" and "Phase 2d was fully

implemented as of December 13, 2021."¹¹⁴ The Quarterly Progress Reports for 2021 provide additional detail regarding the implementation of these steps including the following:

- "Production Go-Live for Equities 2c reporting requirements (Large Industry Members)" was completed on April 26, 2021;
- "LTID Account Information Reporting Go-Live for Phases 2a, 2b and 2c (Large Industry Members)" was completed on April 26, 2021;
- "FCAT Plan Processor creates linkages of the lifecycle of order events based on the received data through Phase 2d Production Go-Live for Options 2d reporting requirements (Large Industry Members)" was completed on December 13, 2021;
- "Production Go-Live for Options 2d reporting requirements (Large Industry Members)" was completed on December 13, 2021;
- "Production Go-Live for Options 2b reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "Production Go-Live for Equities 2c reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "Production Go-Live for Options 2d reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "LTID Account Information Reporting Go-Live for Phases 2d (Large Industry Members)" was completed on December 13, 2021; and
- "LTID Account Information Reporting Go-Live for Phases 2a, 2b, 2c and 2d (Small Industry Members)" was completed on December 13, 2021.¹¹⁵

The third prong of "Full Availability and Regulatory Utilization of Transactional Database Functionality" also imposes an Error Rate requirement of 5% or less. The Quarterly Progress Report for the fourth quarter of 2021 states the average overall error rate was less than 5% as of December 31, 2021. The average overall error rate was calculated by dividing the compliance errors by processed records.

The fourth prong of "Full Availability and Regulatory Utilization of Transactional Database Functionality" requires that the data collected by the CAT at this stage be made available to

regulators through an online targeted query tool and a user-defined direct query tool. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021, the query tool functionality incorporating the data from Phases 2a, 2b, 2c and 2d was available to the Participants and to the Commission as of December 31, 2021.¹¹⁶

The fifth prong requires the requirements of Section 6.10(a) of the CAT NMS Plan to have been met. Section 6.10(a) of the CAT NMS Plan requires the Participants to use the tools described in Appendix D to "develop and implement a surveillance system, or enhance existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository." The Exchange implemented a surveillance system, or enhanced existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository as of December 31, 2021 in accordance with Section 6.10(a) of the CAT NMS Plan.¹¹⁷

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.¹¹⁸

As discussed above, Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from January 1, 2021 through December 31, 2021. The total costs for this period, as discussed above, are \$144,415,268. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remain [*sic*] two-thirds, with CEBBs paying one-third (\$48,138,422.70) and CEBBs paying one-third (\$48,138,422.70).

(D) Additional Considerations Related to the Financial Accountability Milestones

As discussed above, CAT LLC has satisfied the Financial Accountability Milestones ("FAMs") for Periods 1

¹¹⁶ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁷ See Q1 2021 Quarterly Progress Report (Apr. 30, 2021); Q2 2021 Quarterly Progress Report (July 27, 2021); Q3 2021 Quarterly Progress Report (Nov. 1, 2021); Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁸ Settlement Exemptive Order at 77129 n.13.

¹¹² *Id.*

¹¹³ *Id.* at 23079–80.

¹¹⁴ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁵ See Q2 2021 Quarterly Progress Report (July 27, 2021); and Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

through 3.¹¹⁹ As discussed below, none of the circumstances related to NIA Electronic RFQ Responses, the 2023 Verbal Quotes Exemption, the November 2023 Order, or Executing Broker reporting, affect the conclusion that the FAMs for Periods 1 through 3 were satisfied in a timely fashion.

(i) NIA Electronic RFQ Responses

CAT LLC does not believe that the exemptive relief relating to the reporting of electronic responses for quotes (“RFQs”) that are not immediately actionable (“NIA Electronic RFQ Responses”) affect the conclusion that FAMs 1 through 3 have been satisfied. The only reason CAT LLC pursued this relief is because certain Industry Members introduced concerns that NIA Electronic RFQ Responses could be considered “orders” reportable pursuant to Rule 613(j)(8) and some Industry Members were not prepared to report such orders to CAT. Thus, the relief was requested on behalf of Industry Members. CAT LLC itself has not taken any position on whether NIA Electronic RFQ Responses are “orders,” as the definition of “order” is an SEC rule and the trading processes for NIA Electronic RFQ Responses are the Industry Members’, not those of the Participants or CAT LLC. Accordingly, CAT LLC stated in its letter that “Industry Members must determine whether trading interest falls within the definition of an ‘order’ for CAT purposes. To the extent an NIA Electronic RFQ Response is not considered an ‘order’ as defined in Rule 613(j)(8) and the CAT NMS Plan, it would not be reportable to CAT.”¹²⁰

Only “orders” as defined in SEC Rule 613(j)(8) are reportable to CAT. There is no agreement across the industry or among regulators as to whether NIA Electronic RFQ Responses are “orders” reportable to CAT. Certain Industry Members have raised the question as to whether NIA Electronic RFQ Responses are orders, but others have argued that they are not orders under Rule 613(j)(8).¹²¹ Indeed, members of the

Advisory Committee, which CAT LLC relies upon for guidance with regard to Industry Member issues, have not had a definitive view on whether NIA Electronic RFQ Responses are orders. As Rule 613(j)(8) is an SEC rule, CAT LLC believes that only the SEC can provide a definitive determination as to if, and under what circumstances, an NIA Electronic RFQ Response is considered an “order” reportable to CAT. The issue has persisted for some time. As a result, CAT LLC filed an exemptive request regarding NIA Electronic RFQ Responses for clarity on the interpretive issue. As recently as April 2024, Industry Members have re-raised this issue stating that the SEC agrees that it must provide additional guidance on this interpretive issue to resolve the CAT reporting issue for NIA Electronic RFQ Responses:

As further discussed in the prior FIF letters, even if the Commission had the legal authority to require the reporting of NIA RFQ responses to CAT without an amendment to Rule 613, the Commission has not provided guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT. In subsequent discussions with industry members, Commission representatives have agreed that, prior to NIA RFQ responses being reportable to CAT, it would be necessary for the Commission to provide further guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT.¹²²

On May 20, 2024, the Commission granted CAT LLC’s request for exemptive relief from certain CAT reporting requirements pertaining to NIA Electronic RFQ Responses to the extent such responses are considered “orders” reportable pursuant to Rule 613(j)(8).¹²³ The Commission, however, did not provide additional guidance regarding the conditions under which NIA Electronic RFQ Responses would be reportable to CAT. The Commission stated in its exemptive order that “[t]o the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for the Financial Accountability Milestones, provided that any conditions of the exemption are satisfied.”¹²⁴

When the Commission proposed the FAMs, the Participants expressed concern that, “by conditioning the ability of CAT LLC and the Participants to collect Post-Amendment Industry Member Fees on factors dependent on

the efforts of Industry Members, the Commission’s proposals inadvertently establish a perverse incentive for Industry Members to devote less than maximum efforts to comply with their obligations related to the CAT as they will pay less fees in such instances.”¹²⁵ The Participants further warned that “Industry Members may request or require unanticipated reporting delays to address Industry Member implementation issues or concerns,” but that, “[f]aced with financial penalties for missed deadlines, the Participants may not be able to fully address legitimate industry concerns or accommodate requests for delays with respect to future deadlines.”¹²⁶ CAT LLC has engaged in good faith to help address NIA Electronic RFQ Responses and other concerns relevant to the ability of Industry Members to meet their CAT reporting obligations. CAT LLC should not be penalized financially for seeking in good faith to resolve a difficult interpretive issue for the benefit of Industry Members.

(ii) 2023 Verbal Quotes Exemption

CAT LLC does not believe that the Commission’s May 19, 2023 order granting temporary exemptive relief relating to certain verbal floor activity and unstructured verbal and electronic upstairs activity (the “2023 Verbal Quotes Exemption”) affects the conclusion that FAMs 1 through 3 have been satisfied. The 2023 Verbal Quotes Exemption, which was issued on May 19, 2023, is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. The relevant exemption for this time period is the Commission’s November 12, 2020 order, which granted relief for the same activity through July 31, 2023 (the “2020 Verbal Quotes Order”).¹²⁷ The Commission has stated that, “to the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for a Financial Accountability Milestone, provided that the conditions of the exemption are satisfied.”¹²⁸ Here, the

¹¹⁹ In May 2020, the Commission adopted amendments to the CAT NMS Plan that establish four Financial Accountability Milestones and set target deadlines by which these milestones must be achieved. These amendments also reduce the amount of any fees, costs, and expenses that may be recovered from Industry Members if the Participants fail to meet the target deadlines. FAM Adopting Release.

¹²⁰ See Letter from Brandon Becker, Chair, CAT NMS Plan Operating Committee to Vanessa Countryman, Secretary, Commission (Feb. 13, 2024) at 2.

¹²¹ See, e.g., Letter from Howard Meyerson, Managing Director, FIF, to Sai Rao, Counsel for Trading and Markets, Office of the Chair (Apr. 25, 2024).

¹²² *Id.*

¹²³ Securities Exchange Act Rel. No. 100181 (May 20, 2024), 89 FR 45715 (May 23, 2024).

¹²⁴ *Id.* at n.11.

¹²⁵ See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission at 9 (Oct. 28, 2019).

¹²⁶ *Id.* at 10.

¹²⁷ Securities Exchange Act Rel. No. 90405, 85 FR 73544 (Nov. 18, 2020) (the “2020 Verbal Quotes Exemption”).

¹²⁸ See, e.g., Securities Exchange Act Rel. No. 89051 (June 11, 2020), 85 FR 36631, 36633 (June 17, 2020). The straightforward reading of the Commission’s statement is that compliance with the conditions of an exemption will be measured as of the deadline for a particular FAM Period.

2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3.¹²⁹

(iii) November 2023 Order

CAT LLC does not believe that the Commission's November 2, 2023 order granting relief from certain CAT NMS Plan requirements (the "November 2023 Order") affects the conclusion that FAMs 1 through 3 have been satisfied. The November 2023 Order is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. As described in the November 2023 Order, the relevant exemptive orders for this time period were issued on December 16, 2020, which also states that "the Commission has determined that the Participants have sufficiently complied with the conditions set forth in the prior Orders and with the technical requirements for Quarterly Progress Reports set forth in section 6.6(c) of the CAT NMS Plan, including for purposes of determining compliance with any applicable Financial Accountability Milestones."¹³⁰ The November 2023 Exemption Order is consistent with the Commission's repeated statements in the FAM adopting release that it would have "authority to grant exemptive relief from any requirement associated with a particular Financial Accountability Milestone," citing Section 36 of the Exchange Act and Rule 608.¹³¹ Similarly, the CAT NMS Plan

expressly contemplates the Commission's ability to grant exemptive relief from any CAT NMS Plan requirement.¹³²

(iv) Executing Broker Reporting

CAT LLC also completed the requirements of FAM Period 2, including the required linkages, by December 31, 2020. Although Participant exchanges may report the Executing Broker to CAT differently in certain situations, these reporting differences are irrelevant for linkage purposes as the fields used for CAT Executing Broker are not used for linkage.

(10) Additional Support for Reasonableness of Historical CAT Costs

The CAT Funding Model approved by the Commission permits the recovery of reasonable costs in each of the categories of CAT costs sought to be recovered via Historical CAT Assessment 1.¹³³ As described in detail above and in further detail below, the CAT costs to be recovered for each category are reasonable. The following discusses in further details how each of the following costs are reasonable: (1) costs incurred prior to the effective date of the CAT NMS Plan; (2) cloud hosting services costs; (3) costs related to funding model filings; (4) costs related to litigation with the SEC regarding the CAT NMS Plan; (5) costs related to the Initial Plan Processor; (6) CAIS implementation costs; (7) public relations costs; (8) legal costs related to the limitation of liability provision in the CAT Reporter agreements; and (9) costs for the Chair of CAT Operating Committee. As discussed in detail below, each of these costs is reasonable and should be recoverable in accordance with the CAT Funding Model.

(A) Costs Incurred Prior to the Effective Date of CAT NMS Plan

CAT LLC believes that it is reasonable to seek recovery of costs incurred prior to when the CAT NMS Plan became effective in November 2016, such as legal and consulting fees incurred to

create the CAT NMS Plan. Rule 613 specifically mandates that the CAT be created, implemented and maintained, and further provides that the CAT NMS Plan include a proposed allocation of estimated costs to fund the creation, implementation and maintenance of the CAT among the Participants (referred to as "plan sponsors"), and between the Participants and Industry Members (referred to as "members of the plan sponsors").¹³⁴ Consistent with Rule 613, the CAT NMS Plan, as approved by the Commission, specifically authorizes charging Industry Members fees for costs reasonably incurred prior to the date of the approval of the CAT NMS Plan by the Commission in November 2016, including legal and consulting costs. Section 11.1(c) of the CAT NMS Plan states that:

[i]n 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) reasonably incurred by Participants on behalf of the Company prior to the Effective Date in connection with the creation and implementation of the CAT.

Accordingly, the CAT NMS Plan specifically permits the recovery of costs, including legal and consulting costs, reasonably incurred prior to November 2016 in connection with the creation and implementation of the CAT.

Furthermore, the costs incurred to create and implement the CAT prior to the effective date of the CAT NMS Plan ("Pre-Formation Costs") were reasonable both in scope and amount, in accordance with the requirements of Section 11.1(c) of the CAT NMS Plan. During the four-year period from 2012 to 2016, a total of \$13,842,881 in Pre-Formation Costs were incurred. This is an average of approximately \$3.5 million per year over this period. The Pre-Formation Costs fell into three categories: legal costs, consulting costs and public relations costs. This includes legal costs of \$3,196,434; consulting costs of \$10,589,273; and public relations costs of \$57,174. The legal, consulting and public relations services were performed by WilmerHale, Deloitte and Peppercomm, respectively. The selection considerations and fees for these three firms are described in detail above and are described further below. The Pre-Formation Costs are direct costs of CAT, which have been funded entirely by the Participants through non-interest-bearing notes. The Pre-Formation Costs do not include the significant costs incurred by each of the

¹²⁹ As a condition to the 2020 Verbal Quotes Exemption, the Commission required that the Participants provide a written status update on the reporting of these quotes and orders by July 31, 2022, including the estimated costs of reporting these quotes and orders and an implementation plan for the reporting of these quotes and orders. As noted, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3. In any event, on June 3, 2022, the Participants provided the required written status update. See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (June 3, 2022).

¹³⁰ *Id.* at 77129 n.12.

¹³¹ FAM Adopting Release at 31335 (May 22, 2020). Section 36 of the Exchange Act grants the Commission the authority to "conditionally or unconditionally exempt any person, security, or transaction . . . from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors." 15 U.S.C. 78mm(a)(1). Under Rule 608(e) of Regulation NMS, the Commission may "exempt from [Rule 608], either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is

consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanism of, a national market system." 17 CFR 242.608(e).

¹³² Section 12.3 of the CAT NMS Plan ("[T]o the extent the SEC grants exemptive relief applicable to any provision of this Agreement, Participants and Industry Members shall be entitled to comply with such provision pursuant to the terms of the exemptive relief so granted at the time such relief is granted irrespective of whether this Agreement has been amended.")

¹³³ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹³⁴ See, e.g., Rule 613(a)(1)(vii)(D) of the CAT NMS Plan.

individual Participants in responding to the adoption of Rule 613.

The Pre-Formation Costs are reasonable and appropriate as they reflect the extensive efforts that were necessary to create the CAT NMS Plan as mandated after the SEC's adoption of Rule 613. As described in more detail below, these efforts included, among other things, developing a plan for selecting the Plan Processor, soliciting and evaluating bids, engaging a diverse set of market participants and the SEC in the development of the Plan, interacting with the SEC in their oversight of the development of the Plan, and seeking appropriate exemptive relief to address areas of concern in Rule 613.¹³⁵

(i) Request for Proposal ("RFP")

The Participants determined to utilize an RFP to ensure that potential alternative solutions for creating the Plan could be presented and considered, and that a detailed and meaningful cost-benefit analysis could be performed. The SEC supported the use of an RFP, and approved its use as it is described in extensive detail in the CAT NMS Plan.¹³⁶

In the context of the SEC's adoption of Rule 613, commenters urged the Commission to utilize an RFP process to assist in the planning and design of the NMS plan.¹³⁷ Specifically, the Commission explained:

In this regard, several commenters suggested that the Commission undergo a RFP or request for information ("RFI") process to create and implement a consolidated audit trail. Specifically, FIF urged the Commission to perform a RFP process "to determine the best technical solution for developing a consolidated audit trail." FIF suggested that the Commission "should outline a set of goals and guiding principles they are striving to achieve as part of the adopted CAT filing and leave the determination of data elements and other technical requirements to [an] industry working group." Similarly, Direct Edge suggested that Commission staff should form and engage in a working group to develop an

RFP for publication by the Commission. DirectEdge explained that an RFP process would facilitate the identification of the costs and benefits of the audit trail, as well as the consideration of a wider range of technological solutions. Further, commenters, including Broadridge Financial Solutions, Inc., a technology provider, also requested more specific information about the audit trail system to better assess the Commission's initial cost estimates and to determine the best approach to the consolidated audit trail.¹³⁸

In response to these comments, the Commission modified Rule 613 to require the Participants to address certain important considerations regarding the features and details of the NMS plan and to extend the timeframe for submission of the CAT NMS Plan by the Participants from the 90 days as originally proposed to 270 days, in part, to accommodate a process that would address these considerations.¹³⁹ As the SEC noted, "[i]n light of the numerous specific requirements of Rule 613, the Participants concluded that publication of a request for proposal ('RFP') was necessary to ensure that potential alternative solutions to creating the consolidated audit trail can be presented and considered by the Participants and that a detailed and meaningful cost/benefit analysis can be performed, both of which are required considerations to be addressed in the CAT NMS Plan."¹⁴⁰

The SEC specifically recognized that the Participants planned to use an RFP when it approved the Selection Plan, and stated that the RFP was a reasonable approach.¹⁴¹ As the SEC described in its approval order for the Selection Plan, "[t]he Participants filed the [Selection] Plan to govern how the SROs will proceed with formulating and submitting the CAT NMS Plan—and, as part of that process, how to review, evaluate, and narrow down the bids submitted in response to the RFP ('Bids')—and ultimately choosing the plan processor that will build, operate, and maintain the consolidated audit trail ('Plan Processor')."¹⁴² After evaluating the Selection Plan, including the use of an RFP process, the Commission stated that it "believes the [Selection] Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids

in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail."¹⁴³

On February 26, 2013, the Participants published an RFP soliciting bids from parties interested in serving as the plan processor for the CAT. Initially, 31 firms submitted intentions to bid. In the following months, the Participants engaged with potential bidders with respect to, among other things, the selection process, selection criteria, and potential bidders' questions and concerns. On March 21, 2014, the Participants received ten bids in response to the RFP.

(ii) Selection Plan

On September 4, 2013, the Participants filed with the Commission a national market system plan to govern the process for Participant review of the bids submitted in response to the RFP, the procedures for evaluating the bids, and, ultimately, selection of the plan processor (the "Selection Plan").¹⁴⁴ The Commission approved the Selection Plan as filed on February 21, 2014.¹⁴⁵ In approving the Selection Plan, the Commission concluded that "it is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor."¹⁴⁶

The Selection Plan divided the review and evaluation of bids, and the selection of the plan processor, into various stages. Specifically, pursuant to the Selection Plan, a selection committee reviewed all bids and determined which bids contained sufficient information to allow the Participants to meaningfully assess and evaluate the bids. The ten submitted bids were deemed "Qualified Bids," and so passed to the next stage, in which each bidder presented its bids to the Participants on a confidential basis. On July 1, 2014, after conducting careful analysis and comparison of the bids, the Selection Committee voted and selected a shortlist of six eligible bidders. The Selection Committee determined which shortlisted bidders would be provided the opportunity to revise their bids. After the Selection Committee assessed and evaluated the revised bids, the Selection Committee selected the plan processor via two rounds of voting by the Participants, as described in the Selection Plan.

The Selection Plan established an Operating Committee responsible for

¹³⁵ The Participants described in detail the process for drafting the CAT NMS Plan in its original filing of the CAT NMS Plan. See Letter from Mike Simon, on behalf of the Participants of the CAT NMS Plan, to Brent J. Fields, Secretary, Commission (Sept. 30, 2014). A non-exclusive list of filings and activities associated with CAT, including certain pre-2016 filings, are available on the SEC's website: <https://www.sec.gov/divisions/marketreg/rule613-info>.

¹³⁶ See detailed discussion of RFP questions in Appendix C of the CAT NMS Plan, and incorporation of RFP requirements in Appendix D at D-2.

¹³⁷ For example, in its comments on proposed Rule 613, FIF suggested "that the SROs should select the processor through a 'request for proposal.'" Rule 613 Adopting Release at 45785.

¹³⁸ Rule 613 Adopting Release at 45738–39.

¹³⁹ Rule 613 Adopting Release at 45739.

¹⁴⁰ Securities Exchange Act Rel. No. 71596 (Feb. 21, 2014), 79 FR 11152, 11152 (Feb. 27, 2014) ("Selection Plan Approval Order").

¹⁴¹ *Id.*

¹⁴² *Id.* at 11153.

¹⁴³ *Id.* at 11159.

¹⁴⁴ See Securities Exchange Act Rel. No. 70892 (Nov. 15, 2013), 78 FR 69910 (Nov. 21, 2013).

¹⁴⁵ See Selection Plan Approval Order.

¹⁴⁶ Selection Plan Approval Order at 11160.

formulating, drafting, and filing with the Commission the CAT NMS Plan and for ensuring that the Participants' joint obligations under Rule 613 were met in a timely and efficient manner. In formulating the CAT NMS Plan, the Participants also engaged multiple persons across a wide range of roles and expertise, engaged the consulting firm Deloitte as project manager, and engaged the law firm WilmerHale to serve as legal counsel in drafting the Plan. Within this structure, the Participants focused on, among other things, comparative analyses of the proposed technologies and operating models, development of funding models to support the building and operation of the CAT, and detailed review of governance considerations. Given the complexity and scope of developing the CAT NMS Plan, these efforts were extensive.

When it approved the CAT NMS Plan in 2016, the Commission reiterated its belief that the Selection Plan remains a "reasonable approach," that "the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor," and that "the process set forth in the Selection Plan should be permitted to continue":

In approving the Selection Plan, the Commission stated that the Selection Plan is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor. The Commission also found that the Selection Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail. The Commission believes that the process set out in the Selection Plan for selecting a Plan Processor remains a reasonable approach, which will facilitate the selection of Plan Processor through a fair, transparent and competitive process and that no modifications to the Selection Plan are required to meet the approval standard. . . . In response to the comment that offered support for a specific Bidder, the Commission agrees with the Participants that the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor and thus believes that the process set forth in the Selection Plan should be permitted to continue.¹⁴⁷

(iii) Engagement With Market Participants and SEC

During the process of developing the CAT NMS Plan, the Participants engaged in extensive and meaningful

dialogue with market participants and the SEC. To this end, the Participants created a website to update the public on the progress of the CAT NMS Plan, published a request for comment on multiple issues related to the Plan, held multiple public events to inform the industry of the progress of the CAT and to address inquiries, and formed, and later expanded, a DAG to solicit more input from a representative industry group.¹⁴⁸

The DAG included representatives of Participants and Industry Members and conducted meetings to discuss, among other things, technical and operational aspects the Participants were considering for the Plan. The Participants issued press releases soliciting participants for the DAG, and a wide spectrum of firms was deliberately chosen to provide insight from various industry segments affected by CAT. The DAG meetings included discussions of topics such as option market maker quote reporting, requirements for capturing Customer IDs, timestamps and clock synchronization, reporting requirements for order handling scenarios, costs and funding, error handling and corrections, and potential elimination of systems made redundant by the CAT. From the inception of the DAG through September 2014, the DAG participated in 36 meetings, as well as a variety of DAG subcommittee meetings.

(iv) Request for Exemption From Certain Requirements Under Rule 613

Following multiple discussions between the Participants and both the DAG and the bidders, as well as among the Participants themselves, the Participants recognized that some provisions of Rule 613 would not permit certain solutions to be included in the Plan that the Participants, in coordination with the DAG, determined advisable to effectuate the most efficient and cost-effective CAT. Specifically, "the SROs reached the conclusion that additional flexibility in certain of the minimum requirements specified in Rule 613 would allow them to propose a more efficient and cost-effective approach without adversely affecting the reliability or accuracy of CAT Data, or its security and confidentiality."¹⁴⁹ Consequently, the Participants submitted a request for exemptive relief from certain provisions of Rule 613 regarding: (1) options market maker quotes; (2) Customer-IDs; (3) CAT-

Reporter-IDs; (4) CAT-Order-IDs on allocation reports; and (5) timestamp granularity.¹⁵⁰ The Participants filed two supplements to the request for exemptive relief.¹⁵¹

After reviewing the exemptive request, the Commission determined that it was appropriate in the public interest and consistent with the protection of investors to grant the requested exemptive relief.¹⁵² In granting the exemptive relief, the Commission stated:

[T]he Commission is persuaded to provide flexibility in the discrete areas discussed in the Exemption Request so that the alternative approaches can be included in the CAT NMS Plan and subject to notice and comment. Doing so could allow for more efficient and cost-effective approaches than otherwise would be permitted. The Commission at this stage is not deciding whether the proposed approaches detailed below are more efficient or effective than those in Rule 613. However, the Commission believes the proposed approaches should be within the permissible range of alternatives available to the SROs.¹⁵³

The Commission further stated that the requested exemptive relief is consistent with the protection of investors. The Commission noted that:

Doing so will provide the public an opportunity to consider and comment on whether these proposed alternative approaches would indeed be more efficient and cost-effective than those otherwise required by Rule 613, and whether such approaches would adversely affect the reliability or accuracy of CAT Data or otherwise undermine the goals of Rule 613. Moreover, if—as the SROs represent—efficiency gains and cost savings would result from including the proposed approaches in the CAT NMS Plan without adverse effects, then the resultant benefits could potentially flow to investors (e.g., lower broker-dealer reporting costs resulting in fewer costs passed on to Customers).¹⁵⁴

The Participants incorporated the exemptive relief into the proposed CAT NMS Plan, which was noticed for comment, and the Commission ultimately approved the CAT NMS Plan with the more efficient and cost-effective alternative approaches described in the exemptive relief. Accordingly, the Participants believe that the costs incurred in developing the exemptive request were critical to the creation of a better CAT than was

¹⁵⁰ Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Jan. 30, 2015).

¹⁵¹ See Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Apr. 3, 2015); Letter from the SROs to Brent J. Fields, Secretary, Commission (Sept. 2, 2015).

¹⁵² See 2016 Exemptive Order.

¹⁵³ *Id.* at 11857.

¹⁵⁴ *Id.*

¹⁴⁸ See Section D(11) of Appendix C of the CAT NMS Plan.

¹⁴⁹ Securities Exchange Rel. No. 77265 (Mar. 1, 2016), 81 FR 11856 (Mar. 7, 2016) ("2016 Exemptive Order").

¹⁴⁷ See CAT NMS Plan Approval Order at 84737.

originally contemplated by Rule 613, and therefore should be recoverable as part of Historical CAT Assessment 1.

(v) Request for Extensions for Filing the CAT NMS Plan

Rule 613(a)(1) under Regulation NMS required the Participants to jointly file the CAT NMS Plan on or before April 28, 2013, less than a year after the adoption of Rule 613. In recognition of the complexity of the project to create the CAT NMS Plan as well as industry interest in limiting or eliminating certain requirements of Rule 613 (*e.g.*, addressing the reporting of options market maker quotes), the Participants requested two extensions of the deadline to file the CAT NMS Plan. The Participants described the need for additional time as follows:

The SROs stated in their Request Letter that they do not believe that the 270-day time period provided for in Rule 613(a)(1) provides sufficient time for the development of the RFP, formulation and submission of bids, and review and evaluation of such bids. The SROs also stated that they believe additional time beyond the 270 days provided for in Rule 613(a)(1) is necessary in order to provide sufficient time for effective consultation with and input from the industry and the public on the proposed solution chosen by the SROs for the creation of the consolidated audit trail at the conclusion of the RFP process and the NMS plan itself.¹⁵⁵

In recognition of the need for additional time to refine the technical description of and requirements for the CAT and to allow for additional evaluation of the proposed cost and funding considerations, the SEC granted two extensions of this deadline.¹⁵⁶ The SEC determined that both extensions were appropriate, in the public interest, and consistent with the protection of investors.¹⁵⁷ In reaching this conclusion, the Commission stated that “it understands that the creation of a consolidated audit trail is a significant undertaking and that a proposed NMS plan must include detailed information and discussion about many things.”¹⁵⁸ The SEC also noted the following:

This additional time to complete the RFP process should allow the SROs to engage in a more thoughtful and comprehensive process for the development of an NMS plan. In this regard, the Commission notes that the

additional time to solicit comment from the industry and the public at certain key points in the development of the NMS plan could identify issues that can be resolved earlier in the development of the consolidated audit trail and prior to filing the NMS plan with the Commission.¹⁵⁹

Given the Commission’s recognition of the reasonableness and value of the extension of the deadline to file the CAT NMS Plan, the Participants believe that the costs incurred in developing the extension request were important to the process of developing the CAT NMS Plan, and therefore should be recoverable as part of Historical CAT Assessment 1.

(vi) Submission and Approval of the CAT NMS Plan

After extensive analyses and discussions with the DAG, bidders, market participants and the SEC staff, the Participants finalized the draft of the CAT NMS Plan and filed the CAT NMS Plan with the SEC on September 30, 2014. Following additional discussions, the Participants filed several amendments to the CAT NMS Plan during 2015 and 2016. With these additional changes, the SEC published the CAT NMS Plan for notice and comment in May 2016.¹⁶⁰ Following the comment period, the SEC approved the Plan in November 2016.¹⁶¹

(vii) Legal Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include legal costs of \$3,196,434. The legal services were performed by WilmerHale. The selection considerations and fees for WilmerHale were described in detail above. Prior to the creation of CAT LLC, WilmerHale was engaged to represent the consortium of SROs, not the individual Participants. For administrative purposes, FINRA agreed to receive such legal bills, although such costs were shared among the Participants. Therefore, the legal costs incurred with respect to WilmerHale do not include legal costs incurred by the individual Participants. These pre-formation legal costs are described in detail above and are further described below:

- Analyzed various legal matters associated with the Selection Plan and drafted an amendment to Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the DAG;

- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on the CAT NMS Plan;

- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (*e.g.*, Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG, and governance support during the transition to the new governance structure under the CAT NMS Plan;

- Drafted exemptive requests;
- Provided interpretations related to the CAT NMS Plan;

- Provided support with regard to discussions among the exchanges, FINRA and other third parties, such as Deloitte;

- Provided tax advice with regard to CAT’s status as a tax-exempt organization; and

- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

(viii) Consulting Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include consulting costs of \$10,589,273. The consulting services were performed by Deloitte. The selection considerations and fees for Deloitte were described in detail above. Prior to the creation of CAT LLC, for administrative purposes, Deloitte was engaged by FINRA to provide consulting services related to CAT, but the costs were shared by the consortium of SROs per agreement. Therefore, the consulting costs incurred with respect to Deloitte do not include consulting costs incurred by the individual Participants. The pre-formation consulting costs include the following:

- Established and implemented program operations for the CAT project, including the program management office and workstream design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participants’ independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, reviewing technical requirements of other NMS plans, analyzing OATS and CAT requirements, and drafting appendices to the Plan;

¹⁵⁵ Securities Exchange Act Rel. No. 69060 (Mar. 7, 2013), 78 FR 15771, 15772 (Mar. 12, 2013) (“March 2013 Exemptive Order”).

¹⁵⁶ See March 2013 Exemptive Order; Securities Exchange Act Rel. No. 71018 (Dec. 6, 2013), 78 FR 75669 (Dec. 12, 2013) (“December 2013 Exemptive Order”).

¹⁵⁷ March 2013 Exemptive Order at 15772; December 2013 Exemptive Order at 75670.

¹⁵⁸ March 2013 Exemptive Order at 15772.

¹⁵⁹ *Id.* at 15773.

¹⁶⁰ See Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

¹⁶¹ See CAT NMS Plan Approval Order.

- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG;

- Provided support for updating the SEC on the progress of the development of the CAT;

- Provided support for industry outreach sessions, including with regard to program design and agenda development, program support and logistics and coordination; and
- Provided support in fact finding, drafting content and meeting coordination for WilmerHale with regard to the CAT and the development of the CAT NMS Plan.

Such Pre-Formation Costs did not include costs related to the Chair of the CAT NMS Plan Operating Committee, as the CAT NMS Plan had not yet been adopted.

(ix) Public Relations Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include public relations costs of \$57,174. The public relations services were performed by Peppercomm. The selection considerations and fees for Peppercomm are described in detail above. The costs related to Peppercomm were shared among the SROs. Therefore, the public relations costs do not include public relations costs incurred by the individual Participants. The pre-formation public relations costs include services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT.

(B) Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs related to cloud hosting services as a part of Historical CAT Assessments. CAT LLC believes that the costs related to cloud hosting services described in detail above are reasonable and appropriate given the strict data processing timelines and storage requirements imposed by the Commission-approved CAT NMS Plan

and should be recoverable as a part of Historical CAT Assessment 1.

(i) Reasonableness of AWS Costs Given the Requirements of the CAT NMS Plan

CAT LLC believes that the costs for the cloud hosting services are reasonable, both in terms of the level of the fees paid by CAT LLC for cloud hosting services provided by AWS and the scope of the services performed by AWS for CAT LLC. CAT LLC believes that both the scope and amount of the costs for cloud hosting services are reasonable given the current requirements of the CAT NMS Plan adopted pursuant to Rule 613, including the strict data processing timeline, storage and other technical requirements under the Commission-approved CAT NMS Plan.

CAT LLC believes that the level of fees for the cloud hosting services is reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.

CAT LLC also believes that the scope of services provided by AWS for the CAT are appropriate given the current requirements of the Commission-approved CAT NMS Plan. As described above, the cloud hosting services costs reflect a variety of factors including, among other things:

- *Breadth of Cloud Activities.* AWS was engaged by FCAT, the Plan Processor, to provide a broad range of services to the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS necessary to the CAT include storage services, databases, compute services, and other services (such as networking, management tools and development operations (“DevOps”) tools). AWS also was engaged to provide the various environments for CAT, such as the development, performance testing, test and production environments, which are required by the CAT NMS Plan.

- *High Data Volume.* The cost for AWS services for the CAT is a function of the volume of CAT Data. While it is not linear, the greater the amount of CAT Data, the greater the cost of AWS services to the CAT. The data volume handled by AWS now far exceeds the original volume estimates for the CAT.

- *Plan Requirements.* The cost for AWS services also reflects the technical requirements necessary to meet the stringent performance and other requirements for processing CAT Data. These Plan-dictated processing timelines, storage, testing, security and

other technical requirements are significant drivers of AWS costs.

- *Cost Avoidance Efforts.* CAT LLC and FCAT have engaged in ongoing efforts to seek to avoid and minimize AWS costs where permissible under the Plan. Accordingly, these cost avoidance efforts have limited the extent of AWS costs.

In addition, various requirements of the CAT NMS Plan adopted pursuant to Rule 613 contribute to the significant cloud hosting services costs, and that various Plan requirements could be amended or removed without affecting the regulatory purpose of the CAT. Indeed, CAT LLC has repeatedly sought exemptive relief and filed amendments to the CAT NMS Plan, and has even filed suit against the Commission, to seek to revise or eliminate certain costly requirements related to the CAT. However, despite these efforts, absent the Commission granting exemptive relief or approving cost savings amendments to the CAT NMS Plan, CAT LLC, the Participants and Industry Members are all required to comply with such requirements.

(ii) Effect of CAT Design on CAT Costs

(a) Efficient CAT Design

CAT is reasonably designed to efficiently and effectively utilize cloud computing and storage services, given the requirements of the Commission-approved CAT NMS Plan, including requirements related to security, operational reliance and quality assurance, and maintainability.

The Plan Processor uses state-of-the-art software that meets the strict security standards of the CAT NMS Plan. CAT utilizes a big data processing framework that is extensively used by large data processing companies, such as Apple, Meta, Netflix, IBM and Google. As such, it has substantial commercial support and support in the open-source community. It is also well suited for use with regard to iterative types of algorithms and query functions and analytics that the CAT requires, and it provides the heightened security necessary for the CAT.

The development and implementation of the design of CAT is not and has not been static. CAT LLC and the Plan Processor are always evaluating new innovations and service offerings from AWS and other providers to seek to maximize efficiency and cost avoidance while still satisfying the requirements of the CAT NMS Plan. These efforts have led to substantial savings to date. The cloud hosting costs for 2023 were less than the cloud hosting costs for 2022 by \$8 million despite processing seven

trillion more events in 2023 due to the efficiency and cost avoidance efforts for cloud hosting services. For example, when AWS introduced new storage options, FCAT adopted the cost-efficient new storage option after establishing that the new offering would satisfy the security and other standards of the CAT NMS Plan. This change led to millions of dollars of savings in storage costs. Similarly, when AWS introduced a new compute processor, FCAT adopted this new compute processor, which led to millions of dollars in savings in compute costs. However, in other cases, new cloud technology developments could not be implemented in CAT because they would not satisfy the security or other requirements of the CAT NMS Plan.

When evaluating the design of the CAT, it must be kept in mind that the CAT is not a typical commercial technology project. The ability to make use of technology approaches that may lead to cost avoidance is also subject to the restrictive requirements of the CAT NMS Plan, such as processing timeframes, requirements for retention of data versions, query requirements, and security standards. Because such requirements are set forth in the CAT NMS Plan, any modification of such requirements are subject to the time-consuming process of amending the CAT NMS Plan or seeking an exemption from the relevant requirement. For example, CAT LLC recently has filed an amendment to address several of these expensive Plan requirements.¹⁶²

(b) CAT Was Designed To Minimize Industry Member Effort

The CAT System also was designed to minimize the extent to which Industry Members would need to alter their systems to report to CAT. During the design process, Industry Member groups argued that it would make more sense financially for the CAT to accommodate differences in industry systems, than for all Industry Members to change their systems. Moreover, such design choices would facilitate consistency, uniformity and accuracy in reporting. Requiring the CAT to make such accommodations may increase CAT costs while accommodating CAT Reporters.

Based on the requirements in the CAT NMS Plan and/or in response to industry requests for functionality to be embedded with the Plan Processor to

streamline or limit Industry Member system changes, the CAT has been designed to limit the effect on Industry Members. The following provides examples of such accommodations:

- *Industry Member Reporting.* In light of the complexity of Industry Member market activity, the CAT's order reporting and linkage scenarios document for Industry Members is over 800 pages in length, addressing nearly 200 scenarios.¹⁶³ The Industry Member Technical Specifications allow for dozens of specific event types, which drive complexity for the Plan Processor, but streamline reporting for Industry Members. Furthermore, the Plan Processor greatly expanded Industry Member linkage requirements to support, among other things, child events and supplemental events, allowing for "stateless as-you-go" and "batch end-of-day" reporting when all data is available. Accordingly, CAT takes on the significant cost and effort of providing the required linkages between CAT events; correspondingly, Industry Members are not required to perform this costly task.

- *File Submission Process.* The CAT was designed to accommodate the varying needs of CAT Reporters with regard to the file submission process. For example, in a 2018 letter, FIF stated that "[t]he SFTP-based submission process is cumbersome, exposes industry members to unnecessary complexity, and puts the burden of support on the CAT Reporter rather than imbedding more functionality into the Plan Processor."¹⁶⁴ Currently, FCAT provides two mechanisms for submitting files: SFTP via a private network, and the Web via Reporter Web Portal.

- *Error Corrections.* The industry also emphasized the need for the CAT to provide error correction tools and functionalities to identify, rectify and re-submit corrections within the required timeframe. For example, FIF stated in a 2018 letter the following:

To be clear, if OATS-like error correction tools are not made available on Day 1, hundreds of firms will be required to create and test their own tools or obtain vendor alternatives prior to the CAT Go-Live Date. Proprietary tools will require additional system builds, access to and ingestion of CAT data to perform system validation, and testing which will further stress the limited number of subject matter experts ("SMEs") dedicated to the

implementation of CAT reporting. Should this occur, inevitably firms (especially small firms who lack the necessary IT staff to write code and develop proprietary systems), may be put in the position of passing onto investors the cost required to build hundreds of redundant systems.¹⁶⁵

CAT provides various tools to help Industry Members identify and rectify errors.

- *Data Ingestion Format.* The industry also recommended that CAT adopt a flexible input format that provides an option for Industry Members to submit data in formats that are already in use to reduce costs and potential reporting errors. For example, FIF argued the following:

FIF CAT WG is not proposing a specific format; rather, we are proposing flexibility of input formats which includes support of existing formats (e.g., OATS, FIX) as well as a baseline specification where all fields are defined, and normalized. The input formats must be clearly and thoroughly defined in Technical Specifications, including FAQs.

Mandating a uniform format for reporting data to the CAT simplifies the task for the Central Repository of consolidating/storing data, but it puts the burden on each CAT Reporter to accurately translate their current (e.g., OATS) reporting information into a uniform CAT interface. However, that is likely to yield more errors because it is very dependent on accurate, complete and timely information (Technical Specifications, FAQs, meta-data, competent CAT help desk) available to CAT Reporters, availability of sophisticated CAT test tools to validate interface protocols, and the skill levels of the estimated 300+ unique CAT Reporters/Submitters during Phase 1 of CAT. Concentrating the responsibility of data conversions with the Central Repository is a reasonable trade-off that should yield fewer errors, and greater accuracy.¹⁶⁶

CAT provides such a flexible input format.

(c) Effect of Initial Plan Processor Design

The costs for cloud hosting services are appropriate and have not been adversely affected by the original design and approaches of the Initial Plan Processor. FCAT's design costs are the result of the requirements of the Commission-approved CAT NMS Plan.

¹⁶² See, e.g., Securities Exchange Act Rel. No. 99938 (Apr. 10, 2024), 89 FR 26983 (Apr. 16, 2024); Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (Mar. 27, 2024) (proposing amendments to the CAT NMS Plan for \$23 million in annual savings).

¹⁶³ See CAT Industry Member Reporting Scenarios v.4.10 (Oct. 21, 2022).

¹⁶⁴ Letter from Janet Early, FIF, to Thesys CAT (Mar. 29, 2018).

¹⁶⁵ Letter from Christopher Bok, FIF, to Jay Clayton, Chair, Commission, at 4 (Dec. 11, 2018).

¹⁶⁶ Letter from Mary Lou Von Kaenel, Managing Director, FIF, to Brent Fields, Secretary, Commission at 92 (July 18, 2016), <https://www.sec.gov/comments/4-698/4698-13.pdf>.

When FCAT took over as the Plan Processor from Thesys, it utilized certain aspects of the technical specifications created by Thesys in its design. However, FCAT has not maintained aspects of the original design that would not be appropriate for the CAT. FCAT revised and enhanced the original technical specifications of the CAT System to increase its efficiency and efficacy, and to ensure its compliance with the CAT NMS Plan. For example, the Initial Plan Processor's approach utilized many more fields than FCAT's approach, which relies on additional linkages. With the additional linkages, the CAT System takes on more of the CAT-related burdens than the Industry Members. Such an approach serves to facilitate consistency, uniformity and accuracy in reporting.

Moreover, FCAT did not utilize the system built by the Initial Plan Processor; it rebuilt the CAT System based on revised technical specifications. For example, the Initial Plan Processor used an on-premises processing approach which was not geared toward the huge amounts of data stored in the CAT, while FCAT adopted a cloud-based solution in response to such data demands.

Furthermore, given the very short timeframe to develop the CAT System and the prior optimization of certain query tools (e.g., Diver) for regulatory use with significant amounts of data, FCAT determined to rely upon certain existing FINRA tools and adapt them for use with the CAT.

(iii) Consideration of AWS Alternatives

CAT LLC continues to support the selection of AWS as the cloud hosting services provider for CAT given the compliance, operational, and security requirements of the CAT. Independent analyses confirm these conclusions, noting that "AWS is an excellent choice for either strategic or tactical use and recommends considering AWS for almost all cloud IaaS or IaaS+PaaS scenarios."¹⁶⁷ AWS provides the following benefits to CAT, among others:

- *Broad Suitability.* AWS has a long track record of successfully serving cloud customers with mission-critical projects.
- *Proven Scalability.* AWS has demonstrated that it is capable of building and delivering services on a large scale.
- *Track Record of Innovation.* AWS continues to rapidly innovate, both in

terms of new domains of capability and at a fundamental level, thereby facilitating innovation for its customers.

- *Resiliency/Dependability.* Another benefit of AWS is its resiliency; it has a strong track record of stable services. As noted in a review of cloud service providers, "[c]ustomers like to have a broad set of options for resilience and for their cloud providers to have a strong track record of stable services (continuously available, without operational quirks). Only AWS fulfills both desires."¹⁶⁸

- *Technical and Customer Support.* AWS consistently provides high-quality technical and customer support and engagement. Given the size, scope and regulatory importance of CAT, customer support and engagement that CAT has with the highest levels of AWS are very important to the success of the CAT.

- *Scale.* AWS is capable of supporting large-scale solutions, which is critical given the size and magnitude of the CAT.

- *Security.* AWS provides the security features necessary for the CAT.

In addition, the nature of the CAT, including the amount of data it must process and the size of its data footprint, does not allow for a multi-cloud solution as this would be cost prohibitive and greatly increase the security boundary and associated risk profile of the CAT. For example, a multi-cloud hosting option would increase costs, complexity, and risk for operations with regard to, for example, DevOps, production support, and networking. Similarly, with regard to security, a multi-cloud solution would increase risk, including with regard to the need for data transfers between cloud providers and the expansion of the security boundary. With regard to labor, a multi-cloud solution would lose economies of scale due to the need to support unique cloud requirements. Accordingly, the use of single-cloud solution continues to provide advantages with regard to cost, complexity, and risk. Indeed, "[t]he best practice is to focus on a single primary strategic provider."¹⁶⁹

Furthermore, if another cloud service provider were determined to be a better match for the CAT at some future date, switching cloud service providers would be a very significant, expensive and time-consuming effort. Such an effort would likely be a 10-to-15-year commitment at a substantial expense. Such a move would require the replication or redesign of the underlying cloud environments (e.g., organizational

setup, identify management, accounts, environments, DevOps tooling likes release management/config management/network management), as the new provider likely would not have the same infrastructure and software. Once that process has been completed, an exabyte of CAT data would need to be securely migrated to the new platform.

(C) Funding Model Filings

CAT LLC believes that the recovery of costs related to the development of the funding model is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

Funding the CAT is a critical aspect of Rule 613 and the CAT NMS Plan. Article XI of the CAT NMS Plan describes in detail the requirements for funding the CAT, and the Participants are required to comply with and enforce compliance with the funding requirements of the CAT NMS Plan, just as with other aspects of the Plan. Accordingly, the development and implementation of a funding model for the CAT is as much a part of the requirements of the CAT NMS Plan as the development and operation of the CAT System. CAT LLC sees no reason to distinguish the efforts to develop a funding model from, for example, efforts to develop the CAT System, in seeking to recover reasonable CAT costs.

Moreover, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that "the reasonably budgeted CAT costs shall include . . . legal costs."¹⁷⁰ In addition, the CAT NMS Plan also requires Participants to include in their fee filings "a brief description of the amount and type of the Historical CAT Costs, including . . . legal . . . costs."¹⁷¹ In keeping with these provisions, this filing provides a brief description of reasonably budgeted legal costs above. These legal costs include costs related to the development of the CAT Funding Model.

In addition, the legal costs incurred for the assistance in developing the CAT Funding Model are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the specialized services were performed by experienced counsel at negotiated rates for such services that reflect both the

¹⁶⁷ See, e.g., Lydia Leong and Adrian Wong, Solution Comparison for Strategic Cloud Integrated IaaS and PaaS Providers (July 28, 2023) ("Strategic Cloud Assessment Article").

¹⁶⁸ Strategic Cloud Assessment Article.

¹⁶⁹ *Id.*

¹⁷⁰ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁷¹ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

extent of the services and market rates. Moreover, the scope of the legal costs associated with the development of the funding model reflect the complexity of the task in satisfying the detailed requirements of the CAT NMS Plan, the standards of the Exchange Act, and the many perspectives of the different market constituents potentially affected by or interested in the funding model, including Industry Members, Participants and investors. The many and varied comments by market participants on CAT funding over the years demonstrate the complexity of the task.

(D) Costs Related to Litigation With the SEC

CAT LLC believes that the recovery of legal costs related to the litigation with the SEC regarding the CAT NMS Plan is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.¹⁷² Moreover, CAT LLC initiated such litigation, and incurred the related legal costs, because it was critical to address the Commission's interpretations of the CAT NMS Plan. Among other things, such interpretations threatened to impose unnecessary costs on the CAT, which would be borne by the Participants and Industry Members. Indeed, in response to the litigation, the Commission provided exemptive relief that allowed alternative, more cost-effective approaches to the implementation of the CAT. Specifically, in the 2023 exemptive order, the Commission stated:

The conditional exemptive relief in this Order allows for the implementation of alternative regulatory solutions that continue to advance the regulatory goals that Rule 613 and the CAT NMS Plan were intended to promote, while reducing the implementation and operational costs, burdens, and/or difficulties that would otherwise be incurred by the Participants and Industry Members that must fund the CAT.¹⁷³

CAT LLC believes it is reasonable and appropriate to incur costs to limit the need to incur even greater costs due to certain interpretations of the Plan.

In addition, the legal costs incurred during the litigation are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the

specialized services were performed by experienced counsel at market rates for such services. As such, the legal costs related to this litigation incurred during the period covered by Historical CAT Assessment 1 were reasonable.

Finally, Industry Members will directly benefit from the result of the litigation because it has addressed CAT NMS Plan requirements that would have imposed significantly greater costs on the CAT. Accordingly, it is reasonable and appropriate that the costs of such litigation be included in the Historical CAT Costs 1.

(E) Costs Related to the Initial Plan Processor

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017, which was the date by which Participants were required to begin reporting to the CAT, due to the delay in the commencement of reporting to the CAT. As discussed above, the Participants determined to exclude all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Thesys costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Thesys costs incurred after November 15, 2018 are the \$19,628,791 in capitalized developed technology costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these \$19,628,791 in costs.

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. CAT LLC notes that the development and implementation of the CAT System, while unprecedented in scope and design, is like any other large and innovative technology project in that, inevitably, there were adjustments and refinements in the technical approach as the project developed, even with substantial planning efforts and oversight prior to the build. This is even more likely when the project faces a very tight implementation schedule, such as the one imposed by the Commission in Rule 613 and the CAT NMS Plan. However, an adjusted approach does not mean that the funds were not valid expenditures and should not be recovered.

The reasonableness of Thesys costs should be evaluated by the Commission as of the time they were incurred, not in hindsight. As detailed above, the Commission concluded in 2016 that "the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor," and that "the process set forth in the Selection Plan should be permitted to continue."¹⁷⁴ Following this process, the Participants notified the Commission of the selection of Thesys as the Initial Plan Processor on January 17, 2017.¹⁷⁵ At the time, neither the Commission nor the industry argued that the selection of the Initial Plan Processor was unreasonable or otherwise inconsistent with the CAT NMS Plan, nor did they predict the selection would result in unanticipated delays in the implementation of the CAT System. On the contrary, on April 4, 2017, the President of SIFMA wrote that "SIFMA looks forward to commencing work with the SROs and Thesys."¹⁷⁶

As noted in the CAT Funding Model Approval Order, "[i]n Rule 613, the Commission made the determination that the costs of the CAT should be shared by the Participants and Industry Members."¹⁷⁷ If the CAT Funding Model had existed on Day 1, the risk of any unanticipated costs or challenges associated with the Initial Plan Processor would have been fairly and reasonably shared among the Participants and Industry Members on an ongoing basis. Given that the Commission concluded in 2012 that the costs of the CAT would be shared by the Participants and Industry Members, it is not fair or reasonable to determine in hindsight that all of the risk involved in developing the CAT should be allocated entirely to the Participants.

(F) CAIS Implementation Costs

CAT LLC believes that the recovery of CAIS-related costs is appropriate, and that the amount and scope of such costs, as described above, are reasonable, and that the reasonableness of historical costs should be evaluated by the Commission as of the time they were incurred, not in hindsight.

¹⁷⁴ CAT NMS Plan Approval Order at 84737.

¹⁷⁵ Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/markreg/rule613-info-notice-of-plan-processor-selection.pdf>.

¹⁷⁶ Letter from Kenneth E. Bentsen, Jr., SIFMA, to Participants re: Selection of Thesys as CAT Processor (Apr. 4, 2017), <https://www.sifma.org/wp-content/uploads/2017/05/SIFMA-Submits-Comment-Letter-to-SRO-on-the-selection-of-Thesys-as-the-CAT-Processor.pdf>.

¹⁷⁷ CAT Funding Model Approval Order at 62650.

¹⁷² See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁷³ Settlement Exemptive Order at 77129–30.

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable CAIS operating costs as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . CAIS operating fees.”¹⁷⁸ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . CAIS operating fees.”¹⁷⁹ In keeping with these provisions, this filing provides a brief description of reasonably budgeted CAIS operating fees.

In addition, CAT LLC determined that the CAIS operating fees described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. The “CAIS Operating Costs” for Historical CAT Assessment 1 total \$9,480,587, with Pre-FAM costs of \$2,072,908, FAM 1 costs of \$254,998, FAM 2 costs of \$1,590,298, and FAM 3 costs of \$5,562,383. As described above, the CAIS operating fees were incurred with regard to two categories of CAIS-related efforts: (1) the acceleration of the reporting of LTIDs; and (2) the development of the CAIS Technical Specifications and the building of CAIS. These two categories of costs are discussed in more detail below.

(i) LTID Reporting

During the period covered by Historical CAT Assessment 1, the CAIS operating costs included costs related to the acceleration of the reporting of LTIDs earlier than originally contemplated during this period at the request of the SEC and in accordance with exemptive relief granted by the SEC.¹⁸⁰ As the SEC approved in this exemptive relief, the Participants proposed “to require the reporting of LTIDs to the CAT in Phases 2c and 2d, instead of with the rest of Customer Account Information in Phase 2e, which potentially could result in an earlier elimination of broker-dealer recordkeeping, reporting and monitoring requirements of the Large Trader Rule.”¹⁸¹ To implement the reporting of LTIDs to the CAT, the following steps were taken during the period covered by Historical CAT Assessment 1:

- After FCAT developed the LTID Technical Specifications, the LTID

Technical Specifications were published on January 31, 2020, with additional updates provided to the LTID Technical Specifications through April 2021.¹⁸²

- The LTID account information testing environment opened on August 24, 2020.
- The LTID account information reporting production environment opened on December 14, 2020.
- CAT Reporters were required to request their production readiness certification for account information related to LTIDs by the deadline of April 9, 2021.
- The LTID account information reporting for Phases 2a, 2b and 2c for Large Industry Members went live on April 26, 2021.
- The LTID account information reporting for Phases 2d for Large Industry Members went live on December 13, 2021.
- The LTID account information reporting for Phases 2a, 2b, 2c and 2d for Small Industry Members went live on April 26, 2021.

Throughout this project, FCAT and CAT LLC worked closely with the industry on LTID and CAIS reporting. Between December 2019 and December 2021, at least 57 checkpoint calls, webinars, and technical working group meetings with industry representatives were hosted to address issues and to educate CAT Reporters regarding LTID and CAIS reporting.¹⁸³

The LTID reporting project was successfully completed in a timely fashion, and the fees related to the project were reasonable. Accordingly, CAT LLC appropriately seeks to recover such costs via Historical CAT Assessment 1.

(ii) CAIS Reporting

During the period covered by Historical CAT Assessment 1, FCAT began the development of the full CAIS Technical Specifications and the building of CAIS. The CAIS Technical Specifications were developed during this period as follows:

- Iterative drafts of the CAIS Technical Specifications were published on June 30, 2020, December 1, 2020, and January 1, 2021.¹⁸⁴

¹⁸² The LTID Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

¹⁸³ Such contact points with the industry are described in detail on the Events web page of the CAT website (<https://www.catnmsplan.com/events>).

¹⁸⁴ The CAIS Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

- The full, final CAIS Technical Specifications were published on January 29, 2021.

- Updated versions of the CAIS Technical Specifications were published throughout 2021.¹⁸⁵

As discussed above, FCAT and CAT LLC frequently engaged with the industry regarding the development of CAIS, hosting regular checkpoint calls, webinars, and technical working group meetings with industry representatives to address any issues, including addressing the interplay between Industry Members’ existing customer systems and CAIS, and to educate CAT Reporters regarding LTID and CAIS reporting. Such engagement was critical to the CAIS development process as the CAIS project was unprecedented in terms of its content, scope and complexity.

During this period, FCAT also commenced the building of the CAIS system in accordance with the CAIS Technical Specifications during the period covered by Historical CAT Assessment 1. The CAIS system was ready for industry testing shortly after the end of this period in January 2022.

The CAIS Technical Specifications and the CAIS system, as developed during this period, continue to be in use today. Industry Members have been required to report, and have continuously reported, required data to CAIS on a daily basis since November 7, 2022, consistent with interim reporting obligations. The CAIS system accepts and validates the CAIS data submitted by Industry Members and provides Industry Members with initial feedback on data errors. In light of the unprecedented nature of the CAIS system, certain changes to the system, such as changes related to error corrections and the CAIS regulatory portal, were necessary to finalize CAIS reporting. FCAT worked to address these remaining issues,¹⁸⁶ and, as of May 31, 2024, FCAT indicated that it had achieved the final CAIS reporting milestone. Accordingly, CAT LLC appropriately seeks to recover CAIS operating costs via Historical CAT Assessment 1.

(G) Public Relations Costs

CAT LLC believes that the recovery of public relations costs is appropriate and that the amount and scope of such costs, as described above, are reasonable.

¹⁸⁵ Six updated versions of the CAIS Technical Specifications were published during 2021, in March, May, June, August, October and December.

¹⁸⁶ See, e.g., CAT Q4 2023 Quarterly Progress Report (Jan. 30, 2024) (<https://www.catnmsplan.com/sites/default/files/2024-01/CAT-Q4-2023-QPR.pdf>).

¹⁷⁸ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁷⁹ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁸⁰ See Phased Reporting Exemptive Relief Order at 23079–80.

¹⁸¹ *Id.* at 23078–79, n.70.

The Commission has long recognized that external public relations costs are reasonably associated with creating, implementing and maintaining the CAT. In the CAT NMS Plan Approval Order, the Commission estimated that the Participants had collectively spent approximately \$2,400,000 in preparation of the CAT NMS Plan on external public relations, legal, and consulting costs, and estimated that the Participants would continue to incur external public relations costs associated with maintaining the CAT upon approval of the CAT NMS Plan.¹⁸⁷

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for public relations services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . public relations costs.”¹⁸⁸ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . public relations costs.”¹⁸⁹ In keeping with these provisions, a brief description of reasonable public relations costs are described above.

In addition, CAT LLC determined that the public relations costs described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. The services performed by the public relations firms through 2021 were limited in scope to assist CAT LLC, which has no employees of its own, to be better positioned to understand and address CAT matters to the benefit of all market participants and to communicate on important CAT topics with the public. In addition, the costs for these services were appropriately limited. During the 10-year period covered by Historical CAT Assessment 1, the average cost per year for these services was approximately \$36,000.

(H) Legal Costs Related to the Limitation of Liability Provision in CAT Reporter Agreements

CAT LLC believes that the recovery of legal costs related to the limitation of liability provision, including costs related to the proceedings before the SEC and costs related to the proposed amendment to the Consolidated Audit Trail Reporter Agreement and the Consolidated Audit Trail Reporting

Agent Agreement (the “Reporting Agreements”) is appropriate and that the amount and scope of such costs as described above are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.¹⁹⁰ In addition, CAT LLC determined that the legal costs incurred for the assistance with regard to the limitation of liability provisions are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1.

Moreover, it is critical that CAT LLC, which has no employees of its own, have the ability to fund a legal defense in litigation and other legal proceedings against it. In response to CAT LLC requiring Industry Members to agree to the limitation of liability provision to submit data to the CAT, SIFMA filed an application for review of actions taken by CAT LLC and the Participants pursuant to Sections 19(d) and 19(f) of the Exchange Act. Contemporaneously with the filing of this proceeding, SIFMA moved for a stay of the requirement that Industry Members sign a Reporter Agreement, or in the alternative, asked the Commission to further delay the launch of CAT reporting on June 22, 2020. CAT LLC must have the resources to defend itself from litigious actions by others, like these.

Although a limitation of liability provision ultimately was not adopted as proposed, it was a reasonable provision to propose for the CAT Reporter Agreements, given that such provisions are in accordance with industry norms. Limitations of liability are ubiquitous within the securities industry and have long governed the economic relationships between self-regulatory organizations and the entities that they regulate. For example, U.S. securities exchanges have adopted rules to limit their liability for losses that Industry Members incur through their use of exchange facilities.¹⁹¹ Similarly, FINRA’s former order audit trail, OATS, which has functioned as an integrated audit trail of order, quote, and trade data for equity securities, required FINRA members to acknowledge an agreement that includes a limitation of liability provision.¹⁹² In addition, such a

provision was intended to ensure the financial stability of the CAT. Accordingly, it was reasonable for CAT LLC to propose the use of such a provision.¹⁹³

Furthermore, as described above, the specialized services were performed by experienced counsel at market rates for such services. Accordingly, the legal costs for the efforts related to the limitation of liability provision were reasonable.

(I) Costs for the Chair of CAT Operating Committee

CAT LLC believes that the recovery of consulting costs related to the Chair of the CAT Operating Committee is appropriate and that the amount and scope of such costs are reasonable.

As a preliminary matter, the selection of the Chair of the Operating Committee complies with the requirements of Section 4.2 of the CAT NMS Plan. The initial Chair that served during the period covered by Historical CAT Assessment was designated by a Participant as the Participant’s alternate voting member. Accordingly, the Chair is a representative of the Participants, as required by the CAT NMS Plan.

In addition, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for consulting as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . consulting . . .” costs.¹⁹⁴ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . consulting”¹⁹⁵ costs. In keeping with these provisions, a brief description of reasonable consulting costs is included in this filing, and such reasonable consulting costs include the costs related to the Chair position.

The Participants determined that the position of the Chair was a critical role for the implementation of the CAT, and an independent Chair would appropriately consider and address the views of each of the Participants. The Participants also determined that it was important to have a Chair with a strong

terms—including its limitation of liability provision—every time they access FINRA’s OATS system to report trade information (*i.e.*, repeatedly over the course of a trading day for many Industry Members).

¹⁹³ See Letter from Michael Simon, Chair, CAT Operating Committee, to Vanessa Countryman, Secretary, Commission (Dec. 18, 2020).

¹⁹⁴ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁹⁵ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁸⁷ CAT NMS Plan Approval Order at 84917–18.

¹⁸⁸ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁸⁹ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁹⁰ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁹¹ See, e.g., NASDAQ Equities Rule 4626.

¹⁹² FINRA Rule 1013(a)(1)(R) requires all applicants for FINRA Membership to acknowledge the FINRA Entitlement Program Agreement and Terms of Use, which applies to OATS. Industry Members click to indicate that they agree to its

background regarding issues related to the regulatory obligations of self-regulatory organizations, including their obligations under national market system plans. The compensation paid to the Chair is appropriate for a person with such background and skills. The average annual amount paid to the Chair from 2017 through the end of FAM 3 was \$292,733.30. Separate from the Chair, CAT LLC relies upon a Leadership Team of representatives of the SROs to oversee the day-to-day implementation of the CAT NMS Plan. CAT LLC does not compensate any member of the Leadership Team.

(11) Fee Implementation Assistance for Industry Members

(A) Reconciliation of CAT Invoices

(i) Reconciliation of CAT Invoices to Underlying Trades Provided by CAT

CAT LLC understands that there are three types of reconciliation processes related to the invoices:

- *Reconciliation of CAT Invoices to Underlying Trades:* Reconciling the CAT invoice amount to the underlying trades provided by CAT;
- *Matching Trades to Books and Records:* Providing the means to match the underlying trades provided by CAT with CAT invoices to other books and records independently maintained by individual CAT Reporters (e.g., exchange trade journals/acknowledgements) and data sources of self-regulatory organizations independent of CAT; and

- *Order Originator Identification:* Providing the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices, which would facilitate firms' ability to pass through CAT Fees to their customers.

As discussed further below, CAT LLC only considers the first type of process to be a "reconciliation" and the only type of process that is required under the CAT NMS Plan. CAT LLC provides the means to reconcile the CAT invoice amount to the underlying trades provided by CAT.

The CAT NMS Plan does not require CAT LLC to facilitate the second type of process: matching underlying trades for a CAT invoice with a firm's internal books and records. CAT LLC has access only to the underlying trades provided by CAT; it does not have access to a firm's internal books and records. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying

trades with their own books and records.

The CAT NMS Plan also does not require CAT LLC to provide the ability to identify the order originator for the underlying trades for the CAT invoices. Accordingly, the billing guidance and processes do not provide CAT Reporters with the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices. CAT LLC has been working closely with CAT Reporters to explain its billing approach and to address any outstanding billing questions. But, it should not be lost that CAT LLC provides information sufficient to allow CAT Reporters to reconcile CAT invoice amounts with the underlying trades provided by CAT LLC.

(ii) Match the Underlying Trades Provided by CAT With CAT Invoices to Firms' Internal Books and Records Independent of CAT

The CAT NMS Plan does not require CAT LLC to facilitate the matching of underlying trades for a CAT invoice with a firm's internal books and records, which may consist of trading data from various sources external to CAT. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying trades with their own books and records.

In this regard, it is important to recognize that CAT LLC has developed a billing approach that greatly improves upon existing billing practices for similar regulatory fees (e.g., fees related to Section 31). Accordingly, with the additional information voluntarily provided by CAT LLC, CAT Reporters generally will have sufficient information to match their underlying trades provided by CAT with their own internal books and records that are independent of CAT or to SRO data that is independent of CAT data. However, CAT LLC emphasizes that providing such additional information is not required by the CAT NMS Plan.

To facilitate the introduction of CAT fees, CAT LLC has worked with FCAT to develop an approach to CAT billing that is consistent with existing billing constructs used with regard to Section 31-related sales values fees, subject to certain enhancements. Under this billing approach, FCAT is providing additional linkage elements, not necessarily provided in the Section 31-sales value fee context, to facilitate CAT Reporters' ability to match the underlying trades provided by CAT

with their internal books and records and to reduce the complexity of that process. Specifically, FCAT is providing various key elements of the trade itself, such as the tradeID and branch sequence,¹⁹⁶ to CAT Reporters in the trade billing details provided with their CAT invoices ("Additional Trade Details"). As a result, CAT Reporters now have numerous alternative methods for matching a trade with their internal books and records where they previously did not have such matching methods in other fee contexts.

With the Additional Trade Details, CAT LLC and FCAT believe that the overwhelming majority of underlying trades provided by CAT bills can be matched with a CAT Reporter's internal books and records. CAT LLC recognizes that there may be certain cases in which such matching is more difficult given various firm-specific considerations, but believes that such instances are significantly more limited than with regard to the SRO fees charged in relation to Section 31.¹⁹⁷ By providing Additional Trade Details that are not available in other fee contexts, FCAT enhances the Industry Members' ability to match the underlying trades provided with CAT invoices with books and records and SRO data, both of which are independent of CAT data.

(iii) CAT LLC Is Not Required To Facilitate CAT Reporters' Ability To Pass Through Fees to Their Customers

Similar to other regulatory fees, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Accordingly, Historical CAT Assessment 1 does not address the process by which any CAT Reporters may pass through the fee to their

¹⁹⁶ See CAT Technical Specifications for Billing Trade Details; Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>); CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

¹⁹⁷ For years, broker-dealers have faced similar reconciliation issues with regard to SRO fees related to Section 31. Broker-dealers have responded to this issue in the Section 31 context by exercising their discretion as to whether and the manner and extent to which they pass on those fees (e.g., by rounding up its fees to the nearest cent, or decide to charge for, or not charge for, certain transactions, or assess a specific fee or incorporate the costs into other fee programs). See, e.g., Securities Exchange Act Rel. No. 49928 (June 28, 2004), 69 FR 41060, 41072 (July 7, 2004) (noting that broker-dealers may "over-collect" Section 31-related fees charged to their clients due to rounding practices, and double-counting with regard to certain transactions).

customers. Likewise, the CAT billing approach provided by the Plan Processor is designed to address the needs of CAT Reporters with regard to the reconciliation of CAT invoices with the underlying trades provided by CAT LLC with the invoices; they are not designed to address issues related to any pass-through fees. Accordingly, facilitating CAT Reporters' ability to pass through fees to their clients is outside the scope of this fee filing. Nevertheless, as described below, CAT LLC and the Plan Processor have expended significant efforts to provide technical assistance to Industry Members regarding the implementation of Historical CAT Assessment 1, including providing Additional Trade Details that provide significant details about each underlying trade.

(a) Originating Brokers Versus Executing Brokers

In its approval of the CAT Funding Model, the Commission approved charging CAT fees to the CAT Executing Broker, rather than the originating broker. This fee filing must comply with the requirements of the CAT Funding Model, and, therefore, charges the Historical CAT Assessment 1 to CAT Executing Brokers.

Moreover, charging originating brokers would introduce significant complexity to the billing process from the CAT's perspective, and would increase the costs of implementing CAT fees. Charging the CAT Executing Broker is simple and straightforward, and leverages a one-to-one relationship between billable events (trades) and billable parties, similar to other transaction-based fees. In contrast, for a single trade event, there may be many originating brokers, and each trade must be broken down on a pro-rata basis, to account for one or more layers of aggregation, disaggregation, and representation of the underlying orders. While CAT is indeed designed to capture and unwind complex aggregation scenarios, the data and linkages are structured to facilitate regulatory use, and not a billing mechanism that assesses fees on a distinct set of executed trades; it is not simply a matter of using existing CAT linkages. Furthermore, charging originating brokers would implicate issues related to lifecycle linkage rates, and issues related to corrections, cancellations and allocations, while charging CAT Executing Brokers would avoid such issues.

(b) Identification of Order Originator for Underlying Trades

As noted, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT Fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Nevertheless, the Additional Trade Details provided with regard to the underlying trades on CAT invoices may assist with this process. Like with Section 31-related sales value fees, however, it is not always possible to trace every fee on a transaction back to the originating party. Industry Members have faced these issues under Section 31-related sales value fees for many years.¹⁹⁸ However, with the Additional Trade Details provided under the CAT billing approach, in many cases, CAT Reporters will be able to identify the order originator for the underlying trades provided by CAT with CAT invoices. In some cases, CAT LLC believes that certain issues related to certain types of market activity may implicate CAT Reporters' ability to identify the order originator for a limited set of underlying trades for the CAT invoices. Although CAT LLC does not believe that it is required to address these issues, CAT LLC and FCAT have been carefully researching and analyzing these types of issues as they are identified, and have been working voluntarily to assist CAT Reporters with these issues as necessary and when possible. In addition, CAT LLC intends to continue to provide CAT Reporters with billing guidance through FAQs, CAT Alerts and Helpdesk responses to address outstanding billing questions.

(B) Significant Technical Assistance

CAT LLC has worked with FCAT to provide significant technical assistance to Industry Members to allow the Industry Members to understand how Historical CAT Assessment 1 will be implemented and billed, including webinars, CAT alerts, mock invoices, and responses to questions posed to the FCAT Help Desk.

• *Technical Specifications and Scenarios.* CAT LLC has provided

¹⁹⁸ "FINRA charges a Regulatory Transaction Fee ("RTF") to industry members to reimburse FINRA for the Section 31 fees that FINRA pays to the Commission. FINRA does not currently provide industry members with the data that industry members require for proper reconciliation of RTF fees. This has been a major problem for the industry for many years." Letter from Howard Meyerson, Managing Director, FIF, to Robert Cook, Chief Executive Officer, FINRA at 2 (Dec. 15, 2023) (<https://fif.com/index.php/working-groups/category/271-comment-letters?download=2820:fif-letter-to-finra-on-pass-through-of-finra-cat-fees&view=category>).

detailed technical documentation for CAT billing, including (1) technical specifications, which describe the CAT Billing Trade Details Files associated with monthly CAT invoices, including detailed information about data elements and file formats as well as access instructions, network and transport options;¹⁹⁹ (2) trade details schemas;²⁰⁰ and (3) CAT billing scenarios.²⁰¹

• *Industry Webinars.* CAT LLC has hosted two industry webinars specifically dedicated to CAT billing. The first webinar, hosted on September 28, 2023, discussed the operational implementation of the CAT Reporter billing process.²⁰² The second webinar, hosted on November 7, 2023, provided (1) a demonstration of the CAT Reporter Portal and how to access CAT billing documents, including CAT invoices; and (2) additional information on underlying trade details in relation to the CAT Reporter billing process and an overview of the CAT Contact Management System.²⁰³ 485 participants and 394 participants attended the two webinars, respectively.

• *CAT Alert.* CAT LLC has published a detailed CAT Alert that describes how FCAT, as the Plan Processor acting on behalf of CAT LLC, will calculate applicable fees, issue invoices to and collect payment from CAT Executing Brokers.²⁰⁴

• *Frequently Asked Questions (FAQs).* CAT LLC also has continued to engage with the industry on billing issues by making responses to billing FAQs available on the CAT website. The FAQs address a broad range of frequently asked questions, including, for example, which Industry Members will receive invoices, how fees are calculated, when and how fees are required to be paid, how to access invoices, and how to update the billing contact. To date, responses to 27 FAQs are available on the CAT website, and

¹⁹⁹ CAT Technical Specifications for Billing Trade Details, Version 1.0 r1 (Dec. 8, 2023) (https://catnmsplan.com/sites/default/files/2023-12/12.07.2023-CAT-Technical-Specifications-for-Billing-Trade-Details-v1.0r1_CLEAN.pdf).

²⁰⁰ Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>).

²⁰¹ CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

²⁰² CAT Billing Webinar, Part 1 (Sept. 28, 2023) (<https://www.catnmsplan.com/events/part-1-cat-billing-webinar>).

²⁰³ CAT Billing Webinar, Part 2 (Nov. 7, 2023) (<https://www.catnmsplan.com/events/part-2-cat-billing-webinar>).

²⁰⁴ See CAT Alert 2023-02 (Oct. 12, 2023) (<https://www.catnmsplan.com/sites/default/files/2023-10/10.12.23-CAT-Alert-2023-02.pdf>).

CAT LLC will provide additional responses to FAQs as warranted.²⁰⁵

- **Mock Invoices.** To assist Industry Members with compliance with the commencement of Historical CAT Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices for Historical CAT Assessment 1 since December 2023 for billable activity occurring in November 2023. The mock invoices are in the same form as the actual, payable invoices, including both the relevant transaction data and the corresponding fee (as originally contemplated). However, no payments are required in response to such mock invoices; they are to be used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data provides CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended to facilitate the payment of Historical CAT Assessment 1. For the November, December, and January billing periods, FCAT has generated trade detail files for 569 distinct firms that are CAT Executing Brokers. As such, CAT Reporters have actively engaged in the billing process via the mock invoices.

- **Help Desk Assistance.** CAT LLC also provides detailed, individualized assistance to Industry Members regarding CAT fees and the billing process through the FCAT Help Desk.²⁰⁶ For example, the Help Desk has assisted with 406 cases related to the billing of CAT fees from July 2023 through March 2024.

By providing such detailed and sustained assistance to Industry Members regarding CAT fees and billing, CAT LLC has successfully addressed questions raised by Industry Members regarding the CAT fees and billing processes.

(C) Ample Preparation Time

CAT LLC has provided Industry Members with ample time to comply with the implementation of Historical CAT Assessment 1. CAT LLC originally proposed issuing the first invoices for Historical CAT Assessment 1 in

December 2023 based on transactions in Eligible Securities in November 2023. In consideration of the feedback about the need for additional time to implement the new fee, CAT LLC pushed back this timeline by four months, proposing to issue the first Historical CAT Assessment 1 in April 2024 based on transactions in March 2024.²⁰⁷ This filing pushes this timeline back even further for implementing Historical CAT Assessment 1, proposing to issue the first invoices for Historical CAT Assessment 1 in November 2024 based on transactions in Eligible Securities in October 2024. Moreover, as discussed above, during these additional months, FCAT has been working closely with Industry Members to provide guidance regarding their mock bills and reconciliation efforts related thereto.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of the Exchange Act. The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,²⁰⁸ which requires, among other things, that the Exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and not designed to permit unfair discrimination between customers, issuers, brokers and dealers. The Exchange also believes that the proposed rule change is consistent with the provisions of Section 6(b)(4) of the Act,²⁰⁹ because it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange further believes that the proposed rule change is consistent with Section 15A(b)(9) of the Act,²¹⁰ which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. These provisions also require that the Exchange be "so organized and [have] the capacity to be able to carry out the purposes" of the Act and "to comply, and . . . to enforce compliance by its members and persons associated with its members," with the

provisions of the Exchange Act.²¹¹ Accordingly, a reasonable reading of the Act indicates that it intended that regulatory funding be sufficient to permit an exchange to fulfill its statutory responsibility under the Act, and contemplated that such funding would be achieved through equitable assessments on the members, issuers, and other users of an exchange's facilities.

The Exchange believes that this proposal is consistent with the Act because it implements provisions of the Plan and is designed to assist the Exchange in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan "is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act."²¹² To the extent that this proposal implements the Plan and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

The Exchange believes that the proposed fees paid by the CEBBs and CEBs are reasonable, equitably allocated and not unfairly discriminatory. First, the Historical CAT Assessment 1 fees to be collected are directly associated with the costs of establishing and maintaining the CAT, where such costs include Plan Processor costs and costs related to technology, legal, consulting, insurance, professional and administration, and public relations costs. The Exchange has already incurred such development and implementation costs and the proposed Historical CAT Assessment 1 fees, therefore, would allow the Exchange to collect certain of such costs in a fair and reasonable manner from Industry Members, as contemplated by the CAT NMS Plan.

The proposed Historical CAT Assessment 1 fees would be charged to Industry Members in support of the maintenance of a consolidated audit trail for regulatory purposes. The proposed fees, therefore, are consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business operations. The proposed fees would not cover Exchange services unrelated to the CAT.

²⁰⁵ See CAT Billing FAQs, Section V of CAT FAQs (https://www.catnmsplan.com/faq?search_api_fulltext=&field_topics=271&sort_by=field_faq_number).

²⁰⁶ The CAT NMS Plan requires that the Plan Processor "staff a CAT help desk, as described in Appendix D, CAT Help Desk, to provide technical expertise." Section 6.10(c)(vi) of the CAT NMS Plan. See also Section 10.3 of Appendix D of the CAT NMS Plan for a description of the Plan requirements for the CAT Help Desk.

²⁰⁷ Securities Exchange Act Rel. No. 34–99361 (January 17, 2024), 89 FR 10201 (February 13, 2024) ("SR-MRX–2024–01").

²⁰⁸ 15 U.S.C. 78f(b)(6).

²⁰⁹ 15 U.S.C. 78f(b)(4).

²¹⁰ 15 U.S.C. 78o–3(b)(9).

²¹¹ See Section 6(b)(1) of the Exchange Act.

²¹² CAT NMS Plan Approval Order at 84697.

In addition, any surplus would be used as a reserve to offset future fees. Given the direct relationship between CAT fees and CAT costs, the Exchange believes that the proposed fees are reasonable, equitable and not unfairly discriminatory.

As further discussed below, the SEC approved the CAT Funding Model, finding it was reasonable and that it equitably allocates fees among Participants and Industry Members. The Exchange believes that the proposed fees adopted pursuant to the CAT Funding Model approved by the SEC are reasonable, equitably allocated and not unfairly discriminatory.

(1) Implementation of CAT Funding Model in CAT NMS Plan

Section 11.1(b) of the CAT NMS Plan states that “[t]he Participants shall file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves.” Per Section 11.1(b) of the CAT NMS Plan, the Exchange has filed this fee filing to implement the Industry Member CAT fees included in the CAT Funding Model. The Exchange believes that this proposal is consistent with the Exchange Act because it is consistent with, and implements, the CAT Funding Model in the CAT NMS Plan, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the CAT NMS Plan. In approving the CAT NMS Plan, the SEC noted that the Plan “is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.”²¹³ Similarly, in approving the CAT Funding Model, the SEC concluded that the CAT Funding Model met this standard.²¹⁴ As this proposal implements the Plan and the CAT Funding Model described therein, and applies specific requirements to Industry Members in compliance with the Plan, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Exchange Act.

(2) Calculation of Fee Rate for Historical CAT Assessment 1 Is Reasonable

The SEC has determined that the CAT Funding Model is reasonable and satisfies the requirements of the Exchange Act. Specifically, the SEC has

concluded that the method for determining Historical CAT Assessments as set forth in Section 11.3 of the CAT NMS Plan, including the formula for calculating the Historical Fee Rate, the identification of the parties responsible for payment and the transactions subject to the fee rate for the Historical CAT Assessment, is reasonable and satisfies the Exchange Act.²¹⁵ In each respect, as discussed above, Historical CAT Assessment 1 is calculated, and would be applied, in accordance with the requirements applicable to Historical CAT Assessments as set forth in the CAT NMS Plan. Furthermore, as discussed below, the Exchange believes that each of the figures for the variables in the SEC-approved formula for calculating the fee rate for Historical CAT Assessment 1 is reasonable and consistent with the Exchange Act. Calculation of the Historical Fee Rate for Historical CAT Assessment 1 requires the figures for the Historical CAT Costs 1, the executed equivalent share volume for the prior twelve months, the determination of Historical Recovery Period 1, and the projection of the executed equivalent share volume for Historical Recovery Period 1. Each of these variables is reasonable and satisfies the Exchange Act, as discussed throughout this filing.

(A) Historical CAT Costs 1

The formula for calculating a Historical Fee Rate requires the amount of Historical CAT Costs to be recovered. Specifically, Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan requires a fee filing to provide:

a brief description of the amount and type of the Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs.

In accordance with this requirement, the Exchange has set forth the amount and type of Historical CAT Costs 1 for each of these categories of costs above.

Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan also requires that the fee filing provide “sufficient detail to demonstrate that the Historical CAT Costs are reasonable and appropriate.” As discussed below, the Exchange believes that the amounts set forth in this filing for each of these cost categories is “reasonable and appropriate.” Each of the costs included in Historical CAT Costs 1 are reasonable

and appropriate because the costs are consistent with standard industry practice, based on the need to comply with the requirements of the CAT NMS Plan, incurred subject to negotiations performed on an arm’s length basis, and/or are consistent with the needs of any legal entity, particularly one with no employees.

(i) Technology: Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover costs related to cloud hosting services as a part of Historical CAT Assessments.²¹⁶ CAT LLC determined that the costs related to cloud hosting services described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. As described above, the cloud hosting services costs reflect, among other things, the breadth of the CAT cloud activities, data volume far in excess of the original volume estimates, the need for specialized cloud services given the volume and unique nature of the CAT, the processing time requirements of the Plan, and regular efforts to seek to minimize costs where permissible under the Plan. CAT LLC determined that use of cloud hosting services is necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT, and that the fees for cloud hosting services negotiated by FCAT were reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.²¹⁷ Indeed, the actual costs of the CAT are far in excess of the original estimated costs of the CAT due to various factors, including the higher volumes and greater complexity of the CAT than anticipated when Rule 613 was originally adopted.

To comply with the requirements of the Plan, the breadth of the cloud activities related to the CAT is substantial. The cloud services not only include the production environment for the CAT, but they also include two industry testing environments, support environments for quality assurance and stress testing and disaster recovery capabilities. Moreover, the cloud storage costs are driven by the requirements of the Plan, which requires the storage of multiple versions of the data, from the original submitted version of the data

²¹⁶ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²¹⁷ For a discussion of the amount and type of cloud hosting services fees, see Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

²¹³ CAT NMS Plan Approval Order at 84696.

²¹⁴ CAT Funding Model Approval Order at 62686.

²¹⁵ *Id.* at 62662–63.

through various processing steps, to the final version of the data.

Data volume is a significant driver of costs for cloud hosting services. When the Commission adopted the CAT NMS Plan in 2016, it estimated that the CAT would need to receive 58 billion records per day²¹⁸ and that annual operating costs for the CAT would range from \$36.5 million to \$55 million.²¹⁹ Through 2021, the actual data volumes have been five times that original estimate. The data volumes for each period are set forth in detail above.²²⁰

In addition to the effect of the data volume on the cloud hosting costs, the processing timelines set forth in the Plan contribute to the cloud hosting costs. Although CAT LLC has proactively sought to manage cloud hosting costs while complying with the Plan, including through requests to the Commission for exemptive relief and an amendment to the CAT NMS Plan, stringent CAT NMS Plan requirements do not allow for any material flexibility in cloud architecture design choices, processing timelines (*e.g.*, the use of non-peak processing windows), or lower-cost storage tiers. As a result, the required CAT processing timelines contribute to the cloud hosting costs of the CAT.

The costs for cloud hosting services also reflect the need for specialized cloud hosting services given the data volume and unique processing needs of the CAT. The data volume as well as the data processing needs of the CAT necessitate the use of cloud hosting services. The equipment, power and services required for an on-premises data model, the alternative to cloud hosting services, would be cost prohibitive. Moreover, as CAT was being developed, there were limited cloud hosting providers that could satisfy all the necessary CAT requirements, including the operational and security criteria. Over time more providers offering cloud hosting services that would satisfy these criteria have entered the market. CAT LLC will continue to evaluate alternative cloud hosting services, recognizing that the time and cost to move to an alternative cloud provider would be substantial.

The reasonableness of the cloud hosting services costs is further supported by key cost discipline mechanisms for the CAT—a cost-based funding structure, cost transparency, cost management efforts (including regular efforts to lower compute and

storage costs where permitted by the Plan) and oversight. Together, these mechanisms help ensure the ongoing reasonableness of the CAT's costs and the level of fees assessed to support those costs.²²¹

(ii) Technology: Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to operating fees as a part of Historical CAT Assessments.²²² CAT LLC determined that the costs related to operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The operating fees include the negotiated fees paid by CAT LLC to the Plan Processor to operate and maintain the system for order-related information and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.*, management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the selection of FCAT as the Plan Processor was reasonable and appropriate given its expertise with securities regulatory reporting, after a process of considering other potential candidates.²²³ CAT LLC also determined that the fixed price contract, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, was reasonable and appropriate, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity.²²⁴ The services performed by FCAT for each period and the costs related to such services are described above.²²⁵

(iii) Technology: CAIS Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to CAIS operating fees as a part of Historical CAT Assessments.²²⁶ CAT LLC determined that the costs related to CAIS operating fees described in this filing are reasonable and should be included as a part of Historical CAT

Costs 1. The CAIS operating fees include the fees paid to the Plan Processor to operate and maintain CAIS and to perform the business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.*, management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the FCAT-negotiated fees for Kingland's CAIS-related services, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity, were reasonable and appropriate.²²⁷ The services performed by Kingland for each period and the costs for each period are described above.²²⁸

(iv) Technology: Change Request Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to change request fees as a part of Historical CAT Assessments.²²⁹ CAT LLC determined that the costs related to change request fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. It is common practice to utilize a change request process to address evolving needs in technology projects. This is particularly true for a project like CAT that is the first of its kind, both in substance and in scale. The substance and costs of each of the change requests are evaluated by the Operating Committee, and approved in accordance with the requirements for Operating Committee meetings. In each case, CAT LLC determined that the change requests were necessary to implement the CAT. As described above, the change requests cover various technology changes, including, for example, changes related to CAT reporting, data feeds and exchange functionality. CAT LLC also determined that the costs for each change request were appropriate for the relevant technology change. A description of the change requests for each FAM Period and their total costs are set described above.²³⁰ As noted above, the total costs for change requests through FAM Period 3 represent a small percentage of

²²¹ See Securities Exchange Act Rel. No. 97151 (Mar. 15, 2023), 88 FR 17086, 17117 (Mar. 21, 2023) (describing key cost discipline mechanisms for the CAT).

²²² Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²³ See Section 3(a)(2)(B)(i)(b) above.

²²⁴ See Sections 3(a)(2)(B)(i)(b), 3(a)(2)(B)(ii)(b), 3(a)(2)(B)(iii)(b) and 3(a)(2)(B)(iv)(b) above.

²²⁵ *Id.*

²²⁶ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²⁷ See Sections 3(a)(2)(B)(i)(c), 3(a)(2)(B)(ii)(c), 3(a)(2)(B)(iii)(c) and 3(a)(2)(B)(iv)(c) above.

²²⁸ *Id.*

²²⁹ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²³⁰ See Sections 3(a)(2)(B)(i)(d), 3(a)(2)(B)(ii)(d), 3(a)(2)(B)(iii)(d) and 3(a)(2)(B)(iv)(d) above.

²¹⁸ Appendix D–4 of the CAT NMS Plan at n.262.

²¹⁹ CAT NMS Plan Approval Order at 84801.

²²⁰ See Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

Historical CAT Costs 1—that is, 0.25% of Historical CAT Costs 1.

(v) Capitalized Developed Technology Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to capitalized developed technology costs as a part of Historical CAT Assessments.²³¹ Capitalized developed technology costs include costs related to certain development costs, costs related to certain modifications, upgrades and other changes to the CAT, CAIS implementation fees and license fees. The amount and type of costs for each period are described in more detail above.²³² CAT LLC determined that these costs are reasonable and should be included as a part of Historical CAT Costs 1.

These costs involve the activity of both the Initial Plan Processor and FCAT, as the successor Plan Processor.²³³ With regard to the Initial Plan Processor, the Participants utilized an RFP to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan. CAT LLC entered into an agreement with the Initial Plan Processor in which CAT LLC would pay the Initial Plan Processor a negotiated, fixed price fee.²³⁴ In addition, as described above, CAT LLC determined that it is appropriate to enter into an agreement with FCAT as the successor Plan Processor.²³⁵

(vi) Legal

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to legal fees as a part of Historical CAT Assessments.²³⁶ CAT LLC determined that the legal costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Given the unique nature of the CAT, the number of parties involved with the CAT (including, for example, the SEC, Participants, Industry Members, and

vendors) and the many regulatory issues associated with the CAT, the scope of the necessary legal services are substantial. CAT LLC determined that the scope of the legal services is necessary to implement and maintain the CAT and that the legal rates reflect the specialized services necessary for such a project. When hiring each law firm for a CAT project, CAT LLC interviewed multiple firms, and determined to hire each firm based on a variety of factors, including the relevant expertise and fees. In each case, CAT LLC determined that the hourly fee rates were in line with market rates for the specialized legal expertise. In addition, CAT LLC determined that the total costs incurred for each CAT project were appropriate given the breadth of services provided. The services performed by each law firm for each period and the costs related to such services are described above.²³⁷

(vii) Consulting

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover consulting costs as a part of Historical CAT Assessments.²³⁸ CAT LLC determined that the consulting costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Because there are no CAT employees²³⁹ and because of the significant number of issues associated with the CAT, the consultants provided assistance in the management of various CAT matters and the processes related to such matters.²⁴⁰ CAT LLC considered a variety of factors in choosing a consulting firm and determined to select Deloitte after an interview process.²⁴¹ CAT LLC also determined that the consulting services were provided at reasonable market rates, as the fees were negotiated annually and comparable to the rates charged by other consulting firms for similar work.²⁴² Moreover, the total costs for such consulting services were appropriate in light of the breadth of services provided by Deloitte and the services performed by Deloitte and the

costs related to such services are described above.²⁴³

(viii) Insurance

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover insurance costs as a part of Historical CAT Assessments.²⁴⁴ CAT LLC determined that the insurance costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that it is common practice to have directors' and officers' liability insurance, and errors and omissions liability insurance. CAT LLC further determined that it was important to have cyber security insurance given the nature of the CAT, and such a decision is consistent with the CAT NMS Plan, which states that the cyber incident response plan may include "[i]nsurance against security breaches."²⁴⁵ In selecting the insurance providers for these policies, CAT LLC engaged in an evaluation of alternative insurers, including a comparison of the pricing offered by the alternative insurers.²⁴⁶ Based on this analysis, CAT LLC determined that the selected insurance policies provided appropriate coverage at reasonable market rates.²⁴⁷

(ix) Professional and Administration

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover professional and administration costs as a part of Historical CAT Assessments.²⁴⁸ CAT LLC determined that the professional and administration costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Because there are no CAT employees, all required accounting, financial, tax, cash management and treasury functions for CAT LLC have been outsourced at market rates. In addition, the required annual financial statement audit of CAT LLC is included in professional and administration costs, which costs are also at market rates.

CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT

²³¹ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²³² See Sections 3(a)(2)(B)(i)(e), 3(a)(2)(B)(ii)(e), 3(a)(2)(B)(iii)(e) and 3(a)(2)(B)(iv)(e) above.

²³³ *Id.*

²³⁴ See Section 3(a)(2)(B)(i)(e) above.

²³⁵ See Section 3(a)(2)(B)(i)(b) above.

²³⁶ Section 11.3(b)(iii)(B)(II)(B)(2) of the CAT NMS Plan.

²³⁷ See Sections 3(a)(2)(B)(i)(f), 3(a)(2)(B)(ii)(f), 3(a)(2)(B)(iii)(f) and 3(a)(2)(B)(iv)(f) above.

²³⁸ Section 11.3(b)(iii)(B)(II)(B)(3) of the CAT NMS Plan.

²³⁹ As stated in the filing of the proposed CAT NMS Plan, "[i]t is the intent of the Participants that the Company have no employees." Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614, 30621 (May 17, 2016).

²⁴⁰ CAT LLC uses certain third parties to perform tasks that may be performed by administrators for other NMS Plans. See, e.g., CTA Plan and CQ Plan.

²⁴¹ See Section 3(a)(2)(B)(i)(g) above.

²⁴² See Sections 3(a)(2)(B)(i)(g), 3(a)(2)(B)(ii)(g), 3(a)(2)(B)(iii)(g) and 3(a)(2)(B)(iv)(g) above.

²⁴³ *Id.*

²⁴⁴ Section 11.3(b)(iii)(B)(II)(B)(4) of the CAT NMS Plan.

²⁴⁵ Section 4.1.5 of Appendix D of the CAT NMS Plan.

²⁴⁶ See Sections 3(a)(2)(B)(i)(h), 3(a)(2)(B)(ii)(h), 3(a)(2)(B)(iii)(h) and 3(a)(2)(B)(iv)(h) above.

²⁴⁷ *Id.*

²⁴⁸ Section 11.3(b)(iii)(B)(II)(B)(5) of the CAT NMS Plan.

project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees.²⁴⁹ The hourly fee rates for this firm were in line with market rates for the financial advisory services provided.²⁵⁰ Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Anchin. The services performed by Anchin and the costs related to such services are described above.²⁵¹

CAT LLC also determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the role given the balance of these considerations.²⁵² Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services.²⁵³ Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Grant Thornton. The services performed by Grant Thornton and the costs related to such services are described above.²⁵⁴

The professional and administrative costs also include costs related to the receipt of certain market data from Exegy. After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy. Exegy provided the data elements required by the CAT NMS Plan, and the fees were reasonable and in line with market rates for the market data received.²⁵⁵

The professional and administrative costs also include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the

effective design, implementation and operation of the controls specified by NIST Special Publication 800–53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment.²⁵⁶

(x) Public Relations Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover public relations costs as a part of Historical CAT Assessments.²⁵⁷ CAT LLC determined that the public relations costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that the types of public relations services utilized were beneficial to the CAT and market participants more generally. Public relations services were important for various reasons, including monitoring comments made by market participants about CAT and understanding issues related to the CAT discussed on the public record.²⁵⁸ By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT issues to the benefit of all market participants.²⁵⁹ Moreover, CAT LLC determined that the rates charged for such services were in line with market rates.²⁶⁰ As noted above, the total public relations costs through FAM Period 3 represent a small percentage of Historical CAT Costs 1—that is, 0.1% of Historical CAT Costs 1.

(B) Total Executed Equivalent Share Volume for the Prior 12 Months

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. CAT LLC determined the total executed equivalent share volume for the prior twelve months by counting executed equivalent shares in the same manner as it will count executed equivalent shares for CAT billing purposes.

(C) Historical Recovery Period 1

CAT LLC has determined to establish a Historical Recovery Period of 24 months for Historical CAT Assessment 1 and that such length is reasonable. CAT LLC determined that the length of Historical Recovery Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans notes to the Participants in a timely fashion. CAT LLC determined that 24 months for Historical Recovery Period 1 would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to Section 31.²⁶¹ In addition, in establishing a Historical Recovery Period of 24 months, CAT LLC recognized that the total costs for Historical CAT Assessment 1 was less than the total costs for 2022 and 2023, and therefore it would be appropriate to recover those costs in two years.

(D) Projected Executed Equivalent Share Volume for Historical Recovery Period 1

CAT LLC has determined to calculate the projected total executed equivalent share volume for the 24 months of Historical Recovery Period 1 by doubling the executed equivalent share volume for the prior 12 months. CAT LLC determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has remained relatively constant in recent years. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395, the executed equivalent share volume for 2022 was 4,039,821,841,560.31, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6. Accordingly, the projected total executed equivalent share volume for Historical Recovery Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.²⁶²

(E) Actual Fee Rate for Historical CAT Assessment 1

(i) Decimal Places

As noted in the Plan amendment for the CAT Funding Model, as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the

²⁴⁹ See Section 3(a)(2)(B)(i)(i) above.

²⁵⁰ See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

²⁵¹ *Id.*

²⁵² See Section 3(a)(2)(B)(i)(i) above.

²⁵³ See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

²⁵⁴ *Id.*

²⁵⁵ See Section 3(a)(2)(B)(i)(i) above.

²⁵⁶ *Id.*

²⁵⁷ Section 11.3(b)(iii)(B)(III)(B)(6) of the CAT NMS Plan.

²⁵⁸ See Section 3(a)(2)(B)(i)(j) above.

²⁵⁹ See Sections 3(a)(2)(B)(i)(j), 3(a)(2)(B)(ii)(j), 3(a)(2)(B)(iii)(j) and 3(a)(2)(B)(iv)(j) above.

²⁶⁰ *Id.*

²⁶¹ As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model Approval Order at 62682.

²⁶² This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee rate.²⁶³ Accordingly, proposed paragraph (a)(1)(B) of the fee schedule would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 by one-third, and rounding the result to 6 decimal places. CAT LLC determined that the use of six decimal places is reasonable as it balances the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

(ii) Reasonable Fee Level

The Exchange believes that imposing Historical CAT Assessment 1 with a fee rate of \$0.000013 per executed equivalent share is reasonable because it provides for a revenue stream for the Company that is aligned with Historical CAT Costs 1 and such costs would be spread out over an appropriate recovery period, as discussed above. Moreover, the Exchange believes that the level of the fee rate is reasonable, as it is comparable to other transaction-based fees. Indeed, Historical CAT Assessment 1 is significantly lower than fees assessed pursuant to Section 31 (e.g., \$0.0009 per share to 0.0004 per share),²⁶⁴ and, as a result, the magnitude of Historical CAT Assessment 1 is small, and therefore will mitigate any potential adverse economic effects or inefficiencies.²⁶⁵ Furthermore, the reasonable fee rate for Historical CAT Assessment 1 further supports CAT LLC's decision to seek to recover all Historical CAT Costs prior to 2022, rather than establishing separate Historical CAT Assessments for pre-FAM, FAM 1, FAM 2 and FAM 3 costs.

(3) Historical CAT Assessment 1 Provides for an Equitable Allocation of Fees

Historical CAT Assessment 1 provides for an equitable allocation of fees, as it equitably allocates CAT costs between and among the Participants and Industry Members. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act, including the formula for calculating Historical CAT Assessments as well as the Industry Members to be charged the Historical CAT Assessments.²⁶⁶ In approving the CAT

Funding Model, the SEC stated that “[t]he Participants have sufficiently demonstrated that the proposed allocation of fees is reasonable.”²⁶⁷ Accordingly, the CAT Funding Model sets forth the requirements for allocating fees related to Historical CAT Costs among Participants and Industry Members, and the fee filings for Historical CAT Assessments must comply with those requirements.

Historical CAT Assessment 1 provides for an equitable allocation of fees as it complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. For example, as described above, the calculation of Historical CAT Assessment 1 complies with the formula set forth in Section 11.3(b) of the CAT NMS Plan. In addition, Historical CAT Assessment 1 would be charged to CEBBs and CEBs in accordance with Section 11.3(b) of the CAT NMS Plan. Furthermore, the Participants would continue to remain responsible for their designated share of Past CAT Costs through the cancellation of loans made by the Participants to CAT LLC.

In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1—Historical CAT Costs 1 (including Excluded Costs), the count for the executed equivalent share volume for the prior 12 months, the length of the Historical Recovery Period, and the projected executed equivalent share volume for the Historical Recovery Period—are reasonable. Moreover, these inputs lead to a reasonable fee rate for Historical CAT Assessment 1 that is lower than other fee rates for transaction-based fees. A reasonable fee rate allocated in accordance with the requirements of the CAT Funding Model provides for an equitable allocation of fees.

(4) Historical CAT Assessment 1 Is Not Unfairly Discriminatory

Historical CAT Assessment 1 is not an unfairly discriminatory fee. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act. In reaching this conclusion, the SEC analyzed the potential effect of Historical CAT Assessments calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members,

such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Historical CAT Assessment 1 complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1 and the resulting fee rate for Historical CAT Assessment 1 is reasonable. Therefore, Historical CAT Assessment 1 does not impose an unfairly discriminatory fee on Industry Members.

Finally, the Exchange believes the proposed fees established pursuant to the CAT Funding Model promote just and equitable principles of trade, and, in general, protect investors and the public interest, and are provided in a transparent manner and specificity in the fee schedule. The Exchange also believes that the proposed fees are reasonable because they would provide ease of calculation, ease of billing and other administrative functions, and predictability of a fee based on fixed rate per executed equivalent share. Such factors are crucial to estimating a reliable revenue stream for CAT LLC and for permitting Exchange members to reasonably predict their payment obligations for budgeting purposes.

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

Section 6(b)(8) of the Act²⁶⁸ requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that Historical CAT Assessment 1 implements provisions of the CAT NMS Plan that were approved by the Commission and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan.

In addition, all Participants (including exchanges and FINRA) are proposing to introduce Historical CAT Assessment 1 on behalf of CAT LLC to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive fee filing, and, therefore, it does not raise competition issues between and among the Participants.

Furthermore, in approving the CAT Funding Model, the SEC analyzed the

²⁶³ CAT Funding Model Approval Order at 62658, n.658.

²⁶⁴ CAT Funding Model Approval Order at 62663, 62682.

²⁶⁵ *Id.*

²⁶⁶ See Section 11.3(b) of the CAT NMS Plan.

²⁶⁷ CAT Funding Model Approval Order at 62629.

²⁶⁸ 15 U.S.C. 78f(b)(8).

potential competitive impact of the CAT Funding Model, including competitive issues related to market services, trading services and regulatory services, efficiency concerns, and capital formation.²⁶⁹ The SEC also analyzed the potential effect of CAT fees calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Based on this analysis, the SEC approved the CAT Funding Model as compliant with the Exchange Act. Historical CAT Assessment 1 is calculated and implemented in accordance with the CAT Funding Model as approved by the SEC.

As discussed above, each of the inputs into the calculation of Historical CAT Assessment 1 is reasonable and the resulting fee rate for Historical CAT Assessment 1 calculated in accordance with the CAT Funding Model is reasonable. Therefore, Historical CAT Assessment 1 would not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act²⁷⁰ and Rule 19b-4(f)(2) thereunder,²⁷¹ because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-MRX-2024-33 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-MRX-2024-33. This file

number should be included on the subject line if email 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 (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-MRX-2024-33 and should be submitted on or before October 3, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷²

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-20474 Filed 9-11-24; 8:45 am]

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²⁶⁹ CAT Funding Model Approval Order at 62676-86.

²⁷⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁷¹ 17 CFR 240.19b-4(f)(2).

²⁷² 17 CFR 200.30-3(a)(12).



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Part III

Securities and Exchange Commission

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100936; File No. SR–BOX–2024–21]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail

September 5, 2024,

Pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b–4 thereunder,² notice is hereby given that on August 27, 2024, BOX Exchange LLC (the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the Fee Schedule to establish fees for Industry Members³ related to certain historical costs of the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”) incurred prior to January 1, 2022. These fees would be payable to Consolidated Audit Trail, LLC (“CAT LLC” or “the Company”)⁴ and referred to as Historical CAT Assessment 1, and would be described in a section of the Exchange’s fee schedule entitled “Consolidated Audit Trail Funding Fees.” The fee rate for Historical CAT Assessment 1 will be \$0.000013 per executed equivalent share. CAT Executing Brokers will receive their first monthly invoice for Historical CAT Assessment 1 in

November 2024 calculated based on their transactions as CAT Executing Brokers for the Buyer (“CEBB”) and/or CAT Executing Brokers for the Seller (“CEBS”) in October 2024. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission’s Public Reference Room and also on the Exchange’s internet website at <https://rules.boxexchange.com/rulefilings>.

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

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

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

1. Purpose

On July 11, 2012, the Commission adopted Rule 613 of Regulation NMS, which required the self-regulatory organizations (“SROs”) to submit a national market system (“NMS”) plan to create, implement and maintain a consolidated audit trail that would capture customer and order event information for orders in NMS securities across all markets, from the time of order inception through routing, cancellation, modification or execution.⁵ On November 15, 2016, the Commission approved the CAT NMS Plan.⁶ Under the CAT NMS Plan, the Operating Committee has the discretion to establish funding for CAT LLC to operate the CAT, including establishing fees for Industry Members to be assessed by CAT LLC that would be implemented on behalf of CAT LLC by the Participants.⁷ The Operating Committee adopted a revised funding model to fund the CAT (“CAT Funding Model”). On September 6, 2023, the Commission approved the CAT Funding Model, after concluding that the model was

reasonable and that it satisfied the requirements of Section 11A of the Exchange Act and Rule 608 thereunder.⁸

The CAT Funding Model provides a framework for the recovery of the costs to create, develop and maintain the CAT, including providing a method for allocating costs to fund the CAT among Participants and Industry Members. The CAT Funding Model establishes two categories of fees: (1) CAT fees assessed by CAT LLC and payable by certain Industry Members to recover a portion of historical CAT costs previously paid by the Participants (“Historical CAT Assessment” fees); and (2) CAT fees assessed by CAT LLC and payable by Participants and Industry Members to fund prospective CAT costs (“Prospective CAT Costs” fees).⁹

Under the CAT Funding Model, “[t]he Operating Committee will establish one or more fees (each a ‘Historical CAT Assessment’) to be payable by Industry Members with regard to CAT costs previously paid by the Participants (‘Past CAT Costs’).”¹⁰ In establishing a Historical CAT Assessment, the Operating Committee will determine a “Historical Recovery Period” and calculate a “Historical Fee Rate” for that Historical Recovery Period. Then, for each month in which a Historical CAT Assessment is in effect, each CEBB and CEBS would be required to pay the fee—the Historical CAT Assessment—for each transaction in Eligible Securities executed by the CEBB or CEBS 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.¹¹

⁸ Securities Exchange Act Rel. No. 98290 (Sept. 6, 2023), 88 FR 62628 (Sept. 12, 2023) (“CAT Funding Model Approval Order”).

⁹ Under the CAT Funding Model, the Operating Committee may establish one or more Historical CAT Assessments. Section 11.3(b) of the CAT NMS Plan. This filing only establishes Historical CAT Assessment 1 related to certain Historical CAT Costs as described herein; it does not address any other potential Historical CAT Assessment related to other Historical CAT Costs. In addition, under the CAT Funding Model, the Operating Committee also may establish CAT Fees related to CAT costs going forward. Section 11.3(a) of the CAT NMS Plan. This filing does not address any potential CAT Fees related to CAT costs going forward. Any such other fee for any other Historical CAT Assessment or CAT Fee for Prospective CAT Costs will be subject to a separate fee filing.

¹⁰ Section 11.3(b) of the CAT NMS Plan.

¹¹ In approving the CAT Funding Model, the Commission stated that, “[i]n the Commission’s view, the proposed recovery of the Past CAT Costs via the Historical CAT Assessment is reasonable.” CAT Funding Model Approval Order at 62662.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ An “Industry Member” is defined as “a member of a national securities exchange or a member of a national securities association.” See BOX Rule 16010 Consolidated Audit Trail—Definitions. See also Section 1.1 of the CAT NMS Plan. Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the CAT NMS Plan and/or the CAT Compliance Rule. See BOX Rule Series 16000 CONSOLIDATED AUDIT TRAIL COMPLIANCE RULE.

⁴ The term “CAT LLC” may be used to refer to Consolidated Audit Trail, LLC or CAT NMS, LLC, depending on the context.

⁵ Securities Exchange Act Rel. No. 67457 (July 18, 2012), 77 FR 45721 (Aug. 1, 2012) (“Rule 613 Adopting Release”).

⁶ Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (“CAT NMS Plan Approval Order”).

⁷ Section 11.1(b) of the CAT NMS Plan.

Each Historical CAT Assessment to be paid by CEBBs and CEBs is designed to contribute toward the recovery of two-thirds of the Historical CAT Costs. Because the Participants previously have paid Past CAT Costs via loans to the Company, the Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made by the Participants to the Company on a pro rata basis based on the outstanding loan amounts due under the loans, instead of through the payment of a CAT fee.¹² In addition, the Participants also will be 100% responsible for certain Excluded Costs (as discussed below).

CAT LLC proposes to charge CEBBs and CEBs (as described in more detail below) Historical CAT Assessment 1 to recover certain historical CAT costs incurred prior to January 1, 2022, in accordance with the CAT Funding Model. To implement this fee on behalf of CAT LLC, the CAT NMS Plan requires the Participants to "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.'"¹³ The Plan further states that "Participants will be required to file with the SEC pursuant to Section 19(b) of the Exchange Act a filing for each Historical CAT Assessment."¹⁴ Accordingly, the purpose of this filing is to implement a Historical CAT Assessment on behalf of CAT LLC for Industry Members, referred to as Historical CAT Assessment 1, in accordance with the CAT NMS Plan.¹⁵

The Exchange previously filed a fee filing to implement Historical CAT Assessment 1. On January 17, 2024, the SEC published this prior filing for Historical CAT Assessment 1, temporarily suspended the fee filing, and instituted proceedings to determine whether to approve or disapprove the fee filing.¹⁶ The Exchange is withdrawing its original fee filing for Historical CAT Assessment 1. This Historical CAT Assessment 1 replaces the prior Historical CAT Assessment 1 that was previously filed with the Commission.

(1) CAT Executing Brokers

Historical CAT Assessment 1 will be charged to each CEBB and CEBs for each applicable transaction in Eligible Securities.¹⁷ The CAT NMS Plan defines a "CAT Executing Broker" to mean:

(a) with respect to a transaction in an Eligible Security that is executed on an exchange, the Industry Member identified as the Industry Member responsible for the order on the buy-side of the transaction and the Industry Member responsible for the sell-side of the transaction in the equity order trade event and option trade event in the CAT Data submitted to the CAT by the relevant exchange pursuant to the Participant Technical Specifications; and (b) with respect to a transaction in an Eligible Security that is executed otherwise than on an exchange and required to be reported to an equity trade reporting facility of a registered national securities association, the Industry Member identified as the executing broker and the Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event in the CAT Data submitted to the CAT by FINRA pursuant to the Participant Technical Specifications; provided, however, in those circumstances where there is a non-Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event or no contra-side executing broker is identified in the TRF/ORF/ADF transaction data event, then the Industry Member identified as the executing broker in the TRF/ORF/ADF transaction data event would be treated as CAT Executing Broker for the Buyer and for the Seller.¹⁸

The following fields of the Participant Technical Specifications indicate the CAT Executing Brokers for the transactions executed on an exchange.

EQUITY ORDER TRADE (EOT)¹⁹

No.	Field name	Data type	Description	Include key
12.n.8/13.n.8	member	Member Alias	The identifier for the member firm that is responsible for the order on this side of the trade. Not required if there is no order for the side as indicated by the NOBUYID/NOSELLID instruction. This must be provided if orderID is provided..	C

OPTION TRADE (OT)²⁰

No.	Field name	Data type	Description	Include key
16.n.13/17.n.13	member	Member Alias	The identifier for the member firm that is responsible for the order	R

In addition, the following fields of the Participant Technical Specifications would indicate the CAT Executing

Brokers for the transactions executed otherwise than on an exchange.

¹² Section 11.3(b)(ii) of the CAT NMS Plan.

¹³ Section 11.1(b) of the CAT NMS Plan.

¹⁴ Section 11.3(b)(iii)(B)(I) of the CAT NMS Plan.

¹⁵ Note that there may be one or more Historical CAT Assessments depending on the timing of the completion of the Financial Accountability Milestones, among other things. Section 11.3(b) of the CAT NMS Plan.

¹⁶ See Securities Exchange Act Rel. No. 99377 (Jan. 17, 2024), 89 FR 10544 (Feb. 13, 2024) (SR-BOX-2024-03).

¹⁷ In its approval of the CAT Funding Model, the Commission determined that charging CAT fees to CAT Executing Brokers was reasonable. In reaching this conclusion the Commission noted that the use

of CAT Executing Brokers is appropriate because the CAT Funding Model is based upon the calculation of *executed* equivalent shares, and, therefore, charging CAT Executing Brokers would reflect their executing role in each transaction. Furthermore, the Commission noted that, because CAT Executing Brokers are already identified in transaction reports from the exchanges and FINRA's equity trade reporting facilities recorded in CAT Data, charging CAT Executing Brokers could streamline the billing process. CAT Funding Model Approval Order at 62629.

¹⁸ Section 1.1 of the CAT NMS Plan. Note that CEBBs and CEBs may, but are not required to, pass-through their CAT fees to their clients, who

may, in turn, pass their fees to their clients until they are imposed ultimately on the account that executed the transaction. See CAT Funding Model Approval Order at 62649.

¹⁹ See Table 23, Section 4.7 (Order Trade Event) of the CAT Reporting Technical Specifications for Plan Participants, Version 4.1.0-r21 (Apr. 15, 2024), https://www.catnmsplan.com/sites/default/files/2024-04/04.15.2024-CAT_Reporting_Technical_Specifications_for_Participants_4.1.0-r21.pdf ("CAT Reporting Technical Specifications for Plan Participants").

²⁰ See Table 51, Section 5.2.5.1 (Simple Option Trade Event) of the CAT Reporting Technical Specifications for Plan Participants.

TRF/ORF/ADF TRANSACTION DATA EVENT (TRF)²¹

No.	Field name	Data type	Description	Include key
26	reportingExecutingMpid	Member Alias	MPID of the executing party	R
28	contraExecutingMpid	Member Alias	MPID of the contra-side executing party	C

(2) Calculation of Historical Fee Rate 1

The Operating Committee determined the Historical Fee Rate to be used in calculating Historical CAT Assessment 1 (“Historical Fee Rate 1”) by dividing the Historical CAT Costs for Historical CAT Assessment 1 (“Historical CAT Costs 1”) by the projected total executed share volume of all transactions in Eligible Securities for the Historical Recovery Period for Historical CAT Assessment 1 (“Historical Recovery Period 1”), as discussed in detail below. Based on this calculation, the Operating Committee has determined that Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. This rate is then divided by three and rounded to determine the fee rate of \$0.000013 per executed equivalent share that will be assessed to CEBBs and CEBs, as also discussed in detail below.

(A) Executed Equivalent Shares for Transactions in Eligible Securities

Under the CAT NMS Plan, for purposes of calculating each Historical CAT Assessment, executed equivalent shares in a transaction in Eligible Securities will be reasonably counted as follows: (1) each executed share for a transaction in NMS Stocks will be counted as one executed equivalent share; (2) each executed contract for a transaction in Listed Options will be counted based on the multiplier applicable to the specific Listed Options (*i.e.*, 100 executed equivalent shares or such other applicable multiplier); and

(3) each executed share for a transaction in OTC Equity Securities shall be counted as 0.01 executed equivalent share.²²

(B) Historical CAT Costs 1

The CAT NMS Plan states that “[t]he Operating Committee will reasonably determine the Historical CAT Costs sought to be recovered by each Historical CAT Assessment, where the Historical CAT Costs will be Past CAT Costs minus Past CAT Costs reasonably excluded from Historical CAT Costs by the Operating Committee. Each Historical CAT Assessment will seek to recover from CAT Executing Brokers two-thirds of Historical CAT Costs incurred during the period covered by the Historical CAT Assessment.”²³ As described in detail below, Historical CAT Costs 1 would be \$318,059,819. This figure includes Past CAT Costs of \$401,312,909 minus certain Excluded Costs of \$83,253,090. Participants collectively will remain responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), plus the Excluded Costs of \$83,253,090. CEBBs collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), and CEBs collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67).

The following describes in detail Historical CAT Costs 1 with regard to four separate historical time periods as well as Past CAT Costs excluded from Historical CAT Costs 1 (“Excluded Costs”). The following cost details are

provided in accordance with the requirement in the CAT NMS Plan to provide in the fee filing “a brief description of the amount and type of Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs.”²⁴ Each of the costs described below are reasonable, appropriate and necessary for the creation, implementation and maintenance of CAT.

(i) Historical CAT Costs Incurred Prior to June 22, 2020 (Pre-FAM Costs)

Historical CAT Costs 1 would include costs incurred by CAT prior to June 22, 2020 (“Pre-FAM Period”) and already funded by the Participants, excluding Excluded Costs (described further below). Historical CAT Costs 1 would include costs for the Pre-FAM Period of \$124,290,730. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$41,430,243.33), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$41,430,243.33) and CEBs paying one-third (\$41,430,243.33). These costs do not include Excluded Costs, as discussed further below. The following table breaks down Historical CAT Costs 1 for the Pre-FAM Period into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs 1 for Pre-FAM Period (prior to June 22, 2020) *
Capitalized Developed Technology Costs **	\$51,847,150
<i>Technology Costs</i>	33,568,579
Cloud Hosting Services	10,268,840
Operating Fees	21,085,485
CAIS Operating Fees	2,072,908
Change Request Fees	141,346
Legal	19,674,463
Consulting	17,013,414
Insurance	880,419
Professional and administration	1,082,036

²¹ See Table 61, Section 6.1 (TRF/ORF/ADF Transaction Data Event) of the CAT Reporting Technical Specifications for Plan Participants.

²² Section 11.3(a)(i)(B) and 11.3(b)(i)(B) of the CAT NMS Plan. In approving the CAT Funding

Model, the Commission concluded that “the use of executed equivalent share volume as the basis of the proposed cost allocation methodology is reasonable and consistent with the approach taken

by the funding principles of the CAT NMS Plan.” CAT Funding Model Approval Order at 62640.

²³ Section 11.3(b)(i)(C) of the CAT NMS Plan.

²⁴ Section 11.3(b)(iii)(B)(II)(B) of the CAT NMS Plan.

Operating expense	Historical CAT costs 1 for Pre-FAM Period (prior to June 22, 2020) *
Public relations	224,669
Total Operating Expenses	124,290,730

*The costs described in this table of costs for the Pre-FAM Period were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website. In addition, in accordance with Section 6.6(a)(i) of the CAT NMS Plan, in 2018 CAT LLC provided the SEC with "an independent audit of fees, costs, and expenses incurred by the Participants on behalf of the Company prior to the Effective Date of the Plan that will be publicly available." The audit is available on the CAT website.

**The non-cash amortization of these capitalized developed technology costs of \$2,115,545 incurred during the period prior to June 22, 2020 have been appropriately excluded from the above table.²⁵

The Pre-FAM Period includes a broad range of CAT-related activity from 2012 through June 22, 2020, including the evaluation of the requirements of SEC Rule 613, the development of the CAT NMS Plan, the evaluation and selection of the initial and successor Plan Processors, the commencement of the creation and implementation of the CAT to comply with Rule 613 and the CAT NMS Plan, including technical specifications for transaction reporting and regulatory access, and related technology and the commencement of reporting to the CAT. The following describes the costs for each of the categories for the Pre-FAM Period.

(a) Technology Costs—Cloud Hosting Services

The \$10,268,840 in technology costs for cloud hosting services represent costs incurred for services provided by the cloud services provider for the CAT, Amazon Web Services, Inc. ("AWS"), during the Pre-FAM Period.

As part of its proposal for acting as the successor Plan Processor for the CAT, FCAT selected AWS as a subcontractor to provide cloud hosting services. In 2019, after reviewing the capabilities of other cloud services providers, FCAT determined that AWS was the only cloud services provider at that time sufficiently mature and capable of providing the full suite of necessary cloud services for the CAT, including, for example, the security, resiliency and complexity necessary for the CAT computing requirements. The

use of cloud hosting services is standard for this type of high-volume data activity and reasonable and necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT the fees incurred by the Plan Processor for cloud hosting services provided by AWS as FCAT's subcontractor [*sic*] on a monthly basis for the cloud hosting services, and FCAT, in turn, pays such fees to AWS. The fees for cloud hosting services were negotiated by FCAT on an arm's length basis with the goals of managing cost and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the expected volume of data, the breadth of services provided and market rates for similar services. The fees for cloud hosting services during the Pre-FAM Period were paid to FCAT by CAT NMS, LLC²⁶ and subsequently Consolidated Audit Trail, LLC (as previously noted, both entities are referred to generally as "CAT LLC"),²⁷ and FCAT, in turn, paid AWS. CAT LLC was funded via loan contributions by the Participants.²⁸

AWS was engaged by FCAT to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS include storage services, databases, compute services and other

services (such as networking, management tools and DevOps tools). AWS also was engaged to provide various environments for CAT, such as development, performance testing, test and production environments.

The cost for AWS services for the CAT is a function of the volume of CAT Data. The greater the amount of CAT Data, the greater the cost of AWS services to the CAT. During the Pre-FAM Period from the engagement of AWS in February 2019 through June 2020, AWS provided cloud hosting services for volumes of CAT Data far in excess of the volume predictions set forth in the CAT NMS Plan. The CAT NMS Plan states, when all CAT Reporters are submitting their data to the CAT, it "must be sized to receive[,] process and load more than 58 billion records per day,"²⁹ and that "[i]t is expected that the Central Repository will grow to more than 29 petabytes of raw, uncompressed data."³⁰ However, the volume of CAT Data for the Pre-FAM Period was far in excess of these predicted levels. By the end of this period, data submitted to the CAT included options and equities Participant Data,³¹ Phase 2a and Phase 2b Industry Member Data³² (including certain linkages), as well as SIP Data,³³ reference data and other types of Other Data.³⁴ The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during the Pre-FAM Period.³⁵

²⁵ With respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

²⁶ CAT NMS, LLC was formed by FINRA and the U.S. national securities exchanges to implement the requirements of SEC Rule 613 under the Exchange Act. SEC Rule 613 required the SROs to jointly submit to the SEC the CAT NMS Plan to create, implement and maintain the CAT. The SEC

approved the CAT NMS Plan on November 15, 2016. CAT NMS Plan Approval Order.

²⁷ On August 29, 2019, the Participants formed a new Delaware limited liability company named Consolidated Audit Trail, LLC for the purpose of conducting activities related to the CAT from and after the effectiveness of the proposed amendment of the CAT NMS Plan to replace CAT NMS, LLC. See Securities Exchange Act Rel. No. 87149 (Sept. 27, 2019), 84 FR 52905 (Oct. 3, 2019).

²⁸ For each of the costs paid by CAT NMS, LLC and Consolidated Audit Trail, LLC as discussed throughout this filing, CAT NMS, LLC and Consolidated Audit Trail, LLC paid these costs via loan contributions by the Participants to CAT NMS,

LLC and Consolidated Audit Trail, LLC, respectively.

²⁹ Appendix D-4 of the CAT NMS Plan at n.262.

³⁰ Appendix D-5 of the CAT NMS Plan.

³¹ See Section 6.3(d) of the CAT NMS Plan.

³² See Securities Exchange Rel. No. 88702 (Apr. 20, 2020), 85 FR 23075 (Apr. 24, 2020) ("Phased Reporting Exemptive Relief Order") for a description of Phase 2a and Phase 2b Industry Member Data.

³³ See Section 6.5(a)(ii) of the CAT NMS Plan.

³⁴ See Appendix C-108 of the CAT NMS Plan.

³⁵ Note that the volume data described in this table does not include CAIS data.

	Date range: 3/29/19 to 4/12/20 *	Date range: 4/13/20 to 6/21/20 **
Average Daily Volume in Billions:		
Participant—Equities	5	5
Participant—Options	80	981
Industry Member—Equities		3
Industry Member—Options		0.04
SIP—Options & Equities	64	70
Average Total Daily Volume	149	166
Cumulative Total Events for the Period	3,890	4,990
Total Compute Hours for the Period	*** N/A	5,663,247
Storage Footprint at End of Period (Petabytes)	30.57	47.96

* The Participant Equities in RSA format.

** Start of Industry Member reporting on 4/13/2020.

*** Note that, although there were compute hours during this period, data related to such compute hours are no longer available in current data.

(b) Technology Costs—Operating Fees

The \$21,085,485 in technology costs related to operating fees represent costs incurred with regard to activities of FCAT as the Plan Processor. Operating fees are those fees paid by CAT LLC to FCAT as the Plan Processor to operate and maintain the CAT and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.*, management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management as required by the CAT NMS Plan.

FCAT was selected to assume the role of the successor Plan Processor. Prior to this selection, the Participants engaged in discussions with two prior Bidders³⁶ for the successor Plan Processor role. The Operating Committee formed a Selection Subcommittee in accordance with Section 4.12 of the CAT NMS Plan to evaluate and review Bids and to make a recommendation to the Operating Committee with respect to the selection of the successor Plan Processor. In an April 9, 2019 letter to the Commission, the Participants described the reasons for its selection of the successor Plan Processor:

The Selection Subcommittee considered factors including, but not limited to, the following, in recommending FINRA to the Operating Committee as the successor Plan Processor:

- FINRA's specialized technical expertise and capabilities in the area of broker-dealer technology;
- The need to appoint a successor Plan Processor with specialized expertise to develop, implement, and maintain the CAT System in accordance with the CAT NMS Plan and SEC Rule 613;
- FINRA's detailed proposal in response to CATLLC's recent inquiries; and
- FINRA's data query and analytics systems demonstration to the Participants.

Based on these and other factors, the Selection Subcommittee determined that FINRA was the most appropriate Bidder to become the successor Plan Processor.³⁷

On February 26, 2019, the Operating Committee (with FINRA recusing itself) voted to select FINRA as the successor Plan Processor pursuant to Section 6.1(t) of the CAT NMS Plan.³⁸ On March 29, 2019, CAT LLC and FCAT (a wholly owned subsidiary of FINRA) entered into a Plan Processor Agreement pursuant to which FCAT would perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT a negotiated monthly fixed price for the operation of the CAT. This fixed price contract was negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity. The operating fees during the Pre-FAM Period were paid to FCAT by CAT LLC.

From March 29, 2019 (the commencement of the Plan Processor Agreement with FCAT) through June 22, 2020 (the end of the Pre-FAM Period), the Plan Processor's activities with respect to the CAT included the following:

- Commenced user acceptance testing with market data provided by Exegy Incorporated ("Exegy"), a market data provider;³⁹

³⁷ Letter from Michael J. Simon, Chair, CAT NMS, LLC Operating Committee, to Brent J. Fields, Secretary, SEC (Apr. 9, 2019), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection-040919.pdf>.

³⁸ *Id.*

³⁹ The use of Exegy to provide market data, including the costs and market data provided, is discussed below in Section 3(a)(2)(B)(i)(i).

- Published Technical Specifications and related reporting scenarios documents for Phase 2a, 2b and 2c reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;

- Facilitated testing for Phase 2a and 2b reporting for Industry Members;

- Began developing Technical Specifications and related reporting scenarios documents for Phase 2d reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;

- Published Central Repository Access Technical Specifications, and provided regulator access to test data from Industry Members;

- Facilitated Participant exchanges that support options market makers sending Quote Sent Time to the CAT;

- Facilitated the introduction of OPRA and Options NBBO Other Data to CAT;

- Addressed compliance items, including drafting CAT policies and procedures, and addressing requirements under Regulation SCI;

- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;

- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;

- Oversaw the security of the CAT;

- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;

- Provided support to subcontractors under the Plan Processor Agreement;

- Provided support in discussions with Participants, the SEC and its staff;

- Operated the FINRA CAT Helpdesk, which is the primary source for answers to questions about CAT, including questions regarding: clock synchronization, firm reporting

³⁶ The term "Bidder" is defined in Section 1.1 of the CAT NMS Plan.

responsibilities, interpretive questions, technical specifications for reporting to CAT and more;

- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content;⁴⁰ and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

The \$2,072,908 in technology costs related to CAIS operating fees represent the fees paid for FCAT's subcontractor charged with the development and operation of CAT's Customer and Account Information System ("CAIS"). The CAT is required under the CAT NMS Plan to capture and store Customer Identifying Information and Customer Account Information in a database separate from the transactional database and to create a CAT-Customer-ID for each Customer.

During the Pre-FAM Period, the CAIS-related services were provided by the Plan Processor through the Plan Processor's subcontractor, Kingland Systems Incorporation ("Kingland"). Kingland had experience operating in the securities regulatory technology space, and as a part of its proposal for acting as the Plan Processor for the CAT, FCAT selected Kingland as a subcontractor to provide certain CAIS-related services.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay to the Plan Processor the fees incurred by FCAT for CAIS-related services provided by FCAT through Kingland on a monthly basis. FCAT negotiated the fees for Kingland's CAIS-related services on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity. The fees for CAIS-related services during the Pre-FAM Period were paid by CAT LLC to FCAT. FCAT, in turn, paid Kingland.

During the Pre-FAM Period, Kingland began development of the CAIS Technical Specifications and the building of CAIS. In addition, Kingland also worked on the build related to the CCID Alternative, an alternative approach to customer information that

was not included in the CAT NMS Plan as originally adopted.⁴¹ Furthermore, Kingland also worked on the acceleration of the reporting of large trader identifiers ("LTID") earlier than originally contemplated during this period, in accordance with exemptive relief granted by the SEC.⁴²

(d) Technology Costs—Change Request Fees

The technology costs related to change request fees include costs related to certain modifications, upgrades or other changes to the CAT. Change requests are standard practice and necessary to reflect operational changes, including changes related to new market developments, such as new market participants. In general, if CAT LLC determines that a modification, upgrade or other change to the functionality or service is necessary and appropriate, CAT LLC will submit a request for such a change to the Plan Processor. The Plan Processor will then respond to the request with a proposal for implementing the change, including the cost (if any) of such a change. CAT LLC then determines whether to approve the proposed change. The change request costs were paid by CAT LLC to FCAT. During the Pre-FAM Period, CAT LLC incurred costs of \$141,346 related to change requests implemented by FCAT. Such change requests related to a development fee regarding the OPRA and SIP data feeds, and the reprocessing of certain exchange data.⁴³

(e) Technology Costs—Capitalized Developed Technology Costs

This category of costs includes capitalizable application development costs incurred in the development of the CAT. The capitalized developed technology costs for the Pre-FAM Period of \$51,847,150 relate to technology provided by the Initial Plan Processor and the successor Plan Processor.

Initial Plan Processor: Thesys CAT, LLC. The capitalized developed technology costs related to the Initial Plan Processor include costs incurred with regard to testing for Participant reporting, Participant reporting to the CAT, a security assessment of the CAT, and the development of the billing function for the CAT.

⁴¹ For a discussion of the CCID Alternative, see Securities Exchange Act Rel. No. 88393 (Mar. 17, 2020), 85 FR 16152 (Mar. 20, 2020).

⁴² Phased Reporting Exemptive Relief Order at 23079–80.

⁴³ Note that CAT LLC also has incurred costs related to specific Industry Members (e.g., reprocessing costs related to Industry Member reporting errors).

On January 17, 2017, the Selection Committee of the CAT NMS Plan selected the Initial Plan Processor, Thesys Technologies, LLC, for the CAT NMS Plan pursuant to Article V of the CAT NMS Plan.⁴⁴ The Participants utilized a request for proposal ("RFP") to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan, taking into consideration that the Initial Plan Processor had experience operating in the securities regulatory technology space, among other considerations. On April 6, 2017, CAT LLC entered into an agreement with Thesys CAT LLC ("Thesys CAT"), a Thesys affiliate, to perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT. Under the agreement, CAT LLC would pay Thesys CAT a negotiated, fixed price fee for its role as the Initial Plan Processor. Effective January 30, 2019, the Plan Processor Agreement with Thesys CAT was terminated, and FCAT was subsequently selected as the successor Plan Processor.

From January 17, 2017 through January 30, 2019, the time in which the Thesys CAT was engaged for the CAT, but excluding the period from November 15, 2017 through January 30, 2019, the Initial Plan Processor engaged in various activities with respect to the CAT, including preparing iterative drafts of Participant Technical Specifications, Industry Member Technical Specifications and the Central Repository Access Technical Specifications. In addition, Thesys CAT also developed CAT technology, addressed compliance items, including drafting CAT policies and procedures, addressing Regulation SCI requirements, establishing a CAT Compliance Officer and a Chief Information Security Officer, addressed security-related matters for the CAT, and worked towards the initiation of Participant reporting per the Participant Technical Specifications.

Successor Plan Processor: FCAT. The capitalized developed technology costs related to FCAT include: (1) development costs incurred during the

⁴⁰ The CAT website is <https://www.catnmsplan.com>.

⁴⁴ Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf>.

application development stage to meet various agreed-upon milestones regarding the CAT, including the completion of go-live functionality related to options ingestion and validation, equities regulatory services agreement query tool updates and unlinked options data query, options linkages release, Industry Member Phase 2a file submission and data integrity (including error corrections), and Industry Member testing, including reporting relationships, ATS order type management, basic reporting statistics, SFTP data integrity feedback and error correction; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including a one-time development fee for a secure analytics workspace, a one-time development fee of an Industry Member connectivity solution, and a one-time development fee for the acceleration of multi-factor authentication; (3) CAIS implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$19,674,463 represent the fees paid for legal services provided by two law firms, Wilmer Cutler Pickering Hale and Dorr LLP (“WilmerHale”) and Pillsbury Winthrop Shaw Pittman LLP (“Pillsbury”), during the Pre-FAM Period. The legal costs exclude those costs incurred from November 15, 2017 through November 15, 2018.

Law Firm: WilmerHale. Following the adoption of Rule 613, the Participants determined it was necessary to engage external legal counsel to advise the Participants with respect to corporate and regulatory legal matters related to the CAT, including drafting and developing the CAT NMS Plan. The Participants considered a variety of factors in their analysis of prospective law firms, including (1) the firm’s qualifications, resources and expertise; (2) the firm’s relevant experience and understanding of the regulatory matters raised by the CAT and in advising on matters of similar scope; (3) the composition of the legal team; and (4) professional fees. Following a series of interviews, the Participants acting as a consortium determined that WilmerHale was well qualified given the balance of these considerations and engaged WilmerHale in February 2013.

WilmerHale’s billing rates are negotiated on an annual basis and are determined with reference to the rates charged by other leading law firms for similar work. The Participants assess

WilmerHale’s performance and review prospective budgets and staffing plans submitted by WilmerHale on an annual basis. WilmerHale’s compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading law firms for similar work.

The legal costs for WilmerHale during the Pre-FAM Period included costs incurred from 2013 until June 22, 2020 to address corporate and regulatory legal matters related to the CAT. The legal fees for this law firm during the period from February 2013 until the formation of the CAT NMS, LLC on November 15, 2016 were paid directly by the exchanges and FINRA to WilmerHale. After the formation of CAT NMS LLC, the legal fees were paid by CAT LLC to WilmerHale.

After WilmerHale was engaged in 2013 through the end of the Pre-FAM Period on June 22, 2020 (excluding the legal costs from November 15, 2017 through November 15, 2018), WilmerHale provided legal assistance to the CAT on a variety of matters, including with regard to the following:

- Analyzed various legal matters associated with the Selection Plan, and drafted an amendment to the Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the Development Advisory Group (“DAG”);
- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on CAT NMS Plan;
- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan, and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;
- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan and related filings;
- Negotiated and drafted the plan processor agreements with the Initial

Plan Processor and the successor Plan Processor;

- Provided assistance with compliance with Regulation SCI;
- Assisted with clock synchronization study;
- Provided assistance with respect to the establishment of CAT security;
- Drafted exemptive requests from CAT NMS Plan requirements, including with regard to options market maker quotes, Customer IDs, CAT Reporter IDs, linking allocations to executions, CAT reporting timeline, FDIDs, customer and account information, timestamp granularity, small industry members, data facility reporting and linkage, allocation reports, SRO-assigned market participant identifiers and cancelled trade indicators, thereby seeking to implement changes that would be cost effective and benefit Industry Members and Participants;
- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Provided advice regarding CAT policies and procedures;
- Analyzed the SEC’s amendment of the CAT NMS Plan regarding financial accountability;
- Provided interpretations of and related to the CAT NMS Plan;
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues; and
- Assisted with third-party vendor agreements.

Law Firm: Pillsbury. The legal costs for CAT during the Pre-FAM Period include costs related to the legal services performed by Pillsbury. The Participants interviewed this law firm as well as other potential law firms to provide legal assistance regarding certain liability matters. After considering a variety of factors in its analysis, including the relevant expertise and fees of the firm, CAT LLC determined to hire Pillsbury in April 2019. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees were paid by CAT LLC to Pillsbury. The legal costs for Pillsbury during the Pre-FAM Period included costs incurred from April 2019 until June 22, 2020 to address legal matters regarding the agreements between CAT Reporters and CAT LLC concerning certain terms associated with CAT Reporting (the “Reporter Agreement”). During that period, Pillsbury advised CAT LLC regarding applicable legal matters, participated in negotiations between the Participants and Industry Members, participated in meetings with senior

SEC staff, the Chairman, and Commissioners, represented CAT LLC and the Participants in an SEC administrative proceeding, and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, litigation involving CAT LLC is an expense of operating the CAT, and, therefore, is appropriately an obligation of both Participants and Industry Members under the CAT Funding Model.

(g) Consulting Costs

The consulting costs of \$17,013,414 represent the fees paid to the consulting firm Deloitte & Touche LLP ("Deloitte") as project manager during the Pre-FAM Period, from October 2012 until June 22, 2020. These consulting costs include costs for advisory services related to the operation of the CAT, and meeting facilitation and communications coordination, vendor support and financial analyses.

To help facilitate project management given the unprecedented complexity and scope of the CAT project, the Participants determined it was necessary to engage a consulting firm to assist with the CAT project in 2012, following the adoption of Rule 613. A variety of factors were considered in the analysis of prospective consulting firms, including (1) the firm's qualifications, resources, and expertise; (2) the firm's relevant experience and understanding of the regulatory issues raised by the CAT and in coordinating matters of similar scope; (3) the composition of the consulting team; and (4) professional fees. Following a series of interviews, the exchanges and FINRA as a consortium determined that Deloitte was well qualified given the balance of these considerations and engaged Deloitte on October 1, 2012.

Deloitte's fee rates are negotiated on an annual basis and are in line with market rates for this type of specialized consulting work. CAT LLC assesses Deloitte's performance and reviews prospective budgets and staffing plans submitted by Deloitte on an annual basis. Deloitte's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading consulting firms for similar work.

The consulting costs for CAT during the period from 2012 until the formation of the CAT NMS, LLC were paid directly by the Participants to Deloitte.

After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC to Deloitte. CAT LLC reviewed the consulting fees each month and approved the invoices.

After Deloitte was hired in 2012 through the end of the Pre-FAM Period on June 22, 2020 (excluding the consulting costs from November 15, 2017 through November 15, 2018), Deloitte provided a variety of consulting services, including the following:

- Established and implemented program operations for the CAT project, including the program management office and workstream design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participant's independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, analyzing OATS and CAT requirements, and drafting appendices to the Plan;
- Assisted with cost and funding-related activities for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with industry outreach and communications regarding the CAT, including assistance with industry outreach events, the development of the CAT website, frequently asked questions, and coordinating with the CAT LLC's public relations firm;
- Provided support for updating the SEC on the progress of the development of the CAT;

- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress;

- Coordinated efforts regarding the selection of the successor Plan Processor;

- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor, including support for the Operating Committee and successor Plan Processor for the new role; and

- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$880,419 represent the cost incurred for insurance for CAT during the Pre-FAM Period. Commencing in 2020, CAT LLC performed an evaluation of various potential alternatives for CAT insurance policies, which included engaging in discussions with different insurance companies and conducting cost comparisons of various alternative approaches to insurance. Based on an analysis of a variety of factors, including coverage and premiums, CAT LLC determined to purchase cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance from USI Insurance Services LLC ("USI"). Such policies are standard for corporate entities, and cyber security liability insurance is important for the CAT System. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

In adopting the CAT NMS Plan, the Commission amended the Plan to add a requirement that CAT LLC's financial statements be prepared in compliance with GAAP, audited by an independent public accounting firm, and made publicly available.⁴⁵ The professional and administration costs include costs related to accounting and accounting advisory services to support the operating and financial functions of CAT, financial statement audit services by an independent accounting firm, preparation of tax returns, and various cash management and treasury functions. In addition, professional and administration costs for the Pre-FAM Period include costs related to the

⁴⁵ Section 9.2 of the CAT NMS Plan.

receipt of market data and a security assessment. The costs for these professional and administration services were \$1,082,036 for the Pre-FAM Period.

Financial Advisory Firm: Anchin Accountants & Advisors ("Anchin"). CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT in April 2018. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The hourly fee rates for this firm were in line with market rates for these financial advisory services. The fees for these services were paid by CAT LLC to Anchin.

After Anchin was hired in April 2018 through the end of the Pre-FAM Period on June 22, 2020 (excluding the period from April 2018 through November 15, 2018), Anchin provided a variety of services, including the following:

- Developed, updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Addressed accounting and financial reporting matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC, including supporting the dissolution of CAT NMS, LLC;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Accounting Firm: Grant Thornton LLP ("Grant Thornton"). In February 2020,

CAT LLC determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the proposed role given the balance of these considerations. Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services. The fees for these services were paid by CAT LLC to Grant Thornton.

Market Data Provider: Exegy. The professional and administrative costs for the Pre-FAM Period included costs related to the receipt of certain market data for the CAT pursuant to an agreement with the CAT LLC, and then with FCAT. Exegy provided SIP Data required by the CAT NMS Plan.

After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy from July 2018 through March 2019. CAT LLC determined that, unlike certain other vendors, Exegy provided market data that included all data elements required by the CAT NMS Plan.⁴⁶ In addition, the fees were reasonable and in line with market rates for the market data received. Accordingly, the professional and administrative costs for the Pre-FAM Period include the Exegy costs from November 2018 through March 2019. The cost of the market data was reasonable for the market data received. The fees for the market data were paid directly by CAT LLC to Exegy.

Upon the termination of the contract between CAT LLC and Exegy, FCAT entered into a contract with Exegy to purchase the required market data from Exegy in July 2019. All costs under the contract were treated as a direct pass through cost to CAT LLC. Therefore, the fees for the market data were paid by CAT LLC to FCAT, who, in turn, paid Exegy for the market data.

Security Assessment: RSM US LLP ("RSM"). The operating costs for the Pre-FAM Period include costs related to a third party security assessment of the

CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation, and operation of the controls specified by NIST Special Publication 800-53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment. RSM performed the assessment from October 2018 through December 2018. Accordingly, the costs for the Pre-FAM Period include the costs incurred in November and December 2018. The cost for the security assessment were paid directly to RSM by CAT LLC.

(j) Public Relations Costs

The public relations costs of \$224,669 represent the fees paid to public relations firms during the Pre-FAM Period for professional communications services to CAT, including media relations consulting, strategy and execution. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants. Specifically, the public relations firms provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). Public relations services were important for various reasons, including monitoring comments made by market participants about CAT and understanding issues related to the CAT discussed on the public record.

The services performed by each of the public relations firms were comparable. The fees for such services were reasonable and in line with market rates. Only one public relations firm was engaged at a time; the three firms were engaged sequentially as the primary public relations contact moved among the three firms during this time period.

Public Relations Firm: Peppercomm, Inc. ("Peppercomm"). The national securities exchanges and FINRA, acting

⁴⁶ See Section 6.5(a)(ii) of the CAT NMS Plan.

as a consortium, determined to hire the public relations firm Peppercomm in October 2014 and continued to engage this firm through September 2017. The exchanges and FINRA made this engagement decision after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fee rates for this public relations firm were negotiated on an arm's length basis and were in line with market rates for these types of services. The public relations costs during the period from October 2014 until the formation of the CAT NMS, LLC were paid directly by the exchanges and FINRA to the public relations firm. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC.

Public Relations Firm: Sloane & Company ("Sloane"). CAT LLC determined to hire a new public relations firm, Sloane, in March 2018,

based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Sloane. CAT LLC continued the engagement with Sloane until February 2020.

Public Relations Firm: Peak Strategies. CAT LLC determined to hire a new public relations firm, Peak Strategies, in March 2020, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Peak Strategies.

(ii) Historical CAT Costs Incurred in Financial Accountability Milestone Period 1

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 1 of the Financial Accountability Milestones ("FAM Period 1"),⁴⁷ which covers the period from June 22, 2020–July 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 1 of \$6,377,343. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$2,125,781), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBs paying one-third (\$2,125,781). The following table breaks down Historical CAT Costs 1 for FAM Period 1 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 1 *
Capitalized Developed Technology Costs **	\$1,684,870
Technology Costs	3,996,800
Cloud Hosting Services	2,642,122
Operating Fees	1,099,680
CAIS Operating Fees	254,998
Change Request Fees	
Legal	481,687
Consulting	137,209
Insurance	
Professional and administration	69,077
Public relations	7,700
Total Operating Expenses	6,377,343

* The costs described in this table of costs for FAM Period 1 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$362,121 incurred during FAM Period 1 have been appropriately excluded from the above table.⁴⁸

By the completion of FAM Period 1, CAT LLC was required to implement the reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of equities transaction data and options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.⁴⁹ CAT LLC completed the requirements of FAM Period 1 by July 31, 2020. The following describes the costs for each of the categories for FAM Period 1.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 1 to provide a broad array of cloud hosting services for the CAT,

including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production environments, during the FAM 1 Period. Accordingly, the \$2,642,122 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 1. The fee arrangement for AWS described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor

Agreement. Moreover, CAT LLC continued to believe that AWS's maturity in the cloud services space as well as the significant cost and time necessary to move the CAT to a different cloud services provider supported the continued engagement of AWS.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the FAM 1 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well as SIP Data, reference data and other

⁴⁷ Section 11.6(a)(i)(A) of the CAT NMS Plan.

⁴⁸ As discussed above, with respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized

over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁴⁹ See definition of "Initial Industry Member Core Equity and Options Reporting" in Section 1.1 of the CAT NMS Plan.

types of Other Data. The following chart provides data regarding the average

daily volume, cumulative total events, total compute hours and storage

footprint of the CAT during FAM Period 1.⁵⁰

	Date range: 6/22/20–7/31/20
Average Daily Volume in Billions:	
Participant—Equities	6
Participant—Options	103
Industry Member—Equities	7
Industry Member—Options	0.31
SIP—Options & Equities	74
Average Total Daily Volume	185
Cumulative Total Events for the Period	5,190
Total Compute Hours for the Period	2,612,082
Storage Footprint at End of Period (Petabytes)	57.47

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 1. Accordingly, the \$1,099,680 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 1. The fee arrangement for FCAT described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, FCAT's activities with respect to the CAT included the following:

- Published iterative drafts of draft Technical Specifications for Phase 2d, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Published iterative drafts of CAIS Technical Specifications, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Facilitated Industry Member reporting of Quote Sent Time on Options Market Maker quotes;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;

- Provided support in discussions with Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 1. Accordingly, the \$254,998 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 1. The fee arrangement for Kingland described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

CAT LLC did not incur costs related to change requests during FAM Period 1.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 1 of \$1,684,870 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include: (1) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including separate production and industry test entitlements, and reprocessing of exchange event timestamps; (2) implementation fees; and (3) license fees.

(f) Legal Costs

The legal costs of \$481,687 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 1.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 1 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to WilmerHale. During FAM Period 1, WilmerHale provided legal assistance to the CAT including with regard to the following:

- Assisted with the development of the CAT funding model and drafted related amendments and fee filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, verbal activity, options market maker quote sent time, TRF linkages, and allocations;
- Provided interpretations related to CAT NMS Plan requirements, including the Financial Accountability Milestone amendment;

⁵⁰ Note that the volume data described in this table does not include CAIS data.

- Assisted with compliance with Regulation SCI;
- Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the drafting of the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Assisted with communications and presentations for the industry regarding CAIS;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for Compliance Subcommittee, including with regard to response to OCIE examinations and the annual assessment;
- Provided guidance regarding CAT technical specifications;
- Assisted with third-party vendor agreements; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to Pillsbury. During FAM Period 1, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(g) Consulting Costs

The consulting costs of \$137,209 represent the fees paid to Deloitte as project manager during FAM Period 1. CAT LLC continued to employ Deloitte during FAM Period 1 based on, among other things, their expertise and cumulative experience with the CAT. The fee rates for Deloitte during FAM Period 1 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 1 were paid by CAT LLC to the consulting firm. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 1,

Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

Although insurance was in effect during FAM Period 1, CAT LLC did not incur costs related to insurance during FAM Period 1.

(i) Professional and Administration Costs

Financial Advisory Firm: Anchin. The professional and administration costs of \$69,077 represent the fees paid to Anchin during FAM Period 1. CAT LLC continued to employ Anchin during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these type of financial advisory services. The fees for these services during FAM Period 1 were paid by CAT LLC to Anchin. During FAM Period 1, Anchin provided a variety of services, including the following:

- Maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;

- Worked with and provided support to the Operating Committee and various CAT working groups; and
- Prepared monthly and quarterly financial statements.

(j) Public Relations Costs

The public relations costs of \$7,700 represent the fees paid to Peak Strategies during FAM Period 1. CAT LLC continued to employ Peak Strategies during FAM Period 1 based on, among other things, their expertise and history with the project. The fee rates for this firm were reasonable and in line with market rates for these types of services. The fees for these services during FAM Period 1 were paid by CAT LLC to Peak Strategies. During FAM Period 1, Peak Strategies continued to provide professional communications services to CAT LLC, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(iii) Historical CAT Costs Incurred in Financial Accountability Milestone Period 2

Historical CAT Costs 1 would include costs incurred by CAT LLC and already funded by Participants during Period 2 of the Financial Accountability Milestones ("FAM Period 2"),⁵¹ which covers the period from August 1, 2020–December 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 2 of \$42,976,478. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$14,325,493), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third

⁵¹ Section 11.6(a)(i)(B) of the CAT NMS Plan.

(\$14,325,493) and CEBs paying one-third (\$14,325,493). The following table

breaks down Historical CAT Costs 1 for FAM Period 2 into the categories set

forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 2 *
Capitalized Developed Technology Costs **	\$6,761,094
<i>Technology Costs</i>	31,460,033
Cloud Hosting Services	20,709,212
Operating Fees	9,108,700
CAIS Operating Fees	1,590,298
Change Request Fees	51,823
Legal	2,766,644
Consulting	532,146
Insurance	976,098
Professional and administration	438,523
Public relations	41,940
Total Operating Expenses	42,976,478

* The costs described in this table of costs for FAM Period 2 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$1,892,505 incurred during FAM Period 2 have been appropriately excluded from the above table.⁵²

By the completion of FAM Period 2, CAT LLC was required to implement the following with regard to the CAT:

(a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, CustomerID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission.⁵³

CAT LLC completed the requirements of FAM Period 2 by December 31, 2020. The following describes the costs for each of the categories for FAM Period 2.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 2 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production environments, during the FAM 2 Period. Accordingly, the \$20,709,212 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 2.

The fee arrangement for AWS described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the FAM 2 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well as SIP Data, and Other Data, including reference data. In addition, Industry Members began reporting LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 2.⁵⁴

	Date range: 8/1/20–12/31/20
Average Daily Volume in Billions:	
Participant—Equities	6
Participant—Options	116
Industry Member—Equities	11
Industry Member—Options	0.98
SIP—Options & Equities	80
Average Total Daily Volume	282
Cumulative Total Events for the Period	2,170
Total Compute Hours for the Period	15,660,392
Storage Footprint at End of Period (Petabytes)	114.59

⁵² As discussed above, with respect to certain costs that were “appropriately excluded,” such excluded costs relate to the amortization of capitalized technology costs, which are amortized over the life of the Plan Processor Agreement. As

such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁵³ See definition of “Full Implementation of Core Equity Reporting Requirements” in Section 1.1 of the CAT NMS Plan.

⁵⁴ Note that the volume data described in this table does not include CAIS data.

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 2. Accordingly, the \$9,108,700 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 2. The fee arrangement for FCAT described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, FCAT's activities with respect to the CAT included publishing the Technical Specifications for Phase 2d and overseeing the reporting of firm to firm and intrafirm linkages by Industry Members. In addition, FCAT also continued to engage in the following activities during FAM Period 2:

- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the development and implementation of the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 2. Accordingly, the \$1,590,298 in technology costs for CAIS operating fees

represent costs incurred for services provided by Kingland during FAM Period 2. The fee arrangement for Kingland described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

During FAM Period 2, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 2, CAT incurred costs of \$51,823 related to a change request regarding the addition of functionality for exchange Participants to report rejected messages to the CAT.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 2 of \$6,761,094 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to separate production and industry test entitlements, market maker reference data, and back-processing of exchange exception logic; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$2,766,644 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 2.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 2 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM

Period 2 were paid by CAT LLC to WilmerHale. During FAM Period 2, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, allocations, exchange activity, OTQT, initial data validation, error corrections and recordkeeping;
- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs and technical specifications;
- Provided support for the Operating Committee, Compliance Subcommittees, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6 of the CAT NMS Plan;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for the Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
- Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
- Provided guidance regarding SRO rule filings for the retirement of systems;
- Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;
- Assisted with third-party vendor agreements (e.g., with regard to Anchin, Grant Thornton and insurance policies);
- Assisted with change requests; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to Pillsbury. During FAM Period 2, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted and filed a proposed amendment to the CAT NMS Plan regarding liability matters. As discussed above, liability issues related to the CAT are important matters that

needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(g) Consulting Costs

The consulting costs of \$532,146 represent the fees paid to Deloitte as project manager during FAM Period 2. CAT LLC continued to employ Deloitte during FAM Period 2 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 2 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 2 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 2, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$976,098 represent the fees paid for insurance during FAM Period 2. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$438,523 represent the fees paid to Anchin and Grant Thornton for

financial services provided during FAM Period 2.

Financial Advisory Firm: Anchin.

CAT LLC continued to engage Anchin during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these types of financial advisory services. The fees for these services during FAM Period 2 were paid by CAT LLC to Anchin. During FAM Period 2, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from the Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audit by an independent auditor; and
- Reviewed historical costs from inception.

Accounting Firm: Grant Thornton.

CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 2 based on, among other things, its expertise and cumulative knowledge of CAT LLC. CAT LLC continued to believe that Grant Thornton was well qualified for its role and its fee rates were in line with market rates for these accounting services. The fees for these services during FAM Period 2 were paid by CAT LLC to Grant Thornton. During FAM Period 2, Grant Thornton performed a financial statement audit for CAT LLC as an independent accounting firm.

(j) Public Relations Costs

The public relations costs of \$41,940 represent the fees paid to Peak

Strategies during FAM Period 2. CAT LLC continued to employ Peak Strategies during FAM Period 2 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 2 were paid by CAT LLC to Peak Strategies. During FAM Period 2, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(iv) Historical CAT Costs Incurred in Financial Accountability Milestone Period 3

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 3 of the Financial Accountability Milestones ("FAM Period 3"),⁵⁵ which covers the period from January 1, 2021–December 31, 2021. Historical CAT Costs 1 would include costs for FAM Period 3 of \$144,415,268. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$48,138,423), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$48,138,423) and CEBBs paying one-third (\$48,138,423). The following table breaks down Historical CAT Costs 1 for FAM Period 3 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

⁵⁵ Section 11.6(a)(i)(C) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 3 *
Capitalized Developed Technology Costs **	\$10,763,372
<i>Technology Costs</i>	123,639,402
Cloud Hosting Services	94,574,759
Operating Fees	23,106,091
CAIS Operating Fees	5,562,383
Change Request Fees	396,169
Legal	6,333,248
Consulting	1,408,209
Insurance	1,582,714
Professional and administration	595,923
Public relations	92,400
Total Operating Expenses	144,415,268

* The costs described in this table of costs for FAM Period 3 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$5,108,044 incurred during FAM Period 3 have been appropriately excluded from the above table.⁵⁶

By the completion of FAM Period 3, CAT LLC was required to implement the following requirements with regard the CAT:

(a) reporting to the Order Audit Trail System ("OATS") is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or

order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)–(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met.⁵⁷

CAT LLC completed the requirements of FAM Period 3 by December 31, 2021. The following describes the costs for each of the categories for FAM Period 3.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 3 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production

environments, during the FAM 3 Period. Accordingly, the \$94,574,759 in technology costs for cloud hosting services represents costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 3. The fee arrangement for AWS described above for the earlier periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During FAM Period 3, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a, Phase 2b, Phase 2c and Phase 2d Industry Member Data (including certain linkages), SIP Data, Other Data, including reference data, and LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 3.⁵⁸

	Date range: 1/1/21 to 4/25/21	Date range: 4/26/21 to 12/31/21 *
Average Daily Volume in Billions:		
Participant—Equities	9	9
Participant—Options	135	136
Industry Member—Equities	20	19
Industry Member—Options	2	2
SIP—Options & Equities	129	137
Average Total Daily Volume	297	304
Cumulative Total Events for the Period	7,480	5,310
Total Compute Hours for the Period	15,860,304	33,487,318

⁵⁶ As discussed above, with respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized over the life of the Plan Processor Agreement. As

such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁵⁷ See definition of "Full Availability and Regulatory Utilization of Transactional Database Functionality" in Section 1.1 of the CAT NMS Plan.

⁵⁸ Note that the volume data described in this table does not include CAIS data.

	Date range: 1/1/21 to 4/25/21	Date range: 4/26/21 to 12/31/21 *
Storage Footprint at End of Period (Petabytes)	180.22	284.62

* Start of Participant Equities in CAT format and SIP Equities on 4/26/21.

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 3. Accordingly, the \$23,106,091 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 3. The fee arrangement for FCAT described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, FCAT's activities with respect to the CAT included the following:

- Facilitated Phase 2c and Phase 2d testing for Industry Members;
- Oversaw creation of linkages of the lifecycle of order events based on the received data through Phase 2d;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement with FCAT discussed above, Kingland continued in its role as a

subcontractor for the development and implementation of CAIS during FAM Period 3. Accordingly, the \$5,562,383 in technology costs for CAIS operating fees represents costs incurred for services provided by Kingland during FAM Period 3. The fee arrangement for Kingland described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs. The full CAIS Technical Specifications were published during FAM Period 3.

(d) Technology Costs—Change Request Fees

During FAM Period 3, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 3, CAT incurred costs of \$396,169 related to change requests, including the following: (1) the addition of functionality for exchange Participants to report rejected messages to the CAT; (2) the migration of MIRS query engine to AWS to reduce operational costs and increase resiliency; and (3) updating the Participant Technical Specifications to allow for two-sided Participant option quote reporting.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 3 of \$10,763,372 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor, including the transition from equity data received by FINRA pursuant to various regulatory services agreements between FINRA and Participant exchanges to the equity CAT Data, and the completion of the Industry Member Phase 2d options manual and

complex orders go-live requirements; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to off-exchange volume concentration, Participant 24-hour trading and an external metastore; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$6,333,248 represent the fees paid for legal services provided by three law firms, WilmerHale, Pillsbury and Covington & Burling LLP ("Covington") during FAM Period 3.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 3 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to WilmerHale. During FAM Period 3, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements, including, for example, verbal activity regarding Phase 2c cutover, error reports, error corrections, Phase 2d Reporting, unique Order-ID on internal route events, reporting addresses, recordkeeping, and unique CCID for foreign customers;
- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs, CAIS requirements, ADF, and technical specifications;
- Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6(c) of the CAT NMS Plan;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for Compliance Subcommittee, including with regard to

responses to OCIE examinations and the annual assessment;

- Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
- Provided guidance regarding SRO rule filings for the retirement of systems;
- Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;
- Provided assistance with change requests;
- Provided guidance and regulatory support for litigation regarding the response to the SEC's exemptive orders;
- Assisted with communications with the industry, including CAT Alerts and presentations;
- Provided guidance regarding the confidentiality of CAT Data, including third-party information requests;
- Assisted with cost management analysis and proposals; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to Pillsbury. During FAM Period 3, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During this period, Pillsbury advised CAT LLC regarding applicable legal matters, reviewed and responded to comment letters regarding the proposed Plan amendment, participated in meetings with senior SEC staff, responded to comments submitted following the SEC's April 6, 2021 order instituting proceedings,⁵⁹ and assessed legal matters regarding the SEC's October 29, 2021 order denying the proposed Plan amendment.⁶⁰

Law Firm: Covington. CAT LLC hired Covington for litigation with the SEC regarding certain exemptive orders related to the CAT, including orders issued in December 2020.⁶¹ CAT LLC interviewed this law firm as well as other potential law firms, considering a variety of factors in its analysis for choosing legal assistance, including the

relevant expertise and fees of the potential lawyers. CAT LLC approved the engagement of Covington in January 2021. The fee rates for this law firm, which were calculated based on hourly rates, were in line with market rates for specialized services. The legal fees for FAM Period 3 for this firm were paid by CAT LLC to Covington.

After Covington was hired in 2021 through the end of 2021, the firm provided legal assistance regarding the litigation with the SEC regarding the 2020 Orders. These services included researching, drafting, and filing motions to stay the 2020 orders and related materials in proceedings before the SEC, as well as researching, drafting, and filing petitions for judicial review of the 2020 Orders in proceedings before the U.S. Court of Appeals for the D.C. Circuit. Covington oversaw ongoing litigation proceedings on these matters, and also supported WilmerHale with respect to settlement negotiations with the SEC staff regarding the 2020 Orders.

In addition to these services, CAT LLC engaged Covington in November 2021 to provide assistance with respect to the SEC's disapproval of CAT NMS Plan amendments concerning a proposed limitation on liability in the event of a data breach or similar event. Covington provided advice concerning CAT's response to the SEC's disapproval order. This work accounted for a minority of Covington's fees in 2021.⁶²

(g) Consulting Costs

The consulting costs of \$1,408,209 represent the fees paid to Deloitte as project manager during FAM Period 3. CAT LLC continued to employ Deloitte during FAM Period 3 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 3 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 3 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 3, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team,

including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;

- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$1,582,714 represent the fees paid for insurance during FAM Period 3. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$595,923 represent the fees paid to Anchin and Grant Thornton for financial services during FAM Period 3.

Financial Advisory Firm: Anchin. CAT LLC continued to employ Anchin during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these financial advisory services. The fees for these services during FAM Period 3 were paid by CAT LLC to Anchin. During FAM Period 3, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from Participants;

⁵⁹ Securities Exchange Act Rel. No. 91487 (Apr. 6, 2021), 86 FR 19054 (Apr. 12, 2021).

⁶⁰ Securities Exchange Act Rel. No. 93484 (Oct. 29, 2021), 86 FR 60933 (Nov. 4, 2021).

⁶¹ See Securities Exchange Act Rel. No. 90688 (Dec. 16, 2020), 85 FR 83634 (Dec. 22, 2020); and Securities Exchange Act Rel. No. 90689 (Dec. 16, 2020), 85 FR 83667 (Dec. 22, 2020) (collectively, the "2020 Orders").

⁶² As discussed above with regard to Pillsbury's work on liability matters, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, such activity is a necessary part of the operation of the CAT.

- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Accounting Firm: Grant Thornton. CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 3 based on, among other things, their expertise and cumulative knowledge of CAT LLC. CAT LLC determined that Grant Thornton was well qualified for its role and that its fixed fee rates were in line with market rates for these accountant services. The fees for these services during FAM Period 3 were paid by CAT LLC to Grant Thornton. During FAM Period 3, Grant Thornton provided audited financial statements for CAT LLC.

(j) Public Relations Costs

The public relations costs of \$92,400 represent the fees paid to Peak Strategies during FAM Period 3. CAT LLC continued to employ Peak Strategies during FAM Period 3 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM

Period 3 were paid by CAT LLC to Peak Strategies. During FAM Period 3, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(v) Excluded Costs

Historical CAT Costs 1 would not include three categories of CAT costs ("Excluded Costs"): (1) \$14,749,362 of costs related to the termination of the relationship with the Initial Plan Processor; (2) \$48,874,937, which are all CAT costs incurred from November 15, 2017 through November 15, 2018; and (3) \$19,628,791, which are costs paid to the Initial Plan Processor from November 16, 2018 through February

2019 when the relationship with the Initial Plan Processor was concluded. The Participants would remain responsible for 100% of these costs, which total \$83,253,090. CAT LLC determined to exclude these Excluded Costs from Historical CAT Costs 1 because these costs relate to the delay in the start of reporting to the CAT and the conclusion of the relationship with the Initial Plan Processor.⁶³

(a) Costs Related to Conclusion of Relationship With Initial Plan Processor

First, Historical CAT Costs 1 would not include \$14,749,362 of costs related to the conclusion of the relationship with the Initial Plan Processor. Such costs include costs related to the American Arbitration Association, the legal assistance of Pillsbury with regard to the arbitration with the Initial Plan Processor, and the settlement costs related to the arbitration with the Initial Plan Processor. The Participants would remain responsible for 100% of these \$14,749,362 in costs.

(b) Costs Incurred From November 15, 2017 Through November 15, 2018

Second, Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018. CAT LLC determined to exclude all costs during this one-year period of \$48,874,937 from fees charged to Industry Members due to the delay in the start of reporting to the CAT. The Participants would remain responsible for 100% of these \$48,874,937 in costs. The following table breaks down these costs into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Excluded costs for November 15, 2017–November 15, 2018 *
Capitalized Developed Technology Costs	\$37,852,083
<i>Technology Costs</i> .....	.....
Cloud Hosting Services .....	.....
Operating Fees .....	.....
CAIS Operating Fees .....	.....
Change Request Fees .....	.....
Legal	6,143,278
Consulting	4,452,106
Insurance .....	.....
Professional and administration	340,145
Public relations	87,325
Total Operating Expenses	48,874,937

* The costs described in this table of Excluded Costs were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

⁶³ In approving the CAT Funding Model, the Commission states that the proposed exclusion of the first two categories of Excluded Costs "is reasonable in the Commission's view because it would not require all costs incurred by the Participants to be recovered from Industry Members

through the Historical CAT Assessment, specifically excluding those costs related to the delay in the start of reporting to the CAT and costs related to the conclusion of the relationship with the Initial Plan Processor." CAT Funding Model Approval Order at 62663. In addition to the first two

categories of Excluded Costs, CAT LLC is now proposing a third category of Excluded Costs that would exclude all costs paid to the Initial Plan Processor after November 15, 2018.

The following provides additional detail regarding the Excluded Costs.

(I) Technology Costs—Cloud Hosting Services, Operating Fees, CAIS Operating Fees and Change Request Fees

CAT LLC did not incur technology costs related to the categories of cloud hosting services, operating fees, CAIS operating fees or change requests during the period from November 15, 2017 through November 15, 2018.

(II) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for the period from November 15, 2017 through November 15, 2018 include capitalizable application development costs of \$37,852,083 incurred in the development of the CAT by the Initial Plan Processor. Such costs include development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Initial Plan Processor. Such costs include costs related to Industry Member technical specifications for orders and transactions, the system security plan, testing and production for Participant CAT reporting, third-party security assessment and response, query portal, onboarding of the Chief Information Security Officer, and ingestion of FINRA TRF data and FINRA data related to halts and corporate actions.

(III) Legal Costs

The legal costs of \$6,143,278 represent the fees paid to WilmerHale for legal services from November 15, 2017 through November 15, 2018. During this period, WilmerHale provided legal assistance to the CAT including with regard to the following:

- Provided legal support for the governance of the CAT, including governance support for the Operating Committee, Advisory Committee, Compliance Subcommittee, and CAT working groups;
- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan;
- Provided assistance related to CAT security;
- Drafted exemptive requests, including requests related to PII;
- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Provided interpretations of and related to the CAT NMS Plan;

- Provided advice with regard to regulator access to the CAT;
- Assisted with the Plan Processor transition;
- Provided assistance regarding communications with the industry regarding the CAT;
- Provided advice regarding Customer Account Information and PII;
- Provided support for litigation related to SEC exemptive orders; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretative and implementation issues.

(IV) Consulting Costs

The consulting costs of \$4,452,106 represent the fees paid to Deloitte for their role as project manager for the CAT from November 15, 2017 through November 15, 2018. During this period, Deloitte engaged in the following activities with respect to the CAT:

- Implemented program operations for the CAT project;
- Provided governance support to the Operating Committee, including support for Subcommittees and working groups of the Operating Committee (e.g., Compliance Subcommittee, Cost and Funding Working Group, Technical Working Group, Industry Outreach Working Group, Security Working Group and Steering Committee);
- Assisted with cost and funding issues for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress.

(V) Insurance

CAT LLC did not incur costs related to insurance during the period from November 15, 2017 through November 15, 2018.

(VI) Professional and Administration Costs

The professional and administration costs of \$340,145 represent the fees paid to Anchin, Exegy and RSM from November 15, 2017 through November 15, 2018.

Financial Advisory Firm: Anchin. From the commencement of its engagement [sic] in April 2018 through November 15, 2018, Anchin engaged in the following activities with respect to the CAT:

- Developed, updated and maintained internal controls;
 - Provided cash management and treasury functions;
 - Facilitated bill payments;
 - Provided monthly bookkeeping;
 - Reviewed vendor invoices and documentation in support of cash disbursements;
 - Provided accounting research and consultations on various accounting, financial reporting and tax matters;
 - Addressed not-for-profit tax and accounting considerations;
 - Prepared tax returns;
 - Addressed various accounting, financial reporting and operating inquiries from Participants;
 - Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
 - Addressed accounting and financial matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC, including supporting the dissolution of CAT NMS, LLC;
 - Supported compliance with the CAT NMS Plan;
 - Worked with and provided support to the Operating Committee and various CAT working groups;
 - Prepared monthly, quarterly and annual financial statements;
 - Supported the annual financial statement audits by an independent auditor;
 - Reviewed historical costs from inception; and
 - Provided accounting and financial information in support of SEC filings.
- Market Data Provider: Exegy.* From July 2018 through November 15, 2018, CAT LLC purchased market data from Exegy (as described in more detail above).

Security Assessment: RSM. From October 2018 through November 15, 2018, CAT LLC incurred costs for RSM's performance of a security assessment (as described in more detail above).

(VII) Public Relations Costs

The public relations costs of \$87,325 represent the fees paid to Sloane from November 15, 2017 through November 15, 2018. From the commencement of its engagement [sic] in March 2018 through November 15, 2018, Sloane provided professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, Sloane provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting

such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan).

(c) Costs Paid to Initial Plan Processor From November 16, 2018 Through February 2019

Third, Historical CAT Costs 1 would not include the \$19,628,791 in costs paid to the Initial Plan Processor from November 16, 2018 through February 2019 when CAT LLC's relationship with the Initial Plan Processor concluded. CAT LLC determined that Historical CAT Costs 1 would not include any fees paid to the Initial Plan Processor after November 15, 2017,⁶⁴ which was the date by which Participants were required to begin reporting to the CAT.⁶⁵ As discussed above, the Participants determined that Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Initial Plan Processor costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Initial Plan Processor costs incurred after November 15, 2018 are the \$19,628,791 in costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these \$19,628,791 in costs.

(C) Historical Recovery Period 1

Under the CAT NMS Plan, the Operating Committee is required to reasonably establish the length of the Historical Recovery Period used in calculating each Historical Fee Rate based upon the amount of the Historical CAT Costs to be recovered by the Historical CAT Assessment, and to describe the reasons for its length.⁶⁶ The Historical Recovery Period used in calculating the Historical Fee Rate may

not be less than 24 months or more than five years.⁶⁷ The Operating Committee has determined to establish a Historical Recovery Period 1 of 24 months for Historical CAT Assessment 1.

The Operating Committee determined that the length of Historical Recovery Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans to the Participants in a timely fashion. The Operating Committee determined that 24 months for Historical Recovery Period 1 would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to Section 31.⁶⁸ In addition, in establishing a Historical Recovery Period of 24 months, the Operating Committee recognized that the total costs for Historical CAT Assessment 1 were less than the total costs for 2022 and 2023,⁶⁹ and therefore it would be reasonable and appropriate to recover costs subject to this filing over an approximate two-year period.

The length of the Historical Recovery Period 1 and the reasons for its length are provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.⁷⁰

(D) Projected Total Executed Equivalent Share Volume

The calculation of Historical Fee Rate 1 also requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for Historical Recovery Period 1. Under the CAT NMS Plan, the Operating Committee is required to "reasonably determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each Historical Recovery Period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months."⁷¹ The Operating Committee is

required to base its projection on the prior twelve months, but it may use its discretion to analyze the likely volume for the upcoming year. Such discretion would allow the Operating Committee to use its judgment when estimating projected total executed equivalent share volume if the volume over the prior twelve months was unusual or otherwise unfit to serve as the basis of a future volume estimate.⁷²

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. The Operating Committee has determined to calculate the projected total executed equivalent share volume for the 24 months of Historical Recovery Period 1 by doubling the executed equivalent share volume for the prior 12 months. The Operating Committee determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has remained relatively constant. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395, the executed equivalent share volume for 2022 was 4,039,821,841,560.31, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6. Accordingly, the projected total executed equivalent share volume for Historical Recovery Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.⁷³

The projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1 and a description of the calculation of the projection is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.⁷⁴

(E) Historical Fee Rate 1

Historical Fee Rate 1 would be calculated by dividing Historical CAT Costs 1 by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1, as described in detail above.⁷⁵ Specifically,

⁶⁴ As discussed below, CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. See Section 3(a)(10)(E) below.

⁶⁵ The SEC approved the CAT NMS Plan on November 15, 2016, and Participant reporting was required to begin on the first anniversary of this date, November 15, 2017. See Section 6.3 of the CAT NMS Plan and CAT NMS Plan Approval Order.

⁶⁶ Section 11.3(b)(i)(D)(I) and Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

⁶⁷ Section 11.3(b)(i)(D)(I) of the CAT NMS Plan. In the CAT Funding Model Approval Order, the SEC stated that "[i]n the Commission's view, it is reasonable for the Operating Committee to establish the length of the Historical Recovery Period to be no less than 24 months and no more than five years." CAT Funding Model Approval Order at 62664.

⁶⁸ As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model at 62682.

⁶⁹ The total CAT costs for 2022 were approximately \$186 million and the total CAT costs for 2023 were approximately \$233 million.

⁷⁰ Section 11.3(b)(iii)(B)(II)(C) of the CAT NMS Plan.

⁷¹ Section 11.3(b)(i)(E) of the CAT NMS Plan.

⁷² CAT Funding Model Approval Order at 62664.

⁷³ This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

⁷⁴ Section 11.3(b)(iii)(B)(II)(D) of the CAT NMS Plan.

⁷⁵ In approving the CAT Funding Model, the Commission stated that "[t]he calculation of the Historical Fee Rate 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 is

Historical Fee Rate 1 would be calculated by dividing \$318,059,819 by 7,961,507,681,810.42. As a result, the Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. Historical Fee Rate 1 is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide the Historical Fee Rate in a fee filing for a Historical CAT Assessment.⁷⁶

(3) Past CAT Costs and Participants

Participants would not be required to pay any fees associated with Historical CAT Assessment 1 as the Participants previously have paid all Past CAT Costs. The CAT NMS Plan explains that:

Because Participants previously have paid Past CAT Costs via loans to the Company, Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs and such other additional Past CAT Costs as reasonably determined by the Operating Committee will be paid by the cancellation of loans made to the Company on a pro rata basis based on the outstanding loan amounts due under the loans.⁷⁷

The CAT NMS Plan further states that "Historical CAT Assessments are designed to recover two-thirds of the Historical CAT Costs."⁷⁸

(4) Monthly Fees

CEBBs and CEBSs would be required to pay fees for Historical CAT Assessment 1 on a monthly basis for the period in which Historical CAT Assessment 1 is in effect.⁷⁹ A CEBB or CEBS's fee for each month would be calculated based on the transactions in Eligible Securities executed by the CEBB or CEBS from the prior month.⁸⁰ Proposed paragraph A.1.a. of the fee schedule would state that each CAT Executing Broker would receive its first invoice in November 2024, and "would receive an invoice each month thereafter in which Historical CAT Assessment 1 is in effect." Proposed paragraph A.1.b. of the fee schedule would state that

reasonable." CAT Funding Model Approval Order at 62664.

⁷⁶ Section 11.3(b)(iii)(B)(II)(A) of the CAT NMS Plan.

⁷⁷ Section 11.3(b)(ii) of the CAT NMS Plan.

⁷⁸ *Id.* In approving the CAT Funding Model, the Commission stated that "[t]he proposed allocation of the Historical CAT Assessment solely to CEBSs and CEBBs, and ultimately Industry Members, is reasonable. The Historical CAT Assessment will still be divided into thirds," as the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made to the Company. CAT Funding Model Approval Order at 62666.

⁷⁹ See Section 11.3(b)(iii)(A) of the CAT NMS Plan.

⁸⁰ See proposed paragraph A.1.b. of the fee schedule.

"Consolidated Audited Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis." In addition, proposed paragraph B.1. of the fee schedule states that each CEBB and CEBS is required to pay its CAT fees "each month."

(5) Actual Recovery Period for Historical CAT Assessment 1

The CAT NMS Plan states that, "[n]otwithstanding the length of the Historical Recovery Period used in calculating the Historical Fee Rate, each Historical CAT Assessment calculated using the Historical Fee Rate will remain in effect until all Historical CAT Costs for the Historical CAT Assessment are collected."⁸¹ Accordingly, Historical CAT Assessment 1 will remain in effect until all Historical CAT Costs 1 have been collected. The actual recovery period for Historical CAT Assessment 1 may be shorter or longer than Historical Recovery Period 1 depending on the actual executed equivalent share volumes during the time that Historical CAT Assessment 1 is in effect.⁸²

(6) Consolidated Audit Trail Funding Fees

To implement Historical CAT Assessment 1, a new section would be added to the Exchange's fee schedule for "Consolidated Audit Trail Funding Fees", and it would include the proposed paragraphs described below.

(A) Fee Schedule for Historical CAT Assessment 1

The CAT NMS Plan states that:

Each month in which a Historical CAT Assessment is in effect, each CEBB and each CEBS shall pay a fee for each transaction in Eligible Securities executed by the CEBB or CEBS 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 reasonably determined pursuant to paragraph (b)(i) of this Section 11.3.⁸³

Accordingly, based on the factors discussed above, the Exchange proposes to add paragraph A.1. to the Consolidated Audit Trail Funding Fees section of its fee schedule. Proposed

⁸¹ Section 11.3(b)(i)(D)(II) of the CAT NMS Plan.

⁸² In approving the CAT Funding Model, the Commission stated that, "[i]n the Commission's view, it is reasonable for Industry Members to be charged a Historical CAT Assessment until all Historical CAT Costs for the Historical CAT Assessment are collected." CAT Funding Model Approval Order at 62665.

⁸³ Section 11.3(b)(iii)(A) of the CAT NMS Plan.

paragraph A.1. would state the following:

a. Each CAT Executing Broker shall receive its first invoice for Historical CAT Assessment 1 in November 2024, which shall set forth the Historical CAT Assessment 1 fees calculated based on transactions in October 2024, and shall receive an invoice for Historical CAT Assessment 1 for each month thereafter in which Historical CAT Assessment 1 is in effect.

b. Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis. Each month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer ("CEBB") and/or the CAT Executing Broker for the Seller ("CEBS") (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of \$0.000013 per executed equivalent share.

c. Historical CAT Assessment 1 will remain in effect until \$212,039,879.34 (two-thirds of Historical CAT Costs 1) are collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time. Consolidated Audit Trail, LLC will provide notice when Historical CAT Assessment 1 will no longer be in effect.

d. Each CAT Executing Broker shall be required to pay each invoice for Historical CAT Assessment 1 in accordance with paragraph B.

As noted in the Plan amendment for the CAT Funding Model, "as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee rate."⁸⁴ Accordingly, proposed paragraph A.1.b. of the fee schedule would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 of \$0.00003994969693072937 by one-third, and rounding the result to 6 decimal places.⁸⁵ The Operating Committee determined to use six decimal places to balance the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

⁸⁴ CAT Funding Model Approval Order at 62658, n.658.

⁸⁵ Dividing \$0.00003994969693072937 by three equals \$0.00001331656564357646. Rounding \$0.00001331656564357646 to six decimal places equals \$0.000013.

The proposed language in paragraph A.1.a. of the fee schedule would describe when CAT Executing Brokers would receive their first monthly invoice for Historical CAT Assessment 1. Specifically, CAT Executing Brokers would receive their first monthly invoice for Historical CAT Assessment 1 in November 2024 and the fees set forth in that invoice would be calculated based on transactions executed in the prior month, that is, transactions executed in October 2024. The payment for the first invoice would be required within 30 days after the receipt of the first invoice (unless a longer period is indicated), as described in paragraph B.2. of the fee schedule.

Proposed paragraph A.1.a. of the fee schedule also would describe the monthly cadence of the invoices for Historical CAT Assessment 1. Specifically, after the first invoices are provided to CAT Executing Brokers in November 2024, invoices will be sent to CAT Executing Brokers each month thereafter while Historical CAT Assessment 1 is in effect.

Proposed paragraph A.1.b. of the fee schedule would describe the invoices for Historical CAT Assessment 1. Proposed paragraph A.1.b. of the fee schedule would state that “Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis.” Proposed paragraph A.1.b. of the fee schedule also would describe the fees to be set forth in the invoices for Historical CAT Assessment 1. Specifically, it would state that “[e]ach month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer (“CEBB”) and/or the CAT Executing Broker for the Seller (“CEBS”) (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of \$0.000013 per executed equivalent share.”

Furthermore, proposed paragraph A.1.c. of the fee schedule would describe how long Historical CAT Assessment 1 would remain in effect. It would state that “Historical CAT Assessment 1 will remain in effect until \$212,039,879.34 (two-thirds of Historical CAT Costs 1) are collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time.” This proposed paragraph would further state that “Consolidated Audit Trail,

LLC will provide notice when Historical CAT Assessment 1 will no longer be in effect.”

Historical CAT Assessment 1 will be assessed for all transactions executed in each month through the end of the month in which two-thirds of Historical CAT Costs 1 are assessed, and then CAT LLC will provide notice that Historical CAT Assessment 1 is no longer in effect. Since Historical CAT Assessment 1 is a monthly fee based on transaction volume from the prior month, Historical CAT Assessment 1 may collect more than two-thirds of Historical CAT Costs 1. To the extent that occurs, any excess money collected during the final month in which Historical CAT Assessment 1 is in effect will be used to offset future fees and/or to fund the reserve for the CAT.

Finally, proposed paragraph A.1.d. of the fee schedule sets forth the requirement for the CAT Executing Brokers to pay the invoices for Historical CAT Assessment 1. It would state that “[e]ach CAT Executing Broker shall be required to pay each invoice for Historical CAT Assessment 1 in accordance with paragraph B.”

(B) Manner of Payment

Paragraph B.1. to the “Consolidated Audit Trail Funding Fees” section of its fee schedule describes the manner of payment of Industry Member CAT fees. Paragraph B.1. states that “[e]ach CAT Executing Broker shall pay its CAT fees as required pursuant to paragraph A. each month to the Consolidated Audit Trail, LLC in the manner prescribed by the Consolidated Audit Trail, LLC.” The CAT NMS Plan requires the Operating Committee to establish a system for the collection of CAT fees.⁸⁶ The Plan Processor has established a billing system for CAT fees.⁸⁷ Therefore, the Exchange proposes to require CAT Executing Brokers to pay Historical CAT Assessment 1 in accordance with such system.

(C) Failure To Pay CAT Fees

The CAT NMS Plan further states that:

Participants shall require each Industry Member to pay all applicable fees authorized under this Article XI within thirty (30) days after receipt of an invoice or other notice indicating payment is due (unless a longer

payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due (as determined in accordance with the preceding sentence), such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (a) the Prime Rate plus 300 basis points; or (b) the maximum rate permitted by applicable law.⁸⁸

Accordingly, the Exchange previously has added this requirement to the Exchange’s fee schedule. Specifically, paragraph B.2. of the fee schedule states:

Each CAT Executing Broker shall pay the CAT fees required pursuant to paragraph (a) within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If a CAT Executing Broker fails to pay any such CAT fee when due, such CAT Executing Broker shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of (i) the Prime Rate plus 300 basis points, or (ii) the maximum rate permitted by applicable law.

The requirements of paragraph B.2. would apply to Historical CAT Assessment 1.

(7) Historical CAT Assessment Details

The CAT NMS Plan states that:

Details regarding the calculation of a CAT Executing Broker’s Historical CAT Assessment will be provided upon request to such CAT Executing Broker. At a minimum, such details would include each CAT Executing Broker’s executed equivalent share volume and corresponding fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.⁸⁹

Such information would provide CEBBs and CEBSSs with the ability to understand the details regarding the calculation of their Historical CAT Assessment.⁹⁰ CAT LLC will provide CAT Executing Brokers with these details regarding the calculation of their Historical CAT Assessments on their monthly invoice for the Historical CAT Assessment.

In addition, CAT LLC will make certain aggregate statistics regarding Historical CAT Assessments publicly available. Specifically, the CAT NMS Plan states that, “[f]or each Historical

⁸⁶ Section 11.4 of the CAT NMS Plan.

⁸⁷ The billing process and system are described in CAT Alert 2023–02 as well as the CAT FAQs related to the billing of CAT fees, the Industry Member CAT Reporter Portal User Guide, the FCAT Industry Member Onboarding Guide, the FCAT Connectivity Supplement for Industry Members and the CAT Billing Webinars (dated Sept. 28, 2023, and Nov. 7, 2023), each available on the CAT website.

⁸⁸ Section 11.4 of the CAT NMS Plan.

⁸⁹ Section 11.3(a)(iv)(A) of the CAT NMS Plan.

⁹⁰ In approving the CAT Funding Model, the Commission stated that, “[i]n the Commission’s view, providing CAT Execut[ing] Brokers information regarding the calculation of their CAT Fees will aid in transparency and permit CAT Execut[ing] Brokers to confirm the accuracy of their invoices for CAT Fees.” CAT Funding Model Approval Order at 62667.

CAT Assessment, at a minimum, CAT LLC will make publicly available the aggregate executed equivalent share volume and corresponding aggregate fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise on an exchange, and (3) by buy-side transactions and sell-side transactions.”⁹¹ Such aggregate statistics will be available on the CAT website.

Furthermore, CAT LLC will make publicly available on the CAT website the total amount invoiced each month that Historical CAT Assessment 1 is in effect as well as the total amount invoiced for Historical CAT Assessment 1 for all months since its commencement. CAT LLC also will make publicly available on the CAT website the total costs to be collected from Industry Members for Historical CAT Assessment 1. By reviewing statistics regarding how much has been invoiced and how much remains to be invoiced for Historical CAT Assessment 1, Industry Members would have sufficient information to reasonably track how much longer Historical CAT Assessment 1 is likely to be in place.

(8) Implementation Assistance

To assist Industry Members with compliance with the commencement of Historical CAT Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices prior to the commencement of Historical CAT Assessment 1. Specifically, CAT Executing Brokers have received mock invoices based on transaction data each month since November 2023. The mock invoices are in the same form as the actual, payable invoices, including both the relevant transaction data and the corresponding fee. However, no payments have been required in response to such mock invoices; they have been used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data has provided CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended

to facilitate the payment of Historical CAT Assessment 1.

(9) Financial Accountability Milestones

The CAT NMS Plan states that “[n]o Participant will make a filing with the SEC pursuant to Section 19(b) of the Exchange Act regarding any Historical CAT Assessment until any applicable Financial Accountability Milestone described in Section 11.6 has been satisfied.”⁹² The CAT NMS Plan further states that “in all filings submitted by the Participants to the Commission under Section 19(b) of the Exchange Act, to establish or implement Post-Amendment Industry Member Fees pursuant to this Article, . . . the Participants shall clearly indicate whether such fees are related to Post-Amendment Expenses incurred during Period 1, Period 2, Period 3, or Period 4.”⁹³ As discussed in detail below, all applicable Financial Accountability Milestones for Historical CAT Assessment 1—that is, Period 1, Period 2 and Period 3 of the Financial Accountability Milestones—have been satisfied. Furthermore, as discussed below, this filing clearly indicates that Historical CAT Assessment 1 relates to Post-Amendment Expenses incurred during Periods 1, 2 and 3 of the Financial Accountability Milestones.

(A) Period 1 of the Financial Accountability Milestones

In accordance with Section 11.6(b) of the CAT NMS Plan, Historical CAT Assessment 1 seeks to recover costs that are related to “all fees, costs, and expenses (including legal and consulting fees, costs, and expenses) incurred by or for the Company in connection with the development, implementation and operation of the CAT from the effective date of [Section 11.6 of the CAT NMS Plan] until such time as Full Implementation of CAT NMS Plan Requirements has been achieved”⁹⁴ (“Post-Amendment Expenses”) incurred during FAM Period 1. FAM Period 1 began on June 22, 2020, the effective date of Section 11.6 of the CAT NMS Plan, and concluded on July 31, 2020, the date of Initial Industry Member Core Equity and Options Reporting. Section 1.1 of the CAT NMS Plan defines “Initial Industry Member Core Equity and Options Reporting” as:

The reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of both: (a) equities

transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information; and (b) options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants’ Quarterly Progress Reports.⁹⁵ As indicated by the Participants’ Quarterly Progress Report for the third quarter of 2020,⁹⁶ Initial Industry Member Core Equity and Option Reporting was completed on schedule on July 22, 2020, which is prior to the July 31, 2020 deadline.

Under the FAM Period 1 requirement of Initial Industry Member Core Equity and Options Reporting, Industry Members—excluding Small Industry Members that are not OATS reporters—were required to report two categories of data to the CAT: equities transaction data and options transaction data (both excluding Customer Account Information, Customer-ID, and Customer Identifying Information) by July 31, 2020. Pursuant to exemptive relief provided by the Commission, the Commission authorized the Participants’ Compliance Rules to allow core equity reporting for Industry Members (Phase 2a) to begin on June 22, 2020 and core options reporting for Industry Members (Phase 2b) to begin on July 20, 2020.⁹⁷

In adopting the FAMs, the Commission stated that the equities transaction reporting required for FAM Period 1 “is consistent with the functionality that the Participants describe on the CAT NMS Plan website as ‘Production Go-Live for Equities 2a file submission and data integrity

⁹⁵ The Quarterly Progress Reports are available at <https://www.catnmsplan.com/implementation-plan>.

⁹⁶ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020) and Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021).

⁹⁷ See Phased Reporting Exemptive Relief Order. Under the CAT NMS Plan as adopted, the Participants were required, through their Compliance Rules, to require their Large Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2018, and to require their Small Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2019. Sections 6.7(a)(v) and (vi) of the CAT NMS Plan. The SEC granted exemptive relief from these provisions of the CAT NMS Plan to allow for the phased implementation of Industry Member reporting via five phases addressing the reporting requirements for Phase 2a Industry Member Data, Phase 2b Industry Member Data, Phase 2c Industry Member Data, Phase 2d Industry Member Data and Phase 2e Industry Member Data.

⁹¹ Section 11.3(a)(iv)(B) of the CAT NMS Plan. In approving the CAT Funding Model, the Commission stated that “[t]he publication of the aggregate executed equivalent share volume and aggregate fee is appropriate because it would allow Participants and CAT Executing Brokers a high-level validation of executed volume and fees.” CAT Funding Model Approval Order at 62667.

⁹² Section 11.3(b)(iii)(B)(III) of the CAT NMS Plan.

⁹³ Section 11.6(b) of the CAT NMS Plan.

⁹⁴ Section 11.6 of the CAT NMS Plan.

validations.’’⁹⁸ The Phase 2a Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order, and includes the following data related to Eligible Securities that are equities:

- All events and scenarios covered by OATS, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions;

- Reportable Events for: (1) proprietary orders, including market maker orders, for Eligible Securities that are equities; (2) electronic quotes in listed equity Eligible Securities (*i.e.*, NMS stocks) sent to a national securities exchange or FINRA’s Alternative Display Facility (“ADF”); (3) electronic quotes in unlisted Eligible Securities (*i.e.*, OTC Equity Securities) received by an Industry Member operating an interdealer quotation system (“IDQS”); and (4) electronic quotes in unlisted Eligible Securities sent to an IDQS or other quotation system not operated by a Participant or Industry Member;

- Firm Designated IDs (“FDIDs”), which Industry Members must report to the CAT as required by Sections 6.3(d)(i)(A) and 6.4(d)(ii)(C) of the CAT NMS Plan;

- Industry Members would be required to report all street side representative orders, including both agency and proprietary orders and mark such orders as representative orders, except in certain limited exceptions as described in the Industry Member Technical Specifications;

- The link between the street side representative order and the order being represented when: (1) the representative order was originated specifically to represent a single order received either from a customer or another broker-dealer; and (2) there is (a) an existing direct electronic link in the Industry Member’s system between the order being represented and the representative order and (b) any resulting executions are immediately and automatically applied to the represented order in the Industry Member’s system;

- Manual and Electronic Capture Time for Manual Order Events;

- Special handling instructions for the original receipt or origination of an order during Phase 2a; and

- When routing an order, whether the order was routed as an intermarket sweep order (“ISO”).

In Phase 2a, Industry Members were not required to report modifications of

a previously routed order in certain limited instances, nor were they required to report a cancellation of an order received from a Customer after the order has been executed.⁹⁹

The Quarterly Progress Report for the third quarter of 2020 states that “Interim Step: Production Go-Live for Equities 2a file submission and data integrity validation (Large Industry Members and Small OATS Reporters)” was completed on June 22, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of “equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information” was completed on June 22, 2020.

In adopting the FAMS, the Commission stated that the options transaction reporting required for FAM Period 1 is “consistent with the functionality that the Participants describe on the CAT NMS Plan website as ‘Production Go-Live for Options 2b file submission and data integrity validations.’”¹⁰⁰ The Phase 2b Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order, and includes the Industry Member Data related to Eligible Securities that are options and related to simple electronic option orders, excluding electronic paired option orders. A simple electronic option order is an order to buy or sell a single option that is not related to or dependent on any other transaction for pricing and timing of execution that is either received or routed electronically by an Industry Member. Electronic receipt of an order is defined as the initial receipt of an order by an Industry Member in electronic form in standard format directly into an order handling or execution system. Electronic routing of an order is the routing of an order via electronic medium in standard format from one Industry Member’s order handling or execution system to an exchange or another Industry Member. An electronic paired option order is an electronic option order that contains both the buy and sell side that is routed to another Industry Member or exchange for crossing and/or price improvement as a single transaction on an exchange. Responses to auctions of simple orders and paired simple orders would be reportable in Phase 2b. Furthermore, combined orders in options would be treated in Phase 2b in the same way as equity representative orders are treated

in Phase 2a. A combined order would mean, as permitted by SRO rules, a single, simple order in Listed Options created by combining individual, simple orders in Listed Options from a customer with the same exchange origin code before routing to an exchange. During Phase 2b, the single combined order sent to an exchange must be reported and marked as a combined order, but the linkage to the underlying orders is not required to be reported until Phase 2d.¹⁰¹

The Quarterly Progress Report for the third quarter of 2020 states that “Interim Step: Production Go-Live for Options 2b file submission and data integrity validations” was completed on July 20, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of “options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information” was completed on July 20, 2020.

As discussed above, the Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from June 22, 2020 through July 31, 2020. The total costs for this period, as discussed above, are \$6,377,343. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBBs paying one-third (\$2,125,781).

(B) Period 2 of the Financial Accountability Milestones

Historical CAT Assessment 1 seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 2. FAM Period 2 began on August 1, 2020, and concluded on December 31, 2020, the date of the Full Implementation of Core Equity Reporting. Section 1.1 of the CAT NMS Plan defines “Full Implementation of Core Equity Reporting” as:

the point at which: (a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-

⁹⁸ Securities Exchange Act Rel. No. 88890 (May 15, 2020), 85 FR 31322, 31330 n.97 (May 22, 2020) (“FAM Adopting Release”).

⁹⁹ Phased Reporting Exemptive Relief Order at 23076–78.

¹⁰⁰ FAM Adopting Release at 31330, n.98.

¹⁰¹ Phased Reporting Exemptive Relief Order at 23078.

firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants' Quarterly Progress Reports. As indicated by the Participants' Quarterly Progress Report for the fourth quarter of 2020,¹⁰² Full Implementation of Core Equity Reporting was completed on schedule by December 31, 2020.

Specifically, the Full Implementation of Core Equity Reporting requires the satisfaction of two prongs. The first prong requires Participants to have fully implemented the first phase of equities transaction reporting for Industry Members (excluding Small Industry Members that are not OATS reporters) at an Error Rate of less than 5%. In addition, equities transaction data produced by the CAT at this stage must also be sufficiently interlinked so as to permit full analysis of an order's lifecycle across the national market, excluding full linkage of representative orders. As CAT LLC reported on its Quarterly Progress Reports, Phase 2a was fully implemented as of October 26, 2020, including intra-firm, inter-firm, national securities exchange, and trade reporting facilities linkages.¹⁰³ In addition to the reporting of Phase 2a Industry Member Data as described above with regard to FAM Period 1, the following linkage data was added to the CAT as described in the Quarterly Progress Reports for the third and fourth quarter of 2020:

- “Production Go-Live for Equities 2a Intrafirm Linkage validations” was completed on 7/27/2020;¹⁰⁴
- “Production Go-Live for Firm to Firm Linkage validations for Equities 2a (Large Industry Members and Small

OATS Reporters)” was completed on October 26, 2020; and

- “Production Go-Live for Equities 2a Exchange and TRF Linkage validations (Large Industry Members and Small OATS Reporters)” was completed on October 26, 2020.

Furthermore, as CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2020, the average overall error rate for Phase 2a Industry Member Data was less than 5% as of December 31, 2020. The average overall error rate was calculated by dividing the compliance errors by processed records.

The second prong of this FAM requires that the equities transaction data collected by the CAT at this stage be made available to regulators through two basic query tools required by the CAT NMS Plan—a targeted query tool that will enable regulators to retrieve data via an online query screen with a variety of predefined selection criteria, and a user-defined direct query tool that will provide regulators with the ability to query data using all available attributes and data sources.¹⁰⁵ As CAT LLC reported on its Quarterly Progress Reports, the query tool functionality incorporating the data from Phase 2a was available to the Participants and the Commission as of December 31, 2020.¹⁰⁶

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.¹⁰⁷

As discussed above, Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from August 1, 2020 through December 31, 2020. The total costs for this period, as discussed above, are \$42,976,478.

¹⁰⁵ Section 6.10(c)(i)(A) of the CAT NMS Plan requires the Plan Processor to “provide Participants and the SEC with access to all CAT Data stored in the Central Repository” via an “online targeted query tool.” Appendix D, Sections 8.1.1–8.1.3 of the CAT NMS Plan describes the required functionality associated with this regulatory tool. Appendix D, Section 8.2.1 describes the required functionality associated with a user-defined direct query tool that will “deliver large sets of data that can then be used in internal surveillance or market analysis applications.”

¹⁰⁶ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020); Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021); and Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰⁷ Securities Exchange Act Rel. No. 98848 (Nov. 2, 2023), 88 FR 77128, 77129 n.13 (Nov. 8, 2023) (“Settlement Exemptive Order”).

Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remain [*sic*] two-thirds, with CEBBs paying one-third (\$14,325,492.70) and CEBBs paying one-third (\$14,325,492.70).

(C) Period 3 of the Financial Accountability Milestones

Historical CAT Assessment 1 seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 3. FAM Period 3 began on January 1, 2021, and concluded on December 31, 2021, the date of the Full Availability and Regulatory Utilization of Transactional Database Functionality. Section 1.1 of the CAT NMS Plan defines “Full Availability and Regulatory Utilization of Transactional Database Functionality” as:

the point at which: (a) reporting to the Order Audit Trail System (“OATS”) is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)–(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants' Quarterly Progress Reports. As indicated by the Participants' Quarterly Progress

¹⁰² Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰³ For a description of the requirements of Phases 2a, see Phased Reporting Exemptive Relief Order.

¹⁰⁴ Q3 2020 Quarterly Progress Report (Oct. 20, 2021).

Report for the fourth quarter of 2021,¹⁰⁸ Full Availability and Regulatory Utilization of Transactional Database Functionality was completed on schedule by December 31, 2021.

Specifically, the “Full Availability and Regulatory Utilization of Transactional Database Functionality” requires the satisfaction of five prongs. The first prong requires that reporting to the Order Audit Trail System (“OATS”) is no longer required for new orders. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021,¹⁰⁹ FINRA retired OATS effective September 1, 2021.¹¹⁰ Accordingly, after the retirement of OATS, reporting to OATS was no longer required.

In addition to Phase 2a and Phase 2b Industry Member Data, the second and third prongs of “Full Availability and Regulatory Utilization of Transactional Database Functionality” require Industry Member reporting of Phase 2c Industry Member Data and Phase 2d Industry Member Data. The Phase 2c Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order. That Order states that “Phase 2c Industry Member Data” is Industry Member Data related to Eligible Securities that are equities other than Phase 2a Industry Member Data, Phase 2d Industry Member Data, or Phase 2e Industry Member Data. Specifically, the Phase 2c Industry Member Data includes Industry Member Data that is related to Eligible Securities that are equities and that is related to: (1) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (2) quotes in unlisted Eligible Securities sent to an IDQS operated by a CAT Reporter (reportable by the Industry Member sending the quotes) (except for quotes reportable in Phase 2d, as discussed below); (3) electronic quotes in listed equity Eligible Securities (*i.e.*, NMS stocks) that are not sent to a national securities exchange or FINRA’s Alternative Display Facility; (4) reporting changes to client instructions regarding modifications to algorithms; (5) marking as a representative order any order originated to work a customer order in price guarantee scenarios, such as a guaranteed VWAP; (6) flagging rejected external routes to indicate a route was not accepted by the receiving destination; (7) linkage of duplicate electronic messages related to a Manual

Order Event between the electronic event and the original manual route; (8) special handling instructions on order route reports (other than the ISO, which is required to be reported in Phase 2a); (9) quote identifier on trade events; (10) reporting of LTIDs (if applicable) for accounts with Reportable Events that are reportable to CAT as of and including Phase 2c; (11) reporting of date account opened or Account Effective Date (as applicable) for accounts and reporting of a flag indicating the Firm Designated ID type as account or relationship; (12) order effective time for orders that are received by an Industry Member and do not become effective until a later time; (13) the modification or cancellation of an internal route of an order; and (14) linkages to the customer orders(s) being represented for representative order scenarios, including agency average price trades, net trades, aggregated orders, and disconnected Order Management System (“OMS”)—Execution Management System (“EMS”) scenarios, as required in the Industry Member Technical Specifications.¹¹¹

Phase 2c Industry Member Data also includes electronic quotes that are provided by or received in a CAT Reporter’s order/quote handling or execution systems in Eligible Securities that are equities and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: (1) an equity bid or offer is displayed publicly or has been communicated (a) for listed securities to the ADF operated by FINRA; or (b) for unlisted equity securities to an “interdealer quotation system,” as defined in FINRA Rule 6420(c); or (2) an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing; *i.e.*, no further manual or electronic action is required by the responder providing the quote in order to execute or cause a trade to be executed). With respect to OTC Equity Securities, OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter (other than such an IDQS that does not match and execute orders) are reportable by the Industry Member sending them in Phase 2c. Accordingly, any response to a request for quote or other form of solicitation response provided in a standard electronic format (*e.g.*, FIX) that meets this quote definition (*i.e.*, an equity bid or offer which is accessible

electronically by customers or other market participants and is immediately actionable for execution or routing) would be reportable in Phase 2c.¹¹²

The Phase 2d Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order. “Phase 2d Industry Member Data” is Industry Member Data that is related to Eligible Securities that are options other than Phase 2b Industry Member Data, Industry Member Data that is related to Eligible Securities that are equities other than Phase 2a Industry Member Data or Phase 2c Industry Member Data, and Industry Member Data other than Phase 2e Industry Member Data. Phase 2d Industry Member Data includes with respect to the Eligible Securities that are options: (1) simple manual orders; (2) electronic and manual paired orders; (3) all complex orders with linkages to all CAT-reportable legs; (4) LTIDs (if applicable) for accounts with Reportable Events for Phase 2d; (5) date account opened or Account Effective Date (as applicable) for accounts with an LTID and flag indicating the Firm Designated ID type as account or relationship for such accounts; (6) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (7) the modification or cancellation of an internal route of an order; and (8) linkage between a combined order and the original customer orders. Phase 2d Industry Member Data also would include electronic quotes that are provided by or received in a CAT Reporter’s order/quote handling or execution systems in Eligible Securities that are options and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: a listed option bid or offer which is accessible electronically by customers or other market participants and is immediately actionable (*i.e.*, no further action is required by the responder providing the quote in order to execute or cause a trade to be executed). Accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (*e.g.*, FIX) that meets this definition is reportable in Phase 2d for options.¹¹³

Phase 2d Industry Member Data also includes with respect to Eligible Securities that are options or equities (1) receipt time of cancellation and modification instructions through Order Cancel Request and Order Modification

¹⁰⁸ Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹⁰⁹ *Id.*

¹¹⁰ Securities Exchange Act Rel. No. 92239 (June 23, 2021), 86 FR 34293 (June 29, 2021).

¹¹¹ Phase Reporting Exemptive Relief Order at 23078–79.

¹¹² *Id.* at 23079.

¹¹³ *Id.*

Request events; (2) modifications of previously routed orders in certain instances; and (3) OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter that does not match and execute orders. In addition, subject to any exemptive or other relief, Phase 2d Industry Member Data will include verbal or manual quotes on an exchange floor or in the over-the-counter market, where verbal quotes and manual quotes are defined as bids or offers in Eligible Securities provided verbally or that are provided or received other than via a CAT Reporter's order handling and execution system (e.g., quotations provided via email or instant messaging).¹¹⁴

The Quarterly Progress Report for the fourth quarter of 2021 states that "Phase 2a was fully implemented as of October 26, 2020;" "Phase 2b was fully implemented as of January 4, 2021;" "Phase 2c was implemented as of April 26, 2021;" and "Phase 2d was fully implemented as of December 13, 2021."¹¹⁵ The Quarterly Progress Reports for 2021 provide additional detail regarding the implementation of these steps including the following:

- "Production Go-Live for Equities 2c reporting requirements (Large Industry Members)" was completed on April 26, 2021;
- "LTID Account Information Reporting Go-Live for Phases 2a, 2b and 2c (Large Industry Members)" was completed on April 26, 2021;
- "FCAT Plan Processor creates linkages of the lifecycle of order events based on the received data through Phase 2d Production Go-Live for Options 2d reporting requirements (Large Industry Members)" was completed on December 13, 2021;
- "Production Go-Live for Options 2d reporting requirements (Large Industry Members)" was completed on December 13, 2021;
- "Production Go-Live for Options 2b reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "Production Go-Live for Equities 2c reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "Production Go-Live for Options 2d reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;

- "LTID Account Information Reporting Go-Live for Phases 2d (Large Industry Members)" was completed on December 13, 2021; and

- "LTID Account Information Reporting Go-Live for Phases 2a, 2b, 2c and 2d (Small Industry Members)" was completed on December 13, 2021.¹¹⁶

The third prong of "Full Availability and Regulatory Utilization of Transactional Database Functionality" also imposes an Error Rate requirement of 5% or less. The Quarterly Progress Report for the fourth quarter of 2021 states the average overall error rate was less than 5% as of December 31, 2021. The average overall error rate was calculated by dividing the compliance errors by processed records.

The fourth prong of "Full Availability and Regulatory Utilization of Transactional Database Functionality" requires that the data collected by the CAT at this stage be made available to regulators through an online targeted query tool and a user-defined direct query tool. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021, the query tool functionality incorporating the data from Phases 2a, 2b, 2c and 2d was available to the Participants and to the Commission as of December 31, 2021.¹¹⁷

The fifth prong requires the requirements of Section 6.10(a) of the CAT NMS Plan to have been met. Section 6.10(a) of the CAT NMS Plan requires the Participants to use the tools described in Appendix D to "develop and implement a surveillance system, or enhance existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository." The Exchange implemented a surveillance system, or enhanced existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository as of December 31, 2021 in accordance with Section 6.10(a) of the CAT NMS Plan.¹¹⁸

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for

purposes of determining compliance with this FAM.¹¹⁹

As discussed above, Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from January 1, 2021 through December 31, 2021. The total costs for this period, as discussed above, are \$144,415,268. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remain [*sic*] two-thirds, with CEBBs paying one-third (\$48,138,422.70) and CEBBs paying one-third (\$48,138,422.70).

(D) Additional Considerations Related to the Financial Accountability Milestones

As discussed above, CAT LLC has satisfied the Financial Accountability Milestones ("FAMs") for Periods 1 through 3.¹²⁰ As discussed below, none of the circumstances related to NIA Electronic RFQ Responses, the 2023 Verbal Quotes Exemption, the November 2023 Order, or Executing Broker reporting, affect the conclusion that the FAMs for Periods 1 through 3 were satisfied in a timely fashion.

(i) NIA Electronic RFQ Responses

CAT LLC does not believe that the exemptive relief relating to the reporting of electronic responses for quotes ("RFQs") that are not immediately actionable ("NIA Electronic RFQ Responses") affect the conclusion that FAMs 1 through 3 have been satisfied. The only reason CAT LLC pursued this relief is because certain Industry Members introduced concerns that NIA Electronic RFQ Responses could be considered "orders" reportable pursuant to Rule 613(j)(8) and some Industry Members were not prepared to report such orders to CAT. Thus, the relief was requested on behalf of Industry Members. CAT LLC itself has not taken any position on whether NIA Electronic RFQ Responses are "orders," as the definition of "order" is an SEC rule and the trading processes for NIA Electronic RFQ Responses are the Industry Members', not those of the Participants

¹¹⁶ See Q2 2021 Quarterly Progress Report (July 27, 2021); and Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁷ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁸ See Q1 2021 Quarterly Progress Report (Apr. 30, 2021); Q2 2021 Quarterly Progress Report (July 27, 2021); Q3 2021 Quarterly Progress Report (Nov. 1, 2021); Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁹ Settlement Exemptive Order at 77129 n.13.

¹²⁰ In May 2020, the Commission adopted amendments to the CAT NMS Plan that establish four Financial Accountability Milestones and set target deadlines by which these milestones must be achieved. These amendments also reduce the amount of any fees, costs, and expenses that may be recovered from Industry Members if the Participants fail to meet the target deadlines. FAM Adopting Release.

¹¹⁴ *Id.* at 23079–80.

¹¹⁵ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

or CAT LLC. Accordingly, CAT LLC stated in its letter that “Industry Members must determine whether trading interest falls within the definition of an ‘order’ for CAT purposes. To the extent an NIA Electronic RFQ Response is not considered an ‘order’ as defined in Rule 613(j)(8) and the CAT NMS Plan, it would not be reportable to CAT.”¹²¹

Only “orders” as defined in SEC Rule 613(j)(8) are reportable to CAT. There is no agreement across the industry or among regulators as to whether NIA Electronic RFQ Responses are “orders” reportable to CAT. Certain Industry Members have raised the question as to whether NIA Electronic RFQ Responses are orders, but others have argued that they are not orders under Rule 613(j)(8).¹²² Indeed, members of the Advisory Committee, which CAT LLC relies upon for guidance with regard to Industry Member issues, have not had a definitive view on whether NIA Electronic RFQ Responses are orders. As Rule 613(j)(8) is an SEC rule, CAT LLC believes that only the SEC can provide a definitive determination as to if, and under what circumstances, an NIA Electronic RFQ Response is considered an “order” reportable to CAT. The issue has persisted for some time. As a result, CAT LLC filed an exemptive request regarding NIA Electronic RFQ Responses for clarity on the interpretive issue. As recently as April 2024, Industry Members have re-raised this issue stating that the SEC agrees that it must provide additional guidance on this interpretive issue to resolve the CAT reporting issue for NIA Electronic RFQ Responses:

As further discussed in the prior FIF letters, even if the Commission had the legal authority to require the reporting of NIA RFQ responses to CAT without an amendment to Rule 613, the Commission has not provided guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT. In subsequent discussions with industry members, Commission representatives have agreed that, prior to NIA RFQ responses being reportable to CAT, it would be necessary for the Commission to provide further guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT.¹²³

On May 20, 2024, the Commission granted CAT LLC’s request for

exemptive relief from certain CAT reporting requirements pertaining to NIA Electronic RFQ Responses to the extent such responses are considered “orders” reportable pursuant to Rule 613(j)(8).¹²⁴ The Commission, however, did not provide additional guidance regarding the conditions under which NIA Electronic RFQ Responses would be reportable to CAT. The Commission stated in its exemptive order that “[t]o the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for the Financial Accountability Milestones, provided that any conditions of the exemption are satisfied.”¹²⁵

When the Commission proposed the FAMs, the Participants expressed concern that, “by conditioning the ability of CAT LLC and the Participants to collect Post-Amendment Industry Member Fees on factors dependent on the efforts of Industry Members, the Commission’s proposals inadvertently establish a perverse incentive for Industry Members to devote less than maximum efforts to comply with their obligations related to the CAT as they will pay less fees in such instances.”¹²⁶ The Participants further warned that “Industry Members may request or require unanticipated reporting delays to address Industry Member implementation issues or concerns,” but that, “[f]aced with financial penalties for missed deadlines, the Participants may not be able to fully address legitimate industry concerns or accommodate requests for delays with respect to future deadlines.”¹²⁷ CAT LLC has engaged in good faith to help address NIA Electronic RFQ Responses and other concerns relevant to the ability of Industry Members to meet their CAT reporting obligations. CAT LLC should not be penalized financially for seeking in good faith to resolve a difficult interpretive issue for the benefit of Industry Members.

(ii) 2023 Verbal Quotes Exemption

CAT LLC does not believe that the Commission’s May 19, 2023 order granting temporary exemptive relief relating to certain verbal floor activity and unstructured verbal and electronic upstairs activity (the “2023 Verbal Quotes Exemption”) affects the

conclusion that FAMs 1 through 3 have been satisfied. The 2023 Verbal Quotes Exemption, which was issued on May 19, 2023, is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. The relevant exemption for this time period is the Commission’s November 12, 2020 order, which granted relief for the same activity through July 31, 2023 (the “2020 Verbal Quotes Order”).¹²⁸ The Commission has stated that, “to the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for a Financial Accountability Milestone, provided that the conditions of the exemption are satisfied.”¹²⁹ Here, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3.¹³⁰

(iii) November 2023 Order

CAT LLC does not believe that the Commission’s November 2, 2023 order granting relief from certain CAT NMS Plan requirements (the “November 2023 Order”) affects the conclusion that FAMs 1 through 3 have been satisfied. The November 2023 Order is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. As described in the November 2023 Order, the relevant exemptive orders for this time period were issued on December 16, 2020, which also states that “the Commission has determined that the Participants have sufficiently complied with the conditions set forth in the prior Orders and with the technical requirements for Quarterly Progress

¹²⁸ Securities Exchange Act Rel. No. 90405, 85 FR 73544 (Nov. 18, 2020) (the “2020 Verbal Quotes Exemption”).

¹²⁹ See, e.g., Securities Exchange Act Rel. No. 89051 (June 11, 2020), 85 FR 36631, 36633 (June 17, 2020). The straightforward reading of the Commission’s statement is that compliance with the conditions of an exemption will be measured as of the deadline for a particular FAM Period.

¹³⁰ As a condition to the 2020 Verbal Quotes Exemption, the Commission required that the Participants provide a written status update on the reporting of these quotes and orders by July 31, 2022, including the estimated costs of reporting these quotes and orders and an implementation plan for the reporting of these quotes and orders. As noted, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3. In any event, on June 3, 2022, the Participants provided the required written status update. See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (June 3, 2022).

¹²¹ See Letter from Brandon Becker, Chair, CAT NMS Plan Operating Committee to Vanessa Countryman, Secretary, Commission (Feb. 13, 2024) at 2.

¹²² See, e.g., Letter from Howard Meyerson, Managing Director, FIF, to Sai Rao, Counsel for Trading and Markets, Office of the Chair (Apr. 25, 2024).

¹²³ *Id.*

¹²⁴ Securities Exchange Act Rel. No. 100181 (May 20, 2024), 89 FR 45715 (May 23, 2024).

¹²⁵ *Id.* at n.11.

¹²⁶ See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission at 9 (Oct. 28, 2019).

¹²⁷ *Id.* at 10.

Reports set forth in section 6.6(c) of the CAT NMS Plan, including for purposes of determining compliance with any applicable Financial Accountability Milestones.”¹³¹ The November 2023 Exemption Order is consistent with the Commission’s repeated statements in the FAM adopting release that it would have “authority to grant exemptive relief from any requirement associated with a particular Financial Accountability Milestone,” citing Section 36 of the Exchange Act and Rule 608.¹³² Similarly, the CAT NMS Plan expressly contemplates the Commission’s ability to grant exemptive relief from any CAT NMS Plan requirement.¹³³

(iv) Executing Broker Reporting

CAT LLC also completed the requirements of FAM Period 2, including the required linkages, by December 31, 2020. Although Participant exchanges may report the Executing Broker to CAT differently in certain situations, these reporting differences are irrelevant for linkage purposes as the fields used for CAT Executing Broker are not used for linkage.

(10) Additional Support for Reasonableness of Historical CAT Costs

The CAT Funding Model approved by the Commission permits the recovery of reasonable costs in each of the categories of CAT costs sought to be recovered via Historical CAT Assessment 1.¹³⁴ As described in detail above and in further detail below, the CAT costs to be recovered for each category are reasonable. The following

discusses in further details how each of the following costs are reasonable: (1) costs incurred prior to the effective date of the CAT NMS Plan; (2) cloud hosting services costs; (3) costs related to funding model filings; (4) costs related to litigation with the SEC regarding the CAT NMS Plan; (5) costs related to the Initial Plan Processor; (6) CAIS implementation costs; (7) public relations costs; (8) legal costs related to the limitation of liability provision in the CAT Reporter agreements; and (9) costs for the Chair of CAT Operating Committee. As discussed in detail below, each of these costs is reasonable and should be recoverable in accordance with the CAT Funding Model.

(A) Costs Incurred Prior to the Effective Date of CAT NMS Plan

CAT LLC believes that it is reasonable to seek recovery of costs incurred prior to when the CAT NMS Plan became effective in November 2016, such as legal and consulting fees incurred to create the CAT NMS Plan. Rule 613 specifically mandates that the CAT be created, implemented and maintained, and further provides that the CAT NMS Plan include a proposed allocation of estimated costs to fund the creation, implementation and maintenance of the CAT among the Participants (referred to as “plan sponsors”), and between the Participants and Industry Members (referred to as “members of the plan sponsors”).¹³⁵ Consistent with Rule 613, the CAT NMS Plan, as approved by the Commission, specifically authorizes charging Industry Members fees for costs reasonably incurred prior to the date of the approval of the CAT NMS Plan by the Commission in November 2016, including legal and consulting costs. Section 11.1(c) of the CAT NMS Plan states that:

[i]n 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) reasonably incurred by Participants on behalf of the Company prior to the Effective Date in connection with the creation and implementation of the CAT.

Accordingly, the CAT NMS Plan specifically permits the recovery of costs, including legal and consulting costs, reasonably incurred prior to November 2016 in connection with the creation and implementation of the CAT.

Furthermore, the costs incurred to create and implement the CAT prior to the effective date of the CAT NMS Plan

(“Pre-Formation Costs”) were reasonable both in scope and amount, in accordance with the requirements of Section 11.1(c) of the CAT NMS Plan. During the four-year period from 2012 to 2016, a total of \$13,842,881 in Pre-Formation Costs were incurred. This is an average of approximately \$3.5 million per year over this period. The Pre-Formation Costs fell into three categories: legal costs, consulting costs and public relations costs. This includes legal costs of \$3,196,434; consulting costs of \$10,589,273; and public relations costs of \$57,174. The legal, consulting and public relations services were performed by WilmerHale, Deloitte and Peppercomm, respectively. The selection considerations and fees for these three firms are described in detail above and are described further below. The Pre-Formation Costs are direct costs of CAT, which have been funded entirely by the Participants through non-interest-bearing notes. The Pre-Formation Costs do not include the significant costs incurred by each of the individual Participants in responding to the adoption of Rule 613.

The Pre-Formation Costs are reasonable and appropriate as they reflect the extensive efforts that were necessary to create the CAT NMS Plan as mandated after the SEC’s adoption of Rule 613. As described in more detail below, these efforts included, among other things, developing a plan for selecting the Plan Processor, soliciting and evaluating bids, engaging a diverse set of market participants and the SEC in the development of the Plan, interacting with the SEC in their oversight of the development of the Plan, and seeking appropriate exemptive relief to address areas of concern in Rule 613.¹³⁶

(i) Request for Proposal (“RFP”)

The Participants determined to utilize an RFP to ensure that potential alternative solutions for creating the Plan could be presented and considered, and that a detailed and meaningful cost-benefit analysis could be performed. The SEC supported the use of an RFP, and approved its use as it is described

¹³¹ *Id.* at 77129 n.12.

¹³² FAM Adopting Release at 31335 (May 22, 2020). Section 36 of the Exchange Act grants the Commission the authority to “conditionally or unconditionally exempt any person, security, or transaction . . . from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.” 15 U.S.C. 78mm(a)(1). Under Rule 608(e) of Regulation NMS, the Commission may “exempt from [Rule 608], either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanism of, a national market system.” 17 CFR 242.608(e).

¹³³ Section 12.3 of the CAT NMS Plan (“[T]o the extent the SEC grants exemptive relief applicable to any provision of this Agreement, Participants and Industry Members shall be entitled to comply with such provision pursuant to the terms of the exemptive relief so granted at the time such relief is granted irrespective of whether this Agreement has been amended.”)

¹³⁴ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹³⁵ See, e.g., Rule 613(a)(1)(vii)(D) of the CAT NMS Plan.

¹³⁶ The Participants described in detail the process for drafting the CAT NMS Plan in its original filing of the CAT NMS Plan. See Letter from Mike Simon, on behalf of the Participants of the CAT NMS Plan, to Brent J. Fields, Secretary, Commission (Sept. 30, 2014). A non-exclusive list of filings and activities associated with CAT, including certain pre-2016 filings, are available on the SEC’s website: <https://www.sec.gov/divisions/marketreg/rule613-info>.

in extensive detail in the CAT NMS Plan.¹³⁷

In the context of the SEC's adoption of Rule 613, commenters urged the Commission to utilize an RFP process to assist in the planning and design of the NMS plan.¹³⁸ Specifically, the Commission explained:

In this regard, several commenters suggested that the Commission undergo a RFP or request for information ("RFI") process to create and implement a consolidated audit trail. Specifically, FIF urged the Commission to perform a RFP process "to determine the best technical solution for developing a consolidated audit trail." FIF suggested that the Commission "should outline a set of goals and guiding principles they are striving to achieve as part of the adopted CAT filing and leave the determination of data elements and other technical requirements to [an] industry working group." Similarly, Direct Edge suggested that Commission staff should form and engage in a working group to develop an RFP for publication by the Commission. DirectEdge explained that an RFP process would facilitate the identification of the costs and benefits of the audit trail, as well as the consideration of a wider range of technological solutions. Further, commenters, including Broadridge Financial Solutions, Inc., a technology provider, also requested more specific information about the audit trail system to better assess the Commission's initial cost estimates and to determine the best approach to the consolidated audit trail.¹³⁹

In response to these comments, the Commission modified Rule 613 to require the Participants to address certain important considerations regarding the features and details of the NMS plan and to extend the timeframe for submission of the CAT NMS Plan by the Participants from the 90 days as originally proposed to 270 days, in part, to accommodate a process that would address these considerations.¹⁴⁰ As the SEC noted, "[i]n light of the numerous specific requirements of Rule 613, the Participants concluded that publication of a request for proposal ('RFP') was necessary to ensure that potential alternative solutions to creating the consolidated audit trail can be presented and considered by the Participants and that a detailed and meaningful cost/benefit analysis can be performed, both of which are required

considerations to be addressed in the CAT NMS Plan."¹⁴¹

The SEC specifically recognized that the Participants planned to use an RFP when it approved the Selection Plan, and stated that the RFP was a reasonable approach.¹⁴² As the SEC described in its approval order for the Selection Plan, "[t]he Participants filed the [Selection] Plan to govern how the SROs will proceed with formulating and submitting the CAT NMS Plan—and, as part of that process, how to review, evaluate, and narrow down the bids submitted in response to the RFP ('Bids')—and ultimately choosing the plan processor that will build, operate, and maintain the consolidated audit trail ('Plan Processor')."¹⁴³ After evaluating the Selection Plan, including the use of an RFP process, the Commission stated that it "believes the [Selection] Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail."¹⁴⁴

On February 26, 2013, the Participants published an RFP soliciting bids from parties interested in serving as the plan processor for the CAT. Initially, 31 firms submitted intentions to bid. In the following months, the Participants engaged with potential bidders with respect to, among other things, the selection process, selection criteria, and potential bidders' questions and concerns. On March 21, 2014, the Participants received ten bids in response to the RFP.

(ii) Selection Plan

On September 4, 2013, the Participants filed with the Commission a national market system plan to govern the process for Participant review of the bids submitted in response to the RFP, the procedures for evaluating the bids, and, ultimately, selection of the plan processor (the "Selection Plan").¹⁴⁵ The Commission approved the Selection Plan as filed on February 21, 2014.¹⁴⁶ In approving the Selection Plan, the Commission concluded that "it is reasonably designed to achieve its objective of facilitating the development

of the CAT NMS Plan and the selection of the Plan Processor."¹⁴⁷

The Selection Plan divided the review and evaluation of bids, and the selection of the plan processor, into various stages. Specifically, pursuant to the Selection Plan, a selection committee reviewed all bids and determined which bids contained sufficient information to allow the Participants to meaningfully assess and evaluate the bids. The ten submitted bids were deemed "Qualified Bids," and so passed to the next stage, in which each bidder presented its bids to the Participants on a confidential basis. On July 1, 2014, after conducting careful analysis and comparison of the bids, the Selection Committee voted and selected a shortlist of six eligible bidders. The Selection Committee determined which shortlisted bidders would be provided the opportunity to revise their bids. After the Selection Committee assessed and evaluated the revised bids, the Selection Committee selected the plan processor via two rounds of voting by the Participants, as described in the Selection Plan.

The Selection Plan established an Operating Committee responsible for formulating, drafting, and filing with the Commission the CAT NMS Plan and for ensuring that the Participants' joint obligations under Rule 613 were met in a timely and efficient manner. In formulating the CAT NMS Plan, the Participants also engaged multiple persons across a wide range of roles and expertise, engaged the consulting firm Deloitte as project manager, and engaged the law firm WilmerHale to serve as legal counsel in drafting the Plan. Within this structure, the Participants focused on, among other things, comparative analyses of the proposed technologies and operating models, development of funding models to support the building and operation of the CAT, and detailed review of governance considerations. Given the complexity and scope of developing the CAT NMS Plan, these efforts were extensive.

When it approved the CAT NMS Plan in 2016, the Commission reiterated its belief that the Selection Plan remains a "reasonable approach," that "the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor," and that "the process set forth in the Selection Plan should be permitted to continue":

In approving the Selection Plan, the Commission stated that the Selection Plan is reasonably designed to achieve its objective of facilitating the development of the CAT

¹³⁷ See detailed discussion of RFP questions in Appendix C of the CAT NMS Plan, and incorporation of RFP requirements in Appendix D at D-2.

¹³⁸ For example, in its comments on proposed Rule 613, FIF suggested "that the SROs should select the processor through a 'request for proposal.'" Rule 613 Adopting Release at 45785.

¹³⁹ Rule 613 Adopting Release at 45738-39.

¹⁴⁰ Rule 613 Adopting Release at 45739.

¹⁴¹ Securities Exchange Act Rel. No. 71596 (Feb. 21, 2014), 79 FR 11152, 11152 (Feb. 27, 2014) ("Selection Plan Approval Order").

¹⁴² *Id.*

¹⁴³ *Id.* at 11153.

¹⁴⁴ *Id.* at 11159.

¹⁴⁵ See Securities Exchange Act Rel. No. 70892 (Nov. 15, 2013), 78 FR 69910 (Nov. 21, 2013).

¹⁴⁶ See Selection Plan Approval Order.

¹⁴⁷ Selection Plan Approval Order at 11160.

NMS Plan and the selection of the Plan Processor. The Commission also found that the Selection Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail. The Commission believes that the process set out in the Selection Plan for selecting a Plan Processor remains a reasonable approach, which will facilitate the selection of Plan Processor through a fair, transparent and competitive process and that no modifications to the Selection Plan are required to meet the approval standard. . . . In response to the comment that offered support for a specific Bidder, the Commission agrees with the Participants that the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor and thus believes that the process set forth in the Selection Plan should be permitted to continue.¹⁴⁸

(iii) Engagement With Market Participants and SEC

During the process of developing the CAT NMS Plan, the Participants engaged in extensive and meaningful dialogue with market participants and the SEC. To this end, the Participants created a website to update the public on the progress of the CAT NMS Plan, published a request for comment on multiple issues related to the Plan, held multiple public events to inform the industry of the progress of the CAT and to address inquiries, and formed, and later expanded, a DAG to solicit more input from a representative industry group.¹⁴⁹

The DAG included representatives of Participants and Industry Members and conducted meetings to discuss, among other things, technical and operational aspects the Participants were considering for the Plan. The Participants issued press releases soliciting participants for the DAG, and a wide spectrum of firms was deliberately chosen to provide insight from various industry segments affected by CAT. The DAG meetings included discussions of topics such as option market maker quote reporting, requirements for capturing Customer IDs, timestamps and clock synchronization, reporting requirements for order handling scenarios, costs and funding, error handling and corrections, and potential elimination of systems made redundant by the CAT. From the inception of the DAG through September 2014, the DAG participated

in 36 meetings, as well as a variety of DAG subcommittee meetings.

(iv) Request for Exemption From Certain Requirements Under Rule 613

Following multiple discussions between the Participants and both the DAG and the bidders, as well as among the Participants themselves, the Participants recognized that some provisions of Rule 613 would not permit certain solutions to be included in the Plan that the Participants, in coordination with the DAG, determined advisable to effectuate the most efficient and cost-effective CAT. Specifically, “the SROs reached the conclusion that additional flexibility in certain of the minimum requirements specified in Rule 613 would allow them to propose a more efficient and cost-effective approach without adversely affecting the reliability or accuracy of CAT Data, or its security and confidentiality.”¹⁵⁰ Consequently, the Participants submitted a request for exemptive relief from certain provisions of Rule 613 regarding: (1) options market maker quotes; (2) Customer-IDs; (3) CAT-Reporter-IDs; (4) CAT-Order-IDs on allocation reports; and (5) timestamp granularity.¹⁵¹ The Participants filed two supplements to the request for exemptive relief.¹⁵²

After reviewing the exemptive request, the Commission determined that it was appropriate in the public interest and consistent with the protection of investors to grant the requested exemptive relief.¹⁵³ In granting the exemptive relief, the Commission stated:

[T]he Commission is persuaded to provide flexibility in the discrete areas discussed in the Exemption Request so that the alternative approaches can be included in the CAT NMS Plan and subject to notice and comment. Doing so could allow for more efficient and cost-effective approaches than otherwise would be permitted. The Commission at this stage is not deciding whether the proposed approaches detailed below are more efficient or effective than those in Rule 613. However, the Commission believes the proposed approaches should be within the permissible range of alternatives available to the SROs.¹⁵⁴

The Commission further stated that the requested exemptive relief is

¹⁵⁰ Securities Exchange Rel. No. 77265 (Mar. 1, 2016), 81 FR 11856 (Mar. 7, 2016) (“2016 Exemptive Order”).

¹⁵¹ Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Jan. 30, 2015).

¹⁵² See Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Apr. 3, 2015); Letter from the SROs to Brent J. Fields, Secretary, Commission (Sept. 2, 2015).

¹⁵³ See 2016 Exemptive Order.

¹⁵⁴ *Id.* at 11857.

consistent with the protection of investors. The Commission noted that:

Doing so will provide the public an opportunity to consider and comment on whether these proposed alternative approaches would indeed be more efficient and cost-effective than those otherwise required by Rule 613, and whether such approaches would adversely affect the reliability or accuracy of CAT Data or otherwise undermine the goals of Rule 613. Moreover, if—as the SROs represent—efficiency gains and cost savings would result from including the proposed approaches in the CAT NMS Plan without adverse effects, then the resultant benefits could potentially flow to investors (e.g., lower broker-dealer reporting costs resulting in fewer costs passed on to Customers).¹⁵⁵

The Participants incorporated the exemptive relief into the proposed CAT NMS Plan, which was noticed for comment, and the Commission ultimately approved the CAT NMS Plan with the more efficient and cost-effective alternative approaches described in the exemptive relief. Accordingly, the Participants believe that the costs incurred in developing the exemptive request were critical to the creation of a better CAT than was originally contemplated by Rule 613, and therefore should be recoverable as part of Historical CAT Assessment 1.

(v) Request for Extensions for Filing the CAT NMS Plan

Rule 613(a)(1) under Regulation NMS required the Participants to jointly file the CAT NMS Plan on or before April 28, 2013, less than a year after the adoption of Rule 613. In recognition of the complexity of the project to create the CAT NMS Plan as well as industry interest in limiting or eliminating certain requirements of Rule 613 (e.g., addressing the reporting of options market maker quotes), the Participants requested two extensions of the deadline to file the CAT NMS Plan. The Participants described the need for additional time as follows:

The SROs stated in their Request Letter that they do not believe that the 270-day time period provided for in Rule 613(a)(1) provides sufficient time for the development of the RFP, formulation and submission of bids, and review and evaluation of such bids. The SROs also stated that they believe additional time beyond the 270 days provided for in Rule 613(a)(1) is necessary in order to provide sufficient time for effective consultation with and input from the industry and the public on the proposed solution chosen by the SROs for the creation of the consolidated audit trail at the

¹⁵⁵ *Id.*

¹⁴⁸ See CAT NMS Plan Approval Order at 84737.

¹⁴⁹ See Section D(11) of Appendix C of the CAT NMS Plan.

conclusion of the RFP process and the NMS plan itself.¹⁵⁶

In recognition of the need for additional time to refine the technical description of and requirements for the CAT and to allow for additional evaluation of the proposed cost and funding considerations, the SEC granted two extensions of this deadline.¹⁵⁷ The SEC determined that both extensions were appropriate, in the public interest, and consistent with the protection of investors.¹⁵⁸ In reaching this conclusion, the Commission stated that “it understands that the creation of a consolidated audit trail is a significant undertaking and that a proposed NMS plan must include detailed information and discussion about many things.”¹⁵⁹ The SEC also noted the following:

This additional time to complete the RFP process should allow the SROs to engage in a more thoughtful and comprehensive process for the development of an NMS plan. In this regard, the Commission notes that the additional time to solicit comment from the industry and the public at certain key points in the development of the NMS plan could identify issues that can be resolved earlier in the development of the consolidated audit trail and prior to filing the NMS plan with the Commission.¹⁶⁰

Given the Commission’s recognition of the reasonableness and value of the extension of the deadline to file the CAT NMS Plan, the Participants believe that the costs incurred in developing the extension request were important to the process of developing the CAT NMS Plan, and therefore should be recoverable as part of Historical CAT Assessment 1.

(vi) Submission and Approval of the CAT NMS Plan

After extensive analyses and discussions with the DAG, bidders, market participants and the SEC staff, the Participants finalized the draft of the CAT NMS Plan and filed the CAT NMS Plan with the SEC on September 30, 2014. Following additional discussions, the Participants filed several amendments to the CAT NMS Plan during 2015 and 2016. With these additional changes, the SEC published the CAT NMS Plan for notice and

comment in May 2016.¹⁶¹ Following the comment period, the SEC approved the Plan in November 2016.¹⁶²

(vii) Legal Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include legal costs of \$3,196,434. The legal services were performed by WilmerHale. The selection considerations and fees for WilmerHale were described in detail above. Prior to the creation of CAT LLC, WilmerHale was engaged to represent the consortium of SROs, not the individual Participants. For administrative purposes, FINRA agreed to receive such legal bills, although such costs were shared among the Participants. Therefore, the legal costs incurred with respect to WilmerHale do not include legal costs incurred by the individual Participants. These pre-formation legal costs are described in detail above and are further described below:

- Analyzed various legal matters associated with the Selection Plan and drafted an amendment to Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the DAG;
- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on the CAT NMS Plan;
- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG, and governance support during the transition to the new governance structure under the CAT NMS Plan;
- Drafted exemptive requests;
- Provided interpretations related to the CAT NMS Plan;
- Provided support with regard to discussions among the exchanges, FINRA and other third parties, such as Deloitte;
- Provided tax advice with regard to CAT’s status as a tax-exempt organization; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

(viii) Consulting Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include consulting costs of \$10,589,273. The consulting services were performed by Deloitte. The selection considerations and fees for Deloitte were described in detail above. Prior to the creation of CAT LLC, for administrative purposes, Deloitte was engaged by FINRA to provide consulting services related to CAT, but the costs were shared by the consortium of SROs per agreement. Therefore, the consulting costs incurred with respect to Deloitte do not include consulting costs incurred by the individual Participants. The pre-formation consulting costs include the following:

- Established and implemented program operations for the CAT project, including the program management office and workstream design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participants’ independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, reviewing technical requirements of other NMS plans, analyzing OATS and CAT requirements, and drafting appendices to the Plan;
- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Provided support for industry outreach sessions, including with regard to program design and agenda development, program support and logistics and coordination; and
- Provided support in fact finding, drafting content and meeting coordination for WilmerHale with regard to the CAT and the development of the CAT NMS Plan.

Such Pre-Formation Costs did not include costs related to the Chair of the CAT NMS Plan Operating Committee, as the CAT NMS Plan had not yet been adopted.

¹⁵⁶ Securities Exchange Act Rel. No. 69060 (Mar. 7, 2013), 78 FR 15771, 15772 (Mar. 12, 2013) (“March 2013 Exemptive Order”).

¹⁵⁷ See March 2013 Exemptive Order; Securities Exchange Act Rel. No. 71018 (Dec. 6, 2013), 78 FR 75669 (Dec. 12, 2013) (“December 2013 Exemptive Order”).

¹⁵⁸ March 2013 Exemptive Order at 15772; December 2013 Exemptive Order at 75670.

¹⁵⁹ March 2013 Exemptive Order at 15772.

¹⁶⁰ *Id.* at 15773.

¹⁶¹ See Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

¹⁶² See CAT NMS Plan Approval Order.

(ix) Public Relations Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include public relations costs of \$57,174. The public relations services were performed by Peppercomm. The selection considerations and fees for Peppercomm are described in detail above. The costs related to Peppercomm were shared among the SROs. Therefore, the public relations costs do not include public relations costs incurred by the individual Participants. The pre-formation public relations costs include services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT.

(B) Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs related to cloud hosting services as a part of Historical CAT Assessments. CAT LLC believes that the costs related to cloud hosting services described in detail above are reasonable and appropriate given the strict data processing timelines and storage requirements imposed by the Commission-approved CAT NMS Plan and should be recoverable as a part of Historical CAT Assessment 1.

(i) Reasonableness of AWS Costs Given the Requirements of the CAT NMS Plan

CAT LLC believes that the costs for the cloud hosting services are reasonable, both in terms of the level of the fees paid by CAT LLC for cloud hosting services provided by AWS and the scope of the services performed by AWS for CAT LLC. CAT LLC believes that both the scope and amount of the costs for cloud hosting services are reasonable given the current requirements of the CAT NMS Plan adopted pursuant to Rule 613, including the strict data processing timeline, storage and other technical requirements under the Commission-approved CAT NMS Plan.

CAT LLC believes that the level of fees for the cloud hosting services is reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.

CAT LLC also believes that the scope of services provided by AWS for the CAT are appropriate given the current requirements of the Commission-approved CAT NMS Plan. As described above, the cloud hosting services costs reflect a variety of factors including, among other things:

- *Breadth of Cloud Activities.* AWS was engaged by FCAT, the Plan Processor, to provide a broad range of services to the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS necessary to the CAT include storage services, databases, compute services, and other services (such as networking, management tools and development operations (“DevOps”) tools). AWS also was engaged to provide the various environments for CAT, such as the development, performance testing, test and production environments, which are required by the CAT NMS Plan.

- *High Data Volume.* The cost for AWS services for the CAT is a function of the volume of CAT Data. While it is not linear, the greater the amount of CAT Data, the greater the cost of AWS services to the CAT. The data volume handled by AWS now far exceeds the original volume estimates for the CAT.

- *Plan Requirements.* The cost for AWS services also reflects the technical requirements necessary to meet the stringent performance and other requirements for processing CAT Data. These Plan-dictated processing timelines, storage, testing, security and other technical requirements are significant drivers of AWS costs.

- *Cost Avoidance Efforts.* CAT LLC and FCAT have engaged in ongoing efforts to seek to avoid and minimize AWS costs where permissible under the Plan. Accordingly, these cost avoidance efforts have limited the extent of AWS costs.

In addition, various requirements of the CAT NMS Plan adopted pursuant to Rule 613 contribute to the significant cloud hosting services costs, and that various Plan requirements could be amended or removed without affecting the regulatory purpose of the CAT. Indeed, CAT LLC has repeatedly sought exemptive relief and filed amendments to the CAT NMS Plan, and has even filed suit against the Commission, to seek to revise or eliminate certain costly requirements related to the CAT. However, despite these efforts, absent the Commission granting exemptive relief or approving cost savings amendments to the CAT NMS Plan, CAT LLC, the Participants and Industry Members are all required to comply with such requirements.

(ii) Effect of CAT Design on CAT Costs

(a) Efficient CAT Design

CAT is reasonably designed to efficiently and effectively utilize cloud computing and storage services, given the requirements of the Commission-approved CAT NMS Plan, including requirements related to security, operational reliance and quality assurance, and maintainability.

The Plan Processor uses state-of-the-art software that meets the strict security standards of the CAT NMS Plan. CAT utilizes a big data processing framework that is extensively used by large data processing companies, such as Apple, Meta, Netflix, IBM and Google. As such, it has substantial commercial support and support in the open-source community. It is also well suited for use with regard to iterative types of algorithms and query functions and analytics that the CAT requires, and it provides the heightened security necessary for the CAT.

The development and implementation of the design of CAT is not and has not been static. CAT LLC and the Plan Processor are always evaluating new innovations and service offerings from AWS and other providers to seek to maximize efficiency and cost avoidance while still satisfying the requirements of the CAT NMS Plan. These efforts have led to substantial savings to date. The cloud hosting costs for 2023 were less than the cloud hosting costs for 2022 by \$8 million despite processing seven trillion more events in 2023 due to the efficiency and cost avoidance efforts for cloud hosting services. For example, when AWS introduced new storage options, FCAT adopted the cost-efficient new storage option after establishing that the new offering would satisfy the security and other standards of the CAT NMS Plan. This change led to millions of dollars of savings in storage costs. Similarly, when AWS introduced a new compute processor, FCAT adopted this new compute processor, which led to millions of dollars in savings in compute costs. However, in other cases, new cloud technology developments could not be implemented in CAT because they would not satisfy the security or other requirements of the CAT NMS Plan.

When evaluating the design of the CAT, it must be kept in mind that the CAT is not a typical commercial technology project. The ability to make use of technology approaches that may lead to cost avoidance is also subject to the restrictive requirements of the CAT NMS Plan, such as processing timeframes, requirements for retention of data versions, query requirements,

and security standards. Because such requirements are set forth in the CAT NMS Plan, any modification of such requirements are subject to the time-consuming process of amending the CAT NMS Plan or seeking an exemption from the relevant requirement. For example, CAT LLC recently has filed an amendment to address several of these expensive Plan requirements.¹⁶³

(b) CAT Was Designed To Minimize Industry Member Effort

The CAT System also was designed to minimize the extent to which Industry Members would need to alter their systems to report to CAT. During the design process, Industry Member groups argued that it would make more sense financially for the CAT to accommodate differences in industry systems, than for all Industry Members to change their systems. Moreover, such design choices would facilitate consistency, uniformity and accuracy in reporting. Requiring the CAT to make such accommodations may increase CAT costs while accommodating CAT Reporters.

Based on the requirements in the CAT NMS Plan and/or in response to industry requests for functionality to be embedded with the Plan Processor to streamline or limit Industry Member system changes, the CAT has been designed to limit the effect on Industry Members. The following provides examples of such accommodations:

- *Industry Member Reporting.* In light of the complexity of Industry Member market activity, the CAT's order reporting and linkage scenarios document for Industry Members is over 800 pages in length, addressing nearly 200 scenarios.¹⁶⁴ The Industry Member Technical Specifications allow for dozens of specific event types, which drive complexity for the Plan Processor, but streamline reporting for Industry Members. Furthermore, the Plan Processor greatly expanded Industry Member linkage requirements to support, among other things, child events and supplemental events, allowing for "stateless as-you-go" and "batch end-of-day" reporting when all data is available. Accordingly, CAT takes on the significant cost and effort of providing the required linkages between CAT events; correspondingly,

Industry Members are not required to perform this costly task.

- *File Submission Process.* The CAT was designed to accommodate the varying needs of CAT Reporters with regard to the file submission process. For example, in a 2018 letter, FIF stated that "[t]he SFTP-based submission process is cumbersome, exposes industry members to unnecessary complexity, and puts the burden of support on the CAT Reporter rather than imbedding more functionality into the Plan Processor."¹⁶⁵ Currently, FCAT provides two mechanisms for submitting files: SFTP via a private network, and the Web via Reporter Web Portal.

- *Error Corrections.* The industry also emphasized the need for the CAT to provide error correction tools and functionalities to identify, rectify and re-submit corrections within the required timeframe. For example, FIF stated in a 2018 letter the following:

To be clear, if OATS-like error correction tools are not made available on Day 1, hundreds of firms will be required to create and test their own tools or obtain vendor alternatives prior to the CAT Go-Live Date. Proprietary tools will require additional system builds, access to and ingestion of CAT data to perform system validation, and testing which will further stress the limited number of subject matter experts ("SMEs") dedicated to the implementation of CAT reporting. Should this occur, inevitably firms (especially small firms who lack the necessary IT staff to write code and develop proprietary systems), may be put in the position of passing onto investors the cost required to build hundreds of redundant systems.¹⁶⁶

CAT provides various tools to help Industry Members identify and rectify errors.

- *Data Ingestion Format.* The industry also recommended that CAT adopt a flexible input format that provides an option for Industry Members to submit data in formats that are already in use to reduce costs and potential reporting errors. For example, FIF argued the following:

FIF CAT WG is not proposing a specific format; rather, we are proposing flexibility of input formats which includes support of existing formats (e.g., OATS, FIX) as well as a baseline specification where all fields are defined, and normalized. The input formats must be clearly and thoroughly

defined in Technical Specifications, including FAQs.

Mandating a uniform format for reporting data to the CAT simplifies the task for the Central Repository of consolidating/storing data, but it puts the burden on each CAT Reporter to accurately translate their current (e.g., OATS) reporting information into a uniform CAT interface. However, that is likely to yield more errors because it is very dependent on accurate, complete and timely information (Technical Specifications, FAQs, meta-data, competent CAT help desk) available to CAT Reporters, availability of sophisticated CAT test tools to validate interface protocols, and the skill levels of the estimated 300+ unique CAT Reporters/Submitters during Phase 1 of CAT. Concentrating the responsibility of data conversions with the Central Repository is a reasonable trade-off that should yield fewer errors, and greater accuracy.¹⁶⁷

CAT provides such a flexible input format.

(c) Effect of Initial Plan Processor Design

The costs for cloud hosting services are appropriate and have not been adversely affected by the original design and approaches of the Initial Plan Processor. FCAT's design costs are the result of the requirements of the Commission-approved CAT NMS Plan.

When FCAT took over as the Plan Processor from Thesys, it utilized certain aspects of the technical specifications created by Thesys in its design. However, FCAT has not maintained aspects of the original design that would not be appropriate for the CAT. FCAT revised and enhanced the original technical specifications of the CAT System to increase its efficiency and efficacy, and to ensure its compliance with the CAT NMS Plan. For example, the Initial Plan Processor's approach utilized many more fields than FCAT's approach, which relies on additional linkages. With the additional linkages, the CAT System takes on more of the CAT-related burdens than the Industry Members. Such an approach serves to facilitate consistency, uniformity and accuracy in reporting.

Moreover, FCAT did not utilize the system built by the Initial Plan Processor; it rebuilt the CAT System based on revised technical specifications. For example, the Initial Plan Processor used an on-premises processing approach which was not

¹⁶³ See, e.g., Securities Exchange Act Rel. No. 99938 (Apr. 10, 2024), 89 FR 26983 (Apr. 16, 2024); Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (Mar. 27, 2024) (proposing amendments to the CAT NMS Plan for \$23 million in annual savings).

¹⁶⁴ See CAT Industry Member Reporting Scenarios v.4.10 (Oct. 21, 2022).

¹⁶⁵ Letter from Janet Early, FIF, to Thesys CAT (Mar. 29, 2018).

¹⁶⁶ Letter from Christopher Bok, FIF, to Jay Clayton, Chair, Commission, at 4 (Dec. 11, 2018).

¹⁶⁷ Letter from Mary Lou Von Kaenel, Managing Director, FIF, to Brent Fields, Secretary, Commission at 92 (July 18, 2016), <https://www.sec.gov/comments/4-698/4698-13.pdf>.

geared toward the huge amounts of data stored in the CAT, while FCAT adopted a cloud-based solution in response to such data demands.

Furthermore, given the very short timeframe to develop the CAT System and the prior optimization of certain query tools (e.g., Diver) for regulatory use with significant amounts of data, FCAT determined to rely upon certain existing FINRA tools and adapt them for use with the CAT.

(iii) Consideration of AWS Alternatives

CAT LLC continues to support the selection of AWS as the cloud hosting services provider for CAT given the compliance, operational, and security requirements of the CAT. Independent analyses confirm these conclusions, noting that “AWS is an excellent choice for either strategic or tactical use and recommends considering AWS for almost all cloud IaaS or IaaS+PaaS scenarios.”¹⁶⁸ AWS provides the following benefits to CAT, among others:

- **Broad Suitability.** AWS has a long track record of successfully serving cloud customers with mission-critical projects.
- **Proven Scalability.** AWS has demonstrated that it is capable of building and delivering services on a large scale.
- **Track Record of Innovation.** AWS continues to rapidly innovate, both in terms of new domains of capability and at a fundamental level, thereby facilitating innovation for its customers.
- **Resiliency/Dependability.** Another benefit of AWS is its resiliency; it has a strong track record of stable services. As noted in a review of cloud service providers, “[c]ustomers like to have a broad set of options for resilience and for their cloud providers to have a strong track record of stable services (continuously available, without operational quirks). Only AWS fulfills both desires.”¹⁶⁹
- **Technical and Customer Support.** AWS consistently provides high-quality technical and customer support and engagement. Given the size, scope and regulatory importance of CAT, customer support and engagement that CAT has with the highest levels of AWS are very important to the success of the CAT.
- **Scale.** AWS is capable of supporting large-scale solutions, which is critical given the size and magnitude of the CAT.

- **Security.** AWS provides the security features necessary for the CAT.

In addition, the nature of the CAT, including the amount of data it must process and the size of its data footprint, does not allow for a multi-cloud solution as this would be cost prohibitive and greatly increase the security boundary and associated risk profile of the CAT. For example, a multi-cloud hosting option would increase costs, complexity, and risk for operations with regard to, for example, DevOps, production support, and networking. Similarly, with regard to security, a multi-cloud solution would increase risk, including with regard to the need for data transfers between cloud providers and the expansion of the security boundary. With regard to labor, a multi-cloud solution would lose economies of scale due to the need to support unique cloud requirements. Accordingly, the use of single-cloud solution continues to provide advantages with regard to cost, complexity, and risk. Indeed, “[t]he best practice is to focus on a single primary strategic provider.”¹⁷⁰

Furthermore, if another cloud service provider were determined to be a better match for the CAT at some future date, switching cloud service providers would be a very significant, expensive and time-consuming effort. Such an effort would likely be a 10-to-15-year commitment at a substantial expense. Such a move would require the replication or redesign of the underlying cloud environments (e.g., organizational setup, identify management, accounts, environments, DevOps tooling like release management/config management/network management), as the new provider likely would not have the same infrastructure and software. Once that process has been completed, an exabyte of CAT data would need to be securely migrated to the new platform.

(C) Funding Model Filings

CAT LLC believes that the recovery of costs related to the development of the funding model is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

Funding the CAT is a critical aspect of Rule 613 and the CAT NMS Plan. Article XI of the CAT NMS Plan describes in detail the requirements for funding the CAT, and the Participants are required to comply with and enforce compliance with the funding requirements of the CAT NMS Plan, just as with other aspects of the Plan. Accordingly, the development and

implementation of a funding model for the CAT is as much a part of the requirements of the CAT NMS Plan as the development and operation of the CAT System. CAT LLC sees no reason to distinguish the efforts to develop a funding model from, for example, efforts to develop the CAT System, in seeking to recover reasonable CAT costs.

Moreover, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . legal costs.”¹⁷¹ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . legal . . . costs.”¹⁷² In keeping with these provisions, this filing provides a brief description of reasonably budgeted legal costs above. These legal costs include costs related to the development of the CAT Funding Model.

In addition, the legal costs incurred for the assistance in developing the CAT Funding Model are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the specialized services were performed by experienced counsel at negotiated rates for such services that reflect both the extent of the services and market rates. Moreover, the scope of the legal costs associated with the development of the funding model reflect the complexity of the task in satisfying the detailed requirements of the CAT NMS Plan, the standards of the Exchange Act, and the many perspectives of the different market constituents potentially affected by or interested in the funding model, including Industry Members, Participants and investors. The many and varied comments by market participants on CAT funding over the years demonstrate the complexity of the task.

(D) Costs Related to Litigation With the SEC

CAT LLC believes that the recovery of legal costs related to the litigation with the SEC regarding the CAT NMS Plan is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that

¹⁶⁸ See, e.g., Lydia Leong and Adrian Wong, Solution Comparison for Strategic Cloud Integrated IaaS and PaaS Providers (July 28, 2023) (“Strategic Cloud Assessment Article”).

¹⁶⁹ Strategic Cloud Assessment Article.

¹⁷⁰ *Id.*

¹⁷¹ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁷² Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.¹⁷³ Moreover, CAT LLC initiated such litigation, and incurred the related legal costs, because it was critical to address the Commission's interpretations of the CAT NMS Plan. Among other things, such interpretations threatened to impose unnecessary costs on the CAT, which would be borne by the Participants and Industry Members. Indeed, in response to the litigation, the Commission provided exemptive relief that allowed alternative, more cost-effective approaches to the implementation of the CAT. Specifically, in the 2023 exemptive order, the Commission stated:

The conditional exemptive relief in this Order allows for the implementation of alternative regulatory solutions that continue to advance the regulatory goals that Rule 613 and the CAT NMS Plan were intended to promote, while reducing the implementation and operational costs, burdens, and/or difficulties that would otherwise be incurred by the Participants and Industry Members that must fund the CAT.¹⁷⁴

CAT LLC believes it is reasonable and appropriate to incur costs to limit the need to incur even greater costs due to certain interpretations of the Plan.

In addition, the legal costs incurred during the litigation are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the specialized services were performed by experienced counsel at market rates for such services. As such, the legal costs related to this litigation incurred during the period covered by Historical CAT Assessment 1 were reasonable.

Finally, Industry Members will directly benefit from the result of the litigation because it has addressed CAT NMS Plan requirements that would have imposed significantly greater costs on the CAT. Accordingly, it is reasonable and appropriate that the costs of such litigation be included in the Historical CAT Costs 1.

(E) Costs Related to the Initial Plan Processor

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017, which was the date by which Participants were required to begin reporting to the CAT, due to the delay in the commencement of reporting to the CAT. As discussed above, the

Participants determined to exclude all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Thesys costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Thesys costs incurred after November 15, 2018 are the \$19,628,791 in capitalized developed technology costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these \$19,628,791 in costs.

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. CAT LLC notes that the development and implementation of the CAT System, while unprecedented in scope and design, is like any other large and innovative technology project in that, inevitably, there were adjustments and refinements in the technical approach as the project developed, even with substantial planning efforts and oversight prior to the build. This is even more likely when the project faces a very tight implementation schedule, such as the one imposed by the Commission in Rule 613 and the CAT NMS Plan. However, an adjusted approach does not mean that the funds were not valid expenditures and should not be recovered.

The reasonableness of Thesys costs should be evaluated by the Commission as of the time they were incurred, not in hindsight. As detailed above, the Commission concluded in 2016 that “the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor,” and that “the process set forth in the Selection Plan should be permitted to continue.”¹⁷⁵ Following this process, the Participants notified the Commission of the selection of Thesys as the Initial Plan Processor on January 17, 2017.¹⁷⁶ At the time, neither the Commission nor the industry argued that the selection of the Initial Plan Processor was unreasonable or otherwise inconsistent with the CAT NMS Plan, nor did they predict the selection would result in unanticipated delays in the implementation of the

CAT System. On the contrary, on April 4, 2017, the President of SIFMA wrote that “SIFMA looks forward to commencing work with the SROs and Thesys.”¹⁷⁷

As noted in the CAT Funding Model Approval Order, “[i]n Rule 613, the Commission made the determination that the costs of the CAT should be shared by the Participants and Industry Members.”¹⁷⁸ If the CAT Funding Model had existed on Day 1, the risk of any unanticipated costs or challenges associated with the Initial Plan Processor would have been fairly and reasonably shared among the Participants and Industry Members on an ongoing basis. Given that the Commission concluded in 2012 that the costs of the CAT would be shared by the Participants and Industry Members, it is not fair or reasonable to determine in hindsight that all of the risk involved in developing the CAT should be allocated entirely to the Participants.

(F) CAIS Implementation Costs

CAT LLC believes that the recovery of CAIS-related costs is appropriate, and that the amount and scope of such costs, as described above, are reasonable, and that the reasonableness of historical costs should be evaluated by the Commission as of the time they were incurred, not in hindsight.

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable CAIS operating costs as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . CAIS operating fees.”¹⁷⁹ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . CAIS operating fees.”¹⁸⁰ In keeping with these provisions, this filing provides a brief description of reasonably budgeted CAIS operating fees.

In addition, CAT LLC determined that the CAIS operating fees described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. The “CAIS Operating Costs” for Historical CAT Assessment 1 total

¹⁷⁷ Letter from Kenneth E. Bentsen, Jr., SIFMA, to Participants re: Selection of Thesys as CAT Processor (Apr. 4, 2017), <https://www.sifma.org/wp-content/uploads/2017/05/SIFMA-Submits-Comment-Letter-to-SRO-on-the-selection-of-Thesys-as-the-CAT-Processor.pdf>.

¹⁷⁸ CAT Funding Model Approval Order at 62650.

¹⁷⁹ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁸⁰ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁷³ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁷⁴ Settlement Exemptive Order at 77129–30.

¹⁷⁵ CAT NMS Plan Approval Order at 84737.

¹⁷⁶ Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/markreg/rule613-info-notice-of-plan-processor-selection.pdf>.

\$9,480,587, with Pre-FAM costs of \$2,072,908, FAM 1 costs of \$254,998, FAM 2 costs of \$1,590,298, and FAM 3 costs of \$5,562,383. As described above, the CAIS operating fees were incurred with regard to two categories of CAIS-related efforts: (1) the acceleration of the reporting of LTIDs; and (2) the development of the CAIS Technical Specifications and the building of CAIS. These two categories of costs are discussed in more detail below.

(i) LTID Reporting

During the period covered by Historical CAT Assessment 1, the CAIS operating costs included costs related to the acceleration of the reporting of LTIDs earlier than originally contemplated during this period at the request of the SEC and in accordance with exemptive relief granted by the SEC.¹⁸¹ As the SEC approved in this exemptive relief, the Participants proposed “to require the reporting of LTIDs to the CAT in Phases 2c and 2d, instead of with the rest of Customer Account Information in Phase 2e, which potentially could result in an earlier elimination of broker-dealer recordkeeping, reporting and monitoring requirements of the Large Trader Rule.”¹⁸² To implement the reporting of LTIDs to the CAT, the following steps were taken during the period covered by Historical CAT Assessment 1:

- After FCAT developed the LTID Technical Specifications, the LTID Technical Specifications were published on January 31, 2020, with additional updates provided to the LTID Technical Specifications through April 2021.¹⁸³
- The LTID account information testing environment opened on August 24, 2020.
- The LTID account information reporting production environment opened on December 14, 2020.
- CAT Reporters were required to request their production readiness certification for account information related to LTIDs by the deadline of April 9, 2021.
- The LTID account information reporting for Phases 2a, 2b and 2c for Large Industry Members went live on April 26, 2021.
- The LTID account information reporting for Phases 2d for Large

Industry Members went live on December 13, 2021.

- The LTID account information reporting for Phases 2a, 2b, 2c and 2d for Small Industry Members went live on April 26, 2021.

Throughout this project, FCAT and CAT LLC worked closely with the industry on LTID and CAIS reporting. Between December 2019 and December 2021, at least 57 checkpoint calls, webinars, and technical working group meetings with industry representatives were hosted to address issues and to educate CAT Reporters regarding LTID and CAIS reporting.¹⁸⁴

The LTID reporting project was successfully completed in a timely fashion, and the fees related to the project were reasonable. Accordingly, CAT LLC appropriately seeks to recover such costs via Historical CAT Assessment 1.

(ii) CAIS Reporting

During the period covered by Historical CAT Assessment 1, FCAT began the development of the full CAIS Technical Specifications and the building of CAIS. The CAIS Technical Specifications were developed during this period as follows:

- Iterative drafts of the CAIS Technical Specifications were published on June 30, 2020, December 1, 2020, and January 1, 2021.¹⁸⁵
- The full, final CAIS Technical Specifications were published on January 29, 2021.
- Updated versions of the CAIS Technical Specifications were published throughout 2021.¹⁸⁶

As discussed above, FCAT and CAT LLC frequently engaged with the industry regarding the development of CAIS, hosting regular checkpoint calls, webinars, and technical working group meetings with industry representatives to address any issues, including addressing the interplay between Industry Members’ existing customer systems and CAIS, and to educate CAT Reporters regarding LTID and CAIS reporting. Such engagement was critical to the CAIS development process as the CAIS project was unprecedented in terms of its content, scope and complexity.

During this period, FCAT also commenced the building of the CAIS system in accordance with the CAIS Technical Specifications during the period covered by Historical CAT Assessment 1. The CAIS system was ready for industry testing shortly after the end of this period in January 2022.

The CAIS Technical Specifications and the CAIS system, as developed during this period, continue to be in use today. Industry Members have been required to report, and have continuously reported, required data to CAIS on a daily basis since November 7, 2022, consistent with interim reporting obligations. The CAIS system accepts and validates the CAIS data submitted by Industry Members and provides Industry Members with initial feedback on data errors. In light of the unprecedented nature of the CAIS system, certain changes to the system, such as changes related to error corrections and the CAIS regulatory portal, were necessary to finalize CAIS reporting. FCAT worked to address these remaining issues,¹⁸⁷ and, as of May 31, 2024, FCAT indicated that it had achieved the final CAIS reporting milestone. Accordingly, CAT LLC appropriately seeks to recover CAIS operating costs via Historical CAT Assessment 1.

(G) Public Relations Costs

CAT LLC believes that the recovery of public relations costs is appropriate and that the amount and scope of such costs, as described above, are reasonable.

The Commission has long recognized that external public relations costs are reasonably associated with creating, implementing and maintaining the CAT. In the CAT NMS Plan Approval Order, the Commission estimated that the Participants had collectively spent approximately \$2,400,000 in preparation of the CAT NMS Plan on external public relations, legal, and consulting costs, and estimated that the Participants would continue to incur external public relations costs associated with maintaining the CAT upon approval of the CAT NMS Plan.¹⁸⁸

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for public relations services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . .

¹⁸¹ See Phased Reporting Exemptive Relief Order at 23079–80.

¹⁸² *Id.* at 23078–79, n.70.

¹⁸³ The LTID Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

¹⁸⁴ Such contact points with the industry are described in detail on the Events web page of the CAT website (<https://www.catnmsplan.com/events>).

¹⁸⁵ The CAIS Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

¹⁸⁶ Six updated versions of the CAIS Technical Specifications were published during 2021, in March, May, June, August, October and December.

¹⁸⁷ See, e.g., CAT Q4 2023 Quarterly Progress Report (Jan. 30, 2024) (<https://www.catnmsplan.com/sites/default/files/2024-01/CAT-Q4-2023-QPR.pdf>).

¹⁸⁸ CAT NMS Plan Approval Order at 84917–18.

public relations costs.”¹⁸⁹ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . public relations costs.”¹⁹⁰ In keeping with these provisions, a brief description of reasonable public relations costs are described above.

In addition, CAT LLC determined that the public relations costs described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. The services performed by the public relations firms through 2021 were limited in scope to assist CAT LLC, which has no employees of its own, to be better positioned to understand and address CAT matters to the benefit of all market participants and to communicate on important CAT topics with the public. In addition, the costs for these services were appropriately limited. During the 10-year period covered by Historical CAT Assessment 1, the average cost per year for these services was approximately \$36,000.

(H) Legal Costs Related to the Limitation of Liability Provision in CAT Reporter Agreements

CAT LLC believes that the recovery of legal costs related to the limitation of liability provision, including costs related to the proceedings before the SEC and costs related to the proposed amendment to the Consolidated Audit Trail Reporter Agreement and the Consolidated Audit Trail Reporting Agent Agreement (the “Reporting Agreements”) is appropriate and that the amount and scope of such costs as described above are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.¹⁹¹ In addition, CAT LLC determined that the legal costs incurred for the assistance with regard to the limitation of liability provisions are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1.

Moreover, it is critical that CAT LLC, which has no employees of its own, have the ability to fund a legal defense in litigation and other legal proceedings against it. In response to CAT LLC requiring Industry Members to agree to

the limitation of liability provision to submit data to the CAT, SIFMA filed an application for review of actions taken by CAT LLC and the Participants pursuant to Sections 19(d) and 19(f) of the Exchange Act. Contemporaneously with the filing of this proceeding, SIFMA moved for a stay of the requirement that Industry Members sign a Reporter Agreement, or in the alternative, asked the Commission to further delay the launch of CAT reporting on June 22, 2020. CAT LLC must have the resources to defend itself from litigious actions by others, like these.

Although a limitation of liability provision ultimately was not adopted as proposed, it was a reasonable provision to propose for the CAT Reporter Agreements, given that such provisions are in accordance with industry norms. Limitations of liability are ubiquitous within the securities industry and have long governed the economic relationships between self-regulatory organizations and the entities that they regulate. For example, U.S. securities exchanges have adopted rules to limit their liability for losses that Industry Members incur through their use of exchange facilities.¹⁹² Similarly, FINRA’s former order audit trail, OATS, which has functioned as an integrated audit trail of order, quote, and trade data for equity securities, required FINRA members to acknowledge an agreement that includes a limitation of liability provision.¹⁹³ In addition, such a provision was intended to ensure the financial stability of the CAT. Accordingly, it was reasonable for CAT LLC to propose the use of such a provision.¹⁹⁴

Furthermore, as described above, the specialized services were performed by experienced counsel at market rates for such services. Accordingly, the legal costs for the efforts related to the limitation of liability provision were reasonable.

(I) Costs for the Chair of CAT Operating Committee

CAT LLC believes that the recovery of consulting costs related to the Chair of

the CAT Operating Committee is appropriate and that the amount and scope of such costs are reasonable.

As a preliminary matter, the selection of the Chair of the Operating Committee complies with the requirements of Section 4.2 of the CAT NMS Plan. The initial Chair that served during the period covered by Historical CAT Assessment was designated by a Participant as the Participant’s alternate voting member. Accordingly, the Chair is a representative of the Participants, as required by the CAT NMS Plan.

In addition, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for consulting as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . consulting . . .” costs.¹⁹⁵ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . consulting”¹⁹⁶ costs. In keeping with these provisions, a brief description of reasonable consulting costs is included in this filing, and such reasonable consulting costs include the costs related to the Chair position.

The Participants determined that the position of the Chair was a critical role for the implementation of the CAT, and an independent Chair would appropriately consider and address the views of each of the Participants. The Participants also determined that it was important to have a Chair with a strong background regarding issues related to the regulatory obligations of self-regulatory organizations, including their obligations under national market system plans. The compensation paid to the Chair is appropriate for a person with such background and skills. The average annual amount paid to the Chair from 2017 through the end of FAM 3 was \$292,733.30. Separate from the Chair, CAT LLC relies upon a Leadership Team of representatives of the SROs to oversee the day-to-day implementation of the CAT NMS Plan. CAT LLC does not compensate any member of the Leadership Team.

¹⁸⁹ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁹⁰ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁹¹ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁹² See, e.g., NASDAQ Equities Rule 4626.

¹⁹³ FINRA Rule 1013(a)(1)(R) requires all applicants for FINRA Membership to acknowledge the FINRA Entitlement Program Agreement and Terms of Use, which applies to OATS. Industry Members click to indicate that they agree to its terms—including its limitation of liability provision—every time they access FINRA’s OATS system to report trade information (*i.e.*, repeatedly over the course of a trading day for many Industry Members).

¹⁹⁴ See Letter from Michael Simon, Chair, CAT Operating Committee, to Vanessa Countryman, Secretary, Commission (Dec. 18, 2020).

¹⁹⁵ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁹⁶ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

(11) Fee Implementation Assistance for Industry Members

(A) Reconciliation of CAT Invoices

(i) Reconciliation of CAT Invoices to Underlying Trades Provided by CAT

CAT LLC understands that there are three types of reconciliation processes related to the invoices:

- *Reconciliation of CAT Invoices to Underlying Trades*: Reconciling the CAT invoice amount to the underlying trades provided by CAT;
- *Matching Trades to Books and Records*: Providing the means to match the underlying trades provided by CAT with CAT invoices to other books and records independently maintained by individual CAT Reporters (e.g., exchange trade journals/ acknowledgements) and data sources of self-regulatory organizations independent of CAT; and
- *Order Originator Identification*: Providing the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices, which would facilitate firms' ability to pass through CAT Fees to their customers.

As discussed further below, CAT LLC only considers the first type of process to be a "reconciliation" and the only type of process that is required under the CAT NMS Plan. CAT LLC provides the means to reconcile the CAT invoice amount to the underlying trades provided by CAT.

The CAT NMS Plan does not require CAT LLC to facilitate the second type of process: matching underlying trades for a CAT invoice with a firm's internal books and records. CAT LLC has access only to the underlying trades provided by CAT; it does not have access to a firm's internal books and records. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying trades with their own books and records.

The CAT NMS Plan also does not require CAT LLC to provide the ability to identify the order originator for the underlying trades for the CAT invoices. Accordingly, the billing guidance and processes do not provide CAT Reporters with the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices. CAT LLC has been working closely with CAT Reporters to explain its billing approach and to address any outstanding billing questions. But, it should not be lost that CAT LLC

provides information sufficient to allow CAT Reporters to reconcile CAT invoice amounts with the underlying trades provided by CAT LLC.

(ii) Match the Underlying Trades Provided by CAT With CAT Invoices to Firms' Internal Books and Records Independent of CAT

The CAT NMS Plan does not require CAT LLC to facilitate the matching of underlying trades for a CAT invoice with a firm's internal books and records, which may consist of trading data from various sources external to CAT. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying trades with their own books and records.

In this regard, it is important to recognize that CAT LLC has developed a billing approach that greatly improves upon existing billing practices for similar regulatory fees (e.g., fees related to Section 31). Accordingly, with the additional information voluntarily provided by CAT LLC, CAT Reporters generally will have sufficient information to match their underlying trades provided by CAT with their own internal books and records that are independent of CAT or to SRO data that is independent of CAT data. However, CAT LLC emphasizes that providing such additional information is not required by the CAT NMS Plan.

To facilitate the introduction of CAT fees, CAT LLC has worked with FCAT to develop an approach to CAT billing that is consistent with existing billing constructs used with regard to Section 31-related sales values fees, subject to certain enhancements. Under this billing approach, FCAT is providing additional linkage elements, not necessarily provided in the Section 31-sales value fee context, to facilitate CAT Reporters' ability to match the underlying trades provided by CAT with their internal books and records and to reduce the complexity of that process. Specifically, FCAT is providing various key elements of the trade itself, such as the tradeID and branch sequence,¹⁹⁷ to CAT Reporters in the trade billing details provided with their CAT invoices ("Additional Trade

Details"). As a result, CAT Reporters now have numerous alternative methods for matching a trade with their internal books and records where they previously did not have such matching methods in other fee contexts.

With the Additional Trade Details, CAT LLC and FCAT believe that the overwhelming majority of underlying trades provided by CAT bills can be matched with a CAT Reporter's internal books and records. CAT LLC recognizes that there may be certain cases in which such matching is more difficult given various firm-specific considerations, but believes that such instances are significantly more limited than with regard to the SRO fees charged in relation to Section 31.¹⁹⁸ By providing Additional Trade Details that are not available in other fee contexts, FCAT enhances the Industry Members' ability to match the underlying trades provided with CAT invoices with books and records and SRO data, both of which are independent of CAT data.

(iii) CAT LLC is Not Required To Facilitate CAT Reporters' Ability To Pass Through Fees to Their Customers

Similar to other regulatory fees, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Accordingly, Historical CAT Assessment 1 does not address the process by which any CAT Reporters may pass through the fee to their customers. Likewise, the CAT billing approach provided by the Plan Processor is designed to address the needs of CAT Reporters with regard to the reconciliation of CAT invoices with the underlying trades provided by CAT LLC with the invoices; they are not designed to address issues related to any pass-through fees. Accordingly, facilitating CAT Reporters' ability to pass through fees to their clients is outside the scope of this fee filing. Nevertheless, as described below, CAT LLC and the Plan Processor have expended significant efforts to provide

¹⁹⁷ See CAT Technical Specifications for Billing Trade Details; Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>); CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

¹⁹⁸ For years, broker-dealers have faced similar reconciliation issues with regard to SRO fees related to Section 31. Broker-dealers have responded to this issue in the Section 31 context by exercising their discretion as to whether and the manner and extent to which they pass on those fees (e.g., by rounding up its fees to the nearest cent, or decide to charge for, or not charge for, certain transactions, or assess a specific fee or incorporate the costs into other fee programs). See, e.g., Securities Exchange Act Rel. No. 49928 (June 28, 2004), 69 FR 41060, 41072 (July 7, 2004) (noting that broker-dealers may "over-collect" Section 31-related fees charged to their clients due to rounding practices, and double-counting with regard to certain transactions).

technical assistance to Industry Members regarding the implementation of Historical CAT Assessment 1, including providing Additional Trade Details that provide significant details about each underlying trade.

(a) Originating Brokers Versus Executing Brokers

In its approval of the CAT Funding Model, the Commission approved charging CAT fees to the CAT Executing Broker, rather than the originating broker. This fee filing must comply with the requirements of the CAT Funding Model, and, therefore, charges the Historical CAT Assessment 1 to CAT Executing Brokers.

Moreover, charging originating brokers would introduce significant complexity to the billing process from the CAT's perspective, and would increase the costs of implementing CAT fees. Charging the CAT Executing Broker is simple and straightforward, and leverages a one-to-one relationship between billable events (trades) and billable parties, similar to other transaction-based fees. In contrast, for a single trade event, there may be many originating brokers, and each trade must be broken down on a pro-rata basis, to account for one or more layers of aggregation, disaggregation, and representation of the underlying orders. While CAT is indeed designed to capture and unwind complex aggregation scenarios, the data and linkages are structured to facilitate regulatory use, and not a billing mechanism that assesses fees on a distinct set of executed trades; it is not simply a matter of using existing CAT linkages. Furthermore, charging originating brokers would implicate issues related to lifecycle linkage rates, and issues related to corrections, cancellations and allocations, while charging CAT Executing Brokers would avoid such issues.

(b) Identification of Order Originator for Underlying Trades

As noted, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT Fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Nevertheless, the Additional Trade Details provided with regard to the underlying trades on CAT invoices may assist with this process. Like with Section 31-related sales value fees, however, it is not always possible to trace every fee on a transaction back to the originating party. Industry Members have faced these issues under Section 31-related sales values fees for

many years.¹⁹⁹ However, with the Additional Trade Details provided under the CAT billing approach, in many cases, CAT Reporters will be able to identify the order originator for the underlying trades provided by CAT with CAT invoices. In some cases, CAT LLC believes that certain issues related to certain types of market activity may implicate CAT Reporters' ability to identify the order originator for a limited set of underlying trades for the CAT invoices. Although CAT LLC does not believe that it is required to address these issues, CAT LLC and FCAT have been carefully researching and analyzing these types of issues as they are identified, and have been working voluntarily to assist CAT Reporters with these issues as necessary and when possible. In addition, CAT LLC intends to continue to provide CAT Reporters with billing guidance through FAQs, CAT Alerts and Helpdesk responses to address outstanding billing questions.

(B) Significant Technical Assistance

CAT LLC has worked with FCAT to provide significant technical assistance to Industry Members to allow the Industry Members to understand how Historical CAT Assessment 1 will be implemented and billed, including webinars, CAT alerts, mock invoices, and responses to questions posed to the FCAT Help Desk.

- *Technical Specifications and Scenarios.* CAT LLC has provided detailed technical documentation for CAT billing, including (1) technical specifications, which describe the CAT Billing Trade Details Files associated with monthly CAT invoices, including detailed information about data elements and file formats as well as access instructions, network and transport options;²⁰⁰ (2) trade details

schemas;²⁰¹ and (3) CAT billing scenarios.²⁰²

- *Industry Webinars.* CAT LLC has hosted two industry webinars specifically dedicated to CAT billing. The first webinar, hosted on September 28, 2023, discussed the operational implementation of the CAT Reporter billing process.²⁰³ The second webinar, hosted on November 7, 2023, provided (1) a demonstration of the CAT Reporter Portal and how to access CAT billing documents, including CAT invoices; and (2) additional information on underlying trade details in relation to the CAT Reporter billing process and an overview of the CAT Contact Management System.²⁰⁴ 485 participants and 394 participants attended the two webinars, respectively.

- *CAT Alert.* CAT LLC has published a detailed CAT Alert that describes how FCAT, as the Plan Processor acting on behalf of CAT LLC, will calculate applicable fees, issue invoices to and collect payment from CAT Executing Brokers.²⁰⁵

- *Frequently Asked Questions (FAQs).* CAT LLC also has continued to engage with the industry on billing issues by making responses to billing FAQs available on the CAT website. The FAQs address a broad range of frequently asked questions, including, for example, which Industry Members will receive invoices, how fees are calculated, when and how fees are required to be paid, how to access invoices, and how to update the billing contact. To date, responses to 27 FAQs are available on the CAT website, and CAT LLC will provide additional responses to FAQs as warranted.²⁰⁶

- *Mock Invoices.* To assist Industry Members with compliance with the commencement of Historical CAT Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices for Historical CAT Assessment 1 since December 2023 for billable activity occurring in

¹⁹⁹ "FINRA charges a Regulatory Transaction Fee ("RTF") to industry members to reimburse FINRA for the Section 31 fees that FINRA pays to the Commission. FINRA does not currently provide industry members with the data that industry members require for proper reconciliation of RTF fees. This has been a major problem for the industry for many years." Letter from Howard Meyerson, Managing Director, FIF, to Robert Cook, Chief Executive Officer, FINRA at 2 (Dec. 15, 2023) (<https://fif.com/index.php/working-groups/category/271-comment-letters?download=2820:fif-letter-to-finra-on-pass-through-of-finra-cat-fees&view=category>).

²⁰⁰ CAT Technical Specifications for Billing Trade Details, Version 1.0 r1 (Dec. 8, 2023) (https://catnmsplan.com/sites/default/files/2023-12/12.07.2023-CAT-Technical-Specifications-for-Billing-Trade-Details-v1.0r1_CLEAN.pdf).

²⁰¹ Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>).

²⁰² CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

²⁰³ CAT Billing Webinar, Part 1 (Sept. 28, 2023) (<https://www.catnmsplan.com/events/part-1-cat-billing-webinar>).

²⁰⁴ CAT Billing Webinar, Part 2 (Nov. 7, 2023) (<https://www.catnmsplan.com/events/part-2-cat-billing-webinar>).

²⁰⁵ See CAT Alert 2023-02 (Oct. 12, 2023) (<https://www.catnmsplan.com/sites/default/files/2023-10/10.12.23-CAT-Alert-2023-02.pdf>).

²⁰⁶ See CAT Billing FAQs, Section V of CAT FAQs (https://www.catnmsplan.com/faq?search_api_fulltext=&field_topics=271&sort_by=field_faq_number).

November 2023. The mock invoices are in the same form as the actual, payable invoices, including both the relevant transaction data and the corresponding fee (as originally contemplated). However, no payments are required in response to such mock invoices; they are to be used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data provides CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended to facilitate the payment of Historical CAT Assessment 1. For the November, December, and January billing periods, FCAT has generated trade detail files for 569 distinct firms that are CAT Executing Brokers. As such, CAT Reporters have actively engaged in the billing process via the mock invoices.

- *Help Desk Assistance.* CAT LLC also provides detailed, individualized assistance to Industry Members regarding CAT fees and the billing process through the FCAT Help Desk.²⁰⁷ For example, the Help Desk has assisted with 406 cases related to the billing of CAT fees from July 2023 through March 2024.

By providing such detailed and sustained assistance to Industry Members regarding CAT fees and billing, CAT LLC has successfully addressed questions raised by Industry Members regarding the CAT fees and billing processes.

(C) Ample Preparation Time

CAT LLC has provided Industry Members with ample time to comply with the implementation of Historical CAT Assessment 1. CAT LLC originally proposed issuing the first invoices for Historical CAT Assessment 1 in December 2023 based on transactions in Eligible Securities in November 2023. In consideration of the feedback about the need for additional time to implement the new fee, CAT LLC pushed back this timeline by four months, proposing to issue the first Historical CAT Assessment 1 in April 2024 based on transactions in March 2024.²⁰⁸ This filing pushes this timeline back even further for implementing Historical CAT

Assessment 1, proposing to issue the first invoices for Historical CAT Assessment 1 in November 2024 based on transactions in Eligible Securities in October 2024. Moreover, as discussed above, during these additional months, FCAT has been working closely with Industry Members to provide guidance regarding their mock bills and reconciliation efforts related thereto.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of the Exchange Act. The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,²⁰⁹ which requires, among other things, that the Exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and not designed to permit unfair discrimination between customers, issuers, brokers and dealers. The Exchange also believes that the proposed rule change is consistent with the provisions of Section 6(b)(4) of the Act,²¹⁰ because it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(8) of the Act,²¹¹ which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. These provisions also require that the Exchange be "so organized and [have] the capacity to be able to carry out the purposes" of the Act and "to comply, and . . . to enforce compliance by its members and persons associated with its members," with the provisions of the Exchange Act.²¹² Accordingly, a reasonable reading of the Act indicates that it intended that regulatory funding be sufficient to permit an exchange to fulfill its statutory responsibility under the Act, and contemplated that such funding would be achieved through equitable assessments on the members, issuers, and other users of an exchange's facilities.

The Exchange believes that this proposal is consistent with the Act

because it implements provisions of the Plan and is designed to assist the Exchange in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan "is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act."²¹³ To the extent that this proposal implements the Plan and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

The Exchange believes that the proposed fees paid by the CEBBs and CEBs are reasonable, equitably allocated and not unfairly discriminatory. First, the Historical CAT Assessment 1 fees to be collected are directly associated with the costs of establishing and maintaining the CAT, where such costs include Plan Processor costs and costs related to technology, legal, consulting, insurance, professional and administration, and public relations costs. The Exchange has already incurred such development and implementation costs and the proposed Historical CAT Assessment 1 fees, therefore, would allow the Exchange to collect certain of such costs in a fair and reasonable manner from Industry Members, as contemplated by the CAT NMS Plan.

The proposed Historical CAT Assessment 1 fees would be charged to Industry Members in support of the maintenance of a consolidated audit trail for regulatory purposes. The proposed fees, therefore, are consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business operations. The proposed fees would not cover Exchange services unrelated to the CAT. In addition, any surplus would be used as a reserve to offset future fees. Given the direct relationship between CAT fees and CAT costs, the Exchange believes that the proposed fees are reasonable, equitable and not unfairly discriminatory.

As further discussed below, the SEC approved the CAT Funding Model, finding it was reasonable and that it equitably allocates fees among Participants and Industry Members. The Exchange believes that the proposed fees adopted pursuant to the CAT

²⁰⁷ The CAT NMS Plan requires that the Plan Processor "staff a CAT help desk, as described in Appendix D, CAT Help Desk, to provide technical expertise." Section 6.10(c)(vi) of the CAT NMS Plan. See also Section 10.3 of Appendix D of the CAT NMS Plan for a description of the Plan requirements for the CAT Help Desk.

²⁰⁸ See Securities Exchange Act Rel. No. 99377 (Jan. 17, 2024), 89 FR 10544 (Feb. 13, 2024) (SR-BOX-2024-03).

²⁰⁹ 15 U.S.C. 78f(b)(6).

²¹⁰ 15 U.S.C. 78f(b)(4).

²¹¹ 15 U.S.C. 78f(b)(8).

²¹² See Section 6(b)(1) of the Exchange Act.

²¹³ CAT NMS Plan Approval Order at 84697.

Funding Model approved by the SEC are reasonable, equitably allocated and not unfairly discriminatory.

(1) Implementation of CAT Funding Model in CAT NMS Plan

Section 11.1(b) of the CAT NMS Plan states that “[t]he Participants shall file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves.” Per Section 11.1(b) of the CAT NMS Plan, the Exchange has filed this fee filing to implement the Industry Member CAT fees included in the CAT Funding Model. The Exchange believes that this proposal is consistent with the Exchange Act because it is consistent with, and implements, the CAT Funding Model in the CAT NMS Plan, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the CAT NMS Plan. In approving the CAT NMS Plan, the SEC noted that the Plan “is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.”²¹⁴ Similarly, in approving the CAT Funding Model, the SEC concluded that the CAT Funding Model met this standard.²¹⁵ As this proposal implements the Plan and the CAT Funding Model described therein, and applies specific requirements to Industry Members in compliance with the Plan, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Exchange Act.

(2) Calculation of Fee Rate for Historical CAT Assessment 1 Is Reasonable

The SEC has determined that the CAT Funding Model is reasonable and satisfies the requirements of the Exchange Act. Specifically, the SEC has concluded that the method for determining Historical CAT Assessments as set forth in Section 11.3 of the CAT NMS Plan, including the formula for calculating the Historical Fee Rate, the identification of the parties responsible for payment and the transactions subject to the fee rate for the Historical CAT Assessment, is reasonable and satisfies the Exchange Act.²¹⁶ In each respect, as discussed above, Historical CAT Assessment 1 is calculated, and would be applied, in

accordance with the requirements applicable to Historical CAT Assessments as set forth in the CAT NMS Plan. Furthermore, as discussed below, the Exchange believes that each of the figures for the variables in the SEC-approved formula for calculating the fee rate for Historical CAT Assessment 1 is reasonable and consistent with the Exchange Act. Calculation of the Historical Fee Rate for Historical CAT Assessment 1 requires the figures for the Historical CAT Costs 1, the executed equivalent share volume for the prior twelve months, the determination of Historical Recovery Period 1, and the projection of the executed equivalent share volume for Historical Recovery Period 1. Each of these variables is reasonable and satisfies the Exchange Act, as discussed throughout this filing.

(A) Historical CAT Costs 1

The formula for calculating a Historical Fee Rate requires the amount of Historical CAT Costs to be recovered. Specifically, Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan requires a fee filing to provide:

a brief description of the amount and type of the Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs.

In accordance with this requirement, the Exchange has set forth the amount and type of Historical CAT Costs 1 for each of these categories of costs above.

Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan also requires that the fee filing provide “sufficient detail to demonstrate that the Historical CAT Costs are reasonable and appropriate.” As discussed below, the Exchange believes that the amounts set forth in this filing for each of these cost categories is “reasonable and appropriate.” Each of the costs included in Historical CAT Costs 1 are reasonable and appropriate because the costs are consistent with standard industry practice, based on the need to comply with the requirements of the CAT NMS Plan, incurred subject to negotiations performed on an arm’s length basis, and/or are consistent with the needs of any legal entity, particularly one with no employees.

(i) Technology: Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover costs related to cloud hosting services as a part of

Historical CAT Assessments.²¹⁷ CAT LLC determined that the costs related to cloud hosting services described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. As described above, the cloud hosting services costs reflect, among other things, the breadth of the CAT cloud activities, data volume far in excess of the original volume estimates, the need for specialized cloud services given the volume and unique nature of the CAT, the processing time requirements of the Plan, and regular efforts to seek to minimize costs where permissible under the Plan. CAT LLC determined that use of cloud hosting services is necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT, and that the fees for cloud hosting services negotiated by FCAT were reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.²¹⁸ Indeed, the actual costs of the CAT are far in excess of the original estimated costs of the CAT due to various factors, including the higher volumes and greater complexity of the CAT than anticipated when Rule 613 was originally adopted.

To comply with the requirements of the Plan, the breadth of the cloud activities related to the CAT is substantial. The cloud services not only include the production environment for the CAT, but they also include two industry testing environments, support environments for quality assurance and stress testing and disaster recovery capabilities. Moreover, the cloud storage costs are driven by the requirements of the Plan, which requires the storage of multiple versions of the data, from the original submitted version of the data through various processing steps, to the final version of the data.

Data volume is a significant driver of costs for cloud hosting services. When the Commission adopted the CAT NMS Plan in 2016, it estimated that the CAT would need to receive 58 billion records per day²¹⁹ and that annual operating costs for the CAT would range from \$36.5 million to \$55 million.²²⁰ Through 2021, the actual data volumes have been five times that original

²¹⁷ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²¹⁸ For a discussion of the amount and type of cloud hosting services fees, see Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

²¹⁹ Appendix D–4 of the CAT NMS Plan at n.262.

²²⁰ CAT NMS Plan Approval Order at 84801.

²¹⁴ CAT NMS Plan Approval Order at 84696.

²¹⁵ CAT Funding Model Approval Order at 62686.

²¹⁶ *Id.* at 62662–63.

estimate. The data volumes for each period are set forth in detail above.²²¹

In addition to the effect of the data volume on the cloud hosting costs, the processing timelines set forth in the Plan contribute to the cloud hosting costs. Although CAT LLC has proactively sought to manage cloud hosting costs while complying with the Plan, including through requests to the Commission for exemptive relief and an amendment to the CAT NMS Plan, stringent CAT NMS Plan requirements do not allow for any material flexibility in cloud architecture design choices, processing timelines (e.g., the use of non-peak processing windows), or lower-cost storage tiers. As a result, the required CAT processing timelines contribute to the cloud hosting costs of the CAT.

The costs for cloud hosting services also reflect the need for specialized cloud hosting services given the data volume and unique processing needs of the CAT. The data volume as well as the data processing needs of the CAT necessitate the use of cloud hosting services. The equipment, power and services required for an on-premises data model, the alternative to cloud hosting services, would be cost prohibitive. Moreover, as CAT was being developed, there were limited cloud hosting providers that could satisfy all the necessary CAT requirements, including the operational and security criteria. Over time more providers offering cloud hosting services that would satisfy these criteria have entered the market. CAT LLC will continue to evaluate alternative cloud hosting services, recognizing that the time and cost to move to an alternative cloud provider would be substantial.

The reasonableness of the cloud hosting services costs is further supported by key cost discipline mechanisms for the CAT—a cost-based funding structure, cost transparency, cost management efforts (including regular efforts to lower compute and storage costs where permitted by the Plan) and oversight. Together, these mechanisms help ensure the ongoing reasonableness of the CAT's costs and the level of fees assessed to support those costs.²²²

(ii) Technology: Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to operating fees

as a part of Historical CAT Assessments.²²³ CAT LLC determined that the costs related to operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The operating fees include the negotiated fees paid by CAT LLC to the Plan Processor to operate and maintain the system for order-related information and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (e.g., management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the selection of FCAT as the Plan Processor was reasonable and appropriate given its expertise with securities regulatory reporting, after a process of considering other potential candidates.²²⁴ CAT LLC also determined that the fixed price contract, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, was reasonable and appropriate, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity.²²⁵ The services performed by FCAT for each period and the costs related to such services are described above.²²⁶

(iii) Technology: CAIS Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to CAIS operating fees as a part of Historical CAT Assessments.²²⁷ CAT LLC determined that the costs related to CAIS operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The CAIS operating fees include the fees paid to the Plan Processor to operate and maintain CAIS and to perform the business operations related to the system, including compliance, security, testing, training, communications with the industry (e.g., management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the FCAT-negotiated fees for Kingland's CAIS-related services, negotiated on an arm's length basis with the goals of managing costs

and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity, were reasonable and appropriate.²²⁸ The services performed by Kingland for each period and the costs for each period are described above.²²⁹

(iv) Technology: Change Request Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to change request fees as a part of Historical CAT Assessments.²³⁰ CAT LLC determined that the costs related to change request fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. It is common practice to utilize a change request process to address evolving needs in technology projects. This is particularly true for a project like CAT that is the first of its kind, both in substance and in scale. The substance and costs of each of the change requests are evaluated by the Operating Committee, and approved in accordance with the requirements for Operating Committee meetings. In each case, CAT LLC determined that the change requests were necessary to implement the CAT. As described above, the change requests cover various technology changes, including, for example, changes related to CAT reporting, data feeds and exchange functionality. CAT LLC also determined that the costs for each change request were appropriate for the relevant technology change. A description of the change requests for each FAM Period and their total costs are set described above.²³¹ As noted above, the total costs for change requests through FAM Period 3 represent a small percentage of Historical CAT Costs 1—that is, 0.25% of Historical CAT Costs 1.

(v) Capitalized Developed Technology Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to capitalized developed technology costs as a part of Historical CAT Assessments.²³² Capitalized developed technology costs include costs related to certain

²²⁸ See Sections 3(a)(2)(B)(i)(c), 3(a)(2)(B)(ii)(c), 3(a)(2)(B)(iii)(c) and 3(a)(2)(B)(iv)(c) above.

²²⁹ *Id.*

²³⁰ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²³¹ See Sections 3(a)(2)(B)(i)(d), 3(a)(2)(B)(ii)(d), 3(a)(2)(B)(iii)(d) and 3(a)(2)(B)(iv)(d) above.

²³² Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²¹ See Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

²²² See Securities Exchange Act Rel. No. 97151 (Mar. 15, 2023), 88 FR 17086, 17117 (Mar. 21, 2023) (describing key cost discipline mechanisms for the CAT).

²²³ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²⁴ See Section 3(a)(2)(B)(i)(b) above.

²²⁵ See Sections 3(a)(2)(B)(i)(b), 3(a)(2)(B)(ii)(b), 3(a)(2)(B)(iii)(b) and 3(a)(2)(B)(iv)(b) above.

²²⁶ *Id.*

²²⁷ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

development costs, costs related to certain modifications, upgrades and other changes to the CAT, CAIS implementation fees and license fees. The amount and type of costs for each period are described in more detail above.²³³ CAT LLC determined that these costs are reasonable and should be included as a part of Historical CAT Costs 1.

These costs involve the activity of both the Initial Plan Processor and FCAT, as the successor Plan Processor.²³⁴ With regard to the Initial Plan Processor, the Participants utilized an RFP to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan. CAT LLC entered into an agreement with the Initial Plan Processor in which CAT LLC would pay the Initial Plan Processor a negotiated, fixed price fee.²³⁵ In addition, as described above, CAT LLC determined that it is appropriate to enter into an agreement with FCAT as the successor Plan Processor.²³⁶

(vi) Legal

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to legal fees as a part of Historical CAT Assessments.²³⁷ CAT LLC determined that the legal costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Given the unique nature of the CAT, the number of parties involved with the CAT (including, for example, the SEC, Participants, Industry Members, and vendors) and the many regulatory issues associated with the CAT, the scope of the necessary legal services are substantial. CAT LLC determined that the scope of the legal services is necessary to implement and maintain the CAT and that the legal rates reflect the specialized services necessary for such a project. When hiring each law firm for a CAT project, CAT LLC interviewed multiple firms, and determined to hire each firm based on a variety of factors, including the relevant expertise and fees. In each case,

CAT LLC determined that the hourly fee rates were in line with market rates for the specialized legal expertise. In addition, CAT LLC determined that the total costs incurred for each CAT project were appropriate given the breadth of services provided. The services performed by each law firm for each period and the costs related to such services are described above.²³⁸

(vii) Consulting

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover consulting costs as a part of Historical CAT Assessments.²³⁹ CAT LLC determined that the consulting costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Because there are no CAT employees²⁴⁰ and because of the significant number of issues associated with the CAT, the consultants provided assistance in the management of various CAT matters and the processes related to such matters.²⁴¹ CAT LLC considered a variety of factors in choosing a consulting firm and determined to select Deloitte after an interview process.²⁴² CAT LLC also determined that the consulting services were provided at reasonable market rates, as the fees were negotiated annually and comparable to the rates charged by other consulting firms for similar work.²⁴³ Moreover, the total costs for such consulting services were appropriate in light of the breadth of services provided by Deloitte. The services performed by Deloitte and the costs related to such services are described above.²⁴⁴

(viii) Insurance

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover insurance costs as a part of Historical CAT Assessments.²⁴⁵ CAT LLC determined that the insurance costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that it is common practice

to have directors' and officers' liability insurance, and errors and omissions liability insurance. CAT LLC further determined that it was important to have cyber security insurance given the nature of the CAT, and such a decision is consistent with the CAT NMS Plan, which states that the cyber incident response plan may include "[i]nsurance against security breaches."²⁴⁶ In selecting the insurance providers for these policies, CAT LLC engaged in an evaluation of alternative insurers, including a comparison of the pricing offered by the alternative insurers.²⁴⁷ Based on this analysis, CAT LLC determined that the selected insurance policies provided appropriate coverage at reasonable market rates.²⁴⁸

(ix) Professional and Administration

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover professional and administration costs as a part of Historical CAT Assessments.²⁴⁹ CAT LLC determined that the professional and administration costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Because there are no CAT employees, all required accounting, financial, tax, cash management and treasury functions for CAT LLC have been outsourced at market rates. In addition, the required annual financial statement audit of CAT LLC is included in professional and administration costs, which costs are also at market rates.

CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees.²⁵⁰ The hourly fee rates for this firm were in line with market rates for the financial advisory services provided.²⁵¹ Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Anchin. The services performed by Anchin and the

²³³ See Sections 3(a)(2)(B)(i)(e), 3(a)(2)(B)(ii)(e), 3(a)(2)(B)(iii)(e) and 3(a)(2)(B)(iv)(e) above.

²³⁴ *Id.*

²³⁵ See Section 3(a)(2)(B)(i)(e) above.

²³⁶ See Section 3(a)(2)(B)(i)(b) above.

²³⁷ Section 11.3(b)(iii)(B)(II)(B)(2) of the CAT NMS Plan.

²³⁸ See Sections 3(a)(2)(B)(i)(f), 3(a)(2)(B)(ii)(f), 3(a)(2)(B)(iii)(f) and 3(a)(2)(B)(iv)(f) above.

²³⁹ Section 11.3(b)(iii)(B)(II)(B)(3) of the CAT NMS Plan.

²⁴⁰ As stated in the filing of the proposed CAT NMS Plan, "[i]t is the intent of the Participants that the Company have no employees." Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614, 30621 (May 17, 2016).

²⁴¹ CAT LLC uses certain third parties to perform tasks that may be performed by administrators for other NMS Plans. See, e.g., CTA Plan and CQ Plan.

²⁴² See Section 3(a)(2)(B)(i)(g) above.

²⁴³ See Sections 3(a)(2)(B)(i)(g), 3(a)(2)(B)(ii)(g), 3(a)(2)(B)(iii)(g) and 3(a)(2)(B)(iv)(g) above.

²⁴⁴ *Id.*

²⁴⁵ Section 11.3(b)(iii)(B)(II)(B)(4) of the CAT NMS Plan.

²⁴⁶ Section 4.1.5 of Appendix D of the CAT NMS Plan.

²⁴⁷ See Sections 3(a)(2)(B)(i)(h), 3(a)(2)(B)(ii)(h), 3(a)(2)(B)(iii)(h) and 3(a)(2)(B)(iv)(h) above.

²⁴⁸ *Id.*

²⁴⁹ Section 11.3(b)(iii)(B)(II)(B)(5) of the CAT NMS Plan.

²⁵⁰ See Section 3(a)(2)(B)(i)(i) above.

²⁵¹ See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

costs related to such services are described above.²⁵²

CAT LLC also determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the role given the balance of these considerations.²⁵³ Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services.²⁵⁴ Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Grant Thornton. The services performed by Grant Thornton and the costs related to such services are described above.²⁵⁵

The professional and administrative costs also include costs related to the receipt of certain market data from Exegy. After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy. Exegy provided the data elements required by the CAT NMS Plan, and the fees were reasonable and in line with market rates for the market data received.²⁵⁶

The professional and administrative costs also include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation and operation of the controls specified by NIST Special Publication 800-53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees

were reasonable and in line with market rates for such an assessment.²⁵⁷

(x) Public Relations Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover public relations costs as a part of Historical CAT Assessments.²⁵⁸ CAT LLC determined that the public relations costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that the types of public relations services utilized were beneficial to the CAT and market participants more generally. Public relations services were important for various reasons, including monitoring comments made by market participants about CAT and understanding issues related to the CAT discussed on the public record.²⁵⁹ By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT issues to the benefit of all market participants.²⁶⁰ Moreover, CAT LLC determined that the rates charged for such services were in line with market rates.²⁶¹ As noted above, the total public relations costs through FAM Period 3 represent a small percentage of Historical CAT Costs 1—that is, 0.1% of Historical CAT Costs 1.

(B) Total Executed Equivalent Share Volume for the Prior 12 Months

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. CAT LLC determined the total executed equivalent share volume for the prior twelve months by counting executed equivalent shares in the same manner as it will count executed equivalent shares for CAT billing purposes.

(C) Historical Recovery Period 1

CAT LLC has determined to establish a Historical Recovery Period of 24 months for Historical CAT Assessment 1 and that such length is reasonable. CAT LLC determined that the length of Historical Recovery Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans notes to the Participants in a timely fashion. CAT

LLC determined that 24 months for Historical Recovery Period 1 would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to Section 31.²⁶² In addition, in establishing a Historical Recovery Period of 24 months, CAT LLC recognized that the total costs for Historical CAT Assessment 1 was less than the total costs for 2022 and 2023, and therefore it would be appropriate to recover those costs in two years.

(D) Projected Executed Equivalent Share Volume for Historical Recovery Period 1

CAT LLC has determined to calculate the projected total executed equivalent share volume for the 24 months of Historical Recovery Period 1 by doubling the executed equivalent share volume for the prior 12 months. CAT LLC determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has remained relatively constant in recent years. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395, the executed equivalent share volume for 2022 was 4,039,821,841,560.31, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6. Accordingly, the projected total executed equivalent share volume for Historical Recovery Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.²⁶³

(E) Actual Fee Rate for Historical CAT Assessment 1

(i) Decimal Places

As noted in the Plan amendment for the CAT Funding Model, as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee rate.²⁶⁴ Accordingly, proposed paragraph A.1.b. of the fee schedule would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 by one-third, and rounding the result to 6 decimal places. CAT LLC determined that the use of six decimal places is reasonable as it balances the

²⁵² *Id.*

²⁵³ See Section 3(a)(2)(B)(i)(i) above.

²⁵⁴ See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

²⁵⁵ *Id.*

²⁵⁶ See Section 3(a)(2)(B)(i)(i) above.

²⁵⁷ *Id.*

²⁵⁸ Section 11.3(b)(iii)(B)(III)(B)(6) of the CAT NMS Plan.

²⁵⁹ See Section 3(a)(2)(B)(i)(j) above.

²⁶⁰ See Sections 3(a)(2)(B)(i)(j), 3(a)(2)(B)(ii)(j), 3(a)(2)(B)(iii)(j) and 3(a)(2)(B)(iv)(j) above.

²⁶¹ *Id.*

²⁶² As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model Approval Order at 62682.

²⁶³ This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

²⁶⁴ CAT Funding Model Approval Order at 62658, n.658.

accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

(ii) Reasonable Fee Level

The Exchange believes that imposing Historical CAT Assessment 1 with a fee rate of \$0.000013 per executed equivalent share is reasonable because it provides for a revenue stream for the Company that is aligned with Historical CAT Costs 1 and such costs would be spread out over an appropriate recovery period, as discussed above. Moreover, the Exchange believes that the level of the fee rate is reasonable, as it is comparable to other transaction-based fees. Indeed, Historical CAT Assessment 1 is significantly lower than fees assessed pursuant to Section 31 (*e.g.*, \$0.0009 per share to 0.0004 per share),²⁶⁵ and, as a result, the magnitude of Historical CAT Assessment 1 is small, and therefore will mitigate any potential adverse economic effects or inefficiencies.²⁶⁶ Furthermore, the reasonable fee rate for Historical CAT Assessment 1 further supports CAT LLC's decision to seek to recover all Historical CAT Costs prior to 2022, rather than establishing separate Historical CAT Assessments for pre-FAM, FAM 1, FAM 2 and FAM 3 costs.

(3) Historical CAT Assessment 1 Provides for an Equitable Allocation of Fees

Historical CAT Assessment 1 provides for an equitable allocation of fees, as it equitably allocates CAT costs between and among the Participants and Industry Members. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act, including the formula for calculating Historical CAT Assessments as well as the Industry Members to be charged the Historical CAT Assessments.²⁶⁷ In approving the CAT Funding Model, the SEC stated that "[t]he Participants have sufficiently demonstrated that the proposed allocation of fees is reasonable."²⁶⁸ Accordingly, the CAT Funding Model sets forth the requirements for allocating fees related to Historical CAT Costs among Participants and Industry Members, and the fee filings for Historical CAT Assessments must comply with those requirements.

Historical CAT Assessment 1 provides for an equitable allocation of fees as it complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. For example, as described above, the calculation of Historical CAT Assessment 1 complies with the formula set forth in Section 11.3(b) of the CAT NMS Plan. In addition, Historical CAT Assessment 1 would be charged to CEBBs and CEBBs in accordance with Section 11.3(b) of the CAT NMS Plan. Furthermore, the Participants would continue to remain responsible for their designated share of Past CAT Costs through the cancellation of loans made by the Participants to CAT LLC.

In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1—Historical CAT Costs 1 (including Excluded Costs), the count for the executed equivalent share volume for the prior 12 months, the length of the Historical Recovery Period, and the projected executed equivalent share volume for the Historical Recovery Period—are reasonable. Moreover, these inputs lead to a reasonable fee rate for Historical CAT Assessment 1 that is lower than other fee rates for transaction-based fees. A reasonable fee rate allocated in accordance with the requirements of the CAT Funding Model provides for an equitable allocation of fees.

(4) Historical CAT Assessment 1 is Not Unfairly Discriminatory

Historical CAT Assessment 1 is not an unfairly discriminatory fee. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act. In reaching this conclusion, the SEC analyzed the potential effect of Historical CAT Assessments calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Historical CAT Assessment 1 complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1 and the resulting fee rate for Historical CAT Assessment 1 is

reasonable. Therefore, Historical CAT Assessment 1 does not impose an unfairly discriminatory fee on Industry Members.

Finally, the Exchange believes the proposed fees established pursuant to the CAT Funding Model promote just and equitable principles of trade, and, in general, protect investors and the public interest, and are provided in a transparent manner and specificity in the fee schedule. The Exchange also believes that the proposed fees are reasonable because they would provide ease of calculation, ease of billing and other administrative functions, and predictability of a fee based on fixed rate per executed equivalent share. Such factors are crucial to estimating a reliable revenue stream for CAT LLC and for permitting Exchange members to reasonably predict their payment obligations for budgeting purposes.

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

Section 6(b)(8) of the Act²⁶⁹ requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that Historical CAT Assessment 1 implements provisions of the CAT NMS Plan that were approved by the Commission and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan.

In addition, all Participants (including exchanges and FINRA) are proposing to introduce Historical CAT Assessment 1 on behalf of CAT LLC to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive fee filing, and, therefore, it does not raise competition issues between and among the Participants.

Furthermore, in approving the CAT Funding Model, the SEC analyzed the potential competitive impact of the CAT Funding Model, including competitive issues related to market services, trading services and regulatory services, efficiency concerns, and capital formation.²⁷⁰ The SEC also analyzed the potential effect of CAT fees calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA),

²⁶⁵ CAT Funding Model Approval Order at 62663, 62682.

²⁶⁶ *Id.*

²⁶⁷ See Section 11.3(b) of the CAT NMS Plan.

²⁶⁸ CAT Funding Model Approval Order at 62629.

²⁶⁹ 15 U.S.C. 78f(b)(8).

²⁷⁰ CAT Funding Model Approval Order at 62676–86.

Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Based on this analysis, the SEC approved the CAT Funding Model as compliant with the Exchange Act. Historical CAT Assessment 1 is calculated and implemented in accordance with the CAT Funding Model as approved by the SEC.

As discussed above, each of the inputs into the calculation of Historical CAT Assessment 1 is reasonable and the resulting fee rate for Historical CAT Assessment 1 calculated in accordance with the CAT Funding Model is reasonable. Therefore, Historical CAT Assessment 1 would not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act²⁷¹ and Rule 19b-4(f)(2) thereunder.²⁷²

because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-BOX-2024-21 on the subject line.

Paper Comments

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

All submissions should refer to file number SR-BOX-2024-21. This file number should be included on the subject line if email 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 (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-BOX-2024-21 and should be submitted on or before October 3, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷³

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-20461 Filed 9-11-24; 8:45 am]

BILLING CODE 8011-01-P

²⁷¹ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁷² 17 CFR 240.19b-4(f)(2).

²⁷³ 17 CFR 200.30-3(a)(12).



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Part IV

Securities and Exchange Commission

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100943; File No. SR–CboeEDGX–2024–054]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail

September 5, 2024.

Pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b–4 thereunder,² notice is hereby given that on August 22, 2024, Cboe EDGX Exchange, Inc. (the “Exchange” or “Cboe EDGX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Cboe EDGX Exchange, Inc. (the “Exchange” or “Cboe EDGX”) proposes to amend its fee schedule entitled “Consolidated Audit Trail Funding Fees”³ to establish fees for Industry Members⁴ related to certain historical costs of the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”) incurred prior to January 1, 2022. These fees would be payable to Consolidated Audit Trail, LLC (“CAT LLC” or “the Company”)⁵ and referred to as Historical CAT Assessment 1. The fee rate for Historical CAT Assessment 1 will be \$0.000013 per executed equivalent share. CAT Executing Brokers will receive their first monthly

invoice for Historical CAT Assessment 1 in November 2024 calculated based on their transactions as CAT Executing Brokers for the Buyer (“CEBB”) and/or CAT Executing Brokers for the Seller (“CEBS”) in October 2024. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/options/regulation/rule_filings/edgx/), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

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

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

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

1. Purpose

On July 11, 2012, the Commission adopted Rule 613 of Regulation NMS, which required the self-regulatory organizations (“SROs”) to submit a national market system (“NMS”) plan to create, implement and maintain a consolidated audit trail that would capture customer and order event information for orders in NMS securities across all markets, from the time of order inception through routing, cancellation, modification or execution.⁶ On November 15, 2016, the Commission approved the CAT NMS Plan.⁷ Under the CAT NMS Plan, the Operating Committee has the discretion to establish funding for CAT LLC to operate the CAT, including establishing fees for Industry Members to be assessed by CAT LLC that would be implemented on behalf of CAT LLC by the Participants.⁸ The Operating Committee adopted a revised funding model to

fund the CAT (“CAT Funding Model”). On September 6, 2023, the Commission approved the CAT Funding Model, after concluding that the model was reasonable and that it satisfied the requirements of Section 11A of the Exchange Act and Rule 608 thereunder.⁹

The CAT Funding Model provides a framework for the recovery of the costs to create, develop and maintain the CAT, including providing a method for allocating costs to fund the CAT among Participants and Industry Members. The CAT Funding Model establishes two categories of fees: (1) CAT fees assessed by CAT LLC and payable by certain Industry Members to recover a portion of historical CAT costs previously paid by the Participants (“Historical CAT Assessment” fees); and (2) CAT fees assessed by CAT LLC and payable by Participants and Industry Members to fund prospective CAT costs (“Prospective CAT Costs” fees).¹⁰

Under the CAT Funding Model, “[t]he Operating Committee will establish one or more fees (each a ‘Historical CAT Assessment’) to be payable by Industry Members with regard to CAT costs previously paid by the Participants (‘Past CAT Costs’).”¹¹ In establishing a Historical CAT Assessment, the Operating Committee will determine a “Historical Recovery Period” and calculate a “Historical Fee Rate” for that Historical Recovery Period. Then, for each month in which a Historical CAT Assessment is in effect, each CEBB and CEBS would be required to pay the fee—the Historical CAT Assessment—for each transaction in Eligible Securities executed by the CEBB or CEBS 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.¹²

⁹ Securities Exchange Act Rel. No. 98290 (Sept. 6, 2023), 88 FR 62628 (Sept. 12, 2023) (“CAT Funding Model Approval Order”).

¹⁰ Under the CAT Funding Model, the Operating Committee may establish one or more Historical CAT Assessments. Section 11.3(b) of the CAT NMS Plan. This filing only establishes Historical CAT Assessment 1 related to certain Historical CAT Costs as described herein; it does not address any other potential Historical CAT Assessment related to other Historical CAT Costs. In addition, under the CAT Funding Model, the Operating Committee also may establish CAT Fees related to CAT costs going forward. Section 11.3(a) of the CAT NMS Plan. This filing does not address any potential CAT Fees related to CAT costs going forward. Any such other fee for any other Historical CAT Assessment or CAT Fee for Prospective CAT Costs will be subject to a separate fee filing.

¹¹ Section 11.3(b) of the CAT NMS Plan.

¹² In approving the CAT Funding Model, the Commission stated that, “[i]n the Commission’s view, the proposed recovery of the Past CAT Costs

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ The Exchange and each of its affiliated exchanges (Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., and Cboe EDGA Exchange, Inc.) are filing to adopt the same amendment to this fee schedule.

⁴ An “Industry Member” is defined as “a member of a national securities exchange or a member of a national securities association.” See Exchange Rule 7.20(u); see also Section 1.1 of the CAT NMS Plan. Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the CAT NMS Plan and/or the CAT Compliance Rule. See Chapter 7, Section B of the Exchange’s Rulebook.

⁵ The term “CAT LLC” may be used to refer to Consolidated Audit Trail, LLC or CAT NMS, LLC, depending on the context.

⁶ Securities Exchange Act Rel. No. 67457 (July 18, 2012), 77 FR 45721 (Aug. 1, 2012) (“Rule 613 Adopting Release”).

⁷ Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (“CAT NMS Plan Approval Order”).

⁸ Section 11.1(b) of the CAT NMS Plan.

Each Historical CAT Assessment to be paid by CEBBs and CEBs is designed to contribute toward the recovery of two-thirds of the Historical CAT Costs. Because the Participants previously have paid Past CAT Costs via loans to the Company, the Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made by the Participants to the Company on a pro rata basis based on the outstanding loan amounts due under the loans, instead of through the payment of a CAT fee.¹³ In addition, the Participants also will be 100% responsible for certain Excluded Costs (as discussed below).

CAT LLC proposes to charge CEBBs and CEBs (as described in more detail below) Historical CAT Assessment 1 to recover certain historical CAT costs incurred prior to January 1, 2022, in accordance with the CAT Funding Model. To implement this fee on behalf of CAT LLC, the CAT NMS Plan requires the Participants to "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.'" ¹⁴ The Plan further states that "Participants will be required to file with the SEC pursuant to Section 19(b) of the Exchange Act a filing for each Historical CAT Assessment."¹⁵ Accordingly, the purpose of this filing is to implement a Historical CAT Assessment on behalf of CAT LLC for Industry Members, referred to as Historical CAT Assessment 1, in accordance with the CAT NMS Plan.¹⁶

The Exchange previously filed a fee filing to implement Historical CAT Assessment 1. On January 17, 2024, the SEC published this prior filing for Historical CAT Assessment 1, temporarily suspended the fee filing, and instituted proceedings to determine whether to approve or disapprove the fee filing.¹⁷ The Exchange is withdrawing its original fee filing for Historical CAT Assessment 1. This Historical CAT Assessment 1 replaces the prior Historical CAT Assessment 1 that was previously filed with the Commission.

(1) CAT Executing Brokers

Historical CAT Assessment 1 will be charged to each CEBB and CEBs for each applicable transaction in Eligible Securities.¹⁸ The CAT NMS Plan defines a "CAT Executing Broker" to mean:

(a) with respect to a transaction in an Eligible Security that is executed on an exchange, the Industry Member identified as the Industry Member responsible for the order on the buy-side of the transaction and the Industry Member responsible for the sell-side of the transaction in the equity order trade event and option trade event in the CAT Data submitted to the CAT by the relevant exchange pursuant to the Participant Technical Specifications; and (b) with respect to a transaction in an Eligible Security that is executed otherwise than on an exchange and required to be reported to an equity trade reporting facility of a registered national securities association, the Industry Member identified as the executing broker and the Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event in the CAT Data submitted to the CAT by FINRA pursuant to the Participant Technical Specifications; provided, however, in those circumstances where there is a non-Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event or no contra-side executing broker is identified in the TRF/ORF/ADF transaction data event, then the Industry Member identified as the executing broker in the TRF/ORF/ADF transaction data event would be treated as CAT Executing Broker for the Buyer and for the Seller.¹⁹

The following fields of the Participant Technical Specifications indicate the CAT Executing Brokers for the transactions executed on an exchange.

EQUITY ORDER TRADE (EOT)²⁰

No.	Field name	Data type	Description	Include key
12.n.8/13.n.8	member	Member Alias	The identifier for the member firm that is responsible for the order on this side of the trade. Not required if there is no order for the side as indicated by the NOBUYID/NOSELLID instruction. This must be provided if orderID is provided.	C

via the Historical CAT Assessment is reasonable." CAT Funding Model Approval Order at 62662.

¹³ Section 11.3(b)(ii) of the CAT NMS Plan.

¹⁴ Section 11.1(b) of the CAT NMS Plan.

¹⁵ Section 11.3(b)(iii)(B)(I) of the CAT NMS Plan.

¹⁶ Note that there may be one or more Historical CAT Assessments depending on the timing of the completion of the Financial Accountability Milestones, among other things. Section 11.3(b) of the CAT NMS Plan.

¹⁷ Securities Exchange Act Release No. 99376 (January 17, 2024), 89 FR 10506 (February 13, 2024) (SR-CboeEDGX-2024-005).

¹⁸ In its approval of the CAT Funding Model, the Commission determined that charging CAT fees to

CAT Executing Brokers was reasonable. In reaching this conclusion the Commission noted that the use of CAT Executing Brokers is appropriate because the CAT Funding Model is based upon the calculation of *executed* equivalent shares, and, therefore, charging CAT Executing Brokers would reflect their executing role in each transaction. Furthermore, the Commission noted that, because CAT Executing Brokers are already identified in transaction reports from the exchanges and FINRA's equity trade reporting facilities recorded in CAT Data, charging CAT Executing Brokers could streamline the billing process. CAT Funding Model Approval Order at 62629.

¹⁹ Section 1.1 of the CAT NMS Plan. Note that CEBBs and CEBs may, but are not required to, pass-through their CAT fees to their clients, who may, in turn, pass their fees to their clients until they are imposed ultimately on the account that executed the transaction. See CAT Funding Model Approval Order at 62649.

²⁰ See Table 23, Section 4.7 (Order Trade Event) of the CAT Reporting Technical Specifications for Plan Participants, Version 4.1.0-r21 (Apr. 15, 2024), https://www.catnmsplan.com/sites/default/files/2024-04/04.15.2024-CAT_Reporting_Technical_Specifications_for_Participants_4.1.0-r21.pdf ("CAT Reporting Technical Specifications for Plan Participants").

OPTION TRADE (OT)²¹

No.	Field name	Data type	Description	Include key
16.n.13/17.n.13	member	Member Alias	The identifier for the member firm that is responsible for the order ..	R

In addition, the following fields of the Participant Technical Specifications would indicate the CAT Executing

Brokers for the transactions executed otherwise than on an exchange:

TRF/ORF/ADF TRANSACTION DATA EVENT (TRF)²²

No.	Field name	Data type	Description	Include key
26	reportingExecutingMpid	Member Alias	MPID of the executing party	R
28	contraExecutingMpid	Member Alias	MPID of the contra-side executing party	C

(2) Calculation of Historical Fee Rate 1

The Operating Committee determined the Historical Fee Rate to be used in calculating Historical CAT Assessment 1 (“Historical Fee Rate 1”) by dividing the Historical CAT Costs for Historical CAT Assessment 1 (“Historical CAT Costs 1”) by the projected total executed share volume of all transactions in Eligible Securities for the Historical Recovery Period for Historical CAT Assessment 1 (“Historical Recovery Period 1”), as discussed in detail below. Based on this calculation, the Operating Committee has determined that Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. This rate is then divided by three and rounded to determine the fee rate of \$0.000013 per executed equivalent share that will be assessed to CEBBs and CEBBs, as also discussed in detail below.

(A) Executed Equivalent Shares for Transactions in Eligible Securities

Under the CAT NMS Plan, for purposes of calculating each Historical CAT Assessment, executed equivalent shares in a transaction in Eligible Securities will be reasonably counted as follows: (1) each executed share for a transaction in NMS Stocks will be counted as one executed equivalent share; (2) each executed contract for a transaction in Listed Options will be counted based on the multiplier applicable to the specific Listed Options (i.e., 100 executed equivalent shares or such other applicable multiplier); and

(3) each executed share for a transaction in OTC Equity Securities shall be counted as 0.01 executed equivalent share.²³

(B) Historical CAT Costs 1

The CAT NMS Plan states that “[t]he Operating Committee will reasonably determine the Historical CAT Costs sought to be recovered by each Historical CAT Assessment, where the Historical CAT Costs will be Past CAT Costs minus Past CAT Costs reasonably excluded from Historical CAT Costs by the Operating Committee. Each Historical CAT Assessment will seek to recover from CAT Executing Brokers two-thirds of Historical CAT Costs incurred during the period covered by the Historical CAT Assessment.”²⁴ As described in detail below, Historical CAT Costs 1 would be \$318,059,819. This figure includes Past CAT Costs of \$401,312,909 minus certain Excluded Costs of \$83,253,090. Participants collectively will remain responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), plus the Excluded Costs of \$83,253,090. CEBBs collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), and CEBBs collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67).

The following describes in detail Historical CAT Costs 1 with regard to four separate historical time periods as well as Past CAT Costs excluded from Historical CAT Costs 1 (“Excluded Costs”). The following cost details are

provided in accordance with the requirement in the CAT NMS Plan to provide in the fee filing “a brief description of the amount and type of Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs.”²⁵ Each of the costs described below are reasonable, appropriate and necessary for the creation, implementation and maintenance of CAT.

(i) Historical CAT Costs Incurred Prior to June 22, 2020 (Pre-FAM Costs)

Historical CAT Costs 1 would include costs incurred by CAT prior to June 22, 2020 (“Pre-FAM Period”) and already funded by the Participants, excluding Excluded Costs (described further below). Historical CAT Costs 1 would include costs for the Pre-FAM Period of \$124,290,730. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$41,430,243.33), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$41,430,243.33) and CEBBs paying one-third (\$41,430,243.33). These costs do not include Excluded Costs, as discussed further below. The following table breaks down Historical CAT Costs 1 for the Pre-FAM Period into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

²¹ See Table 51, Section 5.2.5.1 (Simple Option Trade Event) of the CAT Reporting Technical Specifications for Plan Participants.

²² See Table 61, Section 6.1 (TRF/ORF/ADF Transaction Data Event) of the CAT Reporting Technical Specifications for Plan Participants.

²³ Section 11.3(a)(i)(B) and 11.3(b)(i)(B) of the CAT NMS Plan. In approving the CAT Funding Model, the Commission concluded that “the use of executed equivalent share volume as the basis of the proposed cost allocation methodology is reasonable and consistent with the approach taken

by the funding principles of the CAT NMS Plan.” CAT Funding Model Approval Order at 62640.

²⁴ Section 11.3(b)(i)(C) of the CAT NMS Plan.

²⁵ Section 11.3(b)(iii)(B)(II)(B) of the CAT NMS Plan.

Operating expense	Historical CAT costs 1 for Pre-FAM Period (prior to June 22, 2020) *
Capitalized Developed Technology Costs **	\$51,847,150
Technology Costs	33,568,579
Cloud Hosting Services	10,268,840
Operating Fees	21,085,485
CAIS Operating Fees	2,072,908
Change Request Fees	141,346
Legal	19,674,463
Consulting	17,013,414
Insurance	880,419
Professional and administration	1,082,036
Public relations	224,669
Total Operating Expenses	124,290,730

* The costs described in this table of costs for the Pre-FAM Period were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website. In addition, in accordance with Section 6.6(a)(i) of the CAT NMS Plan, in 2018 CAT LLC provided the SEC with "an independent audit of fees, costs, and expenses incurred by the Participants on behalf of the Company prior to the Effective Date of the Plan that will be publicly available." The audit is available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$2,115,545 incurred during the period prior to June 22, 2020 have been appropriately excluded from the above table.²⁶

The Pre-FAM Period includes a broad range of CAT-related activity from 2012 through June 22, 2020, including the evaluation of the requirements of SEC Rule 613, the development of the CAT NMS Plan, the evaluation and selection of the initial and successor Plan Processors, the commencement of the creation and implementation of the CAT to comply with Rule 613 and the CAT NMS Plan, including technical specifications for transaction reporting and regulatory access, and related technology and the commencement of reporting to the CAT. The following describes the costs for each of the categories for the Pre-FAM Period.

(a) Technology Costs—Cloud Hosting Services

The \$10,268,840 in technology costs for cloud hosting services represent costs incurred for services provided by the cloud services provider for the CAT, Amazon Web Services, Inc. ("AWS"), during the Pre-FAM Period.

As part of its proposal for acting as the successor Plan Processor for the CAT, FCAT selected AWS as a subcontractor to provide cloud hosting services. In 2019, after reviewing the capabilities of other cloud services providers, FCAT determined that AWS was the only cloud services provider at that time sufficiently mature and capable of providing the full suite of necessary cloud services for the CAT,

including, for example, the security, resiliency and complexity necessary for the CAT computing requirements. The use of cloud hosting services is standard for this type of high-volume data activity and reasonable and necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT the fees incurred by the Plan Processor for cloud hosting services provided by AWS as FCAT's subcontractor [sic] on a monthly basis for the cloud hosting services, and FCAT, in turn, pays such fees to AWS. The fees for cloud hosting services were negotiated by FCAT on an arm's length basis with the goals of managing cost and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the expected volume of data, the breadth of services provided and market rates for similar services. The fees for cloud hosting services during the Pre-FAM Period were paid to FCAT by CAT NMS, LLC²⁷ and subsequently Consolidated Audit Trail, LLC (as previously noted, both entities are referred to generally as "CAT LLC"),²⁸ and FCAT, in turn, paid

AWS. CAT LLC was funded via loan contributions by the Participants.²⁹

AWS was engaged by FCAT to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS include storage services, databases, compute services and other services (such as networking, management tools and DevOps tools). AWS also was engaged to provide various environments for CAT, such as development, performance testing, test and production environments.

The cost for AWS services for the CAT is a function of the volume of CAT Data. The greater the amount of CAT Data, the greater the cost of AWS services to the CAT. During the Pre-FAM Period from the engagement of AWS in February 2019 through June 2020, AWS provided cloud hosting services for volumes of CAT Data far in excess of the volume predictions set forth in the CAT NMS Plan. The CAT NMS Plan states, when all CAT Reporters are submitting their data to the CAT, it "must be sized to receive[,] process and load more than 58 billion records per day,"³⁰ and that "[i]t is expected that the Central Repository will grow to more than 29 petabytes of raw, uncompressed data."³¹ However,

See Securities Exchange Act Rel. No. 87149 (Sept. 27, 2019), 84 FR 52905 (Oct. 3, 2019).

²⁹ For each of the costs paid by CAT NMS, LLC and Consolidated Audit Trail, LLC as discussed throughout this filing, CAT NMS, LLC and Consolidated Audit Trail, LLC paid these costs via loan contributions by the Participants to CAT NMS, LLC and Consolidated Audit Trail, LLC, respectively.

³⁰ Appendix D-4 of the CAT NMS Plan at n.262.

³¹ Appendix D-5 of the CAT NMS Plan.

²⁶ With respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

²⁷ CAT NMS, LLC was formed by FINRA and the U.S. national securities exchanges to implement the requirements of SEC Rule 613 under the Exchange Act. SEC Rule 613 required the SROs to jointly submit to the SEC the CAT NMS Plan to create, implement and maintain the CAT. The SEC approved the CAT NMS Plan on November 15, 2016. CAT NMS Plan Approval Order.

²⁸ On August 29, 2019, the Participants formed a new Delaware limited liability company named Consolidated Audit Trail, LLC for the purpose of conducting activities related to the CAT from and after the effectiveness of the proposed amendment of the CAT NMS Plan to replace CAT NMS, LLC.

the volume of CAT Data for the Pre-FAM Period was far in excess of these predicted levels. By the end of this period, data submitted to the CAT included options and equities

Participant Data,³² Phase 2a and Phase 2b Industry Member Data³³ (including certain linkages), as well as SIP Data,³⁴ reference data and other types of Other Data.³⁵ The following chart provides

data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during the Pre-FAM Period.³⁶

	Date range: 3/29/19 to 4/12/20 *	Date range: 4/13/20 to 6/21/20 **
Average Daily Volume in Billions:		
Participant—Equities	5	5
Participant—Options	80	981
Industry Member—Equities		3
Industry Member—Options		0.04
SIP—Options & Equities	64	70
Average Total Daily Volume	149	166
Cumulative Total Events for the Period	3,890	4,990
Total Compute Hours for the Period	*** N/A	5,663,247
Storage Footprint at End of Period (Petabytes)	30.57	47.96

* The Participant Equities in RSA format.

** Start of Industry Member reporting on 4/13/2020.

*** Note that, although there were compute hours during this period, data related to such compute hours are no longer available in current data.

(b) Technology Costs—Operating Fees

The \$21,085,485 in technology costs related to operating fees represent costs incurred with regard to activities of FCAT as the Plan Processor. Operating fees are those fees paid by CAT LLC to FCAT as the Plan Processor to operate and maintain the CAT and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (e.g., management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management as required by the CAT NMS Plan.

FCAT was selected to assume the role of the successor Plan Processor. Prior to this selection, the Participants engaged in discussions with two prior Bidders³⁷ for the successor Plan Processor role. The Operating Committee formed a Selection Subcommittee in accordance with Section 4.12 of the CAT NMS Plan to evaluate and review Bids and to make a recommendation to the Operating Committee with respect to the selection of the successor Plan Processor. In an April 9, 2019 letter to the Commission, the Participants described the reasons for its selection of the successor Plan Processor:

The Selection Subcommittee considered factors including, but not limited to, the following, in recommending FINRA to the Operating Committee as the successor Plan Processor:

a. FINRA's specialized technical expertise and capabilities in the area of broker-dealer technology;

b. The need to appoint a successor Plan Processor with specialized expertise to develop, implement, and maintain the CAT System in accordance with the CAT NMS Plan and SEC Rule 613;

c. FINRA's detailed proposal in response to CATLLC's recent inquiries; and

d. FINRA's data query and analytics systems demonstration to the Participants.

Based on these and other factors, the Selection Subcommittee determined that FINRA was the most appropriate Bidder to become the successor Plan Processor.³⁸

On February 26, 2019, the Operating Committee (with FINRA recusing itself) voted to select FINRA as the successor Plan Processor pursuant to Section 6.1(t) of the CAT NMS Plan.³⁹ On March 29, 2019, CAT LLC and FCAT (a wholly owned subsidiary of FINRA) entered into a Plan Processor Agreement pursuant to which FCAT would perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT a negotiated monthly fixed price for the operation of the CAT. This fixed price contract was negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors,

including the breadth of services provided and market rates for similar types of activity. The operating fees during the Pre-FAM Period were paid to FCAT by CAT LLC.

From March 29, 2019 (the commencement of the Plan Processor Agreement with FCAT) through June 22, 2020 (the end of the Pre-FAM Period), the Plan Processor's activities with respect to the CAT included the following:

- Commenced user acceptance testing with market data provided by Exegy Incorporated ("Exegy"), a market data provider;⁴⁰

- Published Technical Specifications and related reporting scenarios documents for Phase 2a, 2b and 2c reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;

- Facilitated testing for Phase 2a and 2b reporting for Industry Members;

- Began developing Technical Specifications and related reporting scenarios documents for Phase 2d reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;

- Published Central Repository Access Technical Specifications, and provided regulator access to test data from Industry Members;

³² See Section 6.3(d) of the CAT NMS Plan.

³³ See Securities Exchange Rel. No. 88702 (Apr. 20, 2020), 85 FR 23075 (Apr. 24, 2020) ("Phased Reporting Exemptive Relief Order") for a description of Phase 2a and Phase 2b Industry Member Data.

³⁴ See Section 6.5(a)(ii) of the CAT NMS Plan.

³⁵ See Appendix C-108 of the CAT NMS Plan.

³⁶ Note that the volume data described in this table does not include CAIS data.

³⁷ The term "Bidder" is defined in Section 1.1 of the CAT NMS Plan.

³⁸ Letter from Michael J. Simon, Chair, CAT NMS, LLC Operating Committee, to Brent J. Fields,

Secretary, SEC (Apr. 9, 2019), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection-040919.pdf>.

³⁹ *Id.*

⁴⁰ The use of Exegy to provide market data, including the costs and market data provided, is discussed below in Section 3(a)(2)(B)(i)(i).

- Facilitated Participant exchanges that support options market makers sending Quote Sent Time to the CAT;

- Facilitated the introduction of OPRA and Options NBBO Other Data to CAT;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing requirements under Regulation SCI;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;

- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;

- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;

- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with Participants, the SEC and its staff;
- Operated the FINRA CAT Helpdesk, which is the primary source for answers to questions about CAT, including questions regarding: clock synchronization, firm reporting responsibilities, interpretive questions, technical specifications for reporting to CAT and more;

- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content;⁴¹ and

- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

The \$2,072,908 in technology costs related to CAIS operating fees represent the fees paid for FCAT's subcontractor charged with the development and operation of CAT's Customer and Account Information System ("CAIS"). The CAT is required under the CAT NMS Plan to capture and store Customer Identifying Information and Customer Account Information in a database separate from the transactional database and to create a CAT-Customer-ID for each Customer.

During the Pre-FAM Period, the CAIS-related services were provided by the Plan Processor through the Plan Processor's subcontractor, Kingland Systems Incorporation ("Kingland").

Kingland had experience operating in the securities regulatory technology space, and as a part of its proposal for acting as the Plan Processor for the CAT, FCAT selected Kingland as a subcontractor to provide certain CAIS-related services.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay to the Plan Processor the fees incurred by FCAT for CAIS-related services provided by FCAT through Kingland on a monthly basis. FCAT negotiated the fees for Kingland's CAIS-related services on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity. The fees for CAIS-related services during the Pre-FAM Period were paid by CAT LLC to FCAT. FCAT, in turn, paid Kingland.

During the Pre-FAM Period, Kingland began development of the CAIS Technical Specifications and the building of CAIS. In addition, Kingland also worked on the build related to the CCID Alternative, an alternative approach to customer information that was not included in the CAT NMS Plan as originally adopted.⁴² Furthermore, Kingland also worked on the acceleration of the reporting of large trader identifiers ("LTID") earlier than originally contemplated during this period, in accordance with exemptive relief granted by the SEC.⁴³

(d) Technology Costs—Change Request Fees

The technology costs related to change request fees include costs related to certain modifications, upgrades or other changes to the CAT. Change requests are standard practice and necessary to reflect operational changes, including changes related to new market developments, such as new market participants. In general, if CAT LLC determines that a modification, upgrade or other change to the functionality or service is necessary and appropriate, CAT LLC will submit a request for such a change to the Plan Processor. The Plan Processor will then respond to the request with a proposal for implementing the change, including the cost (if any) of such a change. CAT LLC then determines whether to approve the proposed change. The change request costs were paid by CAT LLC to FCAT. During the Pre-FAM Period, CAT LLC

incurred costs of \$141,346 related to change requests implemented by FCAT. Such change requests related to a development fee regarding the OPRA and SIP data feeds, and the reprocessing of certain exchange data.⁴⁴

(e) Technology Costs—Capitalized Developed Technology Costs

This category of costs includes capitalizable application development costs incurred in the development of the CAT. The capitalized developed technology costs for the Pre-FAM Period of \$51,847,150 relate to technology provided by the Initial Plan Processor and the successor Plan Processor.

Initial Plan Processor: Thesys CAT, LLC. The capitalized developed technology costs related to the Initial Plan Processor include costs incurred with regard to testing for Participant reporting, Participant reporting to the CAT, a security assessment of the CAT, and the development of the billing function for the CAT.

On January 17, 2017, the Selection Committee of the CAT NMS Plan selected the Initial Plan Processor, Thesys Technologies, LLC, for the CAT NMS Plan pursuant to Article V of the CAT NMS Plan.⁴⁵ The Participants utilized a request for proposal ("RFP") to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan, taking into consideration that the Initial Plan Processor had experience operating in the securities regulatory technology space, among other considerations. On April 6, 2017, CAT LLC entered into an agreement with Thesys CAT LLC ("Thesys CAT"), a Thesys affiliate, to perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT. Under the agreement, CAT LLC would pay Thesys CAT a negotiated, fixed price fee for its role as the Initial Plan Processor. Effective January 30, 2019, the Plan Processor Agreement with Thesys CAT was terminated, and FCAT

⁴⁴ Note that CAT LLC also has incurred costs related to specific Industry Members (e.g., reprocessing costs related to Industry Member reporting errors).

⁴⁵ Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf>.

⁴¹ The CAT website is <https://www.catnmsplan.com>.

⁴² For a discussion of the CCID Alternative, see Securities Exchange Act Rel. No. 88393 (Mar. 17, 2020), 85 FR 16152 (Mar. 20, 2020).

⁴³ Phased Reporting Exemptive Relief Order at 23079–80.

was subsequently selected as the successor Plan Processor.

From January 17, 2017 through January 30, 2019, the time in which the Thesys CAT was engaged for the CAT, but excluding the period from November 15, 2017 through January 30, 2019, the Initial Plan Processor engaged in various activities with respect to the CAT, including preparing iterative drafts of Participant Technical Specifications, Industry Member Technical Specifications and the Central Repository Access Technical Specifications. In addition, Thesys CAT also developed CAT technology, addressed compliance items, including drafting CAT policies and procedures, addressing Regulation SCI requirements, establishing a CAT Compliance Officer and a Chief Information Security Officer, addressed security-related matters for the CAT, and worked towards the initiation of Participant reporting per the Participant Technical Specifications.

Successor Plan Processor: FCAT. The capitalized developed technology costs related to FCAT include: (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, including the completion of go-live functionality related to options ingestion and validation, equities regulatory services agreement query tool updates and unlinked options data query, options linkages release, Industry Member Phase 2a file submission and data integrity (including error corrections), and Industry Member testing, including reporting relationships, ATS order type management, basic reporting statistics, SFTP data integrity feedback and error correction; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including a one-time development fee for a secure analytics workspace, a one-time development fee of an Industry Member connectivity solution, and a one-time development fee for the acceleration of multi-factor authentication; (3) CAIS implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$19,674,463 represent the fees paid for legal services provided by two law firms, Wilmer Cutler Pickering Hale and Dorr LLP ("WilmerHale") and Pillsbury Winthrop Shaw Pittman LLP ("Pillsbury"), during the Pre-FAM Period. The legal costs exclude those costs incurred from

November 15, 2017 through November 15, 2018.

Law Firm: WilmerHale. Following the adoption of Rule 613, the Participants determined it was necessary to engage external legal counsel to advise the Participants with respect to corporate and regulatory legal matters related to the CAT, including drafting and developing the CAT NMS Plan. The Participants considered a variety of factors in their analysis of prospective law firms, including (1) the firm's qualifications, resources and expertise; (2) the firm's relevant experience and understanding of the regulatory matters raised by the CAT and in advising on matters of similar scope; (3) the composition of the legal team; and (4) professional fees. Following a series of interviews, the Participants acting as a consortium determined that WilmerHale was well qualified given the balance of these considerations and engaged WilmerHale in February 2013.

WilmerHale's billing rates are negotiated on an annual basis and are determined with reference to the rates charged by other leading law firms for similar work. The Participants assess WilmerHale's performance and review prospective budgets and staffing plans submitted by WilmerHale on an annual basis. WilmerHale's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading law firms for similar work.

The legal costs for WilmerHale during the Pre-FAM Period included costs incurred from 2013 until June 22, 2020 to address corporate and regulatory legal matters related to the CAT. The legal fees for this law firm during the period from February 2013 until the formation of the CAT NMS, LLC on November 15, 2016 were paid directly by the exchanges and FINRA to WilmerHale. After the formation of CAT NMS LLC, the legal fees were paid by CAT LLC to WilmerHale.

After WilmerHale was engaged in 2013 through the end of the Pre-FAM Period on June 22, 2020 (excluding the legal costs from November 15, 2017 through November 15, 2018), WilmerHale provided legal assistance to the CAT on a variety of matters, including with regard to the following:

- Analyzed various legal matters associated with the Selection Plan, and drafted an amendment to the Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the Development Advisory Group ("DAG");

- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on CAT NMS Plan;

- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan, and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;

- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan and related filings;

- Negotiated and drafted the plan processor agreements with the Initial Plan Processor and the successor Plan Processor;

- Provided assistance with compliance with Regulation SCI;

- Assisted with clock synchronization study;

- Provided assistance with respect to the establishment of CAT security;

- Drafted exemptive requests from CAT NMS Plan requirements, including with regard to options market maker quotes, Customer IDs, CAT Reporter IDs, linking allocations to executions, CAT reporting timeline, FIDs, customer and account information, timestamp granularity, small industry members, data facility reporting and linkage, allocation reports, SRO-assigned market participant identifiers and cancelled trade indicators, thereby seeking to implement changes that would be cost effective and benefit Industry Members and Participants;

- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;

- Provided advice regarding CAT policies and procedures;

- Analyzed the SEC's amendment of the CAT NMS Plan regarding financial accountability;

- Provided interpretations of and related to the CAT NMS Plan;

- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues; and

- Assisted with third-party vendor agreements.

Law Firm: Pillsbury. The legal costs for CAT during the Pre-FAM Period include costs related to the legal services performed by Pillsbury. The Participants interviewed this law firm as well as other potential law firms to provide legal assistance regarding certain liability matters. After considering a variety of factors in its analysis, including the relevant expertise and fees of the firm, CAT LLC determined to hire Pillsbury in April 2019. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees were paid by CAT LLC to Pillsbury. The legal costs for Pillsbury during the Pre-FAM Period included costs incurred from April 2019 until June 22, 2020 to address legal matters regarding the agreements between CAT Reporters and CAT LLC concerning certain terms associated with CAT Reporting (the "Reporter Agreement"). During that period, Pillsbury advised CAT LLC regarding applicable legal matters, participated in negotiations between the Participants and Industry Members, participated in meetings with senior SEC staff, the Chairman, and Commissioners, represented CAT LLC and the Participants in an SEC administrative proceeding, and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, litigation involving CAT LLC is an expense of operating the CAT, and, therefore, is appropriately an obligation of both Participants and Industry Members under the CAT Funding Model.

(g) Consulting Costs

The consulting costs of \$17,013,414 represent the fees paid to the consulting firm Deloitte & Touche LLP ("Deloitte") as project manager during the Pre-FAM Period, from October 2012 until June 22, 2020. These consulting costs include costs for advisory services related to the operation of the CAT, and meeting facilitation and communications coordination, vendor support and financial analyses.

To help facilitate project management given the unprecedented complexity and scope of the CAT project, the Participants determined it was necessary to engage a consulting firm to assist with the CAT project in 2012, following the adoption of Rule 613. A

variety of factors were considered in the analysis of prospective consulting firms, including (1) the firm's qualifications, resources, and expertise; (2) the firm's relevant experience and understanding of the regulatory issues raised by the CAT and in coordinating matters of similar scope; (3) the composition of the consulting team; and (4) professional fees. Following a series of interviews, the exchanges and FINRA as a consortium determined that Deloitte was well qualified given the balance of these considerations and engaged Deloitte on October 1, 2012.

Deloitte's fee rates are negotiated on an annual basis and are in line with market rates for this type of specialized consulting work. CAT LLC assesses Deloitte's performance and reviews prospective budgets and staffing plans submitted by Deloitte on an annual basis. Deloitte's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading consulting firms for similar work.

The consulting costs for CAT during the period from 2012 until the formation of the CAT NMS, LLC were paid directly by the Participants to Deloitte. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC to Deloitte. CAT LLC reviewed the consulting fees each month and approved the invoices.

After Deloitte was hired in 2012 through the end of the Pre-FAM Period on June 22, 2020 (excluding the consulting costs from November 15, 2017 through November 15, 2018), Deloitte provided a variety of consulting services, including the following:

- Established and implemented program operations for the CAT project, including the program management [sic] office and workstream design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participant's independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, analyzing OATS and CAT requirements, and drafting appendices to the Plan;
- Assisted with cost and funding-related activities for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA

as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;

- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with industry outreach and communications regarding the CAT, including assistance with industry outreach events, the development of the CAT website, frequently asked questions, and coordinating with the CAT LLC's public relations firm;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress;
- Coordinated efforts regarding the selection of the successor Plan Processor;
- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor, including support for the Operating Committee and successor Plan Processor for the new role; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$880,419 represent the cost incurred for insurance for CAT during the Pre-FAM Period. Commencing in 2020, CAT LLC performed an evaluation of various potential alternatives for CAT insurance policies, which included engaging in discussions with different insurance companies and conducting cost comparisons of various alternative approaches to insurance. Based on an analysis of a variety of factors, including coverage and premiums, CAT LLC determined to purchase cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance from USI Insurance Services LLC ("USI"). Such policies are standard for corporate

entities, and cyber security liability insurance is important for the CAT System. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

In adopting the CAT NMS Plan, the Commission amended the Plan to add a requirement that CAT LLC's financial statements be prepared in compliance with GAAP, audited by an independent public accounting firm, and made publicly available.⁴⁶ The professional and administration costs include costs related to accounting and accounting advisory services to support the operating and financial functions of CAT, financial statement audit services by an independent accounting firm, preparation of tax returns, and various cash management and treasury functions. In addition, professional and administration costs for the Pre-FAM Period include costs related to the receipt of market data and a security assessment. The costs for these professional and administration services were \$1,082,036 for the Pre-FAM Period.

Financial Advisory Firm: Anchin Accountants & Advisors ("Anchin"). CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT in April 2018. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The hourly fee rates for this firm were in line with market rates for these financial advisory services. The fees for these services were paid by CAT LLC to Anchin.

After Anchin was hired in April 2018 through the end of the Pre-FAM Period on June 22, 2020 (excluding the period from April 2018 through November 15, 2018), Anchin provided a variety of services, including the following:

- Developed, updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;

- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Addressed accounting and financial reporting matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC, including supporting the dissolution of CAT NMS, LLC;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Accounting Firm: Grant Thornton LLP ("Grant Thornton"). In February 2020, CAT LLC determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the proposed role given the balance of these considerations. Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services. The fees for these services were paid by CAT LLC to Grant Thornton.

Market Data Provider: Exegy. The professional and administrative costs for the Pre-FAM Period included costs related to the receipt of certain market data for the CAT pursuant to an agreement with the CAT LLC, and then with FCAT. Exegy provided SIP Data required by the CAT NMS Plan.

After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase

market data from Exegy from July 2018 through March 2019. CAT LLC determined that, unlike certain other vendors, Exegy provided market data that included all data elements required by the CAT NMS Plan.⁴⁷ In addition, the fees were reasonable and in line with market rates for the market data received. Accordingly, the professional and administrative costs for the Pre-FAM Period include the Exegy costs from November 2018 through March 2019. The cost of the market data was reasonable for the market data received. The fees for the market data were paid directly by CAT LLC to Exegy.

Upon the termination of the contract between CAT LLC and Exegy, FCAT entered into a contract with Exegy to purchase the required market data from Exegy in July 2019. All costs under the contract were treated as a direct pass through cost to CAT LLC. Therefore, the fees for the market data were paid by CAT LLC to FCAT, who, in turn, paid Exegy for the market data.

Security Assessment: RSM US LLP ("RSM"). The operating costs for the Pre-FAM Period include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation, and operation of the controls specified by NIST Special Publication 800–53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment. RSM performed the assessment from October 2018 through December 2018. Accordingly, the costs for the Pre-FAM Period include the costs incurred in November and December 2018. The cost for the security assessment were paid directly to RSM by CAT LLC.

(j) Public Relations Costs

The public relations costs of \$224,669 represent the fees paid to public relations firms during the Pre-FAM Period for professional communications services to CAT, including media relations consulting, strategy and execution. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants. Specifically, the public

⁴⁶ Section 9.2 of the CAT NMS Plan.

⁴⁷ See Section 6.5(a)(ii) of the CAT NMS Plan.

relations firms provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). Public relations services were important for various reasons, including monitoring comments made by market participants about CAT and understanding issues related to the CAT discussed on the public record.

The services performed by each of the public relations firms were comparable. The fees for such services were reasonable and in line with market rates. Only one public relations firm was engaged at a time; the three firms were engaged sequentially as the primary public relations contact moved among the three firms during this time period.

Public Relations Firm: Peppercomm, Inc. ("Peppercomm"). The national securities exchanges and FINRA, acting as a consortium, determined to hire the

public relations firm Peppercomm in October 2014 and continued to engage this firm through September 2017. The exchanges and FINRA made this engagement decision after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fee rates for this public relations firm were negotiated on an arm's length basis and were in line with market rates for these types of services. The public relations costs during the period from October 2014 until the formation of the CAT NMS, LLC were paid directly by the exchanges and FINRA to the public relations firm. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC.

Public Relations Firm: Sloane & Company ("Sloane"). CAT LLC determined to hire a new public relations firm, Sloane, in March 2018, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Sloane. CAT LLC continued the engagement with Sloane until February 2020.

Public Relations Firm: Peak Strategies. CAT LLC determined to hire

a new public relations firm, Peak Strategies, in March 2020, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Peak Strategies.

(ii) Historical CAT Costs Incurred in Financial Accountability Milestone Period 1

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 1 of the Financial Accountability Milestones ("FAM Period 1"),⁴⁸ which covers the period from June 22, 2020–July 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 1 of \$6,377,343. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$2,125,781), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBs paying one-third (\$2,125,781). The following table breaks down Historical CAT Costs 1 for FAM Period 1 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 1 *
Capitalized Developed Technology Costs **	\$1,684,870
Technology Costs	3,996,800
Cloud Hosting Services	2,642,122
Operating Fees	1,099,680
CAIS Operating Fees	254,998
Change Request Fees	
Legal	481,687
Consulting	137,209
Insurance	
Professional and administration	69,077
Public relations	7,700
Total Operating Expenses	6,377,343

* The costs described in this table of costs for FAM Period 1 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$362,121 incurred during FAM Period 1 have been appropriately excluded from the above table.⁴⁹

By the completion of FAM Period 1, CAT LLC was required to implement the reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of equities transaction data and options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.⁵⁰ CAT LLC

completed the requirements of FAM Period 1 by July 31, 2020. The following describes the costs for each of the categories for FAM Period 1.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 1 to provide a broad array

of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance

⁴⁸ Section 11.6(a)(i)(A) of the CAT NMS Plan.

⁴⁹ As discussed above, with respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized

over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁵⁰ See definition of "Initial Industry Member Core Equity and Options Reporting" in Section 1.1 of the CAT NMS Plan.

testing, test, and production environments, during the FAM 1 Period. Accordingly, the \$2,642,122 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 1. The fee arrangement for AWS described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. Moreover, CAT LLC

continued to believe that AWS's maturity in the cloud services space as well as the significant cost and time necessary to move the CAT to a different cloud services provider supported the continued engagement of AWS.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the FAM 1 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in

the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well as SIP Data, reference data and other types of Other Data. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 1.⁵¹

	Date range: 6/22/20–7/31/20
Average Daily Volume in Billions:	
Participant—Equities	6
Participant—Options	103
Industry Member—Equities	7
Industry Member—Options	0.31
SIP—Options & Equities	74
Average Total Daily Volume	185
Cumulative Total Events for the Period	5,190
Total Compute Hours for the Period	2,612,082
Storage Footprint at End of Period (Petabytes)	57.47

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 1. Accordingly, the \$1,099,680 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 1. The fee arrangement for FCAT described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, FCAT's activities with respect to the CAT included the following:

- Published iterative drafts of draft Technical Specifications for Phase 2d, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Published iterative drafts of CAIS Technical Specifications, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Facilitated Industry Member reporting of Quote Sent Time on Options Market Maker quotes;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;

- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 1. Accordingly, the \$254,998 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 1. The fee arrangement for Kingland described above with regard to

the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

CAT LLC did not incur costs related to change requests during FAM Period 1.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 1 of \$1,684,870 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include: (1) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including separate production and industry test entitlements, and reprocessing of exchange event timestamps; (2) implementation fees; and (3) license fees.

(f) Legal Costs

The legal costs of \$481,687 represent the fees paid for legal services provided

⁵¹ Note that the volume data described in this table does not include CAIS data.

by two law firms, WilmerHale and Pillsbury during FAM Period 1.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 1 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to WilmerHale. During FAM Period 1, WilmerHale provided legal assistance to the CAT including with regard to the following:

- Assisted with the development of the CAT funding model and drafted related amendments and fee filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, verbal activity, options market maker quote sent time, TRF linkages, and allocations;
- Provided interpretations related to CAT NMS Plan requirements, including the Financial Accountability Milestone amendment;
- Assisted with compliance with Regulation SCI;
- Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the drafting of the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Assisted with communications and presentations for the industry regarding CAIS;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for Compliance Subcommittee, including with regard to response to OCIE examinations and the annual assessment;
- Provided guidance regarding CAT technical specifications;
- Assisted with third-party vendor agreements; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to Pillsbury. During FAM Period 1, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted a

proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(g) Consulting Costs

The consulting costs of \$137,209 represent the fees paid to Deloitte as project manager during FAM Period 1. CAT LLC continued to employ Deloitte during FAM Period 1 based on, among other things, their expertise and cumulative experience with the CAT. The fee rates for Deloitte during FAM Period 1 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 1 were paid by CAT LLC to the consulting firm. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 1, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

Although insurance was in effect during FAM Period 1, CAT LLC did not incur costs related to insurance during FAM Period 1.

(i) Professional and Administration Costs

Financial Advisory Firm: Anchin. The professional and administration costs of \$69,077 represent the fees paid to Anchin during FAM Period 1. CAT LLC continued to employ Anchin during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this

firm were in line with market rates for these type of financial advisory services. The fees for these services during FAM Period 1 were paid by CAT LLC to Anchin. During FAM Period 1, Anchin provided a variety of services, including the following:

- Maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups; and
- Prepared monthly and quarterly financial statements.

(j) Public Relations Costs

The public relations costs of \$7,700 represent the fees paid to Peak Strategies during FAM Period 1. CAT LLC continued to employ Peak Strategies during FAM Period 1 based on, among other things, their expertise and history with the project. The fee rates for this firm were reasonable and in line with market rates for these types of services. The fees for these services during FAM Period 1 were paid by CAT LLC to Peak Strategies. During FAM Period 1, Peak Strategies continued to provide professional communications services to CAT LLC, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues

related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(iii) Historical CAT Costs Incurred in Financial Accountability Milestone Period 2

Historical CAT Costs 1 would include costs incurred by CAT LLC and already

funded by Participants during Period 2 of the Financial Accountability Milestones ("FAM Period 2"),⁵² which covers the period from August 1, 2020–December 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 2 of \$42,976,478. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$14,325,493), and Industry Members would be

responsible for the remaining two-thirds, with CEBBs paying one-third (\$14,325,493) and CEBBs paying one-third (\$14,325,493). The following table breaks down Historical CAT Costs 1 for FAM Period 2 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 2 *
Capitalized Developed Technology Costs **	\$6,761,094
Technology Costs	31,460,033
Cloud Hosting Services	20,709,212
Operating Fees	9,108,700
CAIS Operating Fees	1,590,298
Change Request Fees	51,823
Legal	2,766,644
Consulting	532,146
Insurance	976,098
Professional and administration	438,523
Public relations	41,940
Total Operating Expenses	42,976,478

* The costs described in this table of costs for FAM Period 2 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$1,892,505 incurred during FAM Period 2 have been appropriately excluded from the above table.⁵³

By the completion of FAM Period 2, CAT LLC was required to implement the following with regard to the CAT:

(a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, CustomerID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission.⁵⁴

CAT LLC completed the requirements of FAM Period 2 by December 31, 2020.

The following describes the costs for each of the categories for FAM Period 2.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 2 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production environments, during the FAM 2 Period. Accordingly, the \$20,709,212 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 2. The fee arrangement for AWS described above with regard to the Pre-FAM

Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the FAM 2 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well as SIP Data, and Other Data, including reference data. In addition, Industry Members began reporting LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 2.⁵⁵

⁵² Section 11.6(a)(i)(B) of the CAT NMS Plan.

⁵³ As discussed above, with respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized

over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁵⁴ See definition of "Full Implementation of Core Equity Reporting Requirements" in Section 1.1 of the CAT NMS Plan.

⁵⁵ Note that the volume data described in this table does not include CAIS data.

	Date range: 8/1/20–12/31/20
Average Daily Volume in Billions:	
Participant—Equities	6
Participant—Options	116
Industry Member—Equities	11
Industry Member—Options	0.98
SIP—Options & Equities	80
Average Total Daily Volume	282
Cumulative Total Events for the Period	2,170
Total Compute Hours for the Period	15,660,392
Storage Footprint at End of Period (Petabytes)	114.59

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 2. Accordingly, the \$9,108,700 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 2. The fee arrangement for FCAT described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, FCAT's activities with respect to the CAT included publishing the Technical Specifications for Phase 2d and overseeing the reporting of firm to firm and intrafirm linkages by Industry Members. In addition, FCAT also continued to engage in the following activities during FAM Period 2:

- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the development and implementation of the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data

access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 2. Accordingly, the \$1,590,298 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 2. The fee arrangement for Kingland described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

During FAM Period 2, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 2, CAT incurred costs of \$51,823 related to a change request regarding the addition of functionality for exchange Participants to report rejected messages to the CAT.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 2 of \$6,761,094 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the

CAT, as defined in the agreement between CAT LLC and the Plan Processor; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to separate production and industry test entitlements, market maker reference data, and back-processing of exchange exception logic; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$2,766,644 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 2.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 2 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to WilmerHale. During FAM Period 2, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, allocations, exchange activity, OTQT, initial data validation, error corrections and recordkeeping;
- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs and technical specifications;
- Provided support for the Operating Committee, Compliance Subcommittees, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6 of the CAT NMS Plan;

- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for the Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
- Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
- Provided guidance regarding SRO rule filings for the retirement of systems;
- Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;
- Assisted with third-party vendor agreements (e.g., with regard to Anchin, Grant Thornton and insurance policies);
- Assisted with change requests; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to Pillsbury. During FAM Period 2, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted and filed a proposed amendment to the CAT NMS Plan regarding liability matters. As discussed above, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(g) Consulting Costs

The consulting costs of \$532,146 represent the fees paid to Deloitte as project manager during FAM Period 2. CAT LLC continued to employ Deloitte during FAM Period 2 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 2 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 2 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 2, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;

- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$976,098 represent the fees paid for insurance during FAM Period 2. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$438,523 represent the fees paid to Anchin and Grant Thornton for financial services provided during FAM Period 2.

Financial Advisory Firm: Anchin. CAT LLC continued to engage Anchin during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these types of financial advisory services. The fees for these services during FAM Period 2 were paid by CAT LLC to Anchin. During FAM Period 2, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated [sic] bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;

- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from the Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audit by an independent auditor; and
- Reviewed historical costs from inception.

Accounting Firm: Grant Thornton. CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 2 based on, among other things, its expertise and cumulative knowledge of CAT LLC. CAT LLC continued to believe that Grant Thornton was well qualified for its role and its fee rates were in line with market rates for these accounting services. The fees for these services during FAM Period 2 were paid by CAT LLC to Grant Thornton. During FAM Period 2, Grant Thornton performed a financial statement audit for CAT LLC as an independent accounting firm.

(j) Public Relations Costs

The public relations costs of \$41,940 represent the fees paid to Peak Strategies during FAM Period 2. CAT LLC continued to employ Peak Strategies during FAM Period 2 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 2 were paid by CAT LLC to Peak Strategies. During FAM Period 2, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). As discussed above, such public

relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(iv) Historical CAT Costs Incurred in Financial Accountability Milestone Period 3

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 3 of the Financial Accountability Milestones ("FAM Period 3"),⁵⁶ which covers the period from January 1, 2021–December 31, 2021. Historical CAT Costs 1 would include costs for FAM Period 3 of \$144,415,268. The

Participants would remain responsible for one-third of this cost (which they have previously paid) (\$48,138,423), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$48,138,423) and CEBBs paying one-third (\$48,138,423). The following table breaks down Historical CAT Costs 1 for FAM Period 3 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 3*
Capitalized Developed Technology Costs**	\$10,763,372
Technology Costs	123,639,402
Cloud Hosting Services	94,574,759
Operating Fees	23,106,091
CAIS Operating Fees	5,562,383
Change Request Fees	396,169
Legal	6,333,248
Consulting	1,408,209
Insurance	1,582,714
Professional and administration	595,923
Public relations	92,400
Total Operating Expenses	144,415,268

* The costs described in this table of costs for FAM Period 3 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$5,108,044 incurred during FAM Period 3 have been appropriately excluded from the above table.⁵⁷

By the completion of FAM Period 3, CAT LLC was required to implement the following requirements with regard the CAT:

(a) reporting to the Order Audit Trail System ("OATS") is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or

order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)–(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met.⁵⁸

CAT LLC completed the requirements of FAM Period 3 by December 31, 2021. The following describes the costs for each of the categories for FAM Period 3.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 3 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production

environments, during the FAM 3 Period. Accordingly, the \$94,574,759 in technology costs for cloud hosting services represents costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 3. The fee arrangement for AWS described above for the earlier periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During FAM Period 3, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a, Phase 2b, Phase 2c and Phase 2d Industry Member Data (including certain linkages), SIP Data, Other Data, including reference data, and LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 3.⁵⁹

⁵⁶ Section 11.6(a)(i)(C) of the CAT NMS Plan.

⁵⁷ As discussed above, with respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized

over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁵⁸ See definition of "Full Availability and Regulatory Utilization of Transactional Database Functionality" in Section 1.1 of the CAT NMS Plan.

⁵⁹ Note that the volume data described in this table does not include CAIS data.

	Date range: 1/1/21 to 4/25/21	Date range: 4/26/21/ to 12/31/21 *
Average Daily Volume in Billions:		
Participant—Equities	9	9
Participant—Options	135	136
Industry Member—Equities	20	19
Industry Member—Options	2	2
SIP—Options & Equities	129	137
Average Total Daily Volume	297	304
Cumulative Total Events for the Period	7,480	5,310
Total Compute Hours for the Period	15,860,304	33,487,318
Storage Footprint at End of Period (Petabytes)	180.22	284.62

* Start of Participant Equities in CAT format and SIP Equities on 4/26/21.

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 3. Accordingly, the \$23,106,091 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 3. The fee arrangement for FCAT described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, FCAT's activities with respect to the CAT included the following:

- Facilitated Phase 2c and Phase 2d testing for Industry Members;
- Oversaw creation of linkages of the lifecycle of order events based on the received data through Phase 2d;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the

use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement with FCAT discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 3. Accordingly, the \$5,562,383 in technology costs for CAIS operating fees represents costs incurred for services provided by Kingland during FAM Period 3. The fee arrangement for Kingland described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs. The full CAIS Technical Specifications were published during FAM Period 3.

(d) Technology Costs—Change Request Fees

During FAM Period 3, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 3, CAT incurred costs of \$396,169 related to change requests, including the following: (1) the addition of functionality for exchange Participants to report rejected messages to the CAT; (2) the migration of MIRS query engine to AWS to reduce operational costs and increase resiliency; and (3) updating the Participant Technical Specifications to allow for two-sided Participant option quote reporting.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 3 of \$10,763,372

include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor, including the transition from equity data received by FINRA pursuant to various regulatory services agreements between FINRA and Participant exchanges to the equity CAT Data, and the completion of the Industry Member Phase 2d options manual and complex orders go-live requirements; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to off-exchange volume concentration, Participant 24-hour trading and an external metastore; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$6,333,248 represent the fees paid for legal services provided by three law firms, WilmerHale, Pillsbury & Covington & Burling LLP ("Covington") during FAM Period 3.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 3 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to WilmerHale. During FAM Period 3, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements, including, for example, verbal activity regarding Phase 2c cutover, error reports, error

corrections, Phase 2d Reporting, unique Order-ID on internal route events, reporting addresses, recordkeeping, and unique CCID for foreign customers;

- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs, CAIS requirements, ADF, and technical specifications;
 - Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
 - Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6(c) of the CAT NMS Plan;
 - Drafted SRO rule filings related to the CAT Compliance Rule;
 - Provided support for Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
 - Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
 - Provided guidance regarding SRO rule filings for the retirement of systems;
 - Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;
 - Provided assistance with change requests;
 - Provided guidance and regulatory support for litigation regarding the response to the SEC's exemptive orders;
 - Assisted with communications with the industry, including CAT Alerts and presentations;
 - Provided guidance regarding the confidentiality of CAT Data, including third-party information requests;
 - Assisted with cost management analysis and proposals; and
 - Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.
- Law Firm: Pillsbury.* CAT LLC continued to employ Pillsbury during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to Pillsbury. During FAM Period 3, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During this period, Pillsbury advised CAT LLC regarding applicable legal matters, reviewed and responded to comment letters regarding the proposed Plan amendment, participated in meetings with senior SEC staff, responded to comments

submitted following the SEC's April 6, 2021 order instituting proceedings,⁶⁰ and assessed legal matters regarding the SEC's October 29, 2021 order denying the proposed Plan amendment.⁶¹

Law Firm: Covington. CAT LLC hired Covington for litigation with the SEC regarding certain exemptive orders related to the CAT, including orders issued in December 2020.⁶² CAT LLC interviewed this law firm as well as other potential law firms, considering a variety of factors in its analysis for choosing legal assistance, including the relevant expertise and fees of the potential lawyers. CAT LLC approved the engagement of Covington in January 2021. The fee rates for this law firm, which were calculated based on hourly rates, were in line with market rates for specialized services. The legal fees for FAM Period 3 for this firm were paid by CAT LLC to Covington.

After Covington was hired in 2021 through the end of 2021, the firm provided legal assistance regarding the litigation with the SEC regarding the 2020 Orders. These services included researching, drafting, and filing motions to stay the 2020 orders and related materials in proceedings before the SEC, as well as researching, drafting, and filing petitions for judicial review of the 2020 Orders in proceedings before the U.S. Court of Appeals for the D.C. Circuit. Covington oversaw ongoing litigation proceedings on these matters, and also supported WilmerHale with respect to settlement negotiations with the SEC staff regarding the 2020 Orders.

In addition to these services, CAT LLC engaged Covington in November 2021 to provide assistance with respect to the SEC's disapproval of CAT NMS Plan amendments concerning a proposed limitation on liability in the event of a data breach or similar event. Covington provided advice concerning CAT's response to the SEC's disapproval order. This work accounted for a minority of Covington's fees in 2021.⁶³

⁶⁰ Securities Exchange Act Rel. No. 91487 (Apr. 6, 2021), 86 FR 19054 (Apr. 12, 2021).

⁶¹ Securities Exchange Act Rel. No. 93484 (Oct. 29, 2021), 86 FR 60933 (Nov. 4, 2021).

⁶² See Securities Exchange Act Rel. No. 90688 (Dec. 16, 2020), 85 FR 83634 (Dec. 22, 2020); and Securities Exchange Act Rel. No. 90689 (Dec. 16, 2020), 85 FR 83667 (Dec. 22, 2020) (collectively, the "2020 Orders").

⁶³ As discussed above with regard to Pillsbury's work on liability matters, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, such activity is a necessary part of the operation of the CAT.

(g) Consulting Costs

The consulting costs of \$1,408,209 represent the fees paid to Deloitte as project manager during FAM Period 3. CAT LLC continued to employ Deloitte during FAM Period 3 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 3 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 3 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 3, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$1,582,714 represent the fees paid for insurance during FAM Period 3. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$595,923 represent the fees paid to Anchin and Grant Thornton for financial services during FAM Period 3.

Financial Advisory Firm: Anchin. CAT LLC continued to employ Anchin during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for

this firm were in line with market rates for these financial advisory services. The fees for these services during FAM Period 3 were paid by CAT LLC to Anchin. During FAM Period 3, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated *[sic]* bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Accounting Firm: Grant Thornton. CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 3 based on, among other things, their expertise and cumulative knowledge of CAT LLC. CAT LLC determined that Grant Thornton was well qualified for its role and that its fixed fee rates were in line with market rates for these accountant services. The

fees for these services during FAM Period 3 were paid by CAT LLC to Grant Thornton. During FAM Period 3, Grant Thornton provided audited financial statements for CAT LLC.

(j) Public Relations Costs

The public relations costs of \$92,400 represent the fees paid to Peak Strategies during FAM Period 3. CAT LLC continued to employ Peak Strategies during FAM Period 3 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 3 were paid by CAT LLC to Peak Strategies. During FAM Period 3, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (*e.g.*, congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (*e.g.*, amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(v) Excluded Costs

Historical CAT Costs 1 would not include three categories of CAT costs ("Excluded Costs"): (1) \$14,749,362 of

costs related to the termination of the relationship with the Initial Plan Processor; (2) \$48,874,937, which are all CAT costs incurred from November 15, 2017 through November 15, 2018; and (3) \$19,628,791, which are costs paid to the the Initial Plan Processor from November 16, 2018 through February 2019 when the relationship with the Initial Plan Processor was concluded. The Participants would remain responsible for 100% of these costs, which total \$83,253,090. CAT LLC determined to exclude these Excluded Costs from Historical CAT Costs 1 because these costs relate to the delay in the start of reporting to the CAT and the conclusion of the relationship with the Initial Plan Processor.⁶⁴

(a) Costs Related to Conclusion of Relationship With Initial Plan Processor

First, Historical CAT Costs 1 would not include \$14,749,362 of costs related to the conclusion of the relationship with the Initial Plan Processor. Such costs include costs related to the American Arbitration Association, the legal assistance of Pillsbury with regard to the arbitration with the Initial Plan Processor, and the settlement costs related to the arbitration with the Initial Plan Processor. The Participants would remain responsible for 100% of these \$14,749,362 in costs.

(b) Costs Incurred From November 15, 2017 Through November 15, 2018

Second, Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018. CAT LLC determined to exclude all costs during this one-year period of \$48,874,937 from fees charged to Industry Members due to the delay in the start of reporting to the CAT. The Participants would remain responsible for 100% of these \$48,874,937 in costs. The following table breaks down these costs into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Excluded costs for November 15, 2017– November 15, 2018 *
Capitalized Developed Technology Costs	\$37,852,083
Technology Costs	
Cloud Hosting Services	
Operating Fees	
CAIS Operating Fees	
Change Request Fees	

⁶⁴ In approving the CAT Funding Model, the Commission states that the proposed exclusion of the first two categories of Excluded Costs "is reasonable in the Commission's view because it would not require all costs incurred by the Participants to be recovered from Industry Members

through the Historical CAT Assessment, specifically excluding those costs related to the delay in the start of reporting to the CAT and costs related to the conclusion of the relationship with the Initial Plan Processor." CAT Funding Model Approval Order at 62663. In addition to the first two

categories of Excluded Costs, CAT LLC is now proposing a third category of Excluded Costs that would exclude all costs paid to the Initial Plan Processor after November 15, 2018.

Operating expense	Excluded costs for November 15, 2017– November 15, 2018 *
Legal	6,143,278
Consulting	4,452,106
Insurance .....	.....
Professional and administration	340,145
Public relations	87,325
Total Operating Expenses	48,874,937

* The costs described in this table of Excluded Costs were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

The following provides additional detail regarding the Excluded Costs.

(I) Technology Costs—Cloud Hosting Services, Operating Fees, CAIS Operating Fees and Change Request Fees

CAT LLC did not incur technology costs related to the categories of cloud hosting services, operating fees, CAIS operating fees or change requests during the period from November 15, 2017 through November 15, 2018.

(II) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for the period from November 15, 2017 through November 15, 2018 include capitalizable application development costs of \$37,852,083 incurred in the development of the CAT by the Initial Plan Processor. Such costs include development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Initial Plan Processor. Such costs include costs related to Industry Member technical specifications for orders and transactions, the system security plan, testing and production for Participant CAT reporting, third-party security assessment and response, query portal, onboarding of the Chief Information Security Officer, and ingestion of FINRA TRF data and FINRA data related to halts and corporate actions.

(III) Legal Costs

The legal costs of \$6,143,278 represent the fees paid to WilmerHale for legal services from November 15, 2017 through November 15, 2018. During this period, WilmerHale provided legal assistance to the CAT including with regard to the following:

- Provided legal support for the governance of the CAT, including governance support for the Operating Committee, Advisory Committee, Compliance Subcommittee, and CAT working groups;

- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan;

- Provided assistance related to CAT security;

- Drafted exemptive requests, including requests related to PII;

- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;

- Provided interpretations of and related to the CAT NMS Plan;

- Provided advice with regard to regulator access to the CAT;

- Assisted with the Plan Processor transition;

- Provided assistance regarding communications with the industry regarding the CAT;

- Provided advice regarding Customer Account Information and PII;

- Provided support for litigation related to SEC exemptive orders; and

- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretative and implementation issues.

(IV) Consulting Costs

The consulting costs of \$4,452,106 represent the fees paid to Deloitte for their role as project manager for the CAT from November 15, 2017 through November 15, 2018. During this period, Deloitte engaged in the following activities with respect to the CAT:

- Implemented program operations for the CAT project;

- Provided governance support to the Operating Committee, including support for Subcommittees and working groups of the Operating Committee (e.g., Compliance Subcommittee, Cost and Funding Working Group, Technical Working Group, Industry Outreach Working Group, Security Working Group and Steering Committee);

- Assisted with cost and funding issues for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;

- Provided support for updating the SEC on the progress of the development of the CAT; and

- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress.

(V) Insurance

CAT LLC did not incur costs related to insurance during the period from November 15, 2017 through November 15, 2018.

(VI) Professional and Administration Costs

The professional and administration costs of \$340,145 represent the fees paid to Anchin, Exegy and RSM from November 15, 2017 through November 15, 2018.

Financial Advisory Firm: Anchin.

From the commencement of its engagement [sic] in April 2018 through November 15, 2018, Anchin engaged in the following activities with respect to the CAT:

- Developed, updated and maintained internal controls;

- Provided cash management and treasury functions;

- Facilitated bill payments;

- Provided monthly bookkeeping;

- Reviewed vendor invoices and

- documentation in support of cash disbursements;

- Provided accounting research and consultations on various accounting, financial reporting and tax matters;

- Addressed not-for-profit tax and accounting considerations;

- Prepared tax returns;

- Addressed various accounting, financial reporting and operating inquiries from Participants;

- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;

- Addressed accounting and financial matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC, including supporting the dissolution of CAT NMS, LLC;

- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Market Data Provider: Exegy. From July 2018 through November 15, 2018, CAT LLC purchased market data from Exegy (as described in more detail above).

Security Assessment: RSM. From October 2018 through November 15, 2018, CAT LLC incurred costs for RSM's performance of a security assessment (as described in more detail above).

(VII) Public Relations Costs

The public relations costs of \$87,325 represent the fees paid to Sloane from November 15, 2017 through November 15, 2018. From the commencement of its engagement [*sic*] in March 2018 through November 15, 2018, Sloane provided professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, Sloane provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (*e.g.*, congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (*e.g.*, amendments to the CAT NMS Plan).

(c) Costs Paid to Initial Plan Processor From November 16, 2018 Through February 2019

Third, Historical CAT Costs 1 would not include the \$19,628,791 in costs paid to the Initial Plan Processor from November 16, 2018 through February 2019 when CAT LLC's relationship with the Initial Plan Processor concluded. CAT LLC determined that Historical CAT Costs 1 would not include any fees paid to the Initial Plan Processor after November 15, 2017,⁶⁵ which was the date by which Participants were

required to begin reporting to the CAT.⁶⁶ As discussed above, the Participants determined that Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Initial Plan Processor costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Initial Plan Processor costs incurred after November 15, 2018 are the \$19,628,791 in costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these \$19,628,791 in costs.

(C) Historical Recovery Period 1

Under the CAT NMS Plan, the Operating Committee is required to reasonably establish the length of the Historical Recovery Period used in calculating each Historical Fee Rate based upon the amount of the Historical CAT Costs to be recovered by the Historical CAT Assessment, and to describe the reasons for its length.⁶⁷ The Historical Recovery Period used in calculating the Historical Fee Rate may not be less than 24 months or more than five years.⁶⁸ The Operating Committee has determined to establish a Historical Recovery Period 1 of 24 months for Historical CAT Assessment 1.

The Operating Committee determined that the length of Historical Recovery Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans to the Participants in a timely fashion. The Operating Committee determined that 24 months for Historical Recovery Period 1 would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to

Section 31.⁶⁹ In addition, in establishing a Historical Recovery Period of 24 months, the Operating Committee recognized that the total costs for Historical CAT Assessment 1 were less than the total costs for 2022 and 2023,⁷⁰ and therefore it would be reasonable and appropriate to recover costs subject to this filing over an approximate two-year period.

The length of the Historical Recovery Period 1 and the reasons for its length are provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.⁷¹

(D) Projected Total Executed Equivalent Share Volume

The calculation of Historical Fee Rate 1 also requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for Historical Recovery Period 1. Under the CAT NMS Plan, the Operating Committee is required to "reasonably determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each Historical Recovery Period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months."⁷² The Operating Committee is required to base its projection on the prior twelve months, but it may use its discretion to analyze the likely volume for the upcoming year. Such discretion would allow the Operating Committee to use its judgment when estimating projected total executed equivalent share volume if the volume over the prior twelve months was unusual or otherwise unfit to serve as the basis of a future volume estimate.⁷³

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. The Operating Committee has determined to calculate the projected total executed equivalent share volume for the 24 months of Historical Recovery Period 1 by doubling the executed equivalent share volume for the prior 12 months. The

⁶⁵ The SEC approved the CAT NMS Plan on November 15, 2016, and Participant reporting was required to begin on the first anniversary of this date, November 15, 2017. See Section 6.3 of the CAT NMS Plan and CAT NMS Plan Approval Order.

⁶⁷ Section 11.3(b)(i)(D)(I) and Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

⁶⁸ Section 11.3(b)(i)(D)(I) of the CAT NMS Plan. In the CAT Funding Model Approval Order, the SEC stated that "[i]n the Commission's view, it is reasonable for the Operating Committee to establish the length of the Historical Recovery Period to be no less than 24 months and no more than five years." CAT Funding Model Approval Order at 62664.

⁶⁹ As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model at 62682.

⁷⁰ The total CAT costs for 2022 were approximately \$186 million and the total CAT costs for 2023 were approximately \$233 million.

⁷¹ Section 11.3(b)(iii)(B)(II)(C) of the CAT NMS Plan.

⁷² Section 11.3(b)(i)(E) of the CAT NMS Plan.

⁷³ CAT Funding Model Approval Order at 62664.

⁶⁵ As discussed below, CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. See Section 3(a)(10)(E) below.

Operating Committee determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has remained relatively constant. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395, the executed equivalent share volume for 2022 was 4,039,821,841,560.31, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6. Accordingly, the projected total executed equivalent share volume for Historical Recovery Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.⁷⁴

The projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1 and a description of the calculation of the projection is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.⁷⁵

(E) Historical Fee Rate 1

Historical Fee Rate 1 would be calculated by dividing Historical CAT Costs 1 by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1, as described in detail above.⁷⁶ Specifically, Historical Fee Rate 1 would be calculated by dividing \$318,059,819 by 7,961,507,681,810.42. As a result, the Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. Historical Fee Rate 1 is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide the Historical Fee Rate in a fee filing for a Historical CAT Assessment.⁷⁷

(3) Past CAT Costs and Participants

Participants would not be required to pay any fees associated with Historical CAT Assessment 1 as the Participants previously have paid all Past CAT Costs. The CAT NMS Plan explains that:

Because Participants previously have paid Past CAT Costs via loans to the Company,

Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs and such other additional Past CAT Costs as reasonably determined by the Operating Committee will be paid by the cancellation of loans made to the Company on a pro rata basis based on the outstanding loan amounts due under the loans.⁷⁸

The CAT NMS Plan further states that "Historical CAT Assessments are designed to recover two-thirds of the Historical CAT Costs."⁷⁹

(4) Monthly Fees

CEBBs and CEBs would be required to pay fees for Historical CAT Assessment 1 on a monthly basis for the period in which Historical CAT Assessment 1 is in effect.⁸⁰ A CEBB or CEBs's fee for each month would be calculated based on the transactions in Eligible Securities executed by the CEBB or CEBs from the prior month.⁸¹ Proposed paragraph (a)(1)(A) of the fee schedule would state that each CAT Executing Broker would receive its first invoice in November 2024, and "would receive an invoice each month thereafter in which Historical CAT Assessment 1 is in effect." Proposed paragraph (a)(1)(B) of the fee schedule would state that "Consolidated Audited Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis." In addition, proposed paragraph (b)(1) of the fee schedule states that each CEBB and CEBs is required to pay its CAT fees "each month."

(5) Actual Recovery Period for Historical CAT Assessment 1

The CAT NMS Plan states that, "[n]otwithstanding the length of the Historical Recovery Period used in calculating the Historical Fee Rate, each Historical CAT Assessment calculated using the Historical Fee Rate will remain in effect until all Historical CAT Costs for the Historical CAT Assessment are collected."⁸² Accordingly, Historical CAT Assessment 1 will remain in effect until all Historical CAT Costs 1 have been collected. The actual

recovery period for Historical CAT Assessment 1 may be shorter or longer than Historical Recovery Period 1 depending on the actual executed equivalent share volumes during the time that Historical CAT Assessment 1 is in effect.⁸³

(6) Consolidated Audit Trail Funding Fees

To implement Historical CAT Assessment 1, a new section would be added to the Exchange's fee schedule for "Consolidated Audit Trail Funding Fees", and it would include the proposed paragraphs described below.

(A) Fee Schedule for Historical CAT Assessment 1

The CAT NMS Plan states that:

Each month in which a Historical CAT Assessment is in effect, each CEBB and each CEBs shall pay a fee for each transaction in Eligible Securities executed by the CEBB or CEBs 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 reasonably determined pursuant to paragraph (b)(i) of this Section 11.3.⁸⁴

Accordingly, based on the factors discussed above, the Exchange proposes to add paragraph (a)(1) to the Consolidated Audit Trail Funding Fees section of its fee schedule. Proposed paragraph (a)(1) would state the following:

(A) Each CAT Executing Broker shall receive its first invoice for Historical CAT Assessment 1 in November 2024, which shall set forth the Historical CAT Assessment 1 fees calculated based on transactions in October 2024, and shall receive an invoice for Historical CAT Assessment 1 for each month thereafter in which Historical CAT Assessment 1 is in effect.

(B) Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis. Each month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer ("CEBB") and/or the CAT Executing Broker for the Seller ("CEBs") (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of \$0.000013 per executed equivalent share.

⁸³ In approving the CAT Funding Model, the Commission stated that, "[i]n the Commission's view, it is reasonable for Industry Members to be charged a Historical CAT Assessment until all Historical CAT Costs for the Historical CAT Assessment are collected." CAT Funding Model Approval Order at 62665.

⁸⁴ Section 11.3(b)(iii)(A) of the CAT NMS Plan.

⁷⁴ This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

⁷⁵ Section 11.3(b)(iii)(B)(II)(D) of the CAT NMS Plan.

⁷⁶ In approving the CAT Funding Model, the Commission stated that "[t]he calculation of the Historical Fee Rate 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 is reasonable." CAT Funding Model Approval Order at 62664.

⁷⁷ Section 11.3(b)(iii)(B)(II)(A) of the CAT NMS Plan.

⁷⁸ Section 11.3(b)(ii) of the CAT NMS Plan.

⁷⁹ *Id.* In approving the CAT Funding Model, the Commission stated that "[t]he proposed allocation of the Historical CAT Assessment solely to CEBs and CEBBs, and ultimately Industry Members, is reasonable. The Historical CAT Assessment will still be divided into thirds," as the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made to the Company. CAT Funding Model Approval Order at 62666.

⁸⁰ See Section 11.3(b)(iii)(A) of the CAT NMS Plan.

⁸¹ See proposed paragraph (a)(1)(B) of the fee schedule.

⁸² Section 11.3(b)(i)(D)(II) of the CAT NMS Plan.

(C) Historical CAT Assessment 1 will remain in effect until \$212,039,879.34 (two-thirds of Historical CAT Costs 1) are collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time. Consolidated Audit Trail, LLC will provide notice when Historical CAT Assessment 1 will no longer be in effect.

(D) Each CAT Executing Broker shall be required to pay each invoice for Historical CAT Assessment 1 in accordance with paragraph (b).

As noted in the Plan amendment for the CAT Funding Model, “as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee rate.”⁸⁵ Accordingly, proposed paragraph (a)(1)(B) of the fee schedule would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 of \$0.00003994969693072937 by one-third, and rounding the result to 6 decimal places.⁸⁶ The Operating Committee determined to use six decimal places to balance the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

The proposed language in paragraph (a)(1)(A) of the fee schedule would describe when CAT Executing Brokers would receive their first monthly invoice for Historical CAT Assessment 1. Specifically, CAT Executing Brokers would receive their first monthly invoice for Historical CAT Assessment 1 in November 2024 and the fees set forth in that invoice would be calculated based on transactions executed in the prior month, that is, transactions executed in October 2024. The payment for the first invoice would be required within 30 days after the receipt of the first invoice (unless a longer period is indicated), as described in paragraph (b)(2) of the fee schedule.

Proposed paragraph (a)(1)(A) of the fee schedule also would describe the monthly cadence of the invoices for Historical CAT Assessment 1. Specifically, after the first invoices are provided to CAT Executing Brokers in November 2024, invoices will be sent to CAT Executing Brokers each month

thereafter while Historical CAT Assessment 1 is in effect.

Proposed paragraph (a)(1)(B) of the fee schedule would describe the invoices for Historical CAT Assessment 1.

Proposed paragraph (a)(1)(B) of the fee schedule would state that “Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis.” Proposed paragraph (a)(1)(B) of the fee schedule also would describe the fees to be set forth in the invoices for Historical CAT Assessment 1. Specifically, it would state that “[e]ach month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer (“CEBB”) and/or the CAT Executing Broker for the Seller (“CEBS”) (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of \$0.000013 per executed equivalent share.”

Furthermore, proposed paragraph (a)(1)(C) of the fee schedule would describe how long Historical CAT Assessment 1 would remain in effect. It would state that “Historical CAT Assessment 1 will remain in effect until \$212,039,879.34 (two-thirds of Historical CAT Costs 1) are collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time.” This proposed paragraph would further state that “Consolidated Audit Trail, LLC will provide notice when Historical CAT Assessment 1 will no longer be in effect.”

Historical CAT Assessment 1 will be assessed for all transactions executed in each month through the end of the month in which two-thirds of Historical CAT Costs 1 are assessed, and then CAT LLC will provide notice that Historical CAT Assessment 1 is no longer in effect. Since Historical CAT Assessment 1 is a monthly fee based on transaction volume from the prior month, Historical CAT Assessment 1 may collect more than two-thirds of Historical CAT Costs 1. To the extent that occurs, any excess money collected during the final month in which Historical CAT Assessment 1 is in effect will be used to offset future fees and/or to fund the reserve for the CAT.

Finally, proposed paragraph (a)(1)(D) of the fee schedule sets forth the requirement for the CAT Executing Brokers to pay the invoices for Historical CAT Assessment 1. It would

state that “[e]ach CAT Executing Broker shall be required to pay each invoice for Historical CAT Assessment 1 in accordance with paragraph (b).”

(B) Manner of Payment

Paragraph (b)(1) to the “Consolidated Audit Trail Funding Fees” section of its fee schedule describes the manner of payment of Industry Member CAT fees. Paragraph (b)(1) states that “[e]ach CAT Executing Broker shall pay its CAT fees as required pursuant to paragraph (a) each month to the Consolidated Audit Trail, LLC in the manner prescribed by the Consolidated Audit Trail, LLC.” The CAT NMS Plan requires the Operating Committee to establish a system for the collection of CAT fees.⁸⁷ The Plan Processor has established a billing system for CAT fees.⁸⁸ Therefore, the Exchange proposes to require CAT Executing Brokers to pay Historical CAT Assessment 1 in accordance with such system.

(C) Failure To Pay CAT Fees

The CAT NMS Plan further states that:

Participants shall require each Industry Member to pay all applicable fees authorized under this Article XI within thirty (30) days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due (as determined in accordance with the preceding sentence), such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (a) the Prime Rate plus 300 basis points; or (b) the maximum rate permitted by applicable law.⁸⁹

Accordingly, the Exchange previously has added this requirement to the Exchange’s fee schedule. Specifically, paragraph (b)(2) of the fee schedule states:

Each CAT Executing Broker shall pay the CAT fees required pursuant to paragraph (a) within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If a CAT Executing Broker fails to pay any such CAT fee when due, such CAT Executing Broker shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of (i) the Prime Rate plus 300

⁸⁷ Section 11.4 of the CAT NMS Plan.

⁸⁸ The billing process and system are described in CAT Alert 2023-02 as well as the CAT FAQs related to the billing of CAT fees, the Industry Member CAT Reporter Portal User Guide, the FCAT Industry Member Onboarding Guide, the FCAT Connectivity Supplement for Industry Members and the CAT Billing Webinars (dated Sept. 28, 2023, and Nov. 7, 2023), each available on the CAT website.

⁸⁹ Section 11.4 of the CAT NMS Plan.

⁸⁵ CAT Funding Model Approval Order at 62658, n.658.

⁸⁶ Dividing \$0.00003994969693072937 by three equals \$0.00001331656564357646. Rounding \$0.00001331656564357646 to six decimal places equals \$0.000013.

basis points, or (ii) the maximum rate permitted by applicable law.

The requirements of paragraph (b)(2) would apply to Historical CAT Assessment 1.

(7) Historical CAT Assessment Details

The CAT NMS Plan states that:

Details regarding the calculation of a CAT Executing Broker's Historical CAT Assessment will be provided upon request to such CAT Executing Broker. At a minimum, such details would include each CAT Executing Broker's executed equivalent share volume and corresponding fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.⁹⁰

Such information would provide CEBBs and CEBBs with the ability to understand the details regarding the calculation of their Historical CAT Assessment.⁹¹ CAT LLC will provide CAT Executing Brokers with these details regarding the calculation of their Historical CAT Assessments on their monthly invoice for the Historical CAT Assessment.

In addition, CAT LLC will make certain aggregate statistics regarding Historical CAT Assessments publicly available. Specifically, the CAT NMS Plan states that, “[f]or each Historical CAT Assessment, at a minimum, CAT LLC will make publicly available the aggregate executed equivalent share volume and corresponding aggregate fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise on an exchange, and (3) by buy-side transactions and sell-side transactions.”⁹² Such aggregate statistics will be available on the CAT website.

Furthermore, CAT LLC will make publicly available on the CAT website the total amount invoiced each month that Historical CAT Assessment 1 is in effect as well as the total amount

invoiced for Historical CAT Assessment 1 for all months since its commencement. CAT LLC also will make publicly available on the CAT website the total costs to be collected from Industry Members for Historical CAT Assessment 1. By reviewing statistics regarding how much has been invoiced and how much remains to be invoiced for Historical CAT Assessment 1, Industry Members would have sufficient information to reasonably track how much longer Historical CAT Assessment 1 is likely to be in place.

(8) Implementation Assistance

To assist Industry Members with compliance with the commencement of Historical CAT Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices prior to the commencement of Historical CAT Assessment 1. Specifically, CAT Executing Brokers have received mock invoices based on transaction data each month since November 2023. The mock invoices are in the same form as the actual, payable invoices, including both the relevant transaction data and the corresponding fee. However, no payments have been required in response to such mock invoices; they have been used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data has provided CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended to facilitate the payment of Historical CAT Assessment 1.

(9) Financial Accountability Milestones

The CAT NMS Plan states that “[n]o Participant will make a filing with the SEC pursuant to Section 19(b) of the Exchange Act regarding any Historical CAT Assessment until any applicable Financial Accountability Milestone described in Section 11.6 has been satisfied.”⁹³ The CAT NMS Plan further states that “in all filings submitted by the Participants to the Commission under Section 19(b) of the Exchange Act, to establish or implement Post-Amendment Industry Member Fees pursuant to this Article, . . . the Participants shall clearly indicate whether such fees are related to Post-Amendment Expenses incurred during Period 1, Period 2, Period 3, or Period 4.”⁹⁴ As discussed in detail below, all

applicable Financial Accountability Milestones for Historical CAT Assessment 1—that is, Period 1, Period 2 and Period 3 of the Financial Accountability Milestones—have been satisfied. Furthermore, as discussed below, this filing clearly indicates that Historical CAT Assessment 1 relates to Post-Amendment Expenses incurred during Periods 1, 2 and 3 of the Financial Accountability Milestones.

(A) Period 1 of the Financial Accountability Milestones

In accordance with Section 11.6(b) of the CAT NMS Plan, Historical CAT Assessment 1 seeks to recover costs that are related to “all fees, costs, and expenses (including legal and consulting fees, costs, and expenses) incurred by or for the Company in connection with the development, implementation and operation of the CAT from the effective date of [Section 11.6 of the CAT NMS Plan] until such time as Full Implementation of CAT NMS Plan Requirements has been achieved”⁹⁵ (“Post-Amendment Expenses”) incurred during FAM Period 1. FAM Period 1 began on June 22, 2020, the effective date of Section 11.6 of the CAT NMS Plan, and concluded on July 31, 2020, the date of Initial Industry Member Core Equity and Options Reporting. Section 1.1 of the CAT NMS Plan defines “Initial Industry Member Core Equity and Options Reporting” as:

The reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of both: (a) equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information; and (b) options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants' Quarterly Progress Reports.⁹⁶ As indicated by the Participants' Quarterly Progress Report for the third quarter of 2020,⁹⁷ Initial Industry Member Core Equity and Option Reporting was completed on schedule on July 22, 2020, which is prior to the July 31, 2020 deadline.

Under the FAM Period 1 requirement of Initial Industry Member Core Equity and Options Reporting, Industry

⁹⁰ Section 11.3(a)(iv)(A) of the CAT NMS Plan.

⁹¹ In approving the CAT Funding Model, the Commission stated that, “[i]n the Commission's view, providing CAT Execut[ing] Brokers information regarding the calculation of their CAT Fees will aid in transparency and permit CAT Execut[ing] Brokers to confirm the accuracy of their invoices for CAT Fees.” CAT Funding Model Approval Order at 62667.

⁹² Section 11.3(a)(iv)(B) of the CAT NMS Plan. In approving the CAT Funding Model, the Commission stated that “[t]he publication of the aggregate executed equivalent share volume and aggregate fee is appropriate because it would allow Participants and CAT Executing Brokers a high-level validation of executed volume and fees.” CAT Funding Model Approval Order at 62667.

⁹³ Section 11.3(b)(iii)(B)(III) of the CAT NMS Plan.

⁹⁴ Section 11.6(b) of the CAT NMS Plan.

⁹⁵ Section 11.6 of the CAT NMS Plan.

⁹⁶ The Quarterly Progress Reports are available at <https://www.catnmsplan.com/implementation-plan>.

⁹⁷ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020) and Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021).

Members—excluding Small Industry Members that are not OATS reporters—were required to report two categories of data to the CAT: equities transaction data and options transaction data (both excluding Customer Account Information, Customer-ID, and Customer Identifying Information) by July 31, 2020. Pursuant to exemptive relief provided by the Commission, the Commission authorized the Participants' Compliance Rules to allow core equity reporting for Industry Members (Phase 2a) to begin on June 22, 2020 and core options reporting for Industry Members (Phase 2b) to begin on July 20, 2020.⁹⁸

In adopting the FAMs, the Commission stated that the equities transaction reporting required for FAM Period 1 “is consistent with the functionality that the Participants describe on the CAT NMS Plan website as ‘Production Go-Live for Equities 2a file submission and data integrity validations.’”⁹⁹ The Phase 2a Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order, and includes the following data related to Eligible Securities that are equities:

- All events and scenarios covered by OATS, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions;
- Reportable Events for: (1) proprietary orders, including market maker orders, for Eligible Securities that are equities; (2) electronic quotes in listed equity Eligible Securities (*i.e.*, NMS stocks) sent to a national securities exchange or FINRA’s Alternative Display Facility (“ADF”); (3) electronic quotes in unlisted Eligible Securities (*i.e.*, OTC Equity Securities) received by an Industry Member operating an interdealer quotation system (“IDQS”); and (4) electronic quotes in unlisted Eligible Securities sent to an IDQS or

other quotation system not operated by a Participant or Industry Member;

- Firm Designated IDs (“FDIDs”), which Industry Members must report to the CAT as required by Sections 6.3(d)(i)(A) and 6.4(d)(ii)(C) of the CAT NMS Plan;

- Industry Members would be required to report all street side representative orders, including both agency and proprietary orders and mark such orders as representative orders, except in certain limited exceptions as described in the Industry Member Technical Specifications;

- The link between the street side representative order and the order being represented when: (1) the representative order was originated specifically to represent a single order received either from a customer or another broker-dealer; and (2) there is (a) an existing direct electronic link in the Industry Member’s system between the order being represented and the representative order and (b) any resulting executions are immediately and automatically applied to the represented order in the Industry Member’s system;

- Manual and Electronic Capture Time for Manual Order Events;

- Special handling instructions for the original receipt or origination of an order during Phase 2a; and

- When routing an order, whether the order was routed as an intermarket sweep order (“ISO”).

In Phase 2a, Industry Members were not required to report modifications of a previously routed order in certain limited instances, nor were they required to report a cancellation of an order received from a Customer after the order has been executed.¹⁰⁰

The Quarterly Progress Report for the third quarter of 2020 states that “Interim Step: Production Go-Live for Equities 2a file submission and data integrity validation (Large Industry Members and Small OATS Reporters)” was completed on June 22, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of “equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information” was completed on June 22, 2020.

In adopting the FAMs, the Commission stated that the options transaction reporting required for FAM Period 1 is “consistent with the functionality that the Participants describe on the CAT NMS Plan website as ‘Production Go-Live for Options 2b

file submission and data integrity validations.’”¹⁰¹ The Phase 2b Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order, and includes the Industry Member Data related to Eligible Securities that are options and related to simple electronic option orders, excluding electronic paired option orders. A simple electronic option order is an order to buy or sell a single option that is not related to or dependent on any other transaction for pricing and timing of execution that is either received or routed electronically by an Industry Member. Electronic receipt of an order is defined as the initial receipt of an order by an Industry Member in electronic form in standard format directly into an order handling or execution system. Electronic routing of an order is the routing of an order via electronic medium in standard format from one Industry Member’s order handling or execution system to an exchange or another Industry Member. An electronic paired option order is an electronic option order that contains both the buy and sell side that is routed to another Industry Member or exchange for crossing and/or price improvement as a single transaction on an exchange. Responses to auctions of simple orders and paired simple orders would be reportable in Phase 2b. Furthermore, combined orders in options would be treated in Phase 2b in the same way as equity representative orders are treated in Phase 2a. A combined order would mean, as permitted by SRO rules, a single, simple order in Listed Options created by combining individual, simple orders in Listed Options from a customer with the same exchange origin code before routing to an exchange. During Phase 2b, the single combined order sent to an exchange must be reported and marked as a combined order, but the linkage to the underlying orders is not required to be reported until Phase 2d.¹⁰²

The Quarterly Progress Report for the third quarter of 2020 states that “Interim Step: Production Go-Live for Options 2b file submission and data integrity validations” was completed on July 20, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of “options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information” was completed on July 20, 2020.

¹⁰¹ FAM Adopting Release at 31330, n.98.

¹⁰² Phased Reporting Exemptive Relief Order at 23078.

⁹⁸ See Phased Reporting Exemptive Relief Order. Under the CAT NMS Plan as adopted, the Participants were required, through their Compliance Rules, to require their Large Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2018, and to require their Small Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2019. Sections 6.7(a)(v) and (vi) of the CAT NMS Plan. The SEC granted exemptive relief from these provisions of the CAT NMS Plan to allow for the phased implementation of Industry Member reporting via five phases addressing the reporting requirements for Phase 2a Industry Member Data, Phase 2b Industry Member Data, Phase 2c Industry Member Data, Phase 2d Industry Member Data and Phase 2e Industry Member Data.

⁹⁹ Securities Exchange Act Rel. No. 88890 (May 15, 2020), 85 FR 31322, 31330 n.97 (May 22, 2020) (“FAM Adopting Release”).

¹⁰⁰ Phased Reporting Exemptive Relief Order at 23076–78.

As discussed above, the Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from June 22, 2020 through July 31, 2020. The total costs for this period, as discussed above, are \$6,377,343. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBBs paying one-third (\$2,125,781).

(B) Period 2 of the Financial Accountability Milestones

Historical CAT Assessment 1 seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 2. FAM Period 2 began on August 1, 2020, and concluded on December 31, 2020, the date of the Full Implementation of Core Equity Reporting. Section 1.1 of the CAT NMS Plan defines “Full Implementation of Core Equity Reporting” as:

the point at which: (a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants’ Quarterly Progress Reports. As indicated by the Participants’ Quarterly Progress Report for the fourth quarter of 2020,¹⁰³ Full Implementation of Core Equity

Reporting was completed on schedule by December 31, 2020.

Specifically, the Full Implementation of Core Equity Reporting requires the satisfaction of two prongs. The first prong requires Participants to have fully implemented the first phase of equities transaction reporting for Industry Members (excluding Small Industry Members that are not OATS reporters) at an Error Rate of less than 5%. In addition, equities transaction data produced by the CAT at this stage must also be sufficiently interlinked so as to permit full analysis of an order’s lifecycle across the national market, excluding full linkage of representative orders. As CAT LLC reported on its Quarterly Progress Reports, Phase 2a was fully implemented as of October 26, 2020, including intra-firm, inter-firm, national securities exchange, and trade reporting facilities linkages.¹⁰⁴ In addition to the reporting of Phase 2a Industry Member Data as described above with regard to FAM Period 1, the following linkage data was added to the CAT as described in the Quarterly Progress Reports for the third and fourth quarter of 2020:

- “Production Go-Live for Equities 2a Intrafirm Linkage validations” was completed on 7/27/2020;¹⁰⁵
- “Production Go-Live for Firm to Firm Linkage validations for Equities 2a (Large Industry Members and Small OATS Reporters)” was completed on October 26, 2020; and
- “Production Go-Live for Equities 2a Exchange and TRF Linkage validations (Large Industry Members and Small OATS Reporters)” was completed on October 26, 2020.

Furthermore, as CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2020, the average overall error rate for Phase 2a Industry Member Data was less than 5% as of December 31, 2020. The average overall error rate was calculated by dividing the compliance errors by processed records.

The second prong of this FAM requires that the equities transaction data collected by the CAT at this stage be made available to regulators through two basic query tools required by the CAT NMS Plan—a targeted query tool that will enable regulators to retrieve data via an online query screen with a variety of predefined selection criteria, and a user-defined direct query tool that will provide regulators with the ability to query data using all available

attributes and data sources.¹⁰⁶ As CAT LLC reported on its Quarterly Progress Reports, the query tool functionality incorporating the data from Phase 2a was available to the Participants and the Commission as of December 31, 2020.¹⁰⁷

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.¹⁰⁸

As discussed above, Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from August 1, 2020 through December 31, 2020. The total costs for this period, as discussed above, are \$42,976,478. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remain [*sic*] two-thirds, with CEBBs paying one-third (\$14,325,492.70) and CEBBs paying one-third (\$14,325,492.70).

(C) Period 3 of the Financial Accountability Milestones

Historical CAT Assessment 1 seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 3. FAM Period 3 began on January 1, 2021, and concluded on December 31, 2021, the date of the Full Availability and Regulatory Utilization of Transactional Database Functionality. Section 1.1 of the CAT NMS Plan defines “Full Availability and Regulatory Utilization of Transactional Database Functionality” as:

the point at which: (a) reporting to the Order Audit Trail System (“OATS”) is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple

¹⁰⁶ Section 6.10(c)(i)(A) of the CAT NMS Plan requires the Plan Processor to “provide Participants and the SEC with access to all CAT Data stored in the Central Repository” via an “online targeted query tool.” Appendix D, Sections 8.1.1–8.1.3 of the CAT NMS Plan describes the required functionality associated with this regulatory tool. Appendix D, Section 8.2.1 describes the required functionality associated with a user-defined direct query tool that will “deliver large sets of data that can then be used in internal surveillance or market analysis applications.”

¹⁰⁷ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020); Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021); and Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰⁸ Securities Exchange Act Rel. No. 98848 (Nov. 2, 2023), 88 FR 77128, 77129 n.13 (Nov. 8, 2023) (“Settlement Exemptive Order”).

¹⁰³ Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰⁴ For a description of the requirements of Phases 2a, see Phased Reporting Exemptive Relief Order.

¹⁰⁵ Q3 2020 Quarterly Progress Report (Oct. 20, 2021).

electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)–(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants' Quarterly Progress Reports. As indicated by the Participants' Quarterly Progress Report for the fourth quarter of 2021,¹⁰⁹ Full Availability and Regulatory Utilization of Transactional Database Functionality was completed on schedule by December 31, 2021.

Specifically, the "Full Availability and Regulatory Utilization of Transactional Database Functionality" requires the satisfaction of five prongs. The first prong requires that reporting to the Order Audit Trail System ("OATS") is no longer required for new orders. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021,¹¹⁰ FINRA retired OATS effective September 1, 2021.¹¹¹ Accordingly, after the retirement of OATS, reporting to OATS was no longer required.

In addition to Phase 2a and Phase 2b Industry Member Data, the second and third prongs of "Full Availability and Regulatory Utilization of Transactional

Database Functionality" require Industry Member reporting of Phase 2c Industry Member Data and Phase 2d Industry Member Data. The Phase 2c Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order. That Order states that "Phase 2c Industry Member Data" is Industry Member Data related to Eligible Securities that are equities other than Phase 2a Industry Member Data, Phase 2d Industry Member Data, or Phase 2e Industry Member Data. Specifically, the Phase 2c Industry Member Data includes Industry Member Data that is related to Eligible Securities that are equities and that is related to: (1) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (2) quotes in unlisted Eligible Securities sent to an IDQS operated by a CAT Reporter (reportable by the Industry Member sending the quotes) (except for quotes reportable in Phase 2d, as discussed below); (3) electronic quotes in listed equity Eligible Securities (*i.e.*, NMS stocks) that are not sent to a national securities exchange or FINRA's Alternative Display Facility; (4) reporting changes to client instructions regarding modifications to algorithms; (5) marking as a representative order any order originated to work a customer order in price guarantee scenarios, such as a guaranteed VWAP; (6) flagging rejected external routes to indicate a route was not accepted by the receiving destination; (7) linkage of duplicate electronic messages related to a Manual Order Event between the electronic event and the original manual route; (8) special handling instructions on order route reports (other than the ISO, which is required to be reported in Phase 2a); (9) quote identifier on trade events; (10) reporting of LTIDs (if applicable) for accounts with Reportable Events that are reportable to CAT as of and including Phase 2c; (11) reporting of date account opened or Account Effective Date (as applicable) for accounts and reporting of a flag indicating the Firm Designated ID type as account or relationship; (12) order effective time for orders that are received by an Industry Member and do not become effective until a later time; (13) the modification or cancellation of an internal route of an order; and (14) linkages to the customer orders(s) being represented for representative order scenarios, including agency average price trades, net trades, aggregated orders, and disconnected Order Management System ("OMS")—Execution Management System ("EMS")

scenarios, as required in the Industry Member Technical Specifications.¹¹²

Phase 2c Industry Member Data also includes electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are equities and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: (1) an equity bid or offer is displayed publicly or has been communicated (a) for listed securities to the ADF operated by FINRA; or (b) for unlisted equity securities to an "interdealer quotation system," as defined in FINRA Rule 6420(c); or (2) an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing; *i.e.*, no further manual or electronic action is required by the responder providing the quote in order to execute or cause a trade to be executed). With respect to OTC Equity Securities, OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter (other than such an IDQS that does not match and execute orders) are reportable by the Industry Member sending them in Phase 2c. Accordingly, any response to a request for quote or other form of solicitation response provided in a standard electronic format (*e.g.*, FIX) that meets this quote definition (*i.e.*, an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing) would be reportable in Phase 2c.¹¹³

The Phase 2d Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order. "Phase 2d Industry Member Data" is Industry Member Data that is related to Eligible Securities that are options other than Phase 2b Industry Member Data, Industry Member Data that is related to Eligible Securities that are equities other than Phase 2a Industry Member Data or Phase 2c Industry Member Data, and Industry Member Data other than Phase 2e Industry Member Data. Phase 2d Industry Member Data includes with respect to the Eligible Securities that are options: (1) simple manual orders; (2) electronic and manual paired orders; (3) all complex orders with linkages to all CAT-reportable legs; (4) LTIDs (if applicable) for accounts with Reportable Events for Phase 2d; (5) date account

¹⁰⁹ Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁰ *Id.*

¹¹¹ Securities Exchange Act Rel. No. 92239 (June 23, 2021), 86 FR 34293 (June 29, 2021).

¹¹² Phase Reporting Exemptive Relief Order at 23078–79.

¹¹³ *Id.* at 23079.

opened or Account Effective Date (as applicable) for accounts with an LTID and flag indicating the Firm Designated ID type as account or relationship for such accounts; (6) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (7) the modification or cancellation of an internal route of an order; and (8) linkage between a combined order and the original customer orders. Phase 2d Industry Member Data also would include electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are options and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: a listed option bid or offer which is accessible electronically by customers or other market participants and is immediately actionable (*i.e.*, no further action is required by the responder providing the quote in order to execute or cause a trade to be executed). Accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (*e.g.*, FIX) that meets this definition is reportable in Phase 2d for options.¹¹⁴

Phase 2d Industry Member Data also includes with respect to Eligible Securities that are options or equities (1) receipt time of cancellation and modification instructions through Order Cancel Request and Order Modification Request events; (2) modifications of previously routed orders in certain instances; and (3) OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter that does not match and execute orders. In addition, subject to any exemptive or other relief, Phase 2d Industry Member Data will include verbal or manual quotes on an exchange floor or in the over-the-counter market, where verbal quotes and manual quotes are defined as bids or offers in Eligible Securities provided verbally or that are provided or received other than via a CAT Reporter's order handling and execution system (*e.g.*, quotations provided via email or instant messaging).¹¹⁵

The Quarterly Progress Report for the fourth quarter of 2021 states that "Phase 2a was fully implemented as of October 26, 2020;" "Phase 2b was fully implemented as of January 4, 2021;" "Phase 2c was implemented as of April 26, 2021;" and "Phase 2d was fully

implemented as of December 13, 2021."¹¹⁶ The Quarterly Progress Reports for 2021 provide additional detail regarding the implementation of these steps including the following:

- "Production Go-Live for Equities 2c reporting requirements (Large Industry Members)" was completed on April 26, 2021;
- "LTID Account Information Reporting Go-Live for Phases 2a, 2b and 2c (Large Industry Members)" was completed on April 26, 2021;
- "FCAT Plan Processor creates linkages of the lifecycle of order events based on the received data through Phase 2d Production Go-Live for Options 2d reporting requirements (Large Industry Members)" was completed on December 13, 2021;
- "Production Go-Live for Options 2d reporting requirements (Large Industry Members)" was completed on December 13, 2021;
- "Production Go-Live for Options 2b reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "Production Go-Live for Equities 2c reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "Production Go-Live for Options 2d reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "LTID Account Information Reporting Go-Live for Phases 2d (Large Industry Members)" was completed on December 13, 2021; and
- "LTID Account Information Reporting Go-Live for Phases 2a, 2b, 2c and 2d (Small Industry Members)" was completed on December 13, 2021.¹¹⁷

The third prong of "Full Availability and Regulatory Utilization of Transactional Database Functionality" also imposes an Error Rate requirement of 5% or less. The Quarterly Progress Report for the fourth quarter of 2021 states the average overall error rate was less than 5% as of December 31, 2021. The average overall error rate was calculated by dividing the compliance errors by processed records.

The fourth prong of "Full Availability and Regulatory Utilization of Transactional Database Functionality" requires that the data collected by the CAT at this stage be made available to

regulators through an online targeted query tool and a user-defined direct query tool. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021, the query tool functionality incorporating the data from Phases 2a, 2b, 2c and 2d was available to the Participants and to the Commission as of December 31, 2021.¹¹⁸

The fifth prong requires the requirements of Section 6.10(a) of the CAT NMS Plan to have been met. Section 6.10(a) of the CAT NMS Plan requires the Participants to use the tools described in Appendix D to "develop and implement a surveillance system, or enhance existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository." The Exchange implemented a surveillance system, or enhanced existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository as of December 31, 2021 in accordance with Section 6.10(a) of the CAT NMS Plan.¹¹⁹

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.¹²⁰

As discussed above, Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from January 1, 2021 through December 31, 2021. The total costs for this period, as discussed above, are \$144,415,268. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remain [*sic*] two-thirds, with CEBBs paying one-third (\$48,138,422.70) and CEBBs paying one-third (\$48,138,422.70).

(D) Additional Considerations Related to the Financial Accountability Milestones

As discussed above, CAT LLC has satisfied the Financial Accountability Milestones ("FAMs") for Periods 1

¹¹⁸ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁹ See Q1 2021 Quarterly Progress Report (Apr. 30, 2021); Q2 2021 Quarterly Progress Report (July 27, 2021); Q3 2021 Quarterly Progress Report (Nov. 1, 2021); Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹²⁰ Settlement Exemptive Order at 77129 n.13.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 23079–80.

¹¹⁶ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁷ See Q2 2021 Quarterly Progress Report (July 27, 2021); and Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

through 3.¹²¹ As discussed below, none of the circumstances related to NIA Electronic RFQ Responses, the 2023 Verbal Quotes Exemption, the November 2023 Order, or Executing Broker reporting, affect the conclusion that the FAMs for Periods 1 through 3 were satisfied in a timely fashion.

(i) NIA Electronic RFQ Responses

CAT LLC does not believe that the exemptive relief relating to the reporting of electronic responses for quotes (“RFQs”) that are not immediately actionable (“NIA Electronic RFQ Responses”) affect the conclusion that FAMs 1 through 3 have been satisfied. The only reason CAT LLC pursued this relief is because certain Industry Members introduced concerns that NIA Electronic RFQ Responses could be considered “orders” reportable pursuant to Rule 613(j)(8) and some Industry Members were not prepared to report such orders to CAT. Thus, the relief was requested on behalf of Industry Members. CAT LLC itself has not taken any position on whether NIA Electronic RFQ Responses are “orders,” as the definition of “order” is an SEC rule and the trading processes for NIA Electronic RFQ Responses are the Industry Members’, not those of the Participants or CAT LLC. Accordingly, CAT LLC stated in its letter that “Industry Members must determine whether trading interest falls within the definition of an ‘order’ for CAT purposes. To the extent an NIA Electronic RFQ Response is not considered an ‘order’ as defined in Rule 613(j)(8) and the CAT NMS Plan, it would not be reportable to CAT.”¹²²

Only “orders” as defined in SEC Rule 613(j)(8) are reportable to CAT. There is no agreement across the industry or among regulators as to whether NIA Electronic RFQ Responses are “orders” reportable to CAT. Certain Industry Members have raised the question as to whether NIA Electronic RFQ Responses are orders, but others have argued that they are not orders under Rule 613(j)(8).¹²³ Indeed, members of the

Advisory Committee, which CAT LLC relies upon for guidance with regard to Industry Member issues, have not had a definitive view on whether NIA Electronic RFQ Responses are orders. As Rule 613(j)(8) is an SEC rule, CAT LLC believes that only the SEC can provide a definitive determination as to if, and under what circumstances, an NIA Electronic RFQ Response is considered an “order” reportable to CAT. The issue has persisted for some time. As a result, CAT LLC filed an exemptive request regarding NIA Electronic RFQ Responses for clarity on the interpretive issue. As recently as April 2024, Industry Members have re-raised this issue stating that the SEC agrees that it must provide additional guidance on this interpretive issue to resolve the CAT reporting issue for NIA Electronic RFQ Responses:

As further discussed in the prior FIF letters, even if the Commission had the legal authority to require the reporting of NIA RFQ responses to CAT without an amendment to Rule 613, the Commission has not provided guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT. In subsequent discussions with industry members, Commission representatives have agreed that, prior to NIA RFQ responses being reportable to CAT, it would be necessary for the Commission to provide further guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT.¹²⁴

On May 20, 2024, the Commission granted CAT LLC’s request for exemptive relief from certain CAT reporting requirements pertaining to NIA Electronic RFQ Responses to the extent such responses are considered “orders” reportable pursuant to Rule 613(j)(8).¹²⁵ The Commission, however, did not provide additional guidance regarding the conditions under which NIA Electronic RFQ Responses would be reportable to CAT. The Commission stated in its exemptive order that “[t]o the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for the Financial Accountability Milestones, provided that any conditions of the exemption are satisfied.”¹²⁶

When the Commission proposed the FAMs, the Participants expressed concern that, “by conditioning the ability of CAT LLC and the Participants to collect Post-Amendment Industry Member Fees on factors dependent on

the efforts of Industry Members, the Commission’s proposals inadvertently establish a perverse incentive for Industry Members to devote less than maximum efforts to comply with their obligations related to the CAT as they will pay less fees in such instances.”¹²⁷ The Participants further warned that “Industry Members may request or require unanticipated reporting delays to address Industry Member implementation issues or concerns,” but that, “[f]aced with financial penalties for missed deadlines, the Participants may not be able to fully address legitimate industry concerns or accommodate requests for delays with respect to future deadlines.”¹²⁸ CAT LLC has engaged in good faith to help address NIA Electronic RFQ Responses and other concerns relevant to the ability of Industry Members to meet their CAT reporting obligations. CAT LLC should not be penalized financially for seeking in good faith to resolve a difficult interpretive issue for the benefit of Industry Members.

(ii) 2023 Verbal Quotes Exemption

CAT LLC does not believe that the Commission’s May 19, 2023 order granting temporary exemptive relief relating to certain verbal floor activity and unstructured verbal and electronic upstairs activity (the “2023 Verbal Quotes Exemption”) affects the conclusion that FAMs 1 through 3 have been satisfied. The 2023 Verbal Quotes Exemption, which was issued on May 19, 2023, is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. The relevant exemption for this time period is the Commission’s November 12, 2020 order, which granted relief for the same activity through July 31, 2023 (the “2020 Verbal Quotes Order”).¹²⁹ The Commission has stated that, “to the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for a Financial Accountability Milestone, provided that the conditions of the exemption are satisfied.”¹³⁰ Here, the

¹²¹ In May 2020, the Commission adopted amendments to the CAT NMS Plan that establish four Financial Accountability Milestones and set target deadlines by which these milestones must be achieved. These amendments also reduce the amount of any fees, costs, and expenses that may be recovered from Industry Members if the Participants fail to meet the target deadlines. FAM Adopting Release.

¹²² See Letter from Brandon Becker, Chair, CAT NMS Plan Operating Committee to Vanessa Countryman, Secretary, Commission (Feb. 13, 2024) at 2.

¹²³ See, e.g., Letter from Howard Meyerson, Managing Director, FIF, to Sai Rao, Counsel for Trading and Markets, Office of the Chair (Apr. 25, 2024).

¹²⁴ *Id.*

¹²⁵ Securities Exchange Act Rel. No. 100181 (May 20, 2024), 89 FR 45715 (May 23, 2024).

¹²⁶ *Id.* at n.11.

¹²⁷ See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission at 9 (Oct. 28, 2019).

¹²⁸ *Id.* at 10.

¹²⁹ Securities Exchange Act Rel. No. 90405, 85 FR 73544 (Nov. 18, 2020) (the “2020 Verbal Quotes Exemption”).

¹³⁰ See, e.g., Securities Exchange Act Rel. No. 89051 (June 11, 2020), 85 FR 36631, 36633 (June 17, 2020). The straightforward reading of the Commission’s statement is that compliance with the conditions of an exemption will be measured as of the deadline for a particular FAM Period.

2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3.¹³¹

(iii) November 2023 Order

CAT LLC does not believe that the Commission's November 2, 2023 order granting relief from certain CAT NMS Plan requirements (the "November 2023 Order") affects the conclusion that FAMs 1 through 3 have been satisfied. The November 2023 Order is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. As described in the November 2023 Order, the relevant exemptive orders for this time period were issued on December 16, 2020, which also states that "the Commission has determined that the Participants have sufficiently complied with the conditions set forth in the prior Orders and with the technical requirements for Quarterly Progress Reports set forth in section 6.6(c) of the CAT NMS Plan, including for purposes of determining compliance with any applicable Financial Accountability Milestones."¹³² The November 2023 Exemption Order is consistent with the Commission's repeated statements in the FAM adopting release that it would have "authority to grant exemptive relief from any requirement associated with a particular Financial Accountability Milestone," citing Section 36 of the Exchange Act and Rule 608.¹³³ Similarly, the CAT NMS Plan

expressly contemplates the Commission's ability to grant exemptive relief from any CAT NMS Plan requirement.¹³⁴

(iv) Executing Broker Reporting

CAT LLC also completed the requirements of FAM Period 2, including the required linkages, by December 31, 2020. Although Participant exchanges may report the Executing Broker to CAT differently in certain situations, these reporting differences are irrelevant for linkage purposes as the fields used for CAT Executing Broker are not used for linkage.

(10) Additional Support for Reasonableness of Historical CAT Costs

The CAT Funding Model approved by the Commission permits the recovery of reasonable costs in each of the categories of CAT costs sought to be recovered via Historical CAT Assessment 1.¹³⁵ As described in detail above and in further detail below, the CAT costs to be recovered for each category are reasonable. The following discusses in further details how each of the following costs are reasonable: (1) costs incurred prior to the effective date of the CAT NMS Plan; (2) cloud hosting services costs; (3) costs related to funding model filings; (4) costs related to litigation with the SEC regarding the CAT NMS Plan; (5) costs related to the Initial Plan Processor; (6) CAIS implementation costs; (7) public relations costs; (8) legal costs related to the limitation of liability provision in the CAT Reporter agreements; and (9) costs for the Chair of CAT Operating Committee. As discussed in detail below, each of these costs is reasonable and should be recoverable in accordance with the CAT Funding Model.

(A) Costs Incurred Prior to the Effective Date of CAT NMS Plan

CAT LLC believes that it is reasonable to seek recovery of costs incurred prior to when the CAT NMS Plan became effective in November 2016, such as legal and consulting fees incurred to

create the CAT NMS Plan. Rule 613 specifically mandates that the CAT be created, implemented and maintained, and further provides that the CAT NMS Plan include a proposed allocation of estimated costs to fund the creation, implementation and maintenance of the CAT among the Participants (referred to as "plan sponsors"), and between the Participants and Industry Members (referred to as "members of the plan sponsors").¹³⁶ Consistent with Rule 613, the CAT NMS Plan, as approved by the Commission, specifically authorizes charging Industry Members fees for costs reasonably incurred prior to the date of the approval of the CAT NMS Plan by the Commission in November 2016, including legal and consulting costs. Section 11.1(c) of the CAT NMS Plan states that:

[i]n 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) reasonably incurred by Participants on behalf of the Company prior to the Effective Date in connection with the creation and implementation of the CAT.

Accordingly, the CAT NMS Plan specifically permits the recovery of costs, including legal and consulting costs, reasonably incurred prior to November 2016 in connection with the creation and implementation of the CAT.

Furthermore, the costs incurred to create and implement the CAT prior to the effective date of the CAT NMS Plan ("Pre-Formation Costs") were reasonable both in scope and amount, in accordance with the requirements of Section 11.1(c) of the CAT NMS Plan. During the four-year period from 2012 to 2016, a total of \$13,842,881 in Pre-Formation Costs were incurred. This is an average of approximately \$3.5 million per year over this period. The Pre-Formation Costs fell into three categories: legal costs, consulting costs and public relations costs. This includes legal costs of \$3,196,434; consulting costs of \$10,589,273; and public relations costs of \$57,174. The legal, consulting and public relations services were performed by WilmerHale, Deloitte and Peppercomm, respectively. The selection considerations and fees for these three firms are described in detail above and are described further below. The Pre-Formation Costs are direct costs of CAT, which have been funded entirely by the Participants through non-interest-bearing notes. The Pre-Formation Costs do not include the significant costs incurred by each of the

¹³¹ As a condition to the 2020 Verbal Quotes Exemption, the Commission required that the Participants provide a written status update on the reporting of these quotes and orders by July 31, 2022, including the estimated costs of reporting these quotes and orders and an implementation plan for the reporting of these quotes and orders. As noted, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3. In any event, on June 3, 2022, the Participants provided the required written status update. See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (June 3, 2022).

¹³² *Id.* at 77129 n.12.

¹³³ FAM Adopting Release at 31335 (May 22, 2020). Section 36 of the Exchange Act grants the Commission the authority to "conditionally or unconditionally exempt any person, security, or transaction . . . from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors." 15 U.S.C. 78mm(a)(1). Under Rule 608(e) of Regulation NMS, the Commission may "exempt from [Rule 608], either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is

consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanism of, a national market system." 17 CFR 242.608(e).

¹³⁴ Section 12.3 of the CAT NMS Plan ("[T]o the extent the SEC grants exemptive relief applicable to any provision of this Agreement, Participants and Industry Members shall be entitled to comply with such provision pursuant to the terms of the exemptive relief so granted at the time such relief is granted irrespective of whether this Agreement has been amended.")

¹³⁵ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹³⁶ See, e.g., Rule 613(a)(1)(vii)(D) of the CAT NMS Plan.

individual Participants in responding to the adoption of Rule 613.

The Pre-Formation Costs are reasonable and appropriate as they reflect the extensive efforts that were necessary to create the CAT NMS Plan as mandated after the SEC's adoption of Rule 613. As described in more detail below, these efforts included, among other things, developing a plan for selecting the Plan Processor, soliciting and evaluating bids, engaging a diverse set of market participants and the SEC in the development of the Plan, interacting with the SEC in their oversight of the development of the Plan, and seeking appropriate exemptive relief to address areas of concern in Rule 613.¹³⁷

(i) Request for Proposal ("RFP")

The Participants determined to utilize an RFP to ensure that potential alternative solutions for creating the Plan could be presented and considered, and that a detailed and meaningful cost-benefit analysis could be performed. The SEC supported the use of an RFP, and approved its use as it is described in extensive detail in the CAT NMS Plan.¹³⁸

In the context of the SEC's adoption of Rule 613, commenters urged the Commission to utilize an RFP process to assist in the planning and design of the NMS plan.¹³⁹ Specifically, the Commission explained:

In this regard, several commenters suggested that the Commission undergo a RFP or request for information ("RFI") process to create and implement a consolidated audit trail. Specifically, FIF urged the Commission to perform a RFP process "to determine the best technical solution for developing a consolidated audit trail." FIF suggested that the Commission "should outline a set of goals and guiding principles they are striving to achieve as part of the adopted CAT filing and leave the determination of data elements and other technical requirements to [an] industry working group." Similarly, Direct Edge suggested that Commission staff should form and engage in a working group to develop an

RFP for publication by the Commission. DirectEdge explained that an RFP process would facilitate the identification of the costs and benefits of the audit trail, as well as the consideration of a wider range of technological solutions. Further, commenters, including Broadridge Financial Solutions, Inc., a technology provider, also requested more specific information about the audit trail system to better assess the Commission's initial cost estimates and to determine the best approach to the consolidated audit trail.¹⁴⁰

In response to these comments, the Commission modified Rule 613 to require the Participants to address certain important considerations regarding the features and details of the NMS plan and to extend the timeframe for submission of the CAT NMS Plan by the Participants from the 90 days as originally proposed to 270 days, in part, to accommodate a process that would address these considerations.¹⁴¹ As the SEC noted, "[i]n light of the numerous specific requirements of Rule 613, the Participants concluded that publication of a request for proposal ('RFP') was necessary to ensure that potential alternative solutions to creating the consolidated audit trail can be presented and considered by the Participants and that a detailed and meaningful cost/benefit analysis can be performed, both of which are required considerations to be addressed in the CAT NMS Plan."¹⁴²

The SEC specifically recognized that the Participants planned to use an RFP when it approved the Selection Plan, and stated that the RFP was a reasonable approach.¹⁴³ As the SEC described in its approval order for the Selection Plan, "[t]he Participants filed the [Selection] Plan to govern how the SROs will proceed with formulating and submitting the CAT NMS Plan—and, as part of that process, how to review, evaluate, and narrow down the bids submitted in response to the RFP ('Bids')—and ultimately choosing the plan processor that will build, operate, and maintain the consolidated audit trail ('Plan Processor')."¹⁴⁴ After evaluating the Selection Plan, including the use of an RFP process, the Commission stated that it "believes the [Selection] Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids

in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail."¹⁴⁵

On February 26, 2013, the Participants published an RFP soliciting bids from parties interested in serving as the plan processor for the CAT. Initially, 31 firms submitted intentions to bid. In the following months, the Participants engaged with potential bidders with respect to, among other things, the selection process, selection criteria, and potential bidders' questions and concerns. On March 21, 2014, the Participants received ten bids in response to the RFP.

(ii) Selection Plan

On September 4, 2013, the Participants filed with the Commission a national market system plan to govern the process for Participant review of the bids submitted in response to the RFP, the procedures for evaluating the bids, and, ultimately, selection of the plan processor (the "Selection Plan").¹⁴⁶ The Commission approved the Selection Plan as filed on February 21, 2014.¹⁴⁷ In approving the Selection Plan, the Commission concluded that "it is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor."¹⁴⁸

The Selection Plan divided the review and evaluation of bids, and the selection of the plan processor, into various stages. Specifically, pursuant to the Selection Plan, a selection committee reviewed all bids and determined which bids contained sufficient information to allow the Participants to meaningfully assess and evaluate the bids. The ten submitted bids were deemed "Qualified Bids," and so passed to the next stage, in which each bidder presented its bids to the Participants on a confidential basis. On July 1, 2014, after conducting careful analysis and comparison of the bids, the Selection Committee voted and selected a shortlist of six eligible bidders. The Selection Committee determined which shortlisted bidders would be provided the opportunity to revise their bids. After the Selection Committee assessed and evaluated the revised bids, the Selection Committee selected the plan processor via two rounds of voting by the Participants, as described in the Selection Plan.

The Selection Plan established an Operating Committee responsible for

¹³⁷ The Participants described in detail the process for drafting the CAT NMS Plan in its original filing of the CAT NMS Plan. See Letter from Mike Simon, on behalf of the Participants of the CAT NMS Plan, to Brent J. Fields, Secretary, Commission (Sept. 30, 2014). A non-exclusive list of filings and activities associated with CAT, including certain pre-2016 filings, are available on the SEC's website: <https://www.sec.gov/divisions/marketreg/rule613-info>.

¹³⁸ See detailed discussion of RFP questions in Appendix C of the CAT NMS Plan, and incorporation of RFP requirements in Appendix D at D-2.

¹³⁹ For example, in its comments on proposed Rule 613, FIF suggested "that the SROs should select the processor through a 'request for proposal.'" Rule 613 Adopting Release at 45785.

¹⁴⁰ Rule 613 Adopting Release at 45738–39.

¹⁴¹ Rule 613 Adopting Release at 45739.

¹⁴² Securities Exchange Act Rel. No. 71596 (Feb. 21, 2014), 79 FR 11152, 11152 (Feb. 27, 2014) ("Selection Plan Approval Order").

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 11153.

¹⁴⁵ *Id.* at 11159.

¹⁴⁶ See Securities Exchange Act Rel. No. 70892 (Nov. 15, 2013), 78 FR 69910 (Nov. 21, 2013).

¹⁴⁷ See Selection Plan Approval Order.

¹⁴⁸ Selection Plan Approval Order at 11160.

formulating, drafting, and filing with the Commission the CAT NMS Plan and for ensuring that the Participants' joint obligations under Rule 613 were met in a timely and efficient manner. In formulating the CAT NMS Plan, the Participants also engaged multiple persons across a wide range of roles and expertise, engaged the consulting firm Deloitte as project manager, and engaged the law firm WilmerHale to serve as legal counsel in drafting the Plan. Within this structure, the Participants focused on, among other things, comparative analyses of the proposed technologies and operating models, development of funding models to support the building and operation of the CAT, and detailed review of governance considerations. Given the complexity and scope of developing the CAT NMS Plan, these efforts were extensive.

When it approved the CAT NMS Plan in 2016, the Commission reiterated its belief that the Selection Plan remains a "reasonable approach," that "the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor," and that "the process set forth in the Selection Plan should be permitted to continue":

In approving the Selection Plan, the Commission stated that the Selection Plan is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor. The Commission also found that the Selection Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail. The Commission believes that the process set out in the Selection Plan for selecting a Plan Processor remains a reasonable approach, which will facilitate the selection of Plan Processor through a fair, transparent and competitive process and that no modifications to the Selection Plan are required to meet the approval standard. . . . In response to the comment that offered support for a specific Bidder, the Commission agrees with the Participants that the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor and thus believes that the process set forth in the Selection Plan should be permitted to continue.¹⁴⁹

(iii) Engagement With Market Participants and SEC

During the process of developing the CAT NMS Plan, the Participants engaged in extensive and meaningful

dialogue with market participants and the SEC. To this end, the Participants created a website to update the public on the progress of the CAT NMS Plan, published a request for comment on multiple issues related to the Plan, held multiple public events to inform the industry of the progress of the CAT and to address inquiries, and formed, and later expanded, a DAG to solicit more input from a representative industry group.¹⁵⁰

The DAG included representatives of Participants and Industry Members and conducted meetings to discuss, among other things, technical and operational aspects the Participants were considering for the Plan. The Participants issued press releases soliciting participants for the DAG, and a wide spectrum of firms was deliberately chosen to provide insight from various industry segments affected by CAT. The DAG meetings included discussions of topics such as option market maker quote reporting, requirements for capturing Customer IDs, timestamps and clock synchronization, reporting requirements for order handling scenarios, costs and funding, error handling and corrections, and potential elimination of systems made redundant by the CAT. From the inception of the DAG through September 2014, the DAG participated in 36 meetings, as well as a variety of DAG subcommittee meetings.

(iv) Request for Exemption from Certain Requirements Under Rule 613

Following multiple discussions between the Participants and both the DAG and the bidders, as well as among the Participants themselves, the Participants recognized that some provisions of Rule 613 would not permit certain solutions to be included in the Plan that the Participants, in coordination with the DAG, determined advisable to effectuate the most efficient and cost-effective CAT. Specifically, "the SROs reached the conclusion that additional flexibility in certain of the minimum requirements specified in Rule 613 would allow them to propose a more efficient and cost-effective approach without adversely affecting the reliability or accuracy of CAT Data, or its security and confidentiality."¹⁵¹ Consequently, the Participants submitted a request for exemptive relief from certain provisions of Rule 613 regarding: (1) options market maker quotes; (2) Customer-IDs; (3) CAT-

Reporter-IDs; (4) CAT-Order-IDs on allocation reports; and (5) timestamp granularity.¹⁵² The Participants filed two supplements to the request for exemptive relief.¹⁵³

After reviewing the exemptive request, the Commission determined that it was appropriate in the public interest and consistent with the protection of investors to grant the requested exemptive relief.¹⁵⁴ In granting the exemptive relief, the Commission stated:

[T]he Commission is persuaded to provide flexibility in the discrete areas discussed in the Exemption Request so that the alternative approaches can be included in the CAT NMS Plan and subject to notice and comment. Doing so could allow for more efficient and cost-effective approaches than otherwise would be permitted. The Commission at this stage is not deciding whether the proposed approaches detailed below are more efficient or effective than those in Rule 613. However, the Commission believes the proposed approaches should be within the permissible range of alternatives available to the SROs.¹⁵⁵

The Commission further stated that the requested exemptive relief is consistent with the protection of investors. The Commission noted that:

Doing so will provide the public an opportunity to consider and comment on whether these proposed alternative approaches would indeed be more efficient and cost-effective than those otherwise required by Rule 613, and whether such approaches would adversely affect the reliability or accuracy of CAT Data or otherwise undermine the goals of Rule 613. Moreover, if—as the SROs represent—efficiency gains and cost savings would result from including the proposed approaches in the CAT NMS Plan without adverse effects, then the resultant benefits could potentially flow to investors (e.g., lower broker-dealer reporting costs resulting in fewer costs passed on to Customers).¹⁵⁶

The Participants incorporated the exemptive relief into the proposed CAT NMS Plan, which was noticed for comment, and the Commission ultimately approved the CAT NMS Plan with the more efficient and cost-effective alternative approaches described in the exemptive relief. Accordingly, the Participants believe that the costs incurred in developing the exemptive request were critical to the creation of a better CAT than was

¹⁵² Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Jan. 30, 2015).

¹⁵³ See Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Apr. 3, 2015); Letter from the SROs to Brent J. Fields, Secretary, Commission (Sept. 2, 2015).

¹⁵⁴ See 2016 Exemptive Order.

¹⁵⁵ *Id.* at 11857.

¹⁵⁶ *Id.*

¹⁵⁰ See Section D(11) of Appendix C of the CAT NMS Plan.

¹⁵¹ Securities Exchange Rel. No. 77265 (Mar. 1, 2016), 81 FR 11856 (Mar. 7, 2016) ("2016 Exemptive Order").

¹⁴⁹ See CAT NMS Plan Approval Order at 84737.

originally contemplated by Rule 613, and therefore should be recoverable as part of Historical CAT Assessment 1.

(v) Request for Extensions for Filing the CAT NMS Plan

Rule 613(a)(1) under Regulation NMS required the Participants to jointly file the CAT NMS Plan on or before April 28, 2013, less than a year after the adoption of Rule 613. In recognition of the complexity of the project to create the CAT NMS Plan as well as industry interest in limiting or eliminating certain requirements of Rule 613 (*e.g.*, addressing the reporting of options market maker quotes), the Participants requested two extensions of the deadline to file the CAT NMS Plan. The Participants described the need for additional time as follows:

The SROs stated in their Request Letter that they do not believe that the 270-day time period provided for in Rule 613(a)(1) provides sufficient time for the development of the RFP, formulation and submission of bids, and review and evaluation of such bids. The SROs also stated that they believe additional time beyond the 270 days provided for in Rule 613(a)(1) is necessary in order to provide sufficient time for effective consultation with and input from the industry and the public on the proposed solution chosen by the SROs for the creation of the consolidated audit trail at the conclusion of the RFP process and the NMS plan itself.¹⁵⁷

In recognition of the need for additional time to refine the technical description of and requirements for the CAT and to allow for additional evaluation of the proposed cost and funding considerations, the SEC granted two extensions of this deadline.¹⁵⁸ The SEC determined that both extensions were appropriate, in the public interest, and consistent with the protection of investors.¹⁵⁹ In reaching this conclusion, the Commission stated that “it understands that the creation of a consolidated audit trail is a significant undertaking and that a proposed NMS plan must include detailed information and discussion about many things.”¹⁶⁰ The SEC also noted the following:

This additional time to complete the RFP process should allow the SROs to engage in a more thoughtful and comprehensive process for the development of an NMS plan. In this regard, the Commission notes that the

additional time to solicit comment from the industry and the public at certain key points in the development of the NMS plan could identify issues that can be resolved earlier in the development of the consolidated audit trail and prior to filing the NMS plan with the Commission.¹⁶¹

Given the Commission’s recognition of the reasonableness and value of the extension of the deadline to file the CAT NMS Plan, the Participants believe that the costs incurred in developing the extension request were important to the process of developing the CAT NMS Plan, and therefore should be recoverable as part of Historical CAT Assessment 1.

(vi) Submission and Approval of the CAT NMS Plan

After extensive analyses and discussions with the DAG, bidders, market participants and the SEC staff, the Participants finalized the draft of the CAT NMS Plan and filed the CAT NMS Plan with the SEC on September 30, 2014. Following additional discussions, the Participants filed several amendments to the CAT NMS Plan during 2015 and 2016. With these additional changes, the SEC published the CAT NMS Plan for notice and comment in May 2016.¹⁶² Following the comment period, the SEC approved the Plan in November 2016.¹⁶³

(vii) Legal Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include legal costs of \$3,196,434. The legal services were performed by WilmerHale. The selection considerations and fees for WilmerHale were described in detail above. Prior to the creation of CAT LLC, WilmerHale was engaged to represent the consortium of SROs, not the individual Participants. For administrative purposes, FINRA agreed to receive such legal bills, although such costs were shared among the Participants. Therefore, the legal costs incurred with respect to WilmerHale do not include legal costs incurred by the individual Participants. These pre-formation legal costs are described in detail above and are further described below:

- Analyzed various legal matters associated with the Selection Plan and drafted an amendment to Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the DAG;

- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on the CAT NMS Plan;

- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (*e.g.*, Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG, and governance support during the transition to the new governance structure under the CAT NMS Plan;

- Drafted exemptive requests;
- Provided interpretations related to the CAT NMS Plan;

- Provided support with regard to discussions among the exchanges, FINRA and other third parties, such as Deloitte;

- Provided tax advice with regard to CAT’s status as a tax-exempt organization; and

- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

(viii) Consulting Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include consulting costs of \$10,589,273. The consulting services were performed by Deloitte. The selection considerations and fees for Deloitte were described in detail above. Prior to the creation of CAT LLC, for administrative purposes, Deloitte was engaged by FINRA to provide consulting services related to CAT, but the costs were shared by the consortium of SROs per agreement. Therefore, the consulting costs incurred with respect to Deloitte do not include consulting costs incurred by the individual Participants. The pre-formation consulting costs include the following:

- Established and implemented program operations for the CAT project, including the program management office and workstream design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participants’ independent reviews;

- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, reviewing technical requirements of other NMS plans, analyzing OATS and CAT requirements, and drafting appendices to the Plan;

¹⁵⁷ Securities Exchange Act Rel. No. 69060 (Mar. 7, 2013), 78 FR 15771, 15772 (Mar. 12, 2013) (“March 2013 Exemptive Order”).

¹⁵⁸ See March 2013 Exemptive Order; Securities Exchange Act Rel. No. 71018 (Dec. 6, 2013), 78 FR 75669 (Dec. 12, 2013) (“December 2013 Exemptive Order”).

¹⁵⁹ March 2013 Exemptive Order at 15772; December 2013 Exemptive Order at 75670.

¹⁶⁰ March 2013 Exemptive Order at 15772.

¹⁶¹ *Id.* at 15773.

¹⁶² See Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

¹⁶³ See CAT NMS Plan Approval Order.

- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG;

- Provided support for updating the SEC on the progress of the development of the CAT;

- Provided support for industry outreach sessions, including with regard to program design and agenda development, program support and logistics and coordination; and
- Provided support in fact finding, drafting content and meeting coordination for WilmerHale with regard to the CAT and the development of the CAT NMS Plan.

Such Pre-Formation Costs did not include costs related to the Chair of the CAT NMS Plan Operating Committee, as the CAT NMS Plan had not yet been adopted.

(ix) Public Relations Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include public relations costs of \$57,174. The public relations services were performed by Peppercomm. The selection considerations and fees for Peppercomm are described in detail above. The costs related to Peppercomm were shared among the SROs. Therefore, the public relations costs do not include public relations costs incurred by the individual Participants. The pre-formation public relations costs include services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT.

(B) Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs related to cloud hosting services as a part of Historical CAT Assessments. CAT LLC believes that the costs related to cloud hosting services described in detail above are reasonable and appropriate given the strict data processing timelines and storage requirements imposed by the Commission-approved CAT NMS Plan

and should be recoverable as a part of Historical CAT Assessment 1.

(i) Reasonableness of AWS Costs Given the Requirements of the CAT NMS Plan

CAT LLC believes that the costs for the cloud hosting services are reasonable, both in terms of the level of the fees paid by CAT LLC for cloud hosting services provided by AWS and the scope of the services performed by AWS for CAT LLC. CAT LLC believes that both the scope and amount of the costs for cloud hosting services are reasonable given the current requirements of the CAT NMS Plan adopted pursuant to Rule 613, including the strict data processing timeline, storage and other technical requirements under the Commission-approved CAT NMS Plan.

CAT LLC believes that the level of fees for the cloud hosting services is reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.

CAT LLC also believes that the scope of services provided by AWS for the CAT are appropriate given the current requirements of the Commission-approved CAT NMS Plan. As described above, the cloud hosting services costs reflect a variety of factors including, among other things:

- *Breadth of Cloud Activities.* AWS was engaged by FCAT, the Plan Processor, to provide a broad range of services to the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS necessary to the CAT include storage services, databases, compute services, and other services (such as networking, management tools and development operations (“DevOps”) tools). AWS also was engaged to provide the various environments for CAT, such as the development, performance testing, test and production environments, which are required by the CAT NMS Plan.

- *High Data Volume.* The cost for AWS services for the CAT is a function of the volume of CAT Data. While it is not linear, the greater the amount of CAT Data, the greater the cost of AWS services to the CAT. The data volume handled by AWS now far exceeds the original volume estimates for the CAT.

- *Plan Requirements.* The cost for AWS services also reflects the technical requirements necessary to meet the stringent performance and other requirements for processing CAT Data. These Plan-dictated processing timelines, storage, testing, security and

other technical requirements are significant drivers of AWS costs.

- *Cost Avoidance Efforts.* CAT LLC and FCAT have engaged in ongoing efforts to seek to avoid and minimize AWS costs where permissible under the Plan. Accordingly, these cost avoidance efforts have limited the extent of AWS costs.

In addition, various requirements of the CAT NMS Plan adopted pursuant to Rule 613 contribute to the significant cloud hosting services costs, and that various Plan requirements could be amended or removed without affecting the regulatory purpose of the CAT. Indeed, CAT LLC has repeatedly sought exemptive relief and filed amendments to the CAT NMS Plan, and has even filed suit against the Commission, to seek to revise or eliminate certain costly requirements related to the CAT. However, despite these efforts, absent the Commission granting exemptive relief or approving cost savings amendments to the CAT NMS Plan, CAT LLC, the Participants and Industry Members are all required to comply with such requirements.

(ii) Effect of CAT Design on CAT Costs

(a) Efficient CAT Design

CAT is reasonably designed to efficiently and effectively utilize cloud computing and storage services, given the requirements of the Commission-approved CAT NMS Plan, including requirements related to security, operational reliance and quality assurance, and maintainability.

The Plan Processor uses state-of-the-art software that meets the strict security standards of the CAT NMS Plan. CAT utilizes a big data processing framework that is extensively used by large data processing companies, such as Apple, Meta, Netflix, IBM and Google. As such, it has substantial commercial support and support in the open-source community. It is also well suited for use with regard to iterative types of algorithms and query functions and analytics that the CAT requires, and it provides the heightened security necessary for the CAT.

The development and implementation of the design of CAT is not and has not been static. CAT LLC and the Plan Processor are always evaluating new innovations and service offerings from AWS and other providers to seek to maximize efficiency and cost avoidance while still satisfying the requirements of the CAT NMS Plan. These efforts have led to substantial savings to date. The cloud hosting costs for 2023 were less than the cloud hosting costs for 2022 by \$8 million despite processing seven

trillion more events in 2023 due to the efficiency and cost avoidance efforts for cloud hosting services. For example, when AWS introduced new storage options, FCAT adopted the cost-efficient new storage option after establishing that the new offering would satisfy the security and other standards of the CAT NMS Plan. This change led to millions of dollars of savings in storage costs. Similarly, when AWS introduced a new compute processor, FCAT adopted this new compute processor, which led to millions of dollars in savings in compute costs. However, in other cases, new cloud technology developments could not be implemented in CAT because they would not satisfy the security or other requirements of the CAT NMS Plan.

When evaluating the design of the CAT, it must be kept in mind that the CAT is not a typical commercial technology project. The ability to make use of technology approaches that may lead to cost avoidance is also subject to the restrictive requirements of the CAT NMS Plan, such as processing timeframes, requirements for retention of data versions, query requirements, and security standards. Because such requirements are set forth in the CAT NMS Plan, any modification of such requirements are subject to the time-consuming process of amending the CAT NMS Plan or seeking an exemption from the relevant requirement. For example, CAT LLC recently has filed an amendment to address several of these expensive Plan requirements.¹⁶⁴

(b) CAT Was Designed to Minimize Industry Member Effort

The CAT System also was designed to minimize the extent to which Industry Members would need to alter their systems to report to CAT. During the design process, Industry Member groups argued that it would make more sense financially for the CAT to accommodate differences in industry systems, than for all Industry Members to change their systems. Moreover, such design choices would facilitate consistency, uniformity and accuracy in reporting. Requiring the CAT to make such accommodations may increase CAT costs while accommodating CAT Reporters.

Based on the requirements in the CAT NMS Plan and/or in response to industry requests for functionality to be embedded with the Plan Processor to

streamline or limit Industry Member system changes, the CAT has been designed to limit the effect on Industry Members. The following provides examples of such accommodations:

- *Industry Member Reporting.* In light of the complexity of Industry Member market activity, the CAT's order reporting and linkage scenarios document for Industry Members is over 800 pages in length, addressing nearly 200 scenarios.¹⁶⁵ The Industry Member Technical Specifications allow for dozens of specific event types, which drive complexity for the Plan Processor, but streamline reporting for Industry Members. Furthermore, the Plan Processor greatly expanded Industry Member linkage requirements to support, among other things, child events and supplemental events, allowing for "stateless as-you-go" and "batch end-of-day" reporting when all data is available. Accordingly, CAT takes on the significant cost and effort of providing the required linkages between CAT events; correspondingly, Industry Members are not required to perform this costly task.

- *File Submission Process.* The CAT was designed to accommodate the varying needs of CAT Reporters with regard to the file submission process. For example, in a 2018 letter, FIF stated that "[t]he SFTP-based submission process is cumbersome, exposes industry members to unnecessary complexity, and puts the burden of support on the CAT Reporter rather than imbedding more functionality into the Plan Processor."¹⁶⁶ Currently, FCAT provides two mechanisms for submitting files: SFTP via a private network, and the Web via Reporter Web Portal.

- *Error Corrections.* The industry also emphasized the need for the CAT to provide error correction tools and functionalities to identify, rectify and re-submit corrections within the required timeframe. For example, FIF stated in a 2018 letter the following:

To be clear, if OATS-like error correction tools are not made available on Day 1, hundreds of firms will be required to create and test their own tools or obtain vendor alternatives prior to the CAT Go-Live Date. Proprietary tools will require additional system builds, access to and ingestion of CAT data to perform system validation, and testing which will further stress the limited number of subject matter experts ("SMEs") dedicated to the

implementation of CAT reporting. Should this occur, inevitably firms (especially small firms who lack the necessary IT staff to write code and develop proprietary systems), may be put in the position of passing onto investors the cost required to build hundreds of redundant systems.¹⁶⁷

CAT provides various tools to help Industry Members identify and rectify errors.

- *Data Ingestion Format.* The industry also recommended that CAT adopt a flexible input format that provides an option for Industry Members to submit data in formats that are already in use to reduce costs and potential reporting errors. For example, FIF argued the following:

FIF CAT WG is not proposing a specific format; rather, we are proposing flexibility of input formats which includes support of existing formats (e.g., OATS, FIX) as well as a baseline specification where all fields are defined, and normalized. The input formats must be clearly and thoroughly defined in Technical Specifications, including FAQs.

Mandating a uniform format for reporting data to the CAT simplifies the task for the Central Repository of consolidating/storing data, but it puts the burden on each CAT Reporter to accurately translate their current (e.g., OATS) reporting information into a uniform CAT interface. However, that is likely to yield more errors because it is very dependent on accurate, complete and timely information (Technical Specifications, FAQs, meta-data, competent CAT help desk) available to CAT Reporters, availability of sophisticated CAT test tools to validate interface protocols, and the skill levels of the estimated 300+ unique CAT Reporters/Submitters during Phase 1 of CAT. Concentrating the responsibility of data conversions with the Central Repository is a reasonable trade-off that should yield fewer errors, and greater accuracy.¹⁶⁸

CAT provides such a flexible input format.

(c) Effect of Initial Plan Processor Design

The costs for cloud hosting services are appropriate and have not been adversely affected by the original design and approaches of the Initial Plan Processor. FCAT's design costs are the result of the requirements of the Commission-approved CAT NMS Plan.

When FCAT took over as the Plan Processor from Thesys, it utilized certain aspects of the technical specifications created by Thesys in its design. However, FCAT has not maintained aspects of the original design that would not be appropriate for

¹⁶⁴ See, e.g., Securities Exchange Act Rel. No. 99938 (Apr. 10, 2024), 89 FR 26983 (Apr. 16, 2024); Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (Mar. 27, 2024) (proposing amendments to the CAT NMS Plan for \$23 million in annual savings).

¹⁶⁵ See CAT Industry Member Reporting Scenarios v.4.10 (Oct. 21, 2022).

¹⁶⁶ Letter from Janet Early, FIF, to Thesys CAT (Mar. 29, 2018).

¹⁶⁷ Letter from Christopher Bok, FIF, to Jay Clayton, Chair, Commission, at 4 (Dec. 11, 2018).

¹⁶⁸ Letter from Mary Lou Von Kaenel, Managing Director, FIF, to Brent Fields, Secretary, Commission at 92 (July 18, 2016), <https://www.sec.gov/comments/4-698/4698-13.pdf>.

the CAT. FCAT revised and enhanced the original technical specifications of the CAT System to increase its efficiency and efficacy, and to ensure its compliance with the CAT NMS Plan. For example, the Initial Plan Processor's approach utilized many more fields than FCAT's approach, which relies on additional linkages. With the additional linkages, the CAT System takes on more of the CAT-related burdens than the Industry Members. Such an approach serves to facilitate consistency, uniformity and accuracy in reporting.

Moreover, FCAT did not utilize the system built by the Initial Plan Processor; it rebuilt the CAT System based on revised technical specifications. For example, the Initial Plan Processor used an on-premises processing approach which was not geared toward the huge amounts of data stored in the CAT, while FCAT adopted a cloud-based solution in response to such data demands.

Furthermore, given the very short timeframe to develop the CAT System and the prior optimization of certain query tools (e.g., Diver) for regulatory use with significant amounts of data, FCAT determined to rely upon certain existing FINRA tools and adapt them for use with the CAT.

(iii) Consideration of AWS Alternatives

CAT LLC continues to support the selection of AWS as the cloud hosting services provider for CAT given the compliance, operational, and security requirements of the CAT. Independent analyses confirm these conclusions, noting that "AWS is an excellent choice for either strategic or tactical use and recommends considering AWS for almost all cloud IaaS or IaaS+PaaS scenarios."¹⁶⁹ AWS provides the following benefits to CAT, among others:

- **Broad Suitability.** AWS has a long track record of successfully serving cloud customers with mission-critical projects.
- **Proven Scalability.** AWS has demonstrated that it is capable of building and delivering services on a large scale.
- **Track Record of Innovation.** AWS continues to rapidly innovate, both in terms of new domains of capability and at a fundamental level, thereby facilitating innovation for its customers.
- **Resiliency/Dependability.** Another benefit of AWS is its resiliency; it has a strong track record of stable services.

As noted in a review of cloud service providers, "[c]ustomers like to have a broad set of options for resilience and for their cloud providers to have a strong track record of stable services (continuously available, without operational quirks). Only AWS fulfills both desires."¹⁷⁰

- **Technical and Customer Support.** AWS consistently provides high-quality technical and customer support and engagement. Given the size, scope and regulatory importance of CAT, customer support and engagement that CAT has with the highest levels of AWS are very important to the success of the CAT.

- **Scale.** AWS is capable of supporting large-scale solutions, which is critical given the size and magnitude of the CAT.

- **Security.** AWS provides the security features necessary for the CAT.

In addition, the nature of the CAT, including the amount of data it must process and the size of its data footprint, does not allow for a multi-cloud solution as this would be cost prohibitive and greatly increase the security boundary and associated risk profile of the CAT. For example, a multi-cloud hosting option would increase costs, complexity, and risk for operations with regard to, for example, DevOps, production support, and networking. Similarly, with regard to security, a multi-cloud solution would increase risk, including with regard to the need for data transfers between cloud providers and the expansion of the security boundary. With regard to labor, a multi-cloud solution would lose economies of scale due to the need to support unique cloud requirements. Accordingly, the use of single-cloud solution continues to provide advantages with regard to cost, complexity, and risk. Indeed, "[t]he best practice is to focus on a single primary strategic provider."¹⁷¹

Furthermore, if another cloud service provider were determined to be a better match for the CAT at some future date, switching cloud service providers would be a very significant, expensive and time-consuming effort. Such an effort would likely be a 10-to-15-year commitment at a substantial expense. Such a move would require the replication or redesign of the underlying cloud environments (e.g., organizational setup, identity management, accounts, environments, DevOps tooling like release management/config management/network management), as the new provider likely would not have the same infrastructure and software.

Once that process has been completed, an exabyte of CAT data would need to be securely migrated to the new platform.

(C) Funding Model Filings

CAT LLC believes that the recovery of costs related to the development of the funding model is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

Funding the CAT is a critical aspect of Rule 613 and the CAT NMS Plan. Article XI of the CAT NMS Plan describes in detail the requirements for funding the CAT, and the Participants are required to comply with and enforce compliance with the funding requirements of the CAT NMS Plan, just as with other aspects of the Plan. Accordingly, the development and implementation of a funding model for the CAT is as much a part of the requirements of the CAT NMS Plan as the development and operation of the CAT System. CAT LLC sees no reason to distinguish the efforts to develop a funding model from, for example, efforts to develop the CAT System, in seeking to recover reasonable CAT costs.

Moreover, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that "the reasonably budgeted CAT costs shall include . . . legal costs."¹⁷² In addition, the CAT NMS Plan also requires Participants to include in their fee filings "a brief description of the amount and type of the Historical CAT Costs, including . . . legal . . . costs."¹⁷³ In keeping with these provisions, this filing provides a brief description of reasonably budgeted legal costs above. These legal costs include costs related to the development of the CAT Funding Model.

In addition, the legal costs incurred for the assistance in developing the CAT Funding Model are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the specialized services were performed by experienced counsel at negotiated rates for such services that reflect both the extent of the services and market rates. Moreover, the scope of the legal costs associated with the development of the funding model reflect the complexity of the task in satisfying the detailed requirements of the CAT NMS Plan, the

¹⁶⁹ See, e.g., Lydia Leong and Adrian Wong, Solution Comparison for Strategic Cloud Integrated IaaS and PaaS Providers (July 28, 2023) ("Strategic Cloud Assessment Article").

¹⁷⁰ Strategic Cloud Assessment Article.

¹⁷¹ *Id.*

¹⁷² Section 11.1(a)(i) of the CAT NMS Plan.

¹⁷³ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

standards of the Exchange Act, and the many perspectives of the different market constituents potentially affected by or interested in the funding model, including Industry Members, Participants and investors. The many and varied comments by market participants on CAT funding over the years demonstrate the complexity of the task.

(D) Costs Related to Litigation With the SEC

CAT LLC believes that the recovery of legal costs related to the litigation with the SEC regarding the CAT NMS Plan is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.¹⁷⁴ Moreover, CAT LLC initiated such litigation, and incurred the related legal costs, because it was critical to address the Commission's interpretations of the CAT NMS Plan. Among other things, such interpretations threatened to impose unnecessary costs on the CAT, which would be borne by the Participants and Industry Members. Indeed, in response to the litigation, the Commission provided exemptive relief that allowed alternative, more cost-effective approaches to the implementation of the CAT. Specifically, in the 2023 exemptive order, the Commission stated:

The conditional exemptive relief in this Order allows for the implementation of alternative regulatory solutions that continue to advance the regulatory goals that Rule 613 and the CAT NMS Plan were intended to promote, while reducing the implementation and operational costs, burdens, and/or difficulties that would otherwise be incurred by the Participants and Industry Members that must fund the CAT.¹⁷⁵

CAT LLC believes it is reasonable and appropriate to incur costs to limit the need to incur even greater costs due to certain interpretations of the Plan.

In addition, the legal costs incurred during the litigation are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the specialized services were performed by experienced counsel at market rates for such services. As such, the legal costs related to this litigation incurred during the period covered by Historical CAT Assessment 1 were reasonable.

Finally, Industry Members will directly benefit from the result of the litigation because it has addressed CAT NMS Plan requirements that would have imposed significantly greater costs on the CAT. Accordingly, it is reasonable and appropriate that the costs of such litigation be included in the Historical CAT Costs 1.

(E) Costs Related to the Initial Plan Processor

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017, which was the date by which Participants were required to begin reporting to the CAT, due to the delay in the commencement of reporting to the CAT. As discussed above, the Participants determined to exclude all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Thesys costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Thesys costs incurred after November 15, 2018 are the \$19,628,791 in capitalized developed technology costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these \$19,628,791 in costs.

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. CAT LLC notes that the development and implementation of the CAT System, while unprecedented in scope and design, is like any other large and innovative technology project in that, inevitably, there were adjustments and refinements in the technical approach as the project developed, even with substantial planning efforts and oversight prior to the build. This is even more likely when the project faces a very tight implementation schedule, such as the one imposed by the Commission in Rule 613 and the CAT NMS Plan. However, an adjusted approach does not mean that the funds were not valid expenditures and should not be recovered.

The reasonableness of Thesys costs should be evaluated by the Commission as of the time they were incurred, not in hindsight. As detailed above, the Commission concluded in 2016 that "the competitive bidding process to select the Plan Processor is a reasonable

and effective way to choose a Plan Processor," and that "the process set forth in the Selection Plan should be permitted to continue."¹⁷⁶ Following this process, the Participants notified the Commission of the selection of Thesys as the Initial Plan Processor on January 17, 2017.¹⁷⁷ At the time, neither the Commission nor the industry argued that the selection of the Initial Plan Processor was unreasonable or otherwise inconsistent with the CAT NMS Plan, nor did they predict the selection would result in unanticipated delays in the implementation of the CAT System. On the contrary, on April 4, 2017, the President of SIFMA wrote that "SIFMA looks forward to commencing work with the SROs and Thesys."¹⁷⁸

As noted in the CAT Funding Model Approval Order, "[i]n Rule 613, the Commission made the determination that the costs of the CAT should be shared by the Participants and Industry Members."¹⁷⁹ If the CAT Funding Model had existed on Day 1, the risk of any unanticipated costs or challenges associated with the Initial Plan Processor would have been fairly and reasonably shared among the Participants and Industry Members on an ongoing basis. Given that the Commission concluded in 2012 that the costs of the CAT would be shared by the Participants and Industry Members, it is not fair or reasonable to determine in hindsight that all of the risk involved in developing the CAT should be allocated entirely to the Participants.

(F) CAIS Implementation Costs

CAT LLC believes that the recovery of CAIS-related costs is appropriate, and that the amount and scope of such costs, as described above, are reasonable, and that the reasonableness of historical costs should be evaluated by the Commission as of the time they were incurred, not in hindsight.

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable CAIS operating costs as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that "the reasonably budgeted CAT costs shall

¹⁷⁶ CAT NMS Plan Approval Order at 84737.

¹⁷⁷ Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf>.

¹⁷⁸ Letter from Kenneth E. Bentsen, Jr., SIFMA, to Participants re: Selection of Thesys as CAT Processor (Apr. 4, 2017), <https://www.sifma.org/wp-content/uploads/2017/05/SIFMA-Submits-Comment-Letter-to-SRO-on-the-selection-of-Thesys-as-the-CAT-Processor.pdf>.

¹⁷⁹ CAT Funding Model Approval Order at 62650.

¹⁷⁴ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁷⁵ Settlement Exemptive Order at 77129–30.

include . . . CAIS operating fees.”¹⁸⁰ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . CAIS operating fees.”¹⁸¹ In keeping with these provisions, this filing provides a brief description of reasonably budgeted CAIS operating fees.

In addition, CAT LLC determined that the CAIS operating fees described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. The “CAIS Operating Costs” for Historical CAT Assessment 1 total \$9,480,587, with Pre-FAM costs of \$2,072,908, FAM 1 costs of \$254,998, FAM 2 costs of \$1,590,298, and FAM 3 costs of \$5,562,383. As described above, the CAIS operating fees were incurred with regard to two categories of CAIS-related efforts: (1) the acceleration of the reporting of LTIDs; and (2) the development of the CAIS Technical Specifications and the building of CAIS. These two categories of costs are discussed in more detail below.

(i) LTID Reporting

During the period covered by Historical CAT Assessment 1, the CAIS operating costs included costs related to the acceleration of the reporting of LTIDs earlier than originally contemplated during this period at the request of the SEC and in accordance with exemptive relief granted by the SEC.¹⁸² As the SEC approved in this exemptive relief, the Participants proposed “to require the reporting of LTIDs to the CAT in Phases 2c and 2d, instead of with the rest of Customer Account Information in Phase 2e, which potentially could result in an earlier elimination of broker-dealer recordkeeping, reporting and monitoring requirements of the Large Trader Rule.”¹⁸³ To implement the reporting of LTIDs to the CAT, the following steps were taken during the period covered by Historical CAT Assessment 1:

- After FCAT developed the LTID Technical Specifications, the LTID Technical Specifications were published on January 31, 2020, with additional updates provided to the LTID Technical Specifications through April 2021.¹⁸⁴

- The LTID account information testing environment opened on August 24, 2020.

- The LTID account information reporting production environment opened on December 14, 2020.

- CAT Reporters were required to request their production readiness certification for account information related to LTIDs by the deadline of April 9, 2021.

- The LTID account information reporting for Phases 2a, 2b and 2c for Large Industry Members went live on April 26, 2021.

- The LTID account information reporting for Phases 2d for Large Industry Members went live on December 13, 2021.

- The LTID account information reporting for Phases 2a, 2b, 2c and 2d for Small Industry Members went live on April 26, 2021.

Throughout this project, FCAT and CAT LLC worked closely with the industry on LTID and CAIS reporting. Between December 2019 and December 2021, at least 57 checkpoint calls, webinars, and technical working group meetings with industry representatives were hosted to address issues and to educate CAT Reporters regarding LTID and CAIS reporting.¹⁸⁵

The LTID reporting project was successfully completed in a timely fashion, and the fees related to the project were reasonable. Accordingly, CAT LLC appropriately seeks to recover such costs via Historical CAT Assessment 1.

(ii) CAIS Reporting

During the period covered by Historical CAT Assessment 1, FCAT began the development of the full CAIS Technical Specifications and the building of CAIS. The CAIS Technical Specifications were developed during this period as follows:

- Iterative drafts of the CAIS Technical Specifications were published on June 30, 2020, December 1, 2020, and January 1, 2021.¹⁸⁶

- The full, final CAIS Technical Specifications were published on January 29, 2021.

on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

¹⁸⁵ Such contact points with the industry are described in detail on the Events web page of the CAT website (<https://www.catnmsplan.com/events>).

¹⁸⁶ The CAIS Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

- Updated versions of the CAIS Technical Specifications were published throughout 2021.¹⁸⁷

As discussed above, FCAT and CAT LLC frequently engaged with the industry regarding the development of CAIS, hosting regular checkpoint calls, webinars, and technical working group meetings with industry representatives to address any issues, including addressing the interplay between Industry Members’ existing customer systems and CAIS, and to educate CAT Reporters regarding LTID and CAIS reporting. Such engagement was critical to the CAIS development process as the CAIS project was unprecedented in terms of its content, scope and complexity.

During this period, FCAT also commenced the building of the CAIS system in accordance with the CAIS Technical Specifications during the period covered by Historical CAT Assessment 1. The CAIS system was ready for industry testing shortly after the end of this period in January 2022.

The CAIS Technical Specifications and the CAIS system, as developed during this period, continue to be in use today. Industry Members have been required to report, and have continuously reported, required data to CAIS on a daily basis since November 7, 2022, consistent with interim reporting obligations. The CAIS system accepts and validates the CAIS data submitted by Industry Members and provides Industry Members with initial feedback on data errors. In light of the unprecedented nature of the CAIS system, certain changes to the system, such as changes related to error corrections and the CAIS regulatory portal, were necessary to finalize CAIS reporting. FCAT worked to address these remaining issues,¹⁸⁸ and, as of May 31, 2024, FCAT indicated that it had achieved the final CAIS reporting milestone. Accordingly, CAT LLC appropriately seeks to recover CAIS operating costs via Historical CAT Assessment 1.

(G) Public Relations Costs

CAT LLC believes that the recovery of public relations costs is appropriate and that the amount and scope of such costs, as described above, are reasonable.

The Commission has long recognized that external public relations costs are reasonably associated with creating,

¹⁸⁷ Six updated versions of the CAIS Technical Specifications were published during 2021, in March, May, June, August, October and December.

¹⁸⁸ See, e.g., CAT Q4 2023 Quarterly Progress Report (Jan. 30, 2024) (<https://www.catnmsplan.com/sites/default/files/2024-01/CAT-Q4-2023-QPR.pdf>).

¹⁸⁰ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁸¹ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁸² See Phased Reporting Exemptive Relief Order at 23079–80.

¹⁸³ *Id.* at 23078–79, n.70.

¹⁸⁴ The LTID Technical Specifications, including original drafts and updated versions, are available

implementing and maintaining the CAT. In the CAT NMS Plan Approval Order, the Commission estimated that the Participants had collectively spent approximately \$2,400,000 in preparation of the CAT NMS Plan on external public relations, legal, and consulting costs, and estimated that the Participants would continue to incur external public relations costs associated with maintaining the CAT upon approval of the CAT NMS Plan.¹⁸⁹

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for public relations services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . public relations costs.”¹⁹⁰ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . public relations costs.”¹⁹¹ In keeping with these provisions, a brief description of reasonable public relations costs are described above.

In addition, CAT LLC determined that the public relations costs described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. The services performed by the public relations firms through 2021 were limited in scope to assist CAT LLC, which has no employees of its own, to be better positioned to understand and address CAT matters to the benefit of all market participants and to communicate on important CAT topics with the public. In addition, the costs for these services were appropriately limited. During the 10-year period covered by Historical CAT Assessment 1, the average cost per year for these services was approximately \$36,000.

(H) Legal Costs Related to the Limitation of Liability Provision in CAT Reporter Agreements

CAT LLC believes that the recovery of legal costs related to the limitation of liability provision, including costs related to the proceedings before the SEC and costs related to the proposed amendment to the Consolidated Audit Trail Reporter Agreement and the Consolidated Audit Trail Reporting Agent Agreement (the “Reporting Agreements”) is appropriate and that

the amount and scope of such costs as described above are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.¹⁹² In addition, CAT LLC determined that the legal costs incurred for the assistance with regard to the limitation of liability provisions are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1.

Moreover, it is critical that CAT LLC, which has no employees of its own, have the ability to fund a legal defense in litigation and other legal proceedings against it. In response to CAT LLC requiring Industry Members to agree to the limitation of liability provision to submit data to the CAT, SIFMA filed an application for review of actions taken by CAT LLC and the Participants pursuant to Sections 19(d) and 19(f) of the Exchange Act. Contemporaneously with the filing of this proceeding, SIFMA moved for a stay of the requirement that Industry Members sign a Reporter Agreement, or in the alternative, asked the Commission to further delay the launch of CAT reporting on June 22, 2020. CAT LLC must have the resources to defend itself from litigious actions by others, like these.

Although a limitation of liability provision ultimately was not adopted as proposed, it was a reasonable provision to propose for the CAT Reporter Agreements, given that such provisions are in accordance with industry norms. Limitations of liability are ubiquitous within the securities industry and have long governed the economic relationships between self-regulatory organizations and the entities that they regulate. For example, U.S. securities exchanges have adopted rules to limit their liability for losses that Industry Members incur through their use of exchange facilities.¹⁹³ Similarly, FINRA’s former order audit trail, OATS, which has functioned as an integrated audit trail of order, quote, and trade data for equity securities, required FINRA members to acknowledge an agreement that includes a limitation of liability provision.¹⁹⁴ In addition, such a

provision was intended to ensure the financial stability of the CAT.

Accordingly, it was reasonable for CAT LLC to propose the use of such a provision.¹⁹⁵

Furthermore, as described above, the specialized services were performed by experienced counsel at market rates for such services. Accordingly, the legal costs for the efforts related to the limitation of liability provision were reasonable.

(I) Costs for the Chair of CAT Operating Committee

CAT LLC believes that the recovery of consulting costs related to the Chair of the CAT Operating Committee is appropriate and that the amount and scope of such costs are reasonable.

As a preliminary matter, the selection of the Chair of the Operating Committee complies with the requirements of Section 4.2 of the CAT NMS Plan. The initial Chair that served during the period covered by Historical CAT Assessment was designated by a Participant as the Participant’s alternate voting member. Accordingly, the Chair is a representative of the Participants, as required by the CAT NMS Plan.

In addition, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for consulting as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . consulting . . .” costs.¹⁹⁶ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . consulting”¹⁹⁷ costs. In keeping with these provisions, a brief description of reasonable consulting costs is included in this filing, and such reasonable consulting costs include the costs related to the Chair position.

The Participants determined that the position of the Chair was a critical role for the implementation of the CAT, and an independent Chair would appropriately consider and address the views of each of the Participants. The Participants also determined that it was important to have a Chair with a strong background regarding issues related to

system to report trade information (*i.e.*, repeatedly over the course of a trading day for many Industry Members).

¹⁹⁵ See Letter from Michael Simon, Chair, CAT Operating Committee, to Vanessa Countryman, Secretary, Commission (Dec. 18, 2020).

¹⁹⁶ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁹⁷ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁹² See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁹³ See, *e.g.*, NASDAQ Equities Rule 4626.

¹⁹⁴ FINRA Rule 1013(a)(1)(R) requires all applicants for FINRA Membership to acknowledge the FINRA Entitlement Program Agreement and Terms of Use, which applies to OATS. Industry Members click to indicate that they agree to its terms—including its limitation of liability provision—every time they access FINRA’s OATS

¹⁸⁹ CAT NMS Plan Approval Order at 84917–18.

¹⁹⁰ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁹¹ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

the regulatory obligations of self-regulatory organizations, including their obligations under national market system plans. The compensation paid to the Chair is appropriate for a person with such background and skills. The average annual amount paid to the Chair from 2017 through the end of FAM 3 was \$292,733.30. Separate from the Chair, CAT LLC relies upon a Leadership Team of representatives of the SROs to oversee the day-to-day implementation of the CAT NMS Plan. CAT LLC does not compensate any member of the Leadership Team.

(11) Fee Implementation Assistance for Industry Members

(A) Reconciliation of CAT Invoices

(i) Reconciliation of CAT Invoices to Underlying Trades Provided by CAT

CAT LLC understands that there are three types of reconciliation processes related to the invoices:

- *Reconciliation of CAT Invoices to Underlying Trades:* Reconciling the CAT invoice amount to the underlying trades provided by CAT;
- *Matching Trades to Books and Records:* Providing the means to match the underlying trades provided by CAT with CAT invoices to other books and records independently maintained by individual CAT Reporters (e.g., exchange trade journals/acknowledgements) and data sources of self-regulatory organizations independent of CAT; and
- *Order Originator Identification:* Providing the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices, which would facilitate firms' ability to pass through CAT Fees to their customers.

As discussed further below, CAT LLC only considers the first type of process to be a "reconciliation" and the only type of process that is required under the CAT NMS Plan. CAT LLC provides the means to reconcile the CAT invoice amount to the underlying trades provided by CAT.

The CAT NMS Plan does not require CAT LLC to facilitate the second type of process: matching underlying trades for a CAT invoice with a firm's internal books and records. CAT LLC has access only to the underlying trades provided by CAT; it does not have access to a firm's internal books and records. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying

trades with their own books and records.

The CAT NMS Plan also does not require CAT LLC to provide the ability to identify the order originator for the underlying trades for the CAT invoices. Accordingly, the billing guidance and processes do not provide CAT Reporters with the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices. CAT LLC has been working closely with CAT Reporters to explain its billing approach and to address any outstanding billing questions. But, it should not be lost that CAT LLC provides information sufficient to allow CAT Reporters to reconcile CAT invoice amounts with the underlying trades provided by CAT LLC.

(ii) Match the Underlying Trades Provided by CAT With CAT Invoices to Firms' Internal Books and Records Independent of CAT

The CAT NMS Plan does not require CAT LLC to facilitate the matching of underlying trades for a CAT invoice with a firm's internal books and records, which may consist of trading data from various sources external to CAT. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying trades with their own books and records.

In this regard, it is important to recognize that CAT LLC has developed a billing approach that greatly improves upon existing billing practices for similar regulatory fees (e.g., fees related to Section 31). Accordingly, with the additional information voluntarily provided by CAT LLC, CAT Reporters generally will have sufficient information to match their underlying trades provided by CAT with their own internal books and records that are independent of CAT or to SRO data that is independent of CAT data. However, CAT LLC emphasizes that providing such additional information is not required by the CAT NMS Plan.

To facilitate the introduction of CAT fees, CAT LLC has worked with FCAT to develop an approach to CAT billing that is consistent with existing billing constructs used with regard to Section 31-related sales values fees, subject to certain enhancements. Under this billing approach, FCAT is providing additional linkage elements, not necessarily provided in the Section 31-sales value fee context, to facilitate CAT Reporters' ability to match the underlying trades provided by CAT

with their internal books and records and to reduce the complexity of that process. Specifically, FCAT is providing various key elements of the trade itself, such as the tradeID and branch sequence,¹⁹⁸ to CAT Reporters in the trade billing details provided with their CAT invoices ("Additional Trade Details"). As a result, CAT Reporters now have numerous alternative methods for matching a trade with their internal books and records where they previously did not have such matching methods in other fee contexts.

With the Additional Trade Details, CAT LLC and FCAT believe that the overwhelming majority of underlying trades provided by CAT bills can be matched with a CAT Reporter's internal books and records. CAT LLC recognizes that there may be certain cases in which such matching is more difficult given various firm-specific considerations, but believes that such instances are significantly more limited than with regard to the SRO fees charged in relation to Section 31.¹⁹⁹ By providing Additional Trade Details that are not available in other fee contexts, FCAT enhances the Industry Members' ability to match the underlying trades provided with CAT invoices with books and records and SRO data, both of which are independent of CAT data.

(iii) CAT LLC is Not Required To Facilitate CAT Reporters' Ability To Pass Through Fees to Their Customers

Similar to other regulatory fees, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Accordingly, Historical CAT Assessment 1 does not address the process by which any CAT Reporters may pass through the fee to their

¹⁹⁸ See CAT Technical Specifications for Billing Trade Details; Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>); CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

¹⁹⁹ For years, broker-dealers have faced similar reconciliation issues with regard to SRO fees related to Section 31. Broker-dealers have responded to this issue in the Section 31 context by exercising their discretion as to whether and the manner and extent to which they pass on those fees (e.g., by rounding up its fees to the nearest cent, or decide to charge for, or not charge for, certain transactions, or assess a specific fee or incorporate the costs into other fee programs). See, e.g., Securities Exchange Act Rel. No. 49928 (June 28, 2004), 69 FR 41060, 41072 (July 7, 2004) (noting that broker-dealers may "over-collect" Section 31-related fees charged to their clients due to rounding practices, and double-counting with regard to certain transactions).

customers. Likewise, the CAT billing approach provided by the Plan Processor is designed to address the needs of CAT Reporters with regard to the reconciliation of CAT invoices with the underlying trades provided by CAT LLC with the invoices; they are not designed to address issues related to any pass-through fees. Accordingly, facilitating CAT Reporters' ability to pass through fees to their clients is outside the scope of this fee filing. Nevertheless, as described below, CAT LLC and the Plan Processor have expended significant efforts to provide technical assistance to Industry Members regarding the implementation of Historical CAT Assessment 1, including providing Additional Trade Details that provide significant details about each underlying trade.

(a) Originating Brokers Versus Executing Brokers

In its approval of the CAT Funding Model, the Commission approved charging CAT fees to the CAT Executing Broker, rather than the originating broker. This fee filing must comply with the requirements of the CAT Funding Model, and, therefore, charges the Historical CAT Assessment 1 to CAT Executing Brokers.

Moreover, charging originating brokers would introduce significant complexity to the billing process from the CAT's perspective, and would increase the costs of implementing CAT fees. Charging the CAT Executing Broker is simple and straightforward, and leverages a one-to-one relationship between billable events (trades) and billable parties, similar to other transaction-based fees. In contrast, for a single trade event, there may be many originating brokers, and each trade must be broken down on a pro-rata basis, to account for one or more layers of aggregation, disaggregation, and representation of the underlying orders. While CAT is indeed designed to capture and unwind complex aggregation scenarios, the data and linkages are structured to facilitate regulatory use, and not a billing mechanism that assesses fees on a distinct set of executed trades; it is not simply a matter of using existing CAT linkages. Furthermore, charging originating brokers would implicate issues related to lifecycle linkage rates, and issues related to corrections, cancellations and allocations, while charging CAT Executing Brokers would avoid such issues.

(b) Identification of Order Originator for Underlying Trades

As noted, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT Fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Nevertheless, the Additional Trade Details provided with regard to the underlying trades on CAT invoices may assist with this process. Like with Section 31-related sales value fees, however, it is not always possible to trace every fee on a transaction back to the originating party. Industry Members have faced these issues under Section 31-related sales value fees for many years.²⁰⁰ However, with the Additional Trade Details provided under the CAT billing approach, in many cases, CAT Reporters will be able to identify the order originator for the underlying trades provided by CAT with CAT invoices. In some cases, CAT LLC believes that certain issues related to certain types of market activity may implicate CAT Reporters' ability to identify the order originator for a limited set of underlying trades for the CAT invoices. Although CAT LLC does not believe that it is required to address these issues, CAT LLC and FCAT have been carefully researching and analyzing these types of issues as they are identified, and have been working voluntarily to assist CAT Reporters with these issues as necessary and when possible. In addition, CAT LLC intends to continue to provide CAT Reporters with billing guidance through FAQs, CAT Alerts and Helpdesk responses to address outstanding billing questions.

(B) Significant Technical Assistance

CAT LLC has worked with FCAT to provide significant technical assistance to Industry Members to allow the Industry Members to understand how Historical CAT Assessment 1 will be implemented and billed, including webinars, CAT alerts, mock invoices, and responses to questions posed to the FCAT Help Desk.

• *Technical Specifications and Scenarios.* CAT LLC has provided

detailed technical documentation for CAT billing, including (1) technical specifications, which describe the CAT Billing Trade Details Files associated with monthly CAT invoices, including detailed information about data elements and file formats as well as access instructions, network and transport options;²⁰¹ (2) trade details schemas;²⁰² and (3) CAT billing scenarios.²⁰³

• *Industry Webinars.* CAT LLC has hosted two industry webinars specifically dedicated to CAT billing. The first webinar, hosted on September 28, 2023, discussed the operational implementation of the CAT Reporter billing process.²⁰⁴ The second webinar, hosted on November 7, 2023, provided (1) a demonstration of the CAT Reporter Portal and how to access CAT billing documents, including CAT invoices; and (2) additional information on underlying trade details in relation to the CAT Reporter billing process and an overview of the CAT Contact Management System.²⁰⁵ 485 participants and 394 participants attended the two webinars, respectively.

• *CAT Alert.* CAT LLC has published a detailed CAT Alert that describes how FCAT, as the Plan Processor acting on behalf of CAT LLC, will calculate applicable fees, issue invoices to and collect payment from CAT Executing Brokers.²⁰⁶

• *Frequently Asked Questions (FAQs).* CAT LLC also has continued to engage with the industry on billing issues by making responses to billing FAQs available on the CAT website. The FAQs address a broad range of frequently asked questions, including, for example, which Industry Members will receive invoices, how fees are calculated, when and how fees are required to be paid, how to access invoices, and how to update the billing contact. To date, responses to 27 FAQs are available on the CAT website, and

²⁰¹ CAT Technical Specifications for Billing Trade Details, Version 1.0 r1 (Dec. 8, 2023) (https://catnmsplan.com/sites/default/files/2023-12/12.07.2023-CAT-Technical-Specifications-for-Billing-Trade-Details-v1.0r1_CLEAN.pdf).

²⁰² Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>).

²⁰³ CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

²⁰⁴ CAT Billing Webinar, Part 1 (Sept. 28, 2023) (<https://www.catnmsplan.com/events/part-1-cat-billing-webinar>).

²⁰⁵ CAT Billing Webinar, Part 2 (Nov. 7, 2023) (<https://www.catnmsplan.com/events/part-2-cat-billing-webinar>).

²⁰⁶ See CAT Alert 2023-02 (Oct. 12, 2023) (<https://www.catnmsplan.com/sites/default/files/2023-10/10.12.23-CAT-Alert-2023-02.pdf>).

²⁰⁰ "FINRA charges a Regulatory Transaction Fee ("RTF") to industry members to reimburse FINRA for the Section 31 fees that FINRA pays to the Commission. FINRA does not currently provide industry members with the data that industry members require for proper reconciliation of RTF fees. This has been a major problem for the industry for many years." Letter from Howard Meyerson, Managing Director, FIF, to Robert Cook, Chief Executive Officer, FINRA at 2 (Dec. 15, 2023) (<https://fif.com/index.php/working-groups/category/271-comment-letters?download=2820:fif-letter-to-finra-on-pass-through-of-finra-cat-fees&view=category>).

CAT LLC will provide additional responses to FAQs as warranted.²⁰⁷

- **Mock Invoices.** To assist Industry Members with compliance with the commencement of Historical CAT Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices for Historical CAT Assessment 1 since December 2023 for billable activity occurring in November 2023. The mock invoices are in the same form as the actual, payable invoices, including both the relevant transaction data and the corresponding fee (as originally contemplated). However, no payments are required in response to such mock invoices; they are to be used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data provides CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended to facilitate the payment of Historical CAT Assessment 1. For the November, December, and January billing periods, FCAT has generated trade detail files for 569 distinct firms that are CAT Executing Brokers. As such, CAT Reporters have actively engaged in the billing process via the mock invoices.

- **Help Desk Assistance.** CAT LLC also provides detailed, individualized assistance to Industry Members regarding CAT fees and the billing process through the FCAT Help Desk.²⁰⁸ For example, the Help Desk has assisted with 406 cases related to the billing of CAT fees from July 2023 through March 2024.

By providing such detailed and sustained assistance to Industry Members regarding CAT fees and billing, CAT LLC has successfully addressed questions raised by Industry Members regarding the CAT fees and billing processes.

(C) Ample Preparation Time

CAT LLC has provided Industry Members with ample time to comply with the implementation of Historical CAT Assessment 1. CAT LLC originally proposed issuing the first invoices for Historical CAT Assessment 1 in

December 2023 based on transactions in Eligible Securities in November 2023. In consideration of the feedback about the need for additional time to implement the new fee, CAT LLC pushed back this timeline by four months, proposing to issue the first Historical CAT Assessment 1 in April 2024 based on transactions in March 2024.²⁰⁹ This filing pushes this timeline back even further for implementing Historical CAT Assessment 1, proposing to issue the first invoices for Historical CAT Assessment 1 in November 2024 based on transactions in Eligible Securities in October 2024. Moreover, as discussed above, during these additional months, FCAT has been working closely with Industry Members to provide guidance regarding their mock bills and reconciliation efforts related thereto.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of the Exchange Act. The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,²¹⁰ which requires, among other things, that the Exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and not designed to permit unfair discrimination between customers, issuers, brokers and dealers. The Exchange also believes that the proposed rule change is consistent with the provisions of Section 6(b)(4) of the Act,²¹¹ because it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(8) of the Act,²¹² which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. These provisions also require that the Exchange be "so organized and [have] the capacity to be able to carry out the purposes" of the Act and "to comply, and . . . to enforce compliance by its members and persons associated with its members," with the

provisions of the Exchange Act.²¹³ Accordingly, a reasonable reading of the Act indicates that it intended that regulatory funding be sufficient to permit an exchange to fulfill its statutory responsibility under the Act, and contemplated that such funding would be achieved through equitable assessments on the members, issuers, and other users of an exchange's facilities.

The Exchange believes that this proposal is consistent with the Act because it implements provisions of the Plan and is designed to assist the Exchange in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan "is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act."²¹⁴ To the extent that this proposal implements the Plan and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

The Exchange believes that the proposed fees paid by the CEBBs and CEBs are reasonable, equitably allocated and not unfairly discriminatory. First, the Historical CAT Assessment 1 fees to be collected are directly associated with the costs of establishing and maintaining the CAT, where such costs include Plan Processor costs and costs related to technology, legal, consulting, insurance, professional and administration, and public relations costs. The Exchange has already incurred such development and implementation costs and the proposed Historical CAT Assessment 1 fees, therefore, would allow the Exchange to collect certain of such costs in a fair and reasonable manner from Industry Members, as contemplated by the CAT NMS Plan.

The proposed Historical CAT Assessment 1 fees would be charged to Industry Members in support of the maintenance of a consolidated audit trail for regulatory purposes. The proposed fees, therefore, are consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business operations. The proposed fees would not cover Exchange services unrelated to the CAT.

²⁰⁷ See CAT Billing FAQs, Section V of CAT FAQs (https://www.catnmsplan.com/faq?search_api_fulltext=&field_topics=271&sort_by=field_faq_number).

²⁰⁸ The CAT NMS Plan requires that the Plan Processor "staff a CAT help desk, as described in Appendix D, CAT Help Desk, to provide technical expertise." Section 6.10(c)(vi) of the CAT NMS Plan. See also Section 10.3 of Appendix D of the CAT NMS Plan for a description of the Plan requirements for the CAT Help Desk.

²⁰⁹ Securities Exchange Act Release No. 99376 (January 17, 2024), 89 FR 10506 (February 13, 2024) (SR-CboeEDGX-2024-005).

²¹⁰ 15 U.S.C. 78f(b)(6).

²¹¹ 15 U.S.C. 78f(b)(4).

²¹² 15 U.S.C. 78f(b)(8).

²¹³ See Section 6(b)(1) of the Exchange Act.

²¹⁴ CAT NMS Plan Approval Order at 84697.

In addition, any surplus would be used as a reserve to offset future fees. Given the direct relationship between CAT fees and CAT costs, the Exchange believes that the proposed fees are reasonable, equitable and not unfairly discriminatory.

As further discussed below, the SEC approved the CAT Funding Model, finding it was reasonable and that it equitably allocates fees among Participants and Industry Members. The Exchange believes that the proposed fees adopted pursuant to the CAT Funding Model approved by the SEC are reasonable, equitably allocated and not unfairly discriminatory.

(1) Implementation of CAT Funding Model in CAT NMS Plan

Section 11.1(b) of the CAT NMS Plan states that “[t]he Participants shall file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves.” Per Section 11.1(b) of the CAT NMS Plan, the Exchange has filed this fee filing to implement the Industry Member CAT fees included in the CAT Funding Model. The Exchange believes that this proposal is consistent with the Exchange Act because it is consistent with, and implements, the CAT Funding Model in the CAT NMS Plan, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the CAT NMS Plan. In approving the CAT NMS Plan, the SEC noted that the Plan “is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.”²¹⁵ Similarly, in approving the CAT Funding Model, the SEC concluded that the CAT Funding Model met this standard.²¹⁶ As this proposal implements the Plan and the CAT Funding Model described therein, and applies specific requirements to Industry Members in compliance with the Plan, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Exchange Act.

(2) Calculation of Fee Rate for Historical CAT Assessment 1 Is Reasonable

The SEC has determined that the CAT Funding Model is reasonable and satisfies the requirements of the Exchange Act. Specifically, the SEC has

concluded that the method for determining Historical CAT Assessments as set forth in Section 11.3 of the CAT NMS Plan, including the formula for calculating the Historical Fee Rate, the identification of the parties responsible for payment and the transactions subject to the fee rate for the Historical CAT Assessment, is reasonable and satisfies the Exchange Act.²¹⁷ In each respect, as discussed above, Historical CAT Assessment 1 is calculated, and would be applied, in accordance with the requirements applicable to Historical CAT Assessments as set forth in the CAT NMS Plan. Furthermore, as discussed below, the Exchange believes that each of the figures for the variables in the SEC-approved formula for calculating the fee rate for Historical CAT Assessment 1 is reasonable and consistent with the Exchange Act. Calculation of the Historical Fee Rate for Historical CAT Assessment 1 requires the figures for the Historical CAT Costs 1, the executed equivalent share volume for the prior twelve months, the determination of Historical Recovery Period 1, and the projection of the executed equivalent share volume for Historical Recovery Period 1. Each of these variables is reasonable and satisfies the Exchange Act, as discussed throughout this filing.

(A) Historical CAT Costs 1

The formula for calculating a Historical Fee Rate requires the amount of Historical CAT Costs to be recovered. Specifically, Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan requires a fee filing to provide:

a brief description of the amount and type of the Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs.

In accordance with this requirement, the Exchange has set forth the amount and type of Historical CAT Costs 1 for each of these categories of costs above.

Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan also requires that the fee filing provide “sufficient detail to demonstrate that the Historical CAT Costs are reasonable and appropriate.” As discussed below, the Exchange believes that the amounts set forth in this filing for each of these cost categories is “reasonable and appropriate.” Each of the costs included in Historical CAT Costs 1 are reasonable

and appropriate because the costs are consistent with standard industry practice, based on the need to comply with the requirements of the CAT NMS Plan, incurred subject to negotiations performed on an arm’s length basis, and/or are consistent with the needs of any legal entity, particularly one with no employees.

(i) Technology: Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover costs related to cloud hosting services as a part of Historical CAT Assessments.²¹⁸ CAT LLC determined that the costs related to cloud hosting services described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. As described above, the cloud hosting services costs reflect, among other things, the breadth of the CAT cloud activities, data volume far in excess of the original volume estimates, the need for specialized cloud services given the volume and unique nature of the CAT, the processing time requirements of the Plan, and regular efforts to seek to minimize costs where permissible under the Plan. CAT LLC determined that use of cloud hosting services is necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT, and that the fees for cloud hosting services negotiated by FCAT were reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.²¹⁹ Indeed, the actual costs of the CAT are far in excess of the original estimated costs of the CAT due to various factors, including the higher volumes and greater complexity of the CAT than anticipated when Rule 613 was originally adopted.

To comply with the requirements of the Plan, the breadth of the cloud activities related to the CAT is substantial. The cloud services not only include the production environment for the CAT, but they also include two industry testing environments, support environments for quality assurance and stress testing and disaster recovery capabilities. Moreover, the cloud storage costs are driven by the requirements of the Plan, which requires the storage of multiple versions of the data, from the original submitted version of the data

²¹⁸ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²¹⁹ For a discussion of the amount and type of cloud hosting services fees, see Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

²¹⁵ CAT NMS Plan Approval Order at 84696.

²¹⁶ CAT Funding Model Approval Order at 62686.

²¹⁷ *Id.* at 62662–63.

through various processing steps, to the final version of the data.

Data volume is a significant driver of costs for cloud hosting services. When the Commission adopted the CAT NMS Plan in 2016, it estimated that the CAT would need to receive 58 billion records per day²²⁰ and that annual operating costs for the CAT would range from \$36.5 million to \$55 million.²²¹ Through 2021, the actual data volumes have been five times that original estimate. The data volumes for each period are set forth in detail above.²²²

In addition to the effect of the data volume on the cloud hosting costs, the processing timelines set forth in the Plan contribute to the cloud hosting costs. Although CAT LLC has proactively sought to manage cloud hosting costs while complying with the Plan, including through requests to the Commission for exemptive relief and an amendment to the CAT NMS Plan, stringent CAT NMS Plan requirements do not allow for any material flexibility in cloud architecture design choices, processing timelines (*e.g.*, the use of non-peak processing windows), or lower-cost storage tiers. As a result, the required CAT processing timelines contribute to the cloud hosting costs of the CAT.

The costs for cloud hosting services also reflect the need for specialized cloud hosting services given the data volume and unique processing needs of the CAT. The data volume as well as the data processing needs of the CAT necessitate the use of cloud hosting services. The equipment, power and services required for an on-premises data model, the alternative to cloud hosting services, would be cost prohibitive. Moreover, as CAT was being developed, there were limited cloud hosting providers that could satisfy all the necessary CAT requirements, including the operational and security criteria. Over time more providers offering cloud hosting services that would satisfy these criteria have entered the market. CAT LLC will continue to evaluate alternative cloud hosting services, recognizing that the time and cost to move to an alternative cloud provider would be substantial.

The reasonableness of the cloud hosting services costs is further supported by key cost discipline mechanisms for the CAT—a cost-based funding structure, cost transparency, cost management efforts (including regular efforts to lower compute and

storage costs where permitted by the Plan) and oversight. Together, these mechanisms help ensure the ongoing reasonableness of the CAT's costs and the level of fees assessed to support those costs.²²³

(ii) Technology: Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to operating fees as a part of Historical CAT Assessments.²²⁴ CAT LLC determined that the costs related to operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The operating fees include the negotiated fees paid by CAT LLC to the Plan Processor to operate and maintain the system for order-related information and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.*, management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the selection of FCAT as the Plan Processor was reasonable and appropriate given its expertise with securities regulatory reporting, after a process of considering other potential candidates.²²⁵ CAT LLC also determined that the fixed price contract, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, was reasonable and appropriate, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity.²²⁶ The services performed by FCAT for each period and the costs related to such services are described above.²²⁷

(iii) Technology: CAIS Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to CAIS operating fees as a part of Historical CAT Assessments.²²⁸ CAT LLC determined that the costs related to CAIS operating fees described in this filing are reasonable and should be included as a part of Historical CAT

Costs 1. The CAIS operating fees include the fees paid to the Plan Processor to operate and maintain CAIS and to perform the business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.*, management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the FCAT-negotiated fees for Kingland's CAIS-related services, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity, were reasonable and appropriate.²²⁹ The services performed by Kingland for each period and the costs for each period are described above.²³⁰

(iv) Technology: Change Request Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to change request fees as a part of Historical CAT Assessments.²³¹ CAT LLC determined that the costs related to change request fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. It is common practice to utilize a change request process to address evolving needs in technology projects. This is particularly true for a project like CAT that is the first of its kind, both in substance and in scale. The substance and costs of each of the change requests are evaluated by the Operating Committee, and approved in accordance with the requirements for Operating Committee meetings. In each case, CAT LLC determined that the change requests were necessary to implement the CAT. As described above, the change requests cover various technology changes, including, for example, changes related to CAT reporting, data feeds and exchange functionality. CAT LLC also determined that the costs for each change request were appropriate for the relevant technology change. A description of the change requests for each FAM Period and their total costs are set described above.²³² As noted above, the total costs for change requests through FAM Period 3 represent a small percentage of

²²³ See Securities Exchange Act Rel. No. 97151 (Mar. 15, 2023), 88 FR 17086, 17117 (Mar. 21, 2023) (describing key cost discipline mechanisms for the CAT).

²²⁴ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²⁵ See Section 3(a)(2)(B)(i)(b) above.

²²⁶ See Sections 3(a)(2)(B)(i)(b), 3(a)(2)(B)(ii)(b), 3(a)(2)(B)(iii)(b) and 3(a)(2)(B)(iv)(b) above.

²²⁷ *Id.*

²²⁸ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²⁹ See Sections 3(a)(2)(B)(i)(c), 3(a)(2)(B)(ii)(c), 3(a)(2)(B)(iii)(c) and 3(a)(2)(B)(iv)(c) above.

²³⁰ *Id.*

²³¹ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²³² See Sections 3(a)(2)(B)(i)(d), 3(a)(2)(B)(ii)(d), 3(a)(2)(B)(iii)(d) and 3(a)(2)(B)(iv)(d) above.

²²⁰ Appendix D–4 of the CAT NMS Plan at n.262.

²²¹ CAT NMS Plan Approval Order at 84801.

²²² See Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

Historical CAT Costs 1—that is, 0.25% of Historical CAT Costs 1.

(v) Capitalized Developed Technology Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to capitalized developed technology costs as a part of Historical CAT Assessments.²³³ Capitalized developed technology costs include costs related to certain development costs, costs related to certain modifications, upgrades and other changes to the CAT, CAIS implementation fees and license fees. The amount and type of costs for each period are described in more detail above.²³⁴ CAT LLC determined that these costs are reasonable and should be included as a part of Historical CAT Costs 1.

These costs involve the activity of both the Initial Plan Processor and FCAT, as the successor Plan Processor.²³⁵ With regard to the Initial Plan Processor, the Participants utilized an RFP to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan. CAT LLC entered into an agreement with the Initial Plan Processor in which CAT LLC would pay the Initial Plan Processor a negotiated, fixed price fee.²³⁶ In addition, as described above, CAT LLC determined that it is appropriate to enter into an agreement with FCAT as the successor Plan Processor.²³⁷

(vi) Legal

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to legal fees as a part of Historical CAT Assessments.²³⁸ CAT LLC determined that the legal costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Given the unique nature of the CAT, the number of parties involved with the CAT (including, for example, the SEC, Participants, Industry Members, and

vendors) and the many regulatory issues associated with the CAT, the scope of the necessary legal services are substantial. CAT LLC determined that the scope of the legal services is necessary to implement and maintain the CAT and that the legal rates reflect the specialized services necessary for such a project. When hiring each law firm for a CAT project, CAT LLC interviewed multiple firms, and determined to hire each firm based on a variety of factors, including the relevant expertise and fees. In each case, CAT LLC determined that the hourly fee rates were in line with market rates for the specialized legal expertise. In addition, CAT LLC determined that the total costs incurred for each CAT project were appropriate given the breadth of services provided. The services performed by each law firm for each period and the costs related to such services are described above.²³⁹

(vii) Consulting

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover consulting costs as a part of Historical CAT Assessments.²⁴⁰ CAT LLC determined that the consulting costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Because there are no CAT employees²⁴¹ and because of the significant number of issues associated with the CAT, the consultants provided assistance in the management of various CAT matters and the processes related to such matters.²⁴² CAT LLC considered a variety of factors in choosing a consulting firm and determined to select Deloitte after an interview process.²⁴³ CAT LLC also determined that the consulting services were provided at reasonable market rates, as the fees were negotiated annually and comparable to the rates charged by other consulting firms for similar work.²⁴⁴ Moreover, the total costs for such consulting services were appropriate in light of the breadth of services provided by Deloitte and the services performed by Deloitte and the

costs related to such services are described above.²⁴⁵

(viii) Insurance

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover insurance costs as a part of Historical CAT Assessments.²⁴⁶ CAT LLC determined that the insurance costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that it is common practice to have directors' and officers' liability insurance, and errors and omissions liability insurance. CAT LLC further determined that it was important to have cyber security insurance given the nature of the CAT, and such a decision is consistent with the CAT NMS Plan, which states that the cyber incident response plan may include "[i]nsurance against security breaches."²⁴⁷ In selecting the insurance providers for these policies, CAT LLC engaged in an evaluation of alternative insurers, including a comparison of the pricing offered by the alternative insurers.²⁴⁸ Based on this analysis, CAT LLC determined that the selected insurance policies provided appropriate coverage at reasonable market rates.²⁴⁹

(ix) Professional and Administration

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover professional and administration costs as a part of Historical CAT Assessments.²⁵⁰ CAT LLC determined that the professional and administration costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Because there are no CAT employees, all required accounting, financial, tax, cash management and treasury functions for CAT LLC have been outsourced at market rates. In addition, the required annual financial statement audit of CAT LLC is included in professional and administration costs, which costs are also at market rates.

CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT

²³³ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²³⁴ See Sections 3(a)(2)(B)(i)(e), 3(a)(2)(B)(ii)(e), 3(a)(2)(B)(iii)(e) and 3(a)(2)(B)(iv)(e) above.

²³⁵ *Id.*

²³⁶ See Section 3(a)(2)(B)(i)(e) above.

²³⁷ See Section 3(a)(2)(B)(i)(b) above.

²³⁸ Section 11.3(b)(iii)(B)(II)(B)(2) of the CAT NMS Plan.

²³⁹ See Sections 3(a)(2)(B)(i)(f), 3(a)(2)(B)(ii)(f), 3(a)(2)(B)(iii)(f) and 3(a)(2)(B)(iv)(f) above.

²⁴⁰ Section 11.3(b)(iii)(B)(II)(B)(3) of the CAT NMS Plan.

²⁴¹ As stated in the filing of the proposed CAT NMS Plan, "[i]t is the intent of the Participants that the Company have no employees." Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614, 30621 (May 17, 2016).

²⁴² CAT LLC uses certain third parties to perform tasks that may be performed by administrators for other NMS Plans. See, e.g., CTA Plan and CQ Plan.

²⁴³ See Section 3(a)(2)(B)(i)(g) above.

²⁴⁴ See Sections 3(a)(2)(B)(i)(g), 3(a)(2)(B)(ii)(g), 3(a)(2)(B)(iii)(g) and 3(a)(2)(B)(iv)(g) above.

²⁴⁵ *Id.*

²⁴⁶ Section 11.3(b)(iii)(B)(II)(B)(4) of the CAT NMS Plan.

²⁴⁷ Section 4.1.5 of Appendix D of the CAT NMS Plan.

²⁴⁸ See Sections 3(a)(2)(B)(i)(h), 3(a)(2)(B)(ii)(h), 3(a)(2)(B)(iii)(h) and 3(a)(2)(B)(iv)(h) above.

²⁴⁹ *Id.*

²⁵⁰ Section 11.3(b)(iii)(B)(II)(B)(5) of the CAT NMS Plan.

project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees.²⁵¹ The hourly fee rates for this firm were in line with market rates for the financial advisory services provided.²⁵² Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Anchin. The services performed by Anchin and the costs related to such services are described above.²⁵³

CAT LLC also determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the role given the balance of these considerations.²⁵⁴ Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services.²⁵⁵ Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Grant Thornton. The services performed by Grant Thornton and the costs related to such services are described above.²⁵⁶

The professional and administrative costs also include costs related to the receipt of certain market data from Exegy. After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy. Exegy provided the data elements required by the CAT NMS Plan, and the fees were reasonable and in line with market rates for the market data received.²⁵⁷

The professional and administrative costs also include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the

effective design, implementation and operation of the controls specified by NIST Special Publication 800–53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment.²⁵⁸

(x) Public Relations Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover public relations costs as a part of Historical CAT Assessments.²⁵⁹ CAT LLC determined that the public relations costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that the types of public relations services utilized were beneficial to the CAT and market participants more generally. Public relations services were important for various reasons, including monitoring comments made by market participants about CAT and understanding issues related to the CAT discussed on the public record.²⁶⁰ By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT issues to the benefit of all market participants.²⁶¹ Moreover, CAT LLC determined that the rates charged for such services were in line with market rates.²⁶² As noted above, the total public relations costs through FAM Period 3 represent a small percentage of Historical CAT Costs 1—that is, 0.1% of Historical CAT Costs 1.

(B) Total Executed Equivalent Share Volume for the Prior 12 Months

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. CAT LLC determined the total executed equivalent share volume for the prior twelve months by counting executed equivalent shares in the same manner as it will count executed equivalent shares for CAT billing purposes.

(C) Historical Recovery Period 1

CAT LLC has determined to establish a Historical Recovery Period of 24 months for Historical CAT Assessment 1 and that such length is reasonable. CAT LLC determined that the length of Historical Recovery Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans notes to the Participants in a timely fashion. CAT LLC determined that 24 months for Historical Recovery Period 1 would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to Section 31.²⁶³ In addition, in establishing a Historical Recovery Period of 24 months, CAT LLC recognized that the total costs for Historical CAT Assessment 1 was less than the total costs for 2022 and 2023, and therefore it would be appropriate to recover those costs in two years.

(D) Projected Executed Equivalent Share Volume for Historical Recovery Period 1

CAT LLC has determined to calculate the projected total executed equivalent share volume for the 24 months of Historical Recovery Period 1 by doubling the executed equivalent share volume for the prior 12 months. CAT LLC determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has remained relatively constant in recent years. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395, the executed equivalent share volume for 2022 was 4,039,821,841,560.31, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6. Accordingly, the projected total executed equivalent share volume for Historical Recovery Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.²⁶⁴

(E) Actual Fee Rate for Historical CAT Assessment 1

(i) Decimal Places

As noted in the Plan amendment for the CAT Funding Model, as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the

²⁵¹ See Section 3(a)(2)(B)(i)(i) above.

²⁵² See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

²⁵³ *Id.*

²⁵⁴ See Section 3(a)(2)(B)(i)(i) above.

²⁵⁵ See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

²⁵⁶ *Id.*

²⁵⁷ See Section 3(a)(2)(B)(i)(i) above.

²⁵⁸ *Id.*

²⁵⁹ Section 11.3(b)(iii)(B)(III)(B)(6) of the CAT NMS Plan.

²⁶⁰ See Section 3(a)(2)(B)(i)(j) above.

²⁶¹ See Sections 3(a)(2)(B)(i)(j), 3(a)(2)(B)(ii)(j), 3(a)(2)(B)(iii)(j) and 3(a)(2)(B)(iv)(j) above.

²⁶² *Id.*

²⁶³ As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model Approval Order at 62682.

²⁶⁴ This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee rate.²⁶⁵ Accordingly, proposed paragraph (a)(1)(B) of the fee schedule would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 by one-third, and rounding the result to 6 decimal places. CAT LLC determined that the use of six decimal places is reasonable as it balances the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

(ii) Reasonable Fee Level

The Exchange believes that imposing Historical CAT Assessment 1 with a fee rate of \$0.000013 per executed equivalent share is reasonable because it provides for a revenue stream for the Company that is aligned with Historical CAT Costs 1 and such costs would be spread out over an appropriate recovery period, as discussed above. Moreover, the Exchange believes that the level of the fee rate is reasonable, as it is comparable to other transaction-based fees. Indeed, Historical CAT Assessment 1 is significantly lower than fees assessed pursuant to Section 31 (e.g., \$0.0009 per share to 0.0004 per share),²⁶⁶ and, as a result, the magnitude of Historical CAT Assessment 1 is small, and therefore will mitigate any potential adverse economic effects or inefficiencies.²⁶⁷ Furthermore, the reasonable fee rate for Historical CAT Assessment 1 further supports CAT LLC's decision to seek to recover all Historical CAT Costs prior to 2022, rather than establishing separate Historical CAT Assessments for pre-FAM, FAM 1, FAM 2 and FAM 3 costs.

(3) Historical CAT Assessment 1 Provides for an Equitable Allocation of Fees

Historical CAT Assessment 1 provides for an equitable allocation of fees, as it equitably allocates CAT costs between and among the Participants and Industry Members. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act, including the formula for calculating Historical CAT Assessments as well as the Industry Members to be charged the Historical CAT Assessments.²⁶⁸ In approving the CAT

Funding Model, the SEC stated that “[t]he Participants have sufficiently demonstrated that the proposed allocation of fees is reasonable.”²⁶⁹ Accordingly, the CAT Funding Model sets forth the requirements for allocating fees related to Historical CAT Costs among Participants and Industry Members, and the fee filings for Historical CAT Assessments must comply with those requirements.

Historical CAT Assessment 1 provides for an equitable allocation of fees as it complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. For example, as described above, the calculation of Historical CAT Assessment 1 complies with the formula set forth in Section 11.3(b) of the CAT NMS Plan. In addition, Historical CAT Assessment 1 would be charged to CEBBs and CEBs in accordance with Section 11.3(b) of the CAT NMS Plan. Furthermore, the Participants would continue to remain responsible for their designated share of Past CAT Costs through the cancellation of loans made by the Participants to CAT LLC.

In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1—Historical CAT Costs 1 (including Excluded Costs), the count for the executed equivalent share volume for the prior 12 months, the length of the Historical Recovery Period, and the projected executed equivalent share volume for the Historical Recovery Period—are reasonable. Moreover, these inputs lead to a reasonable fee rate for Historical CAT Assessment 1 that is lower than other fee rates for transaction-based fees. A reasonable fee rate allocated in accordance with the requirements of the CAT Funding Model provides for an equitable allocation of fees.

(4) Historical CAT Assessment 1 is Not Unfairly Discriminatory

Historical CAT Assessment 1 is not an unfairly discriminatory fee. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act. In reaching this conclusion, the SEC analyzed the potential effect of Historical CAT Assessments calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members,

such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Historical CAT Assessment 1 complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1 and the resulting fee rate for Historical CAT Assessment 1 is reasonable. Therefore, Historical CAT Assessment 1 does not impose an unfairly discriminatory fee on Industry Members.

Finally, the Exchange believes the proposed fees established pursuant to the CAT Funding Model promote just and equitable principles of trade, and, in general, protect investors and the public interest, and are provided in a transparent manner and specificity in the fee schedule. The Exchange also believes that the proposed fees are reasonable because they would provide ease of calculation, ease of billing and other administrative functions, and predictability of a fee based on fixed rate per executed equivalent share. Such factors are crucial to estimating a reliable revenue stream for CAT LLC and for permitting Exchange members to reasonably predict their payment obligations for budgeting purposes.

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

Section 6(b)(8) of the Act²⁷⁰ requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that Historical CAT Assessment 1 implements provisions of the CAT NMS Plan that were approved by the Commission and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan.

In addition, all Participants (including exchanges and FINRA) are proposing to introduce Historical CAT Assessment 1 on behalf of CAT LLC to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive fee filing, and, therefore, it does not raise competition issues between and among the Participants.

Furthermore, in approving the CAT Funding Model, the SEC analyzed the

²⁶⁵ CAT Funding Model Approval Order at 62658, n.658.

²⁶⁶ CAT Funding Model Approval Order at 62663, 62682.

²⁶⁷ *Id.*

²⁶⁸ See Section 11.3(b) of the CAT NMS Plan.

²⁶⁹ CAT Funding Model Approval Order at 62629.

²⁷⁰ 15 U.S.C. 78f(b)(8).

potential competitive impact of the CAT Funding Model, including competitive issues related to market services, trading services and regulatory services, efficiency concerns, and capital formation.²⁷¹ The SEC also analyzed the potential effect of CAT fees calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Based on this analysis, the SEC approved the CAT Funding Model as compliant with the Exchange Act. Historical CAT Assessment 1 is calculated and implemented in accordance with the CAT Funding Model as approved by the SEC.

As discussed above, each of the inputs into the calculation of Historical CAT Assessment 1 is reasonable and the resulting fee rate for Historical CAT Assessment 1 calculated in accordance with the CAT Funding Model is reasonable. Therefore, Historical CAT Assessment 1 would not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act.

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

The Exchange neither solicited nor received written comments on the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act²⁷² and Rule 19b-4(f)(2) thereunder,²⁷³ because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeEDGX-2024-054 on the subject line.

Paper Comments

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

All submissions should refer to file number SR-CboeEDGX-2024-054. This file number should be included on the subject line if email 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 (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeEDGX-2024-054 and should be submitted on or before October 3, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷⁴

Sherry R. Haywood,
Assistant Secretary.

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BILLING CODE 8011-01-P

²⁷¹ CAT Funding Model Approval Order at 62676-86.

²⁷² 15 U.S.C. 78s(b)(3)(A)(ii).

²⁷³ 17 CFR 240.19b-4(f)(2).

²⁷⁴ 17 CFR 200.30-3(a)(12).



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Part V

Securities and Exchange Commission

Self-Regulatory Organizations; Long-Term Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100946; File No. SR–LTSE–2024–05]

Self-Regulatory Organizations; Long-Term Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail

September 5, 2024.

Pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b–4 thereunder,² notice is hereby given that on August 29, 2024, Long-Term Stock Exchange, Inc. (“LTSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to establish fees for Industry Members³ related to certain historical costs of the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”) incurred prior to January 1, 2022. The text of the proposed rule change is available at the Exchange’s website at <https://longtermstockexchange.com/>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

On July 11, 2012, the Commission adopted Rule 613 of Regulation NMS, which required the self-regulatory organizations (“SROs”) to submit a national market system (“NMS”) plan to create, implement and maintain a consolidated audit trail that would capture customer and order event information for orders in NMS securities across all markets, from the time of order inception through routing, cancellation, modification or execution.⁴ On November 15, 2016, the Commission approved the CAT NMS Plan.⁵ Under the CAT NMS Plan, the Operating Committee has the discretion to establish funding for CAT LLC to operate the CAT, including establishing fees for Industry Members to be assessed by CAT LLC that would be implemented on behalf of CAT LLC by the Participants.⁶ The Operating Committee adopted a revised funding model to fund the CAT (“CAT Funding Model”). On September 6, 2023, the Commission approved the CAT Funding Model, after concluding that the model was reasonable and that it satisfied the requirements of Section 11A of the Exchange Act and Rule 608 thereunder.⁷

The CAT Funding Model provides a framework for the recovery of the costs to create, develop and maintain the CAT, including providing a method for allocating costs to fund the CAT among Participants and Industry Members. The CAT Funding Model establishes two categories of fees: (1) CAT fees assessed by CAT LLC and payable by certain Industry Members to recover a portion of historical CAT costs previously paid by the Participants (“Historical CAT Assessment” fees); and (2) CAT fees assessed by CAT LLC and payable by Participants and Industry Members to

fund prospective CAT costs (“Prospective CAT Costs” fees).⁸

Under the CAT Funding Model, “[t]he Operating Committee will establish one or more fees (each a ‘Historical CAT Assessment’) to be payable by Industry Members with regard to CAT costs previously paid by the Participants (‘Past CAT Costs’).”⁹ In establishing a Historical CAT Assessment, the Operating Committee will determine a “Historical Recovery Period” and calculate a “Historical Fee Rate” for that Historical Recovery Period. Then, for each month in which a Historical CAT Assessment is in effect, each CEBB and CEBS would be required to pay the fee—the Historical CAT Assessment—for each transaction in Eligible Securities executed by the CEBB or CEBS 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.¹⁰

Each Historical CAT Assessment to be paid by CEBBs and CEBSs is designed to contribute toward the recovery of two-thirds of the Historical CAT Costs. Because the Participants previously have paid Past CAT Costs via loans to the Company, the Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants’ one-third share of Historical CAT Costs will be paid by the cancellation of loans made by the Participants to the Company on a pro rata basis based on the outstanding loan amounts due under the loans, instead of through the payment of a CAT fee.¹¹ In addition, the Participants also will be 100% responsible for certain Excluded Costs (as discussed below).

CAT LLC proposes to charge CEBBs and CEBSs (as described in more detail

⁸ Under the CAT Funding Model, the Operating Committee may establish one or more Historical CAT Assessments. Section 11.3(b) of the CAT NMS Plan. This filing only establishes Historical CAT Assessment 1 related to certain Historical CAT Costs as described herein; it does not address any other potential Historical CAT Assessment related to other Historical CAT Costs. In addition, under the CAT Funding Model, the Operating Committee also may establish CAT Fees related to CAT costs going forward. Section 11.3(a) of the CAT NMS Plan. This filing does not address any potential CAT Fees related to CAT costs going forward. Any such other fee for any other Historical CAT Assessment or CAT Fee for Prospective CAT Costs will be subject to a separate fee filing.

⁹ Section 11.3(b) of the CAT NMS Plan.

¹⁰ In approving the CAT Funding Model, the Commission stated that, “[i]n the Commission’s view, the proposed recovery of the Past CAT Costs via the Historical CAT Assessment is reasonable.” CAT Funding Model Approval Order at 62662.

¹¹ Section 11.3(b)(ii) of the CAT NMS Plan.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ An “Industry Member” is defined as “a member of a national securities exchange or a member of a national securities association.” See, LTSE Rule 11.610(u). See also Section 1.1 of the CAT NMS Plan. Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the CAT NMS Plan and/or the CAT Compliance Rule. See, Exchange Rule Series 11.600.

⁴ Securities Exchange Act Rel. No. 67457 (July 18, 2012), 77 FR 45721 (Aug. 1, 2012) (“Rule 613 Adopting Release”).

⁵ Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (“CAT NMS Plan Approval Order”).

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

⁷ Securities Exchange Act Rel. No. 98290 (Sept. 6, 2023), 88 FR 62628 (Sept. 12, 2023) (“CAT Funding Model Approval Order”).

below) Historical CAT Assessment 1 to recover certain historical CAT costs incurred prior to January 1, 2022, in accordance with the CAT Funding Model. To implement this fee on behalf of CAT LLC, the CAT NMS Plan requires the Participants to “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.’”¹² The Plan further states that “Participants will be required to file with the SEC pursuant to Section 19(b) of the Exchange Act a filing for each Historical CAT Assessment.”¹³ Accordingly, the purpose of this filing is to implement a Historical CAT Assessment on behalf of CAT LLC for Industry Members, referred to as Historical CAT Assessment 1, in accordance with the CAT NMS Plan.¹⁴

The Exchange previously filed a fee filing to implement Historical CAT Assessment 1. On January 17, 2024, the SEC published this prior filing for

Historical CAT Assessment 1, temporarily suspended the fee filing, and instituted proceedings to determine whether to approve or disapprove the fee filing.¹⁵ The Exchange is withdrawing its original fee filing for Historical CAT Assessment 1. This Historical CAT Assessment 1 replaces the prior Historical CAT Assessment 1 that was previously filed with the Commission.

(1) CAT Executing Brokers

Historical CAT Assessment 1 will be charged to each CEBB and CEBS for each applicable transaction in Eligible Securities.¹⁶ The CAT NMS Plan defines a “CAT Executing Broker” to mean:

(a) with respect to a transaction in an Eligible Security that is executed on an exchange, the Industry Member identified as the Industry Member responsible for the order on the buy-side of the transaction and the Industry Member responsible for the sell-side of the transaction in the equity order trade event and option trade event in the CAT Data submitted to the CAT by the

relevant exchange pursuant to the Participant Technical Specifications; and (b) with respect to a transaction in an Eligible Security that is executed otherwise than on an exchange and required to be reported to an equity trade reporting facility of a registered national securities association, the Industry Member identified as the executing broker and the Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event in the CAT Data submitted to the CAT by FINRA pursuant to the Participant Technical Specifications; provided, however, in those circumstances where there is a non-Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event or no contra-side executing broker is identified in the TRF/ORF/ADF transaction data event, then the Industry Member identified as the executing broker in the TRF/ORF/ADF transaction data event would be treated as CAT Executing Broker for the Buyer and for the Seller.¹⁷

The following fields of the Participant Technical Specifications indicate the CAT Executing Brokers for the transactions executed on an exchange.

EQUITY ORDER TRADE (EOT)¹⁸

No.	Field name	Data type	Description	Include key
12.n.8/13.n.8	member	Member Alias	The identifier for the member firm that is responsible for the order on this side of the trade. Not required if there is no order for the side as indicated by the NOBUYID/NOSELLID instruction. This must be provided if orderID is provided..	C

OPTION TRADE (OT)¹⁹

No.	Field name	Data type	Description	Include key
16.n.13/17.n.13	member	Member Alias	The identifier for the member firm that is responsible for the order.	R

¹² Section 11.1(b) of the CAT NMS Plan.

¹³ Section 11.3(b)(iii)(B)(I) of the CAT NMS Plan.

¹⁴ Note that there may be one or more Historical CAT Assessments depending on the timing of the completion of the Financial Accountability Milestones, among other things. Section 11.3(b) of the CAT NMS Plan.

¹⁵ See Securities Exchange Act Release No. 34–99378 (January 17, 2024), 89 FR 10582 (February 13, 2024) (SR–LTSE–2024–02).

¹⁶ In its approval of the CAT Funding Model, the Commission determined that charging CAT fees to CAT Executing Brokers was reasonable. In reaching this conclusion the Commission noted that the use of CAT Executing Brokers is appropriate because

the CAT Funding Model is based upon the calculation of *executed* equivalent shares, and, therefore, charging CAT Executing Brokers would reflect their executing role in each transaction. Furthermore, the Commission noted that, because CAT Executing Brokers are already identified in transaction reports from the exchanges and FINRA’s equity trade reporting facilities recorded in CAT Data, charging CAT Executing Brokers could streamline the billing process. CAT Funding Model Approval Order at 62629.

¹⁷ Section 1.1 of the CAT NMS Plan. Note that CEBBs and CEBSs may, but are not required to, pass-through their CAT fees to their clients, who may, in turn, pass their fees to their clients until

they are imposed ultimately on the account that executed the transaction. See CAT Funding Model Approval Order at 62649.

¹⁸ See Table 23, Section 4.7 (Order Trade Event) of the CAT Reporting Technical Specifications for Plan Participants, Version 4.1.0–r21 (Apr. 15, 2024), https://www.catnmsplan.com/sites/default/files/2024-04/04.15.2024-CAT_Reporting_Technical_Specifications_for_Participants_4.1.0-r21.pdf (“CAT Reporting Technical Specifications for Plan Participants”).

¹⁹ See Table 51, Section 5.2.5.1 (Simple Option Trade Event) of the CAT Reporting Technical Specifications for Plan Participants.

In addition, the following fields of the Participant Technical Specifications would indicate the CAT Executing Brokers for the transactions executed otherwise than on an exchange:

TRF/ORF/ADF TRANSACTION DATA EVENT (TRF)²⁰

No.	Field name	Data type	Description	Include key
26	reportingExecutingMpid	Member Alias	MPID of the executing party	R
28	contraExecutingMpid	Member Alias	MPID of the contra-side executing party	C

(2) Calculation of Historical Fee Rate 1

The Operating Committee determined the Historical Fee Rate to be used in calculating Historical CAT Assessment 1 (“Historical Fee Rate 1”) by dividing the Historical CAT Costs for Historical CAT Assessment 1 (“Historical CAT Costs 1”) by the projected total executed share volume of all transactions in Eligible Securities for the Historical Recovery Period for Historical CAT Assessment 1 (“Historical Recovery Period 1”), as discussed in detail below. Based on this calculation, the Operating Committee has determined that Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. This rate is then divided by three and rounded to determine the fee rate of \$0.000013 per executed equivalent share that will be assessed to CEBBs and CEBBs, as also discussed in detail below.

(A) Executed Equivalent Shares for Transactions in Eligible Securities

Under the CAT NMS Plan, for purposes of calculating each Historical CAT Assessment, executed equivalent shares in a transaction in Eligible Securities will be reasonably counted as follows: (1) each executed share for a transaction in NMS Stocks will be counted as one executed equivalent share; (2) each executed contract for a transaction in Listed Options will be counted based on the multiplier applicable to the specific Listed Options (i.e., 100 executed equivalent shares or such other applicable multiplier); and

(3) each executed share for a transaction in OTC Equity Securities shall be counted as 0.01 executed equivalent share.²¹

(B) Historical CAT Costs 1

The CAT NMS Plan states that “[t]he Operating Committee will reasonably determine the Historical CAT Costs sought to be recovered by each Historical CAT Assessment, where the Historical CAT Costs will be Past CAT Costs minus Past CAT Costs reasonably excluded from Historical CAT Costs by the Operating Committee. Each Historical CAT Assessment will seek to recover from CAT Executing Brokers two-thirds of Historical CAT Costs incurred during the period covered by the Historical CAT Assessment.”²² As described in detail below, Historical CAT Costs 1 would be \$318,059,819. This figure includes Past CAT Costs of \$401,312,909 minus certain Excluded Costs of \$83,253,090. Participants collectively will remain responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), plus the Excluded Costs of \$83,253,090. CEBBs collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), and CEBBs collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67).

The following describes in detail Historical CAT Costs 1 with regard to four separate historical time periods as well as Past CAT Costs excluded from Historical CAT Costs 1 (“Excluded Costs”). The following cost details are

provided in accordance with the requirement in the CAT NMS Plan to provide in the fee filing “a brief description of the amount and type of Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs.”²³ Each of the costs described below are reasonable, appropriate and necessary for the creation, implementation and maintenance of CAT.

(i) Historical CAT Costs Incurred Prior to June 22, 2020 (Pre-FAM Costs)

Historical CAT Costs 1 would include costs incurred by CAT prior to June 22, 2020 (“Pre-FAM Period”) and already funded by the Participants, excluding Excluded Costs (described further below). Historical CAT Costs 1 would include costs for the Pre-FAM Period of \$124,290,730. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$41,430,243.33), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$41,430,243.33) and CEBBs paying one-third (\$41,430,243.33). These costs do not include Excluded Costs, as discussed further below. The following table breaks down Historical CAT Costs 1 for the Pre-FAM Period into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs 1 for pre-FAM Period (prior to June 22, 2020)*
Capitalized Developed Technology Costs**	\$51,847,150
Technology Costs	33,568,579
Cloud Hosting Services	10,268,840
Operating Fees	21,085,485
CAIS Operating Fees	2,072,908
Change Request Fees	141,346

²⁰ See Table 61, Section 6.1 (TRF/ORF/ADF Transaction Data Event) of the CAT Reporting Technical Specifications for Plan Participants.

²¹ Section 11.3(a)(i)(B) and 11.3(b)(i)(B) of the CAT NMS Plan. In approving the CAT Funding

Model, the Commission concluded that “the use of executed equivalent share volume as the basis of the proposed cost allocation methodology is reasonable and consistent with the approach taken

by the funding principles of the CAT NMS Plan.” CAT Funding Model Approval Order at 62640.

²² Section 11.3(b)(i)(C) of the CAT NMS Plan.

²³ Section 11.3(b)(iii)(B)(II)(B) of the CAT NMS Plan.

Operating expense	Historical CAT costs 1 for pre-FAM Period (prior to June 22, 2020) *
Legal	19,674,463
Consulting	17,013,414
Insurance	880,419
Professional and administration	1,082,036
Public relations	224,669
Total Operating Expenses	124,290,730

* The costs described in this table of costs for the Pre-FAM Period were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website. In addition, in accordance with Section 6.6(a)(i) of the CAT NMS Plan, in 2018 CAT LLC provided the SEC with "an independent audit of fees, costs, and expenses incurred by the Participants on behalf of the Company prior to the Effective Date of the Plan that will be publicly available." The audit is available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$2,115,545 incurred during the period prior to June 22, 2020 have been appropriately excluded from the above table.²⁴

The Pre-FAM Period includes a broad range of CAT-related activity from 2012 through June 22, 2020, including the evaluation of the requirements of SEC Rule 613, the development of the CAT NMS Plan, the evaluation and selection of the initial and successor Plan Processors, the commencement of the creation and implementation of the CAT to comply with Rule 613 and the CAT NMS Plan, including technical specifications for transaction reporting and regulatory access, and related technology and the commencement of reporting to the CAT. The following describes the costs for each of the categories for the Pre-FAM Period.

(a) Technology Costs—Cloud Hosting Services

The \$10,268,840 in technology costs for cloud hosting services represent costs incurred for services provided by the cloud services provider for the CAT, Amazon Web Services, Inc. ("AWS"), during the Pre-FAM Period.

As part of its proposal for acting as the successor Plan Processor for the CAT, FCAT selected AWS as a subcontractor to provide cloud hosting services. In 2019, after reviewing the capabilities of other cloud services providers, FCAT determined that AWS was the only cloud services provider at that time sufficiently mature and capable of providing the full suite of necessary cloud services for the CAT, including, for example, the security, resiliency and complexity necessary for the CAT computing requirements. The use of cloud hosting services is standard for this type of high-volume data

activity and reasonable and necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT the fees incurred by the Plan Processor for cloud hosting services provided by AWS as FCAT's subcontractor [*sic*] on a monthly basis for the cloud hosting services, and FCAT, in turn, pays such fees to AWS. The fees for cloud hosting services were negotiated by FCAT on an arm's length basis with the goals of managing cost and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the expected volume of data, the breadth of services provided and market rates for similar services. The fees for cloud hosting services during the Pre-FAM Period were paid to FCAT by CAT NMS, LLC²⁵ and subsequently Consolidated Audit Trail, LLC (as previously noted, both entities are referred to generally as "CAT LLC"),²⁶ and FCAT, in turn, paid AWS. CAT LLC was funded via loan contributions by the Participants.²⁷

²⁵ CAT NMS, LLC was formed by FINRA and the U.S. national securities exchanges to implement the requirements of SEC Rule 613 under the Exchange Act. SEC Rule 613 required the SROs to jointly submit to the SEC the CAT NMS Plan to create, implement and maintain the CAT. The SEC approved the CAT NMS Plan on November 15, 2016. CAT NMS Plan Approval Order.

²⁶ On August 29, 2019, the Participants formed a new Delaware limited liability company named Consolidated Audit Trail, LLC for the purpose of conducting activities related to the CAT from and after the effectiveness of the proposed amendment of the CAT NMS Plan to replace CAT NMS, LLC. See Securities Exchange Act Rel. No. 87149 (Sept. 27, 2019), 84 FR 52905 (Oct. 3, 2019).

²⁷ For each of the costs paid by CAT NMS, LLC and Consolidated Audit Trail, LLC as discussed throughout this filing, CAT NMS, LLC and Consolidated Audit Trail, LLC paid these costs via loan contributions by the Participants to CAT NMS, LLC and Consolidated Audit Trail, LLC, respectively.

AWS was engaged by FCAT to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS include storage services, databases, compute services and other services (such as networking, management tools and DevOps tools). AWS also was engaged to provide various environments for CAT, such as development, performance testing, test and production environments.

The cost for AWS services for the CAT is a function of the volume of CAT Data. The greater the amount of CAT Data, the greater the cost of AWS services to the CAT. During the Pre-FAM Period from the engagement of AWS in February 2019 through June 2020, AWS provided cloud hosting services for volumes of CAT Data far in excess of the volume predictions set forth in the CAT NMS Plan. The CAT NMS Plan states, when all CAT Reporters are submitting their data to the CAT, it "must be sized to receive[,] process and load more than 58 billion records per day,"²⁸ and that "[i]t is expected that the Central Repository will grow to more than 29 petabytes of raw, uncompressed data."²⁹ However, the volume of CAT Data for the Pre-FAM Period was far in excess of these predicted levels. By the end of this period, data submitted to the CAT included options and equities Participant Data,³⁰ Phase 2a and Phase 2b Industry Member Data³¹ (including certain linkages), as well as SIP Data,³² reference data and other types of Other

²⁸ Appendix D-4 of the CAT NMS Plan at n.262.

²⁹ Appendix D-5 of the CAT NMS Plan.

³⁰ See Section 6.3(d) of the CAT NMS Plan.

³¹ See Securities Exchange Rel. No. 88702 (Apr. 20, 2020), 85 FR 23075 (Apr. 24, 2020) ("Phased Reporting Exemptive Relief Order") for a description of Phase 2a and Phase 2b Industry Member Data.

³² See Section 6.5(a)(ii) of the CAT NMS Plan.

²⁴ With respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

Data.³³ The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during the Pre-FAM Period.³⁴

	Date range: 3/29/19 to 4/12/20 *	Date range: 4/13/20 to 6/21/20 **
Average Daily Volume in Billions:		
Participant—Equities	5	5
Participant—Options	80	981
Industry Member—Equities		3
Industry Member—Options		0.04
SIP—Options & Equities	64	70
Average Total Daily Volume	149	166
Cumulative Total Events for the Period	3,890	4,990
Total Compute Hours for the Period	*** N/A	5,663,247
Storage Footprint at End of Period (Petabytes)	30.57	47.96

* The Participant Equities in RSA format.

** Start of Industry Member reporting on 4/13/2020.

*** Note that, although there were compute hours during this period, data related to such compute hours are no longer available in current data.

(b) Technology Costs—Operating Fees

The \$21,085,485 in technology costs related to operating fees represent costs incurred with regard to activities of FCAT as the Plan Processor. Operating fees are those fees paid by CAT LLC to FCAT as the Plan Processor to operate and maintain the CAT and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (e.g., management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management as required by the CAT NMS Plan.

FCAT was selected to assume the role of the successor Plan Processor. Prior to this selection, the Participants engaged in discussions with two prior Bidders³⁵ for the successor Plan Processor role. The Operating Committee formed a Selection Subcommittee in accordance with Section 4.12 of the CAT NMS Plan to evaluate and review Bids and to make a recommendation to the Operating Committee with respect to the selection of the successor Plan Processor. In an April 9, 2019 letter to the Commission, the Participants described the reasons for its selection of the successor Plan Processor:

The Selection Subcommittee considered factors including, but not limited to, the following, in recommending FINRA to the Operating Committee as the successor Plan Processor:

a. FINRA's specialized technical expertise and capabilities in the area of broker-dealer technology;

b. The need to appoint a successor Plan Processor with specialized expertise to

develop, implement, and maintain the CAT System in accordance with the CAT NMS Plan and SEC Rule 613;

c. FINRA's detailed proposal in response to CATLLC's recent inquiries; and

d. FINRA's data query and analytics systems demonstration to the Participants.

Based on these and other factors, the Selection Subcommittee determined that FINRA was the most appropriate Bidder to become the successor Plan Processor.³⁶

On February 26, 2019, the Operating Committee (with FINRA recusing itself) voted to select FINRA as the successor Plan Processor pursuant to Section 6.1(t) of the CAT NMS Plan.³⁷ On March 29, 2019, CAT LLC and FCAT (a wholly owned subsidiary of FINRA) entered into a Plan Processor Agreement pursuant to which FCAT would perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT a negotiated monthly fixed price for the operation of the CAT. This fixed price contract was negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity. The operating fees during the Pre-FAM Period were paid to FCAT by CAT LLC.

From March 29, 2019 (the commencement of the Plan Processor

Agreement with FCAT) through June 22, 2020 (the end of the Pre-FAM Period), the Plan Processor's activities with respect to the CAT included the following:

- Commenced user acceptance testing with market data provided by Exegy Incorporated ("Exegy"), a market data provider;³⁸

- Published Technical Specifications and related reporting scenarios documents for Phase 2a, 2b and 2c reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;

- Facilitated testing for Phase 2a and 2b reporting for Industry Members;

- Began developing Technical Specifications and related reporting scenarios documents for Phase 2d reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;

- Published Central Repository Access Technical Specifications, and provided regulator access to test data from Industry Members;

- Facilitated Participant exchanges that support options market makers sending Quote Sent Time to the CAT;

- Facilitated the introduction of OPRA and Options NBBO Other Data to CAT;

- Addressed compliance items, including drafting CAT policies and procedures, and addressing requirements under Regulation SCI;

- Provided support to the Operating Committee, the Compliance

³³ See Appendix C–108 of the CAT NMS Plan.

³⁴ Note that the volume data described in this table does not include CAIS data.

³⁵ The term "Bidder" is defined in Section 1.1 of the CAT NMS Plan.

³⁶ Letter from Michael J. Simon, Chair, CAT NMS, LLC Operating Committee, to Brent J. Fields, Secretary, SEC (Apr. 9, 2019), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection-040919.pdf>.

³⁷ *Id.*

³⁸ The use of Exegy to provide market data, including the costs and market data provided, is discussed below in Section 3(a)(2)(B)(i)(i).

Subcommittee and CAT working groups;

- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with Participants, the SEC and its staff;
- Operated the FINRA CAT Helpdesk, which is the primary source for answers to questions about CAT, including questions regarding: clock synchronization, firm reporting responsibilities, interpretive questions, technical specifications for reporting to CAT and more;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content;³⁹ and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

The \$2,072,908 in technology costs related to CAIS operating fees represent the fees paid for FCAT's subcontractor charged with the development and operation of CAT's Customer and Account Information System ("CAIS"). The CAT is required under the CAT NMS Plan to capture and store Customer Identifying Information and Customer Account Information in a database separate from the transactional database and to create a CAT-Customer-ID for each Customer.

During the Pre-FAM Period, the CAIS-related services were provided by the Plan Processor through the Plan Processor's subcontractor, Kingland Systems Incorporation ("Kingland"). Kingland had experience operating in the securities regulatory technology space, and as a part of its proposal for acting as the Plan Processor for the CAT, FCAT selected Kingland as a subcontractor to provide certain CAIS-related services.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay to the Plan Processor the fees incurred by FCAT for CAIS-related services provided by FCAT through Kingland on

a monthly basis. FCAT negotiated the fees for Kingland's CAIS-related services on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity. The fees for CAIS-related services during the Pre-FAM Period were paid by CAT LLC to FCAT. FCAT, in turn, paid Kingland.

During the Pre-FAM Period, Kingland began development of the CAIS Technical Specifications and the building of CAIS. In addition, Kingland also worked on the build related to the CCID Alternative, an alternative approach to customer information that was not included in the CAT NMS Plan as originally adopted.⁴⁰ Furthermore, Kingland also worked on the acceleration of the reporting of large trader identifiers ("LTID") earlier than originally contemplated during this period, in accordance with exemptive relief granted by the SEC.⁴¹

(d) Technology Costs—Change Request Fees

The technology costs related to change request fees include costs related to certain modifications, upgrades or other changes to the CAT. Change requests are standard practice and necessary to reflect operational changes, including changes related to new market developments, such as new market participants. In general, if CAT LLC determines that a modification, upgrade or other change to the functionality or service is necessary and appropriate, CAT LLC will submit a request for such a change to the Plan Processor. The Plan Processor will then respond to the request with a proposal for implementing the change, including the cost (if any) of such a change. CAT LLC then determines whether to approve the proposed change. The change request costs were paid by CAT LLC to FCAT. During the Pre-FAM Period, CAT LLC incurred costs of \$141,346 related to change requests implemented by FCAT. Such change requests related to a development fee regarding the OPRA and SIP data feeds, and the reprocessing of certain exchange data.⁴²

⁴⁰ For a discussion of the CCID Alternative, see Securities Exchange Act Rel. No. 88393 (Mar. 17, 2020), 85 FR 16152 (Mar. 20, 2020).

⁴¹ Phased Reporting Exemptive Relief Order at 23079–80.

⁴² Note that CAT LLC also has incurred costs related to specific Industry Members (e.g., reprocessing costs related to Industry Member reporting errors).

(e) Technology Costs—Capitalized Developed Technology Costs

This category of costs includes capitalizable application development costs incurred in the development of the CAT. The capitalized developed technology costs for the Pre-FAM Period of \$51,847,150 relate to technology provided by the Initial Plan Processor and the successor Plan Processor.

Initial Plan Processor: Thesys CAT, LLC. The capitalized developed technology costs related to the Initial Plan Processor include costs incurred with regard to testing for Participant reporting, Participant reporting to the CAT, a security assessment of the CAT, and the development of the billing function for the CAT.

On January 17, 2017, the Selection Committee of the CAT NMS Plan selected the Initial Plan Processor, Thesys Technologies, LLC, for the CAT NMS Plan pursuant to Article V of the CAT NMS Plan.⁴³ The Participants utilized a request for proposal ("RFP") to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan, taking into consideration that the Initial Plan Processor had experience operating in the securities regulatory technology space, among other considerations. On April 6, 2017, CAT LLC entered into an agreement with Thesys CAT LLC ("Thesys CAT"), a Thesys affiliate, to perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT. Under the agreement, CAT LLC would pay Thesys CAT a negotiated, fixed price fee for its role as the Initial Plan Processor. Effective January 30, 2019, the Plan Processor Agreement with Thesys CAT was terminated, and FCAT was subsequently selected as the successor Plan Processor.

From January 17, 2017 through January 30, 2019, the time in which the Thesys CAT was engaged for the CAT, but excluding the period from November 15, 2017 through January 30, 2019, the Initial Plan Processor engaged in various activities with respect to the CAT, including preparing iterative drafts of Participant Technical

⁴³ Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf>.

³⁹ The CAT website is <https://www.catnmsplan.com>.

Specifications, Industry Member Technical Specifications and the Central Repository Access Technical Specifications. In addition, Thesys CAT also developed CAT technology, addressed compliance items, including drafting CAT policies and procedures, addressing Regulation SCI requirements, establishing a CAT Compliance Officer and a Chief Information Security Officer, addressed security-related matters for the CAT, and worked towards the initiation of Participant reporting per the Participant Technical Specifications.

Successor Plan Processor: FCAT. The capitalized developed technology costs related to FCAT include: (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, including the completion of go-live functionality related to options ingestion and validation, equities regulatory services agreement query tool updates and unlinked options data query, options linkages release, Industry Member Phase 2a file submission and data integrity (including error corrections), and Industry Member testing, including reporting relationships, ATS order type management, basic reporting statistics, SFTP data integrity feedback and error correction; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including a one-time development fee for a secure analytics workspace, a one-time development fee of an Industry Member connectivity solution, and a one-time development fee for the acceleration of multi-factor authentication; (3) CAIS implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$19,674,463 represent the fees paid for legal services provided by two law firms, Wilmer Cutler Pickering Hale and Dorr LLP ("WilmerHale") and Pillsbury Winthrop Shaw Pittman LLP ("Pillsbury"), during the Pre-FAM Period. The legal costs exclude those costs incurred from November 15, 2017 through November 15, 2018.

Law Firm: WilmerHale. Following the adoption of Rule 613, the Participants determined it was necessary to engage external legal counsel to advise the Participants with respect to corporate and regulatory legal matters related to the CAT, including drafting and developing the CAT NMS Plan. The Participants considered a variety of

factors in their analysis of prospective law firms, including (1) the firm's qualifications, resources and expertise; (2) the firm's relevant experience and understanding of the regulatory matters raised by the CAT and in advising on matters of similar scope; (3) the composition of the legal team; and (4) professional fees. Following a series of interviews, the Participants acting as a consortium determined that WilmerHale was well qualified given the balance of these considerations and engaged WilmerHale in February 2013.

WilmerHale's billing rates are negotiated on an annual basis and are determined with reference to the rates charged by other leading law firms for similar work. The Participants assess WilmerHale's performance and review prospective budgets and staffing plans submitted by WilmerHale on an annual basis. WilmerHale's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading law firms for similar work.

The legal costs for WilmerHale during the Pre-FAM Period included costs incurred from 2013 until June 22, 2020 to address corporate and regulatory legal matters related to the CAT. The legal fees for this law firm during the period from February 2013 until the formation of the CAT NMS, LLC on November 15, 2016 were paid directly by the exchanges and FINRA to WilmerHale. After the formation of CAT NMS LLC, the legal fees were paid by CAT LLC to WilmerHale.

After WilmerHale was engaged in 2013 through the end of the Pre-FAM Period on June 22, 2020 (excluding the legal costs from November 15, 2017 through November 15, 2018), WilmerHale provided legal assistance to the CAT on a variety of matters, including with regard to the following:

- Analyzed various legal matters associated with the Selection Plan, and drafted an amendment to the Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the Development Advisory Group ("DAG");
- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on CAT NMS Plan;
- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint

Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan, and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;

- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan and related filings;
- Negotiated and drafted the plan processor agreements with the Initial Plan Processor and the successor Plan Processor;
- Provided assistance with compliance with Regulation SCI;
- Assisted with clock synchronization study;
- Provided assistance with respect to the establishment of CAT security;
- Drafted exemptive requests from CAT NMS Plan requirements, including with regard to options market maker quotes, Customer IDs, CAT Reporter IDs, linking allocations to executions, CAT reporting timeline, FDIDs, customer and account information, timestamp granularity, small industry members, data facility reporting and linkage, allocation reports, SRO-assigned market participant identifiers and cancelled trade indicators, thereby seeking to implement changes that would be cost effective and benefit Industry Members and Participants;
- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Provided advice regarding CAT policies and procedures;
- Analyzed the SEC's amendment of the CAT NMS Plan regarding financial accountability;
- Provided interpretations of and related to the CAT NMS Plan;
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues; and
- Assisted with third-party vendor agreements.

Law Firm: Pillsbury. The legal costs for CAT during the Pre-FAM Period include costs related to the legal services performed by Pillsbury. The Participants interviewed this law firm as well as other potential law firms to provide legal assistance regarding certain liability matters. After considering a variety of factors in its analysis, including the relevant expertise and fees of the firm, CAT LLC

determined to hire Pillsbury in April 2019. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees were paid by CAT LLC to Pillsbury. The legal costs for Pillsbury during the Pre-FAM Period included costs incurred from April 2019 until June 22, 2020 to address legal matters regarding the agreements between CAT Reporters and CAT LLC concerning certain terms associated with CAT Reporting (the "Reporter Agreement"). During that period, Pillsbury advised CAT LLC regarding applicable legal matters, participated in negotiations between the Participants and Industry Members, participated in meetings with senior SEC staff, the Chairman, and Commissioners, represented CAT LLC and the Participants in an SEC administrative proceeding, and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, litigation involving CAT LLC is an expense of operating the CAT, and, therefore, is appropriately an obligation of both Participants and Industry Members under the CAT Funding Model.

(g) Consulting Costs

The consulting costs of \$17,013,414 represent the fees paid to the consulting firm Deloitte & Touche LLP ("Deloitte") as project manager during the Pre-FAM Period, from October 2012 until June 22, 2020. These consulting costs include costs for advisory services related to the operation of the CAT, and meeting facilitation and communications coordination, vendor support and financial analyses.

To help facilitate project management given the unprecedented complexity and scope of the CAT project, the Participants determined it was necessary to engage a consulting firm to assist with the CAT project in 2012, following the adoption of Rule 613. A variety of factors were considered in the analysis of prospective consulting firms, including (1) the firm's qualifications, resources, and expertise; (2) the firm's relevant experience and understanding of the regulatory issues raised by the CAT and in coordinating matters of similar scope; (3) the composition of the consulting team; and (4) professional fees. Following a series of interviews, the exchanges and FINRA as a consortium determined that Deloitte was well qualified given the balance of

these considerations and engaged Deloitte on October 1, 2012.

Deloitte's fee rates are negotiated on an annual basis and are in line with market rates for this type of specialized consulting work. CAT LLC assesses Deloitte's performance and reviews prospective budgets and staffing plans submitted by Deloitte on an annual basis. Deloitte's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading consulting firms for similar work.

The consulting costs for CAT during the period from 2012 until the formation of the CAT NMS, LLC were paid directly by the Participants to Deloitte. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC to Deloitte. CAT LLC reviewed the consulting fees each month and approved the invoices.

After Deloitte was hired in 2012 through the end of the Pre-FAM Period on June 22, 2020 (excluding the consulting costs from November 15, 2017 through November 15, 2018), Deloitte provided a variety of consulting services, including the following:

- Established and implemented program operations for the CAT project, including the program management [*sic*] office and workstream design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participant's independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, analyzing OATS and CAT requirements, and drafting appendices to the Plan;
- Assisted with cost and funding-related activities for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (*e.g.*, Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;

- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;

- Assisted with industry outreach and communications regarding the CAT, including assistance with industry outreach events, the development of the CAT website, frequently asked questions, and coordinating with the CAT LLC's public relations firm;

- Provided support for updating the SEC on the progress of the development of the CAT;

- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress;

- Coordinated efforts regarding the selection of the successor Plan Processor;

- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor, including support for the Operating Committee and successor Plan Processor for the new role; and

- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$880,419 represent the cost incurred for insurance for CAT during the Pre-FAM Period. Commencing in 2020, CAT LLC performed an evaluation of various potential alternatives for CAT insurance policies, which included engaging in discussions with different insurance companies and conducting cost comparisons of various alternative approaches to insurance. Based on an analysis of a variety of factors, including coverage and premiums, CAT LLC determined to purchase cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance from USI Insurance Services LLC ("USI"). Such policies are standard for corporate entities, and cyber security liability insurance is important for the CAT System. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

In adopting the CAT NMS Plan, the Commission amended the Plan to add a requirement that CAT LLC's financial

statements be prepared in compliance with GAAP, audited by an independent public accounting firm, and made publicly available.⁴⁴ The professional and administration costs include costs related to accounting and accounting advisory services to support the operating and financial functions of CAT, financial statement audit services by an independent accounting firm, preparation of tax returns, and various cash management and treasury functions. In addition, professional and administration costs for the Pre-FAM Period include costs related to the receipt of market data and a security assessment. The costs for these professional and administration services were \$1,082,036 for the Pre-FAM Period.

Financial Advisory Firm: Anchin Accountants & Advisors ("Anchin"). CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT in April 2018. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The hourly fee rates for this firm were in line with market rates for these financial advisory services. The fees for these services were paid by CAT LLC to Anchin.

After Anchin was hired in April 2018 through the end of the Pre-FAM Period on June 22, 2020 (excluding the period from April 2018 through November 15, 2018), Anchin provided a variety of services, including the following:

- Developed, updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Addressed accounting and financial reporting matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC,

including supporting the dissolution of CAT NMS, LLC;

- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Accounting Firm: Grant Thornton LLP ("Grant Thornton"). In February 2020, CAT LLC determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the proposed role given the balance of these considerations. Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services. The fees for these services were paid by CAT LLC to Grant Thornton.

Market Data Provider: Exegy. The professional and administrative costs for the Pre-FAM Period included costs related to the receipt of certain market data for the CAT pursuant to an agreement with the CAT LLC, and then with FCAT. Exegy provided SIP Data required by the CAT NMS Plan.

After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy from July 2018 through March 2019. CAT LLC determined that, unlike certain other vendors, Exegy provided market data that included all data elements required by the CAT NMS Plan.⁴⁵ In addition, the fees were reasonable and in line with market rates for the market data received. Accordingly, the professional and administrative costs for the Pre-FAM Period include the Exegy costs from November 2018 through March

2019. The cost of the market data was reasonable for the market data received. The fees for the market data were paid directly by CAT LLC to Exegy.

Upon the termination of the contract between CAT LLC and Exegy, FCAT entered into a contract with Exegy to purchase the required market data from Exegy in July 2019. All costs under the contract were treated as a direct pass through cost to CAT LLC. Therefore, the fees for the market data were paid by CAT LLC to FCAT, who, in turn, paid Exegy for the market data.

Security Assessment: RSM US LLP ("RSM"). The operating costs for the Pre-FAM Period include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation, and operation of the controls specified by NIST Special Publication 800–53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment. RSM performed the assessment from October 2018 through December 2018. Accordingly, the costs for the Pre-FAM Period include the costs incurred in November and December 2018. The cost for the security assessment were paid directly to RSM by CAT LLC.

(j) Public Relations Costs

The public relations costs of \$224,669 represent the fees paid to public relations firms during the Pre-FAM Period for professional communications services to CAT, including media relations consulting, strategy and execution. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants. Specifically, the public relations firms provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). Public relations services were

⁴⁴ Section 9.2 of the CAT NMS Plan.

⁴⁵ See Section 6.5(a)(ii) of the CAT NMS Plan.

important for various reasons, including monitoring comments made by market participants about CAT and understanding issues related to the CAT discussed on the public record.

The services performed by each of the public relations firms were comparable. The fees for such services were reasonable and in line with market rates. Only one public relations firm was engaged at a time; the three firms were engaged sequentially as the primary public relations contact moved among the three firms during this time period.

Public Relations Firm: Peppercomm, Inc. ("Peppercomm"). The national securities exchanges and FINRA, acting as a consortium, determined to hire the public relations firm Peppercomm in October 2014 and continued to engage this firm through September 2017. The exchanges and FINRA made this engagement decision after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fee rates for this public relations firm were negotiated on an arm's length basis and were in line with

market rates for these types of services. The public relations costs during the period from October 2014 until the formation of the CAT NMS, LLC were paid directly by the exchanges and FINRA to the public relations firm. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC.

Public Relations Firm: Sloane & Company ("Sloane"). CAT LLC determined to hire a new public relations firm, Sloane, in March 2018, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Sloane. CAT LLC continued the engagement with Sloane until February 2020.

Public Relations Firm: Peak Strategies. CAT LLC determined to hire a new public relations firm, Peak Strategies, in March 2020, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market

rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Peak Strategies.

(ii) Historical CAT Costs Incurred in Financial Accountability Milestone Period 1

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 1 of the Financial Accountability Milestones ("FAM Period 1"),⁴⁶ which covers the period from June 22, 2020–July 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 1 of \$6,377,343. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$2,125,781), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBBs paying one-third (\$2,125,781). The following table breaks down Historical CAT Costs 1 for FAM Period 1 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 1 *
Capitalized Developed Technology Costs **	\$1,684,870
Technology Costs	3,996,800
Cloud Hosting Services	2,642,122
Operating Fees	1,099,680
CAIS Operating Fees	254,998
Change Request Fees	
Legal	481,687
Consulting	137,209
Insurance	
Professional and administration	69,077
Public relations	7,700
Total Operating Expenses	6,377,343

* The costs described in this table of costs for FAM Period 1 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$362,121 incurred during FAM Period 1 have been appropriately excluded from the above table.⁴⁷

By the completion of FAM Period 1, CAT LLC was required to implement the reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of equities transaction data and options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.⁴⁸ CAT LLC completed the requirements of FAM Period 1 by July 31, 2020. The following describes the costs for each of the categories for FAM Period 1.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 1 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance

testing, test, and production environments, during the FAM 1 Period. Accordingly, the \$2,642,122 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 1. The fee arrangement for AWS described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. Moreover, CAT LLC continued to believe that AWS's

⁴⁶ Section 11.6(a)(i)(A) of the CAT NMS Plan.

⁴⁷ As discussed above, with respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized

over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁴⁸ See definition of "Initial Industry Member Core Equity and Options Reporting" in Section 1.1 of the CAT NMS Plan.

maturity in the cloud services space as well as the significant cost and time necessary to move the CAT to a different cloud services provider supported the continued engagement of AWS.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the

FAM 1 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well

as SIP Data, reference data and other types of Other Data. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 1.⁴⁹

	Date range: 6/22/20–7/31/20
Average Daily Volume in Billions:	
Participant—Equities	6
Participant—Options	103
Industry Member—Equities	7
Industry Member—Options	0.31
SIP—Options & Equities	74
Average Total Daily Volume	185
Cumulative Total Events for the Period	5,190
Total Compute Hours for the Period	2,612,082
Storage Footprint at End of Period (Petabytes)	57.47

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 1. Accordingly, the \$1,099,680 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 1. The fee arrangement for FCAT described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, FCAT's activities with respect to the CAT included the following:

- Published iterative drafts of draft Technical Specifications for Phase 2d, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Published iterative drafts of CAIS Technical Specifications, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Facilitated Industry Member reporting of Quote Sent Time on Options Market Maker quotes;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;

• Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;

- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 1. Accordingly, the \$254,998 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 1. The fee arrangement for Kingland described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications

and build related to CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

CAT LLC did not incur costs related to change requests during FAM Period 1.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 1 of \$1,684,870 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include: (1) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including separate production and industry test entitlements, and reprocessing of exchange event timestamps; (2) implementation fees; and (3) license fees.

(f) Legal Costs

The legal costs of \$481,687 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 1.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 1 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to WilmerHale. During FAM Period 1,

⁴⁹ Note that the volume data described in this table does not include CAIS data.

WilmerHale provided legal assistance to the CAT including with regard to the following:

- Assisted with the development of the CAT funding model and drafted related amendments and fee filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, verbal activity, options market maker quote sent time, TRF linkages, and allocations;
- Provided interpretations related to CAT NMS Plan requirements, including the Financial Accountability Milestone amendment;
- Assisted with compliance with Regulation SCI;
- Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the drafting of the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Assisted with communications and presentations for the industry regarding CAIS;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for Compliance Subcommittee, including with regard to response to OCIE examinations and the annual assessment;
- Provided guidance regarding CAT technical specifications;
- Assisted with third-party vendor agreements; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to Pillsbury. During FAM Period 1, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(g) Consulting Costs

The consulting costs of \$137,209 represent the fees paid to Deloitte as

project manager during FAM Period 1. CAT LLC continued to employ Deloitte during FAM Period 1 based on, among other things, their expertise and cumulative experience with the CAT. The fee rates for Deloitte during FAM Period 1 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 1 were paid by CAT LLC to the consulting firm. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 1, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

Although insurance was in effect during FAM Period 1, CAT LLC did not incur costs related to insurance during FAM Period 1.

(i) Professional and Administration Costs

Financial Advisory Firm: Anchin. The professional and administration costs of \$69,077 represent the fees paid to Anchin during FAM Period 1. CAT LLC continued to employ Anchin during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these type of financial advisory services. The fees for these services during FAM Period 1 were paid by CAT LLC to Anchin. During FAM Period 1, Anchin provided a variety of services, including the following:

- Maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;

• Reviewed vendor invoices and documentation in support of cash disbursements;

- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups; and
- Prepared monthly and quarterly financial statements.

(j) Public Relations Costs

The public relations costs of \$7,700 represent the fees paid to Peak Strategies during FAM Period 1. CAT LLC continued to employ Peak Strategies during FAM Period 1 based on, among other things, their expertise and history with the project. The fee rates for this firm were reasonable and in line with market rates for these types of services. The fees for these services during FAM Period 1 were paid by CAT LLC to Peak Strategies. During FAM Period 1, Peak Strategies continued to provide professional communications services to CAT LLC, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(iii) Historical CAT Costs Incurred in Financial Accountability Milestone Period 2

Historical CAT Costs 1 would include costs incurred by CAT LLC and already

funded by Participants during Period 2 of the Financial Accountability Milestones (“FAM Period 2”),⁵⁰ which covers the period from August 1, 2020—December 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 2 of \$42,976,478. The

Participants would remain responsible for one-third of this cost (which they have previously paid) (\$14,325,493), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$14,325,493) and CEBBs paying one-

third (\$14,325,493). The following table breaks down Historical CAT Costs 1 for FAM Period 2 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 2*
Capitalized Developed Technology Costs**	\$6,761,094
<i>Technology Costs</i>	31,460,033
Cloud Hosting Services	20,709,212
Operating Fees	9,108,700
CAIS Operating Fees	1,590,298
Change Request Fees	51,823
Legal	2,766,644
Consulting	532,146
Insurance	976,098
Professional and administration	438,523
Public relations	41,940
Total Operating Expenses	42,976,478

* The costs described in this table of costs for FAM Period 2 were calculated based upon CAT LLC’s review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$1,892,505 incurred during FAM Period 2 have been appropriately excluded from the above table.⁵¹

By the completion of FAM Period 2, CAT LLC was required to implement the following with regard to the CAT:

(a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, CustomerID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission.⁵²

CAT LLC completed the requirements of FAM Period 2 by December 31, 2020.

The following describes the costs for each of the categories for FAM Period 2.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 2 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production environments, during the FAM 2 Period. Accordingly, the \$20,709,212 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 2. The fee arrangement for AWS described above with regard to the Pre-FAM

Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the FAM 2 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well as SIP Data, and Other Data, including reference data. In addition, Industry Members began reporting LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 2.⁵³

	Date range: 8/1/20–12/31/20
Average Daily Volume in Billions:	
Participant—Equities	6
Participant—Options	116
Industry Member—Equities	11
Industry Member—Options	0.98
SIP—Options & Equities	80
Average Total Daily Volume	282

⁵⁰ Section 11.6(a)(i)(B) of the CAT NMS Plan.

⁵¹ As discussed above, with respect to certain costs that were “appropriately excluded,” such excluded costs relate to the amortization of capitalized technology costs, which are amortized

over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁵² See definition of “Full Implementation of Core Equity Reporting Requirements” in Section 1.1 of the CAT NMS Plan.

⁵³ Note that the volume data described in this table does not include CAIS data.

	Date range: 8/1/20–12/31/20
Cumulative Total Events for the Period	2,170
Total Compute Hours for the Period	15,660,392
Storage Footprint at End of Period (Petabytes)	114.59

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 2. Accordingly, the \$9,108,700 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 2. The fee arrangement for FCAT described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, FCAT's activities with respect to the CAT included publishing the Technical Specifications for Phase 2d and overseeing the reporting of firm to firm and intrafirm linkages by Industry Members. In addition, FCAT also continued to engage in the following activities during FAM Period 2:

- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the development and implementation of the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 2. Accordingly, the \$1,590,298 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 2. The fee arrangement for Kingland described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

During FAM Period 2, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 2, CAT incurred costs of \$51,823 related to a change request regarding the addition of functionality for exchange Participants to report rejected messages to the CAT.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 2 of \$6,761,094 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to separate production and industry test

entitlements, market maker reference data, and back-processing of exchange exception logic; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$2,766,644 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 2.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 2 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to WilmerHale. During FAM Period 2, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, allocations, exchange activity, OTQT, initial data validation, error corrections and recordkeeping;
- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs and technical specifications;
- Provided support for the Operating Committee, Compliance Subcommittees, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6 of the CAT NMS Plan;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for the Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
- Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
- Provided guidance regarding SRO rule filings for the retirement of systems;
- Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;

- Assisted with third-party vendor agreements (e.g., with regard to Anchin, Grant Thornton and insurance policies);
- Assisted with change requests; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to Pillsbury. During FAM Period 2, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted and filed a proposed amendment to the CAT NMS Plan regarding liability matters. As discussed above, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(g) Consulting Costs

The consulting costs of \$532,146 represent the fees paid to Deloitte as project manager during FAM Period 2. CAT LLC continued to employ Deloitte during FAM Period 2 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 2 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 2 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 2, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT,

Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$976,098 represent the fees paid for insurance during FAM Period 2. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$438,523 represent the fees paid to Anchin and Grant Thornton for financial services provided during FAM Period 2.

Financial Advisory Firm: Anchin. CAT LLC continued to engage Anchin during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these types of financial advisory services. The fees for these services during FAM Period 2 were paid by CAT LLC to Anchin. During FAM Period 2, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated [sic] bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from the Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;

- Supported the annual financial statement audit by an independent auditor; and

- Reviewed historical costs from inception.

Accounting Firm: Grant Thornton. CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 2 based on, among other things, its expertise and cumulative knowledge of CAT LLC. CAT LLC continued to believe that Grant Thornton was well qualified for its role and its fee rates were in line with market rates for these accounting services. The fees for these services during FAM Period 2 were paid by CAT LLC to Grant Thornton. During FAM Period 2, Grant Thornton performed a financial statement audit for CAT LLC as an independent accounting firm.

(j) Public Relations Costs

The public relations costs of \$41,940 represent the fees paid to Peak Strategies during FAM Period 2. CAT LLC continued to employ Peak Strategies during FAM Period 2 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 2 were paid by CAT LLC to Peak Strategies. During FAM Period 2, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(iv) Historical CAT Costs Incurred in Financial Accountability Milestone Period 3

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 3 of the Financial Accountability Milestones ("FAM Period 3"),⁵⁴ which

covers the period from January 1, 2021–December 31, 2021. Historical CAT Costs 1 would include costs for FAM Period 3 of \$144,415,268. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$48,138,423), and Industry Members would be

responsible for the remaining two-thirds, with CEBBs paying one-third (\$48,138,423) and CEBSSs paying one-third (\$48,138,423). The following table breaks down Historical CAT Costs 1 for FAM Period 3 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 3*
Capitalized Developed Technology Costs**	\$10,763,372
Technology Costs	123,639,402
Cloud Hosting Services	94,574,759
Operating Fees	23,106,091
CAIS Operating Fees	5,562,383
Change Request Fees	396,169
Legal	6,333,248
Consulting	1,408,209
Insurance	1,582,714
Professional and administration	595,923
Public relations	92,400
Total Operating Expenses	144,415,268

* The costs described in this table of costs for FAM Period 3 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$5,108,044 incurred during FAM Period 3 have been appropriately excluded from the above table.⁵⁵

By the completion of FAM Period 3, CAT LLC was required to implement the following requirements with regard the CAT:

(a) reporting to the Order Audit Trail System ("OATS") is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or

order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)–(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met.⁵⁶

CAT LLC completed the requirements of FAM Period 3 by December 31, 2021. The following describes the costs for each of the categories for FAM Period 3.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 3 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production

environments, during the FAM 3 Period. Accordingly, the \$94,574,759 in technology costs for cloud hosting services represents costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 3. The fee arrangement for AWS described above for the earlier periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During FAM Period 3, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a, Phase 2b, Phase 2c and Phase 2d Industry Member Data (including certain linkages), SIP Data, Other Data, including reference data, and LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 3.⁵⁷

	Date range: 1/1/21 to 4/25/21	Date range: 4/26/21 to 12/31/21*
Average Daily Volume in Billions:		
Participant—Equities*	9	9
Participant—Options	135	136
Industry Member—Equities	20	19

⁵⁴ Section 11.6(a)(i)(C) of the CAT NMS Plan.

⁵⁵ As discussed above, with respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized

over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁵⁶ See definition of "Full Availability and Regulatory Utilization of Transactional Database Functionality" in Section 1.1 of the CAT NMS Plan.

⁵⁷ Note that the volume data described in this table does not include CAIS data.

	Date range: 1/1/21 to 4/25/21	Date range: 4/26/21 to 12/31/21 *
Industry Member—Options	2	2
SIP—Options & Equities	129	137
Average Total Daily Volume	297	304
Cumulative Total Events for the Period	7,480	5,310
Total Compute Hours for the Period	15,860,304	33,487,318
Storage Footprint at End of Period (Petabytes)	180.22	284.62

* Start of Participant Equities in CAT format and SIP Equities on 4/26/21.

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 3. Accordingly, the \$23,106,091 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 3. The fee arrangement for FCAT described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, FCAT's activities with respect to the CAT included the following:

- Facilitated Phase 2c and Phase 2d testing for Industry Members;
- Oversaw creation of linkages of the lifecycle of order events based on the received data through Phase 2d;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement with FCAT discussed above,

Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 3. Accordingly, the \$5,562,383 in technology costs for CAIS operating fees represents costs incurred for services provided by Kingland during FAM Period 3. The fee arrangement for Kingland described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs. The full CAIS Technical Specifications were published during FAM Period 3.

(d) Technology Costs—Change Request Fees

During FAM Period 3, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 3, CAT incurred costs of \$396,169 related to change requests, including the following: (1) the addition of functionality for exchange Participants to report rejected messages to the CAT; (2) the migration of MIRS query engine to AWS to reduce operational costs and increase resiliency; and (3) updating the Participant Technical Specifications to allow for two-sided Participant option quote reporting.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 3 of \$10,763,372 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor, including the transition from equity data received by FINRA pursuant to various regulatory services agreements between FINRA and

Participant exchanges to the equity CAT Data, and the completion of the Industry Member Phase 2d options manual and complex orders go-live requirements; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to off-exchange volume concentration, Participant 24-hour trading and an external metastore; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$6,333,248 represent the fees paid for legal services provided by three law firms, WilmerHale, Pillsbury and Covington & Burling LLP (“Covington”) during FAM Period 3.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 3 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to WilmerHale. During FAM Period 3, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements, including, for example, verbal activity regarding Phase 2c cutover, error reports, error corrections, Phase 2d Reporting, unique Order-ID on internal route events, reporting addresses, recordkeeping, and unique CCID for foreign customers;
- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs, CAIS requirements, ADF, and technical specifications;
- Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6(c) of the CAT NMS Plan;

- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
- Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
- Provided guidance regarding SRO rule filings for the retirement of systems;
- Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;
- Provided assistance with change requests;
- Provided guidance and regulatory support for litigation regarding the response to the SEC's exemptive orders;
- Assisted with communications with the industry, including CAT Alerts and presentations;
- Provided guidance regarding the confidentiality of CAT Data, including third-party information requests;
- Assisted with cost management analysis and proposals; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to Pillsbury. During FAM Period 3, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During this period, Pillsbury advised CAT LLC regarding applicable legal matters, reviewed and responded to comment letters regarding the proposed Plan amendment, participated in meetings with senior SEC staff, responded to comments submitted following the SEC's April 6, 2021 order instituting proceedings,⁵⁸ and assessed legal matters regarding the SEC's October 29, 2021 order denying the proposed Plan amendment.⁵⁹

Law Firm: Covington. CAT LLC hired Covington for litigation with the SEC regarding certain exemptive orders related to the CAT, including orders issued in December 2020.⁶⁰ CAT LLC

interviewed this law firm as well as other potential law firms, considering a variety of factors in its analysis for choosing legal assistance, including the relevant expertise and fees of the potential lawyers. CAT LLC approved the engagement of Covington in January 2021. The fee rates for this law firm, which were calculated based on hourly rates, were in line with market rates for specialized services. The legal fees for FAM Period 3 for this firm were paid by CAT LLC to Covington.

After Covington was hired in 2021 through the end of 2021, the firm provided legal assistance regarding the litigation with the SEC regarding the 2020 Orders. These services included researching, drafting, and filing motions to stay the 2020 orders and related materials in proceedings before the SEC, as well as researching, drafting, and filing petitions for judicial review of the 2020 Orders in proceedings before the U.S. Court of Appeals for the D.C. Circuit. Covington oversaw ongoing litigation proceedings on these matters, and also supported WilmerHale with respect to settlement negotiations with the SEC staff regarding the 2020 Orders.

In addition to these services, CAT LLC engaged Covington in November 2021 to provide assistance with respect to the SEC's disapproval of CAT NMS Plan amendments concerning a proposed limitation on liability in the event of a data breach or similar event. Covington provided advice concerning CAT's response to the SEC's disapproval order. This work accounted for a minority of Covington's fees in 2021.⁶¹

(g) Consulting Costs

The consulting costs of \$1,408,209 represent the fees paid to Deloitte as project manager during FAM Period 3. CAT LLC continued to employ Deloitte during FAM Period 3 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 3 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 3 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 3, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$1,582,714 represent the fees paid for insurance during FAM Period 3. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$595,923 represent the fees paid to Anchin and Grant Thornton for financial services during FAM Period 3.

Financial Advisory Firm: Anchin. CAT LLC continued to employ Anchin during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these financial advisory services. The fees for these services during FAM Period 3 were paid by CAT LLC to Anchin. During FAM Period 3, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated *[sic]* bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;

⁵⁸ Securities Exchange Act Rel. No. 91487 (Apr. 6, 2021), 86 FR 19054 (Apr. 12, 2021).

⁵⁹ Securities Exchange Act Rel. No. 93484 (Oct. 29, 2021), 86 FR 60933 (Nov. 4, 2021).

⁶⁰ See Securities Exchange Act Rel. No. 90688 (Dec. 16, 2020), 85 FR 83634 (Dec. 22, 2020); and Securities Exchange Act Rel. No. 90689 (Dec. 16, 2020), 85 FR 83667 (Dec. 22, 2020) (collectively, the "2020 Orders").

⁶¹ As discussed above with regard to Pillsbury's work on liability matters, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, such activity is a necessary part of the operation of the CAT.

- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Accounting Firm: Grant Thornton. CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 3 based on, among other things, their expertise and cumulative knowledge of CAT LLC. CAT LLC determined that Grant Thornton was well qualified for its role and that its fixed fee rates were in line with market rates for these accountant services. The fees for these services during FAM Period 3 were paid by CAT LLC to Grant Thornton. During FAM Period 3, Grant Thornton provided audited financial statements for CAT LLC.

(j) Public Relations Costs

The public relations costs of \$92,400 represent the fees paid to Peak Strategies during FAM Period 3. CAT LLC continued to employ Peak Strategies during FAM Period 3 based on, among other things, their expertise

and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 3 were paid by CAT LLC to Peak Strategies. During FAM Period 3, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (*e.g.*, congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (*e.g.*, amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(v) Excluded Costs

Historical CAT Costs 1 would not include three categories of CAT costs (“Excluded Costs”): (1) \$14,749,362 of costs related to the termination of the relationship with the Initial Plan Processor; (2) \$48,874,937, which are all CAT costs incurred from November 15, 2017 through November 15, 2018; and (3) \$19,628,791, which are costs paid to

the the Initial Plan Processor from November 16, 2018 through February 2019 when the relationship with the Initial Plan Processor was concluded. The Participants would remain responsible for 100% of these costs, which total \$83,253,090. CAT LLC determined to exclude these Excluded Costs from Historical CAT Costs 1 because these costs relate to the delay in the start of reporting to the CAT and the conclusion of the relationship with the Initial Plan Processor.⁶²

(a) Costs related to Conclusion of Relationship With Initial Plan Processor

First, Historical CAT Costs 1 would not include \$14,749,362 of costs related to the conclusion of the relationship with the Initial Plan Processor. Such costs include costs related to the American Arbitration Association, the legal assistance of Pillsbury with regard to the arbitration with the Initial Plan Processor, and the settlement costs related to the arbitration with the Initial Plan Processor. The Participants would remain responsible for 100% of these \$14,749,362 in costs.

(b) Costs Incurred From November 15, 2017 Through November 15, 2018

Second, Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018. CAT LLC determined to exclude all costs during this one-year period of \$48,874,937 from fees charged to Industry Members due to the delay in the start of reporting to the CAT. The Participants would remain responsible for 100% of these \$48,874,937 in costs. The following table breaks down these costs into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Excluded costs for November 15, 2017–November 15, 2018*
Capitalized Developed Technology Costs	\$37,852,083
<i>Technology Costs</i> .....	.....
Cloud Hosting Services .....	.....
Operating Fees .....	.....
CAIS Operating Fees .....	.....
Change Request Fees .....	.....
Legal	6,143,278
Consulting	4,452,106
Insurance .....	.....
Professional and administration	340,145
Public relations	87,325

⁶² In approving the CAT Funding Model, the Commission states that the proposed exclusion of the first two categories of Excluded Costs “is reasonable in the Commission’s view because it would not require all costs incurred by the Participants to be recovered from Industry Members

through the Historical CAT Assessment, specifically excluding those costs related to the delay in the start of reporting to the CAT and costs related to the conclusion of the relationship with the Initial Plan Processor.” CAT Funding Model Approval Order at 62663. In addition to the first two

categories of Excluded Costs, CAT LLC is now proposing a third category of Excluded Costs that would exclude all costs paid to the Initial Plan Processor after November 15, 2018.

Operating expense	Excluded costs for November 15, 2017–November 15, 2018 *
Total Operating Expenses	48,874,937

* The costs described in this table of Excluded Costs were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

The following provides additional detail regarding the Excluded Costs.

(I) Technology Costs—Cloud Hosting Services, Operating Fees, CAIS Operating Fees and Change Request Fees

CAT LLC did not incur technology costs related to the categories of cloud hosting services, operating fees, CAIS operating fees or change requests during the period from November 15, 2017 through November 15, 2018.

(II) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for the period from November 15, 2017 through November 15, 2018 include capitalizable application development costs of \$37,852,083 incurred in the development of the CAT by the Initial Plan Processor. Such costs include development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Initial Plan Processor. Such costs include costs related to Industry Member technical specifications for orders and transactions, the system security plan, testing and production for Participant CAT reporting, third-party security assessment and response, query portal, onboarding of the Chief Information Security Officer, and ingestion of FINRA TRF data and FINRA data related to halts and corporate actions.

(III) Legal Costs

The legal costs of \$6,143,278 represent the fees paid to WilmerHale for legal services from November 15, 2017 through November 15, 2018. During this period, WilmerHale provided legal assistance to the CAT including with regard to the following:

- Provided legal support for the governance of the CAT, including governance support for the Operating Committee, Advisory Committee, Compliance Subcommittee, and CAT working groups;
- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan;
- Provided assistance related to CAT security;

- Drafted exemptive requests, including requests related to PII;
- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Provided interpretations of and related to the CAT NMS Plan;
- Provided advice with regard to regulator access to the CAT;
- Assisted with the Plan Processor transition;
- Provided assistance regarding communications with the industry regarding the CAT;
- Provided advice regarding Customer Account Information and PII;
- Provided support for litigation related to SEC exemptive orders; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretative and implementation issues.

(IV) Consulting Costs

The consulting costs of \$4,452,106 represent the fees paid to Deloitte for their role as project manager for the CAT from November 15, 2017 through November 15, 2018. During this period, Deloitte engaged in the following activities with respect to the CAT:

- Implemented program operations for the CAT project;
- Provided governance support to the Operating Committee, including support for Subcommittees and working groups of the Operating Committee (*e.g.*, Compliance Subcommittee, Cost and Funding Working Group, Technical Working Group, Industry Outreach Working Group, Security Working Group and Steering Committee);
- Assisted with cost and funding issues for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress.

(V) Insurance

CAT LLC did not incur costs related to insurance during the period from November 15, 2017 through November 15, 2018.

(VI) Professional and Administration Costs

The professional and administration costs of \$340,145 represent the fees paid to Anchin, Exegy and RSM from November 15, 2017 through November 15, 2018.

Financial Advisory Firm: Anchin.

From the commencement of its engagement [*sic*] in April 2018 through November 15, 2018, Anchin engaged in the following activities with respect to the CAT:

- Developed, updated and maintained internal controls;
 - Provided cash management and treasury functions;
 - Facilitated bill payments;
 - Provided monthly bookkeeping;
 - Reviewed vendor invoices and documentation in support of cash disbursements;
 - Provided accounting research and consultations on various accounting, financial reporting and tax matters;
 - Addressed not-for-profit tax and accounting considerations;
 - Prepared tax returns;
 - Addressed various accounting, financial reporting and operating inquiries from Participants;
 - Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
 - Addressed accounting and financial matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC, including supporting the dissolution of CAT NMS, LLC;
 - Supported compliance with the CAT NMS Plan;
 - Worked with and provided support to the Operating Committee and various CAT working groups;
 - Prepared monthly, quarterly and annual financial statements;
 - Supported the annual financial statement audits by an independent auditor;
 - Reviewed historical costs from inception; and
 - Provided accounting and financial information in support of SEC filings.
- Market Data Provider: Exegy.* From July 2018 through November 15, 2018, CAT LLC purchased market data from Exegy (as described in more detail above).
- Security Assessment: RSM.* From October 2018 through November 15,

2018, CAT LLC incurred costs for RSM's performance of a security assessment (as described in more detail above).

(VII) *Public Relations Costs*

The public relations costs of \$87,325 represent the fees paid to Sloane from November 15, 2017 through November 15, 2018. From the commencement of its engagement [*sic*] in March 2018 through November 15, 2018, Sloane provided professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, Sloane provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (*e.g.*, congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (*e.g.*, amendments to the CAT NMS Plan).

(c) *Costs Paid to Initial Plan Processor from November 16, 2018 Through February 2019*

Third, Historical CAT Costs 1 would not include the \$19,628,791 in costs paid to the Initial Plan Processor from November 16, 2018 through February 2019 when CAT LLC's relationship with the Initial Plan Processor concluded. CAT LLC determined that Historical CAT Costs 1 would not include any fees paid to the Initial Plan Processor after November 15, 2017,⁶³ which was the date by which Participants were required to begin reporting to the CAT.⁶⁴ As discussed above, the Participants determined that Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Initial Plan Processor costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Initial Plan Processor costs incurred after November 15, 2018 are the \$19,628,791 in costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial

Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these \$19,628,791 in costs.

(C) *Historical Recovery Period 1*

Under the CAT NMS Plan, the Operating Committee is required to reasonably establish the length of the Historical Recovery Period used in calculating each Historical Fee Rate based upon the amount of the Historical CAT Costs to be recovered by the Historical CAT Assessment, and to describe the reasons for its length.⁶⁵ The Historical Recovery Period used in calculating the Historical Fee Rate may not be less than 24 months or more than five years.⁶⁶ The Operating Committee has determined to establish a Historical Recovery Period 1 of 24 months for Historical CAT Assessment 1.

The Operating Committee determined that the length of Historical Recovery Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans to the Participants in a timely fashion. The Operating Committee determined that 24 months for Historical Recovery Period 1 would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to Section 31.⁶⁷ In addition, in establishing a Historical Recovery Period of 24 months, the Operating Committee recognized that the total costs for Historical CAT Assessment 1 were less than the total costs for 2022 and 2023,⁶⁸ and therefore it would be reasonable and appropriate to recover costs subject to this filing over an approximate two-year period.

The length of the Historical Recovery Period 1 and the reasons for its length are provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a

fee filing for a Historical CAT Assessment.⁶⁹

(D) *Projected Total Executed Equivalent Share Volume*

The calculation of Historical Fee Rate 1 also requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for Historical Recovery Period 1. Under the CAT NMS Plan, the Operating Committee is required to "reasonably determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each Historical Recovery Period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months."⁷⁰ The Operating Committee is required to base its projection on the prior twelve months, but it may use its discretion to analyze the likely volume for the upcoming year. Such discretion would allow the Operating Committee to use its judgment when estimating projected total executed equivalent share volume if the volume over the prior twelve months was unusual or otherwise unfit to serve as the basis of a future volume estimate.⁷¹

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. The Operating Committee has determined to calculate the projected total executed equivalent share volume for the 24 months of Historical Recovery Period 1 by doubling the executed equivalent share volume for the prior 12 months. The Operating Committee determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has remained relatively constant. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395, the executed equivalent share volume for 2022 was 4,039,821,841,560.31, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6. Accordingly, the projected total executed equivalent share volume for Historical Recovery Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.⁷²

The projected total executed equivalent share volume of all transactions in Eligible Securities for

⁶³ As discussed below, CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. See Section 3(a)(10)(E) below.

⁶⁴ The SEC approved the CAT NMS Plan on November 15, 2016, and Participant reporting was required to begin on the first anniversary of this date, November 15, 2017. See Section 6.3 of the CAT NMS Plan and CAT NMS Plan Approval Order.

⁶⁵ Section 11.3(b)(i)(D)(I) and Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

⁶⁶ Section 11.3(b)(i)(D)(I) of the CAT NMS Plan. In the CAT Funding Model Approval Order, the SEC stated that "[i]n the Commission's view, it is reasonable for the Operating Committee to establish the length of the Historical Recovery Period to be no less than 24 months and no more than five years." CAT Funding Model Approval Order at 62664.

⁶⁷ As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model at 62682.

⁶⁸ The total CAT costs for 2022 were approximately \$186 million and the total CAT costs for 2023 were approximately \$233 million.

⁶⁹ Section 11.3(b)(iii)(B)(II)(C) of the CAT NMS Plan.

⁷⁰ Section 11.3(b)(i)(E) of the CAT NMS Plan.

⁷¹ CAT Funding Model Approval Order at 62664.

⁷² This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

Historical Recovery Period 1 and a description of the calculation of the projection is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.⁷³

(E) Historical Fee Rate 1

Historical Fee Rate 1 would be calculated by dividing Historical CAT Costs 1 by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1, as described in detail above.⁷⁴ Specifically, Historical Fee Rate 1 would be calculated by dividing \$318,059,819 by 7,961,507,681,810.42. As a result, the Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. Historical Fee Rate 1 is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide the Historical Fee Rate in a fee filing for a Historical CAT Assessment.⁷⁵

(3) Past CAT Costs and Participants

Participants would not be required to pay any fees associated with Historical CAT Assessment 1 as the Participants previously have paid all Past CAT Costs. The CAT NMS Plan explains that:

Because Participants previously have paid Past CAT Costs via loans to the Company, Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs and such other additional Past CAT Costs as reasonably determined by the Operating Committee will be paid by the cancellation of loans made to the Company on a pro rata basis based on the outstanding loan amounts due under the loans.⁷⁶

The CAT NMS Plan further states that "Historical CAT Assessments are designed to recover two-thirds of the Historical CAT Costs."⁷⁷

⁷³ Section 11.3(b)(iii)(B)(II)(D) of the CAT NMS Plan.

⁷⁴ In approving the CAT Funding Model, the Commission stated that "[t]he calculation of the Historical Fee Rate 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 is reasonable." CAT Funding Model Approval Order at 62664.

⁷⁵ Section 11.3(b)(iii)(B)(II)(A) of the CAT NMS Plan.

⁷⁶ Section 11.3(b)(ii) of the CAT NMS Plan.

⁷⁷ *Id.* In approving the CAT Funding Model, the Commission stated that "[t]he proposed allocation of the Historical CAT Assessment solely to CEBBs and CEBs, and ultimately Industry Members, is reasonable. The Historical CAT Assessment will still be divided into thirds," as the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made to the Company. CAT Funding Model Approval Order at 62666.

(4) Monthly Fees

CEBBs and CEBs would be required to pay fees for Historical CAT Assessment 1 on a monthly basis for the period in which Historical CAT Assessment 1 is in effect.⁷⁸ A CEBB or CEBs's fee for each month would be calculated based on the transactions in Eligible Securities executed by the CEBB or CEBs from the prior month.⁷⁹ Proposed paragraph (a)(1)(A) of the fee schedule would state that each CAT Executing Broker would receive its first invoice in November 2024, and "would receive an invoice each month thereafter in which Historical CAT Assessment 1 is in effect." Proposed paragraph (a)(1)(B) of the fee schedule would state that "Consolidated Audited Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis." In addition, proposed paragraph (b)(1) of the fee schedule states that each CEBB and CEBs is required to pay its CAT fees "each month."

(5) Actual Recovery Period for Historical CAT Assessment 1

The CAT NMS Plan states that, "[n]otwithstanding the length of the Historical Recovery Period used in calculating the Historical Fee Rate, each Historical CAT Assessment calculated using the Historical Fee Rate will remain in effect until all Historical CAT Costs for the Historical CAT Assessment are collected."⁸⁰ Accordingly, Historical CAT Assessment 1 will remain in effect until all Historical CAT Costs 1 have been collected. The actual recovery period for Historical CAT Assessment 1 may be shorter or longer than Historical Recovery Period 1 depending on the actual executed equivalent share volumes during the time that Historical CAT Assessment 1 is in effect.⁸¹

(6) Consolidated Audit Trail Funding Fees

To implement Historical CAT Assessment 1, a new section would be added to the Exchange's fee schedule for "Consolidated Audit Trail Funding Fees", and it would include the proposed paragraphs described below.

⁷⁸ See Section 11.3(b)(iii)(A) of the CAT NMS Plan.

⁷⁹ See proposed paragraph (a)(1)(B) of the fee schedule.

⁸⁰ Section 11.3(b)(i)(D)(II) of the CAT NMS Plan.

⁸¹ In approving the CAT Funding Model, the Commission stated that, "[i]n the Commission's view, it is reasonable for Industry Members to be charged a Historical CAT Assessment until all Historical CAT Costs for the Historical CAT Assessment are collected." CAT Funding Model Approval Order at 62665.

(A) Fee Schedule for Historical CAT Assessment 1

The CAT NMS Plan states that:

Each month in which a Historical CAT Assessment is in effect, each CEBB and each CEBs shall pay a fee for each transaction in Eligible Securities executed by the CEBB or CEBs 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 reasonably determined pursuant to paragraph (b)(i) of this Section 11.3.⁸²

Accordingly, based on the factors discussed above, the Exchange proposes to add paragraph (a)(1) to the Consolidated Audit Trail Funding Fees section of its fee schedule. Proposed paragraph (a)(1) would state the following:

(A) Each CAT Executing Broker shall receive its first invoice for Historical CAT Assessment 1 in November 2024, which shall set forth the Historical CAT Assessment 1 fees calculated based on transactions in October 2024, and shall receive an invoice for Historical CAT Assessment 1 for each month thereafter in which Historical CAT Assessment 1 is in effect.

(B) Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis. Each month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer ("CEBB") and/or the CAT Executing Broker for the Seller ("CEBS") (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of \$0.000013 per executed equivalent share.

(C) Historical CAT Assessment 1 will remain in effect until \$212,039,879.34 (two-thirds of Historical CAT Costs 1) are collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time. Consolidated Audit Trail, LLC will provide notice when Historical CAT Assessment 1 will no longer be in effect.

(D) Each CAT Executing Broker shall be required to pay each invoice for Historical CAT Assessment 1 in accordance with paragraph (b).

As noted in the Plan amendment for the CAT Funding Model, "as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the Historical Fee Rate by one-third and describing the relevant number of

⁸² Section 11.3(b)(iii)(A) of the CAT NMS Plan.

decimal places for the fee rate.⁸³ Accordingly, proposed paragraph (a)(1)(B) of the fee schedule would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 of \$0.00003994969693072937 by one-third, and rounding the result to 6 decimal places.⁸⁴ The Operating Committee determined to use six decimal places to balance the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

The proposed language in paragraph (a)(1)(A) of the fee schedule would describe when CAT Executing Brokers would receive their first monthly invoice for Historical CAT Assessment 1. Specifically, CAT Executing Brokers would receive their first monthly invoice for Historical CAT Assessment 1 in November 2024 and the fees set forth in that invoice would be calculated based on transactions executed in the prior month, that is, transactions executed in October 2024. The payment for the first invoice would be required within 30 days after the receipt of the first invoice (unless a longer period is indicated), as described in paragraph (b)(2) of the fee schedule.

Proposed paragraph (a)(1)(A) of the fee schedule also would describe the monthly cadence of the invoices for Historical CAT Assessment 1. Specifically, after the first invoices are provided to CAT Executing Brokers in November 2024, invoices will be sent to CAT Executing Brokers each month thereafter while Historical CAT Assessment 1 is in effect.

Proposed paragraph (a)(1)(B) of the fee schedule would describe the invoices for Historical CAT Assessment 1. Proposed paragraph (a)(1)(B) of the fee schedule would state that “Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis.” Proposed paragraph (a)(1)(B) of the fee schedule also would describe the fees to be set forth in the invoices for Historical CAT Assessment 1. Specifically, it would state that “[e]ach month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer (“CEBB”) and/or the CAT Executing Broker for the Seller (“CEBS”) (as

applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of \$0.000013 per executed equivalent share.”

Furthermore, proposed paragraph (a)(1)(C) of the fee schedule would describe how long Historical CAT Assessment 1 would remain in effect. It would state that “Historical CAT Assessment 1 will remain in effect until \$212,039,879.34 (two-thirds of Historical CAT Costs 1) are collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time.” This proposed paragraph would further state that “Consolidated Audit Trail, LLC will provide notice when Historical CAT Assessment 1 will no longer be in effect.”

Historical CAT Assessment 1 will be assessed for all transactions executed in each month through the end of the month in which two-thirds of Historical CAT Costs 1 are assessed, and then CAT LLC will provide notice that Historical CAT Assessment 1 is no longer in effect. Since Historical CAT Assessment 1 is a monthly fee based on transaction volume from the prior month, Historical CAT Assessment 1 may collect more than two-thirds of Historical CAT Costs 1. To the extent that occurs, any excess money collected during the final month in which Historical CAT Assessment 1 is in effect will be used to offset future fees and/or to fund the reserve for the CAT.

Finally, proposed paragraph (a)(1)(D) of the fee schedule sets forth the requirement for the CAT Executing Brokers to pay the invoices for Historical CAT Assessment 1. It would state that “[e]ach CAT Executing Broker shall be required to pay each invoice for Historical CAT Assessment 1 in accordance with paragraph (b).”

(B) Manner of Payment

Paragraph (b)(1) to the “Consolidated Audit Trail Funding Fees” section of its fee schedule describes the manner of payment of Industry Member CAT fees. Paragraph (b)(1) states that “[e]ach CAT Executing Broker shall pay its CAT fees as required pursuant to paragraph (a) each month to the Consolidated Audit Trail, LLC in the manner prescribed by the Consolidated Audit Trail, LLC.” The CAT NMS Plan requires the Operating Committee to establish a system for the collection of CAT fees.⁸⁵ The Plan Processor has established a billing

system for CAT fees.⁸⁶ Therefore, the Exchange proposes to require CAT Executing Brokers to pay Historical CAT Assessment 1 in accordance with such system.

(C) Failure to Pay CAT Fees

The CAT NMS Plan further states that:

Participants shall require each Industry Member to pay all applicable fees authorized under this Article XI within thirty (30) days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due (as determined in accordance with the preceding sentence), such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (a) the Prime Rate plus 300 basis points; or (b) the maximum rate permitted by applicable law.⁸⁷

Accordingly, the Exchange previously has added this requirement to the Exchange’s fee schedule. Specifically, paragraph (b)(2) of the fee schedule states:

Each CAT Executing Broker shall pay the CAT fees required pursuant to paragraph (a) within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If a CAT Executing Broker fails to pay any such CAT fee when due, such CAT Executing Broker shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of (i) the Prime Rate plus 300 basis points, or (ii) the maximum rate permitted by applicable law.

The requirements of paragraph (b)(2) would apply to Historical CAT Assessment 1.

(7) Historical CAT Assessment Details

The CAT NMS Plan states that:

Details regarding the calculation of a CAT Executing Broker’s Historical CAT Assessment will be provided upon request to such CAT Executing Broker. At a minimum, such details would include each CAT Executing Broker’s executed equivalent share volume and corresponding fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.⁸⁸

⁸⁶ The billing process and system are described in CAT Alert 2023-02 as well as the CAT FAQs related to the billing of CAT fees, the Industry Member CAT Reporter Portal User Guide, the FCAT Industry Member Onboarding Guide, the FCAT Connectivity Supplement for Industry Members and the CAT Billing Webinars (dated Sept. 28, 2023, and Nov. 7, 2023), each available on the CAT website.

⁸⁷ Section 11.4 of the CAT NMS Plan.

⁸⁸ Section 11.3(a)(iv)(A) of the CAT NMS Plan.

⁸³ CAT Funding Model Approval Order at 62658, n.658.

⁸⁴ Dividing \$0.00003994969693072937 by three equals \$0.00001331656564357646. Rounding \$0.00001331656564357646 to six decimal places equals \$0.000013.

⁸⁵ Section 11.4 of the CAT NMS Plan.

Such information would provide CEBBs and CEBBs with the ability to understand the details regarding the calculation of their Historical CAT Assessment.⁸⁹ CAT LLC will provide CAT Executing Brokers with these details regarding the calculation of their Historical CAT Assessments on their monthly invoice for the Historical CAT Assessment.

In addition, CAT LLC will make certain aggregate statistics regarding Historical CAT Assessments publicly available. Specifically, the CAT NMS Plan states that, “[f]or each Historical CAT Assessment, at a minimum, CAT LLC will make publicly available the aggregate executed equivalent share volume and corresponding aggregate fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise on an exchange, and (3) by buy-side transactions and sell-side transactions.”⁹⁰ Such aggregate statistics will be available on the CAT website.

Furthermore, CAT LLC will make publicly available on the CAT website the total amount invoiced each month that Historical CAT Assessment 1 is in effect as well as the total amount invoiced for Historical CAT Assessment 1 for all months since its commencement. CAT LLC also will make publicly available on the CAT website the total costs to be collected from Industry Members for Historical CAT Assessment 1. By reviewing statistics regarding how much has been invoiced and how much remains to be invoiced for Historical CAT Assessment 1, Industry Members would have sufficient information to reasonably track how much longer Historical CAT Assessment 1 is likely to be in place.

(8) Implementation Assistance

To assist Industry Members with compliance with the commencement of Historical CAT Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices prior to the commencement of Historical CAT

Assessment 1. Specifically, CAT Executing Brokers have received mock invoices based on transaction data each month since November 2023. The mock invoices are in the same form as the actual, payable invoices, including both the relevant transaction data and the corresponding fee. However, no payments have been required in response to such mock invoices; they have been used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data has provided CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended to facilitate the payment of Historical CAT Assessment 1.

(9) Financial Accountability Milestones

The CAT NMS Plan states that “[n]o Participant will make a filing with the SEC pursuant to Section 19(b) of the Exchange Act regarding any Historical CAT Assessment until any applicable Financial Accountability Milestone described in Section 11.6 has been satisfied.”⁹¹ The CAT NMS Plan further states that “in all filings submitted by the Participants to the Commission under Section 19(b) of the Exchange Act, to establish or implement Post-Amendment Industry Member Fees pursuant to this Article, . . . the Participants shall clearly indicate whether such fees are related to Post-Amendment Expenses incurred during Period 1, Period 2, Period 3, or Period 4.”⁹² As discussed in detail below, all applicable Financial Accountability Milestones for Historical CAT Assessment 1—that is, Period 1, Period 2 and Period 3 of the Financial Accountability Milestones—have been satisfied. Furthermore, as discussed below, this filing clearly indicates that Historical CAT Assessment 1 relates to Post-Amendment Expenses incurred during Periods 1, 2 and 3 of the Financial Accountability Milestones.

(A) Period 1 of the Financial Accountability Milestones

In accordance with Section 11.6(b) of the CAT NMS Plan, Historical CAT Assessment 1 seeks to recover costs that are related to “all fees, costs, and expenses (including legal and consulting fees, costs, and expenses) incurred by or for the Company in connection with the development,

implementation and operation of the CAT from the effective date of [Section 11.6 of the CAT NMS Plan] until such time as Full Implementation of CAT NMS Plan Requirements has been achieved”⁹³ (“Post-Amendment Expenses”) incurred during FAM Period 1. FAM Period 1 began on June 22, 2020, the effective date of Section 11.6 of the CAT NMS Plan, and concluded on July 31, 2020, the date of Initial Industry Member Core Equity and Options Reporting. Section 1.1 of the CAT NMS Plan defines “Initial Industry Member Core Equity and Options Reporting” as:

The reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of both: (a) equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information; and (b) options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants’ Quarterly Progress Reports.⁹⁴ As indicated by the Participants’ Quarterly Progress Report for the third quarter of 2020,⁹⁵ Initial Industry Member Core Equity and Option Reporting was completed on schedule on July 22, 2020, which is prior to the July 31, 2020 deadline.

Under the FAM Period 1 requirement of Initial Industry Member Core Equity and Options Reporting, Industry Members—excluding Small Industry Members that are not OATS reporters—were required to report two categories of data to the CAT: equities transaction data and options transaction data (both excluding Customer Account Information, Customer-ID, and Customer Identifying Information) by July 31, 2020. Pursuant to exemptive relief provided by the Commission, the Commission authorized the Participants’ Compliance Rules to allow core equity reporting for Industry Members (Phase 2a) to begin on June 22, 2020 and core options reporting for Industry Members (Phase 2b) to begin on July 20, 2020.⁹⁶

⁸⁹ Section 11.6 of the CAT NMS Plan.

⁹⁰ The Quarterly Progress Reports are available at <https://www.catnmsplan.com/implementation-plan>.

⁹¹ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020) and Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021).

⁹² See Phased Reporting Exemptive Relief Order. Under the CAT NMS Plan as adopted, the Participants were required, through their Compliance Rules, to require their Large Industry Members to commence reporting Industry Member

Continued

⁸⁹ In approving the CAT Funding Model, the Commission stated that, “[i]n the Commission’s view, providing CAT Execut[ing] Brokers information regarding the calculation of their CAT Fees will aid in transparency and permit CAT Execut[ing] Brokers to confirm the accuracy of their invoices for CAT Fees.” CAT Funding Model Approval Order at 62667.

⁹⁰ Section 11.3(a)(iv)(B) of the CAT NMS Plan. In approving the CAT Funding Model, the Commission stated that “[t]he publication of the aggregate executed equivalent share volume and aggregate fee is appropriate because it would allow Participants and CAT Executing Brokers a high-level validation of executed volume and fees.” CAT Funding Model Approval Order at 62667.

⁹¹ Section 11.3(b)(iii)(B)(III) of the CAT NMS Plan.

⁹² Section 11.6(b) of the CAT NMS Plan.

In adopting the FAMs, the Commission stated that the equities transaction reporting required for FAM Period 1 “is consistent with the functionality that the Participants describe on the CAT NMS Plan website as ‘Production Go-Live for Equities 2a file submission and data integrity validations.’”⁹⁷ The Phase 2a Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order, and includes the following data related to Eligible Securities that are equities:

- All events and scenarios covered by OATS, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions;

- Reportable Events for: (1) proprietary orders, including market maker orders, for Eligible Securities that are equities; (2) electronic quotes in listed equity Eligible Securities (*i.e.*, NMS stocks) sent to a national securities exchange or FINRA’s Alternative Display Facility (“ADF”); (3) electronic quotes in unlisted Eligible Securities (*i.e.*, OTC Equity Securities) received by an Industry Member operating an interdealer quotation system (“IDQS”); and (4) electronic quotes in unlisted Eligible Securities sent to an IDQS or other quotation system not operated by a Participant or Industry Member;
- Firm Designated IDs (“FDIDs”), which Industry Members must report to the CAT as required by Sections 6.3(d)(i)(A) and 6.4(d)(ii)(C) of the CAT NMS Plan;

- Industry Members would be required to report all street side representative orders, including both agency and proprietary orders and mark such orders as representative orders, except in certain limited exceptions as described in the Industry Member Technical Specifications;

- The link between the street side representative order and the order being represented when: (1) the representative order was originated specifically to represent a single order received either from a customer or another broker-

dealer; and (2) there is (a) an existing direct electronic link in the Industry Member’s system between the order being represented and the representative order and (b) any resulting executions are immediately and automatically applied to the represented order in the Industry Member’s system;

- Manual and Electronic Capture Time for Manual Order Events;
- Special handling instructions for the original receipt or origination of an order during Phase 2a; and
- When routing an order, whether the order was routed as an intermarket sweep order (“ISO”).

In Phase 2a, Industry Members were not required to report modifications of a previously routed order in certain limited instances, nor were they required to report a cancellation of an order received from a Customer after the order has been executed.⁹⁸

The Quarterly Progress Report for the third quarter of 2020 states that “Interim Step: Production Go-Live for Equities 2a file submission and data integrity validation (Large Industry Members and Small OATS Reporters)” was completed on June 22, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of “equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information” was completed on June 22, 2020.

In adopting the FAMs, the Commission stated that the options transaction reporting required for FAM Period 1 is “consistent with the functionality that the Participants describe on the CAT NMS Plan website as ‘Production Go-Live for Options 2b file submission and data integrity validations.’”⁹⁹ The Phase 2b Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order, and includes the Industry Member Data related to Eligible Securities that are options and related to simple electronic option orders, excluding electronic paired option orders. A simple electronic option order is an order to buy or sell a single option that is not related to or dependent on any other transaction for pricing and timing of execution that is either received or routed electronically by an Industry Member. Electronic receipt of an order is defined as the initial receipt of an order by an Industry Member in electronic form in standard format directly into an order handling or

execution system. Electronic routing of an order is the routing of an order via electronic medium in standard format from one Industry Member’s order handling or execution system to an exchange or another Industry Member. An electronic paired option order is an electronic option order that contains both the buy and sell side that is routed to another Industry Member or exchange for crossing and/or price improvement as a single transaction on an exchange. Responses to auctions of simple orders and paired simple orders would be reportable in Phase 2b. Furthermore, combined orders in options would be treated in Phase 2b in the same way as equity representative orders are treated in Phase 2a. A combined order would mean, as permitted by SRO rules, a single, simple order in Listed Options created by combining individual, simple orders in Listed Options from a customer with the same exchange origin code before routing to an exchange. During Phase 2b, the single combined order sent to an exchange must be reported and marked as a combined order, but the linkage to the underlying orders is not required to be reported until Phase 2d.¹⁰⁰

The Quarterly Progress Report for the third quarter of 2020 states that “Interim Step: Production Go-Live for Options 2b file submission and data integrity validations” was completed on July 20, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of “options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information” was completed on July 20, 2020.

As discussed above, the Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from June 22, 2020 through July 31, 2020. The total costs for this period, as discussed above, are \$6,377,343. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBBs paying one-third (\$2,125,781).

Data to the Central Repository by November 15, 2018, and to require their Small Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2019. Sections 6.7(a)(v) and (vi) of the CAT NMS Plan. The SEC granted exemptive relief from these provisions of the CAT NMS Plan to allow for the phased implementation of Industry Member reporting via five phases addressing the reporting requirements for Phase 2a Industry Member Data, Phase 2b Industry Member Data, Phase 2c Industry Member Data, Phase 2d Industry Member Data and Phase 2e Industry Member Data.

⁹⁷ Securities Exchange Act Rel. No. 88890 (May 15, 2020), 85 FR 31322, 31330 n.97 (May 22, 2020) (“FAM Adopting Release”).

⁹⁸ Phased Reporting Exemptive Relief Order at 23076–78.

⁹⁹ FAM Adopting Release at 31330, n.98.

¹⁰⁰ Phased Reporting Exemptive Relief Order at 23078.

(B) Period 2 of the Financial Accountability Milestones

Historical CAT Assessment 1 seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 2. FAM Period 2 began on August 1, 2020, and concluded on December 31, 2020, the date of the Full Implementation of Core Equity Reporting. Section 1.1 of the CAT NMS Plan defines “Full Implementation of Core Equity Reporting” as:

the point at which: (a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants’ Quarterly Progress Reports. As indicated by the Participants’ Quarterly Progress Report for the fourth quarter of 2020,¹⁰¹ Full Implementation of Core Equity Reporting was completed on schedule by December 31, 2020.

Specifically, the Full Implementation of Core Equity Reporting requires the satisfaction of two prongs. The first prong requires Participants to have fully implemented the first phase of equities transaction reporting for Industry Members (excluding Small Industry Members that are not OATS reporters) at an Error Rate of less than 5%. In addition, equities transaction data produced by the CAT at this stage must also be sufficiently interlinked so as to permit full analysis of an order’s lifecycle across the national market, excluding full linkage of representative orders. As CAT LLC reported on its Quarterly Progress Reports, Phase 2a was fully implemented as of October 26,

2020, including intra-firm, inter-firm, national securities exchange, and trade reporting facilities linkages.¹⁰² In addition to the reporting of Phase 2a Industry Member Data as described above with regard to FAM Period 1, the following linkage data was added to the CAT as described in the Quarterly Progress Reports for the third and fourth quarter of 2020:

- “Production Go-Live for Equities 2a Intrafirm Linkage validations” was completed on 7/27/2020;¹⁰³
- “Production Go-Live for Firm to Firm Linkage validations for Equities 2a (Large Industry Members and Small OATS Reporters)” was completed on October 26, 2020; and
- “Production Go-Live for Equities 2a Exchange and TRF Linkage validations (Large Industry Members and Small OATS Reporters)” was completed on October 26, 2020.

Furthermore, as CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2020, the average overall error rate for Phase 2a Industry Member Data was less than 5% as of December 31, 2020. The average overall error rate was calculated by dividing the compliance errors by processed records.

The second prong of this FAM requires that the equities transaction data collected by the CAT at this stage be made available to regulators through two basic query tools required by the CAT NMS Plan—a targeted query tool that will enable regulators to retrieve data via an online query screen with a variety of predefined selection criteria, and a user-defined direct query tool that will provide regulators with the ability to query data using all available attributes and data sources.¹⁰⁴ As CAT LLC reported on its Quarterly Progress Reports, the query tool functionality incorporating the data from Phase 2a was available to the Participants and the Commission as of December 31, 2020.¹⁰⁵

The Commission has determined that the Participants have sufficiently

complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.¹⁰⁶

As discussed above, Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from August 1, 2020 through December 31, 2020. The total costs for this period, as discussed above, are \$42,976,478. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remain [*sic*] two-thirds, with CEBBs paying one-third (\$14,325,492.70) and CEBBs paying one-third (\$14,325,492.70).

(C) Period 3 of the Financial Accountability Milestones

Historical CAT Assessment 1 seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 3. FAM Period 3 began on January 1, 2021, and concluded on December 31, 2021, the date of the Full Availability and Regulatory Utilization of Transactional Database Functionality. Section 1.1 of the CAT NMS Plan defines “Full Availability and Regulatory Utilization of Transactional Database Functionality” as:

the point at which: (a) reporting to the Order Audit Trail System (“OATS”) is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or

¹⁰² For a description of the requirements of Phases 2a, see Phased Reporting Exemptive Relief Order.

¹⁰³ Q3 2020 Quarterly Progress Report (Oct. 20, 2021).

¹⁰⁴ Section 6.10(c)(i)(A) of the CAT NMS Plan requires the Plan Processor to “provide Participants and the SEC with access to all CAT Data stored in the Central Repository” via an “online targeted query tool.” Appendix D, Sections 8.1.1–8.1.3 of the CAT NMS Plan describes the required functionality associated with this regulatory tool. Appendix D, Section 8.2.1 describes the required functionality associated with a user-defined direct query tool that will “deliver large sets of data that can then be used in internal surveillance or market analysis applications.”

¹⁰⁵ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020); Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021); and Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰¹ Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰⁶ Securities Exchange Act Rel. No. 98848 (Nov. 2, 2023), 88 FR 77128, 77129 n.13 (Nov. 8, 2023) (“Settlement Exemptive Order”).

order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)–(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants' Quarterly Progress Reports. As indicated by the Participants' Quarterly Progress Report for the fourth quarter of 2021,¹⁰⁷ Full Availability and Regulatory Utilization of Transactional Database Functionality was completed on schedule by December 31, 2021.

Specifically, the "Full Availability and Regulatory Utilization of Transactional Database Functionality" requires the satisfaction of five prongs. The first prong requires that reporting to the Order Audit Trail System ("OATS") is no longer required for new orders. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021,¹⁰⁸ FINRA retired OATS effective September 1, 2021.¹⁰⁹ Accordingly, after the retirement of OATS, reporting to OATS was no longer required.

In addition to Phase 2a and Phase 2b Industry Member Data, the second and third prongs of "Full Availability and Regulatory Utilization of Transactional Database Functionality" require Industry Member reporting of Phase 2c Industry Member Data and Phase 2d Industry Member Data. The Phase 2c Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order. That Order states that "Phase 2c Industry Member Data" is Industry Member Data related to Eligible Securities that are equities other than Phase 2a Industry Member Data, Phase 2d Industry Member Data, or Phase 2e Industry Member Data. Specifically, the Phase 2c Industry Member Data includes Industry Member Data that is related to Eligible Securities that are equities and that is related to: (1) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (2)

quotes in unlisted Eligible Securities sent to an IDQS operated by a CAT Reporter (reportable by the Industry Member sending the quotes) (except for quotes reportable in Phase 2d, as discussed below); (3) electronic quotes in listed equity Eligible Securities (*i.e.*, NMS stocks) that are not sent to a national securities exchange or FINRA's Alternative Display Facility; (4) reporting changes to client instructions regarding modifications to algorithms; (5) marking as a representative order any order originated to work a customer order in price guarantee scenarios, such as a guaranteed VWAP; (6) flagging rejected external routes to indicate a route was not accepted by the receiving destination; (7) linkage of duplicate electronic messages related to a Manual Order Event between the electronic event and the original manual route; (8) special handling instructions on order route reports (other than the ISO, which is required to be reported in Phase 2a); (9) quote identifier on trade events; (10) reporting of LTIDs (if applicable) for accounts with Reportable Events that are reportable to CAT as of and including Phase 2c; (11) reporting of date account opened or Account Effective Date (as applicable) for accounts and reporting of a flag indicating the Firm Designated ID type as account or relationship; (12) order effective time for orders that are received by an Industry Member and do not become effective until a later time; (13) the modification or cancellation of an internal route of an order; and (14) linkages to the customer orders(s) being represented for representative order scenarios, including agency average price trades, net trades, aggregated orders, and disconnected Order Management System ("OMS")—Execution Management System ("EMS") scenarios, as required in the Industry Member Technical Specifications.¹¹⁰

Phase 2c Industry Member Data also includes electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are equities and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: (1) an equity bid or offer is displayed publicly or has been communicated (a) for listed securities to the ADF operated by FINRA; or (b) for unlisted equity securities to an "interdealer quotation system," as defined in FINRA Rule 6420(c); or (2) an equity bid or offer which is accessible

electronically by customers or other market participants and is immediately actionable for execution or routing; *i.e.*, no further manual or electronic action is required by the responder providing the quote in order to execute or cause a trade to be executed). With respect to OTC Equity Securities, OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter (other than such an IDQS that does not match and execute orders) are reportable by the Industry Member sending them in Phase 2c. Accordingly, any response to a request for quote or other form of solicitation response provided in a standard electronic format (*e.g.*, FIX) that meets this quote definition (*i.e.*, an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing) would be reportable in Phase 2c.¹¹¹

The Phase 2d Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order. "Phase 2d Industry Member Data" is Industry Member Data that is related to Eligible Securities that are options other than Phase 2b Industry Member Data, Industry Member Data that is related to Eligible Securities that are equities other than Phase 2a Industry Member Data or Phase 2c Industry Member Data, and Industry Member Data other than Phase 2e Industry Member Data. Phase 2d Industry Member Data includes with respect to the Eligible Securities that are options: (1) simple manual orders; (2) electronic and manual paired orders; (3) all complex orders with linkages to all CAT-reportable legs; (4) LTIDs (if applicable) for accounts with Reportable Events for Phase 2d; (5) date account opened or Account Effective Date (as applicable) for accounts with an LTID and flag indicating the Firm Designated ID type as account or relationship for such accounts; (6) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (7) the modification or cancellation of an internal route of an order; and (8) linkage between a combined order and the original customer orders. Phase 2d Industry Member Data also would include electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are options and are provided by an Industry Member to other market participants off a national securities exchange under the following

¹⁰⁷ Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹⁰⁸ *Id.*

¹⁰⁹ Securities Exchange Act Rel. No. 92239 (June 23, 2021), 86 FR 34293 (June 29, 2021).

¹¹⁰ Phase Reporting Exemptive Relief Order at 23078–79.

¹¹¹ *Id.* at 23079.

conditions: a listed option bid or offer which is accessible electronically by customers or other market participants and is immediately actionable (*i.e.*, no further action is required by the responder providing the quote in order to execute or cause a trade to be executed). Accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (*e.g.*, FIX) that meets this definition is reportable in Phase 2d for options.¹¹²

Phase 2d Industry Member Data also includes with respect to Eligible Securities that are options or equities (1) receipt time of cancellation and modification instructions through Order Cancel Request and Order Modification Request events; (2) modifications of previously routed orders in certain instances; and (3) OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter that does not match and execute orders. In addition, subject to any exemptive or other relief, Phase 2d Industry Member Data will include verbal or manual quotes on an exchange floor or in the over-the-counter market, where verbal quotes and manual quotes are defined as bids or offers in Eligible Securities provided verbally or that are provided or received other than via a CAT Reporter's order handling and execution system (*e.g.*, quotations provided via email or instant messaging).¹¹³

The Quarterly Progress Report for the fourth quarter of 2021 states that "Phase 2a was fully implemented as of October 26, 2020;" "Phase 2b was fully implemented as of January 4, 2021;" "Phase 2c was implemented as of April 26, 2021;" and "Phase 2d was fully implemented as of December 13, 2021."¹¹⁴ The Quarterly Progress Reports for 2021 provide additional detail regarding the implementation of these steps including the following:

- "Production Go-Live for Equities 2c reporting requirements (Large Industry Members)" was completed on April 26, 2021;
- "LTID Account Information Reporting Go-Live for Phases 2a, 2b and 2c (Large Industry Members)" was completed on April 26, 2021;
- "FCAT Plan Processor creates linkages of the lifecycle of order events based on the received data through Phase 2d Production Go-Live for Options 2d reporting requirements

(Large Industry Members)" was completed on December 13, 2021;

- "Production Go-Live for Options 2d reporting requirements (Large Industry Members)" was completed on December 13, 2021;
- "Production Go-Live for Options 2b reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "Production Go-Live for Equities 2c reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "Production Go-Live for Options 2d reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "LTID Account Information Reporting Go-Live for Phases 2d (Large Industry Members)" was completed on December 13, 2021; and
- "LTID Account Information Reporting Go-Live for Phases 2a, 2b, 2c and 2d (Small Industry Members)" was completed on December 13, 2021.¹¹⁵

The third prong of "Full Availability and Regulatory Utilization of Transactional Database Functionality" also imposes an Error Rate requirement of 5% or less. The Quarterly Progress Report for the fourth quarter of 2021 states the average overall error rate was less than 5% as of December 31, 2021. The average overall error rate was calculated by dividing the compliance errors by processed records.

The fourth prong of "Full Availability and Regulatory Utilization of Transactional Database Functionality" requires that the data collected by the CAT at this stage be made available to regulators through an online targeted query tool and a user-defined direct query tool. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021, the query tool functionality incorporating the data from Phases 2a, 2b, 2c and 2d was available to the Participants and to the Commission as of December 31, 2021.¹¹⁶

The fifth prong requires the requirements of Section 6.10(a) of the CAT NMS Plan to have been met. Section 6.10(a) of the CAT NMS Plan requires the Participants to use the tools described in Appendix D to "develop and implement a surveillance system, or enhance existing surveillance systems, reasonably designed to make use of the

consolidated information contained in the Central Repository." The Exchange implemented a surveillance system, or enhanced existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository as of December 31, 2021 in accordance with Section 6.10(a) of the CAT NMS Plan.¹¹⁷

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.¹¹⁸

As discussed above, Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from January 1, 2021 through December 31, 2021. The total costs for this period, as discussed above, are \$144,415,268. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remain [*sic*] two-thirds, with CEBBs paying one-third (\$48,138,422.70) and CEBBs paying one-third (\$48,138,422.70).

(D) Additional Considerations Related to the Financial Accountability Milestones

As discussed above, CAT LLC has satisfied the Financial Accountability Milestones ("FAMs") for Periods 1 through 3.¹¹⁹ As discussed below, none of the circumstances related to NIA Electronic RFQ Responses, the 2023 Verbal Quotes Exemption, the November 2023 Order, or Executing Broker reporting, affect the conclusion that the FAMs for Periods 1 through 3 were satisfied in a timely fashion.

(i) NIA Electronic RFQ Responses

CAT LLC does not believe that the exemptive relief relating to the reporting of electronic responses for quotes

¹¹⁷ See Q1 2021 Quarterly Progress Report (Apr. 30, 2021); Q2 2021 Quarterly Progress Report (July 27, 2021); Q3 2021 Quarterly Progress Report (Nov. 1, 2021); Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁸ Settlement Exemptive Order at 77129 n.13.

¹¹⁹ In May 2020, the Commission adopted amendments to the CAT NMS Plan that establish four Financial Accountability Milestones and set target deadlines by which these milestones must be achieved. These amendments also reduce the amount of any fees, costs, and expenses that may be recovered from Industry Members if the Participants fail to meet the target deadlines. FAM Adopting Release.

¹¹² *Id.*

¹¹³ *Id.* at 23079–80.

¹¹⁴ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁵ See Q2 2021 Quarterly Progress Report (July 27, 2021); and Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁶ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

(“RFQs”) that are not immediately actionable (“NIA Electronic RFQ Responses”) affect the conclusion that FAMs 1 through 3 have been satisfied. The only reason CAT LLC pursued this relief is because certain Industry Members introduced concerns that NIA Electronic RFQ Responses could be considered “orders” reportable pursuant to Rule 613(j)(8) and some Industry Members were not prepared to report such orders to CAT. Thus, the relief was requested on behalf of Industry Members. CAT LLC itself has not taken any position on whether NIA Electronic RFQ Responses are “orders,” as the definition of “order” is an SEC rule and the trading processes for NIA Electronic RFQ Responses are the Industry Members’, not those of the Participants or CAT LLC. Accordingly, CAT LLC stated in its letter that “Industry Members must determine whether trading interest falls within the definition of an ‘order’ for CAT purposes. To the extent an NIA Electronic RFQ Response is not considered an ‘order’ as defined in Rule 613(j)(8) and the CAT NMS Plan, it would not be reportable to CAT.”¹²⁰

Only “orders” as defined in SEC Rule 613(j)(8) are reportable to CAT. There is no agreement across the industry or among regulators as to whether NIA Electronic RFQ Responses are “orders” reportable to CAT. Certain Industry Members have raised the question as to whether NIA Electronic RFQ Responses are orders, but others have argued that they are not orders under Rule 613(j)(8).¹²¹ Indeed, members of the Advisory Committee, which CAT LLC relies upon for guidance with regard to Industry Member issues, have not had a definitive view on whether NIA Electronic RFQ Responses are orders. As Rule 613(j)(8) is an SEC rule, CAT LLC believes that only the SEC can provide a definitive determination as to if, and under what circumstances, an NIA Electronic RFQ Response is considered an “order” reportable to CAT. The issue has persisted for some time. As a result, CAT LLC filed an exemptive request regarding NIA Electronic RFQ Responses for clarity on the interpretive issue. As recently as April 2024, Industry Members have re-raised this issue stating that the SEC agrees that it must provide additional guidance on this interpretive issue to resolve the

CAT reporting issue for NIA Electronic RFQ Responses:

As further discussed in the prior FIF letters, even if the Commission had the legal authority to require the reporting of NIA RFQ responses to CAT without an amendment to Rule 613, the Commission has not provided guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT. In subsequent discussions with industry members, Commission representatives have agreed that, prior to NIA RFQ responses being reportable to CAT, it would be necessary for the Commission to provide further guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT.¹²²

On May 20, 2024, the Commission granted CAT LLC’s request for exemptive relief from certain CAT reporting requirements pertaining to NIA Electronic RFQ Responses to the extent such responses are considered “orders” reportable pursuant to Rule 613(j)(8).¹²³ The Commission, however, did not provide additional guidance regarding the conditions under which NIA Electronic RFQ Responses would be reportable to CAT. The Commission stated in its exemptive order that “[t]o the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for the Financial Accountability Milestones, provided that any conditions of the exemption are satisfied.”¹²⁴

When the Commission proposed the FAMs, the Participants expressed concern that, “by conditioning the ability of CAT LLC and the Participants to collect Post-Amendment Industry Member Fees on factors dependent on the efforts of Industry Members, the Commission’s proposals inadvertently establish a perverse incentive for Industry Members to devote less than maximum efforts to comply with their obligations related to the CAT as they will pay less fees in such instances.”¹²⁵ The Participants further warned that “Industry Members may request or require unanticipated reporting delays to address Industry Member implementation issues or concerns,” but that, “[f]aced with financial penalties for missed deadlines, the Participants may not be able to fully address legitimate industry concerns or accommodate requests for delays with

respect to future deadlines.”¹²⁶ CAT LLC has engaged in good faith to help address NIA Electronic RFQ Responses and other concerns relevant to the ability of Industry Members to meet their CAT reporting obligations. CAT LLC should not be penalized financially for seeking in good faith to resolve a difficult interpretive issue for the benefit of Industry Members.

(ii) 2023 Verbal Quotes Exemption

CAT LLC does not believe that the Commission’s May 19, 2023 order granting temporary exemptive relief relating to certain verbal floor activity and unstructured verbal and electronic upstairs activity (the “2023 Verbal Quotes Exemption”) affects the conclusion that FAMs 1 through 3 have been satisfied. The 2023 Verbal Quotes Exemption, which was issued on May 19, 2023, is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. The relevant exemption for this time period is the Commission’s November 12, 2020 order, which granted relief for the same activity through July 31, 2023 (the “2020 Verbal Quotes Order”).¹²⁷ The Commission has stated that, “to the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for a Financial Accountability Milestone, provided that the conditions of the exemption are satisfied.”¹²⁸ Here, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3.¹²⁹

¹²⁶ *Id.* at 10.

¹²⁷ Securities Exchange Act Rel. No. 90405, 85 FR 73544 (Nov. 18, 2020) (the “2020 Verbal Quotes Exemption”).

¹²⁸ *See, e.g.*, Securities Exchange Act Rel. No. 89051 (June 11, 2020), 85 FR 36631, 36633 (June 17, 2020). The straightforward reading of the Commission’s statement is that compliance with the conditions of an exemption will be measured as of the deadline for a particular FAM Period.

¹²⁹ As a condition to the 2020 Verbal Quotes Exemption, the Commission required that the Participants provide a written status update on the reporting of these quotes and orders by July 31, 2022, including the estimated costs of reporting these quotes and orders and an implementation plan for the reporting of these quotes and orders. As noted, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3. In any event, on June 3, 2022, the Participants provided the required written status update. *See* Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (June 3, 2022).

¹²⁰ *See* Letter from Brandon Becker, Chair, CAT NMS Plan Operating Committee to Vanessa Countryman, Secretary, Commission (Feb. 13, 2024) at 2.

¹²¹ *See, e.g.*, Letter from Howard Meyerson, Managing Director, FIF, to Sai Rao, Counsel for Trading and Markets, Office of the Chair (Apr. 25, 2024).

¹²² *Id.*

¹²³ Securities Exchange Act Rel. No. 100181 (May 20, 2024), 89 FR 45715 (May 23, 2024).

¹²⁴ *Id.* at n.11.

¹²⁵ *See* Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission at 9 (Oct. 28, 2019).

(iii) November 2023 Order

CAT LLC does not believe that the Commission's November 2, 2023 order granting relief from certain CAT NMS Plan requirements (the "November 2023 Order") affects the conclusion that FAMs 1 through 3 have been satisfied. The November 2023 Order is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. As described in the November 2023 Order, the relevant exemptive orders for this time period were issued on December 16, 2020, which also states that "the Commission has determined that the Participants have sufficiently complied with the conditions set forth in the prior Orders and with the technical requirements for Quarterly Progress Reports set forth in section 6.6(c) of the CAT NMS Plan, including for purposes of determining compliance with any applicable Financial Accountability Milestones."¹³⁰ The November 2023 Exemption Order is consistent with the Commission's repeated statements in the FAM adopting release that it would have "authority to grant exemptive relief from any requirement associated with a particular Financial Accountability Milestone," citing Section 36 of the Exchange Act and Rule 608.¹³¹ Similarly, the CAT NMS Plan expressly contemplates the Commission's ability to grant exemptive relief from any CAT NMS Plan requirement.¹³²

(iv) Executing Broker Reporting

CAT LLC also completed the requirements of FAM Period 2, including the required linkages, by December 31, 2020. Although

Participant exchanges may report the Executing Broker to CAT differently in certain situations, these reporting differences are irrelevant for linkage purposes as the fields used for CAT Executing Broker are not used for linkage.

(10) Additional Support for Reasonableness of Historical CAT Costs

The CAT Funding Model approved by the Commission permits the recovery of reasonable costs in each of the categories of CAT costs sought to be recovered via Historical CAT Assessment 1.¹³³ As described in detail above and in further detail below, the CAT costs to be recovered for each category are reasonable. The following discusses in further details how each of the following costs are reasonable: (1) costs incurred prior to the effective date of the CAT NMS Plan; (2) cloud hosting services costs; (3) costs related to funding model filings; (4) costs related to litigation with the SEC regarding the CAT NMS Plan; (5) costs related to the Initial Plan Processor; (6) CAIS implementation costs; (7) public relations costs; (8) legal costs related to the limitation of liability provision in the CAT Reporter agreements; and (9) costs for the Chair of CAT Operating Committee. As discussed in detail below, each of these costs is reasonable and should be recoverable in accordance with the CAT Funding Model.

(A) Costs Incurred Prior to the Effective Date of CAT NMS Plan

CAT LLC believes that it is reasonable to seek recovery of costs incurred prior to when the CAT NMS Plan became effective in November 2016, such as legal and consulting fees incurred to create the CAT NMS Plan. Rule 613 specifically mandates that the CAT be created, implemented and maintained, and further provides that the CAT NMS Plan include a proposed allocation of estimated costs to fund the creation, implementation and maintenance of the CAT among the Participants (referred to as "plan sponsors"), and between the Participants and Industry Members (referred to as "members of the plan sponsors").¹³⁴ Consistent with Rule 613, the CAT NMS Plan, as approved by the Commission, specifically authorizes charging Industry Members fees for costs reasonably incurred prior to the date of the approval of the CAT NMS Plan by the Commission in November

2016, including legal and consulting costs. Section 11.1(c) of the CAT NMS Plan states that:

[i]n 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) reasonably incurred by Participants on behalf of the Company prior to the Effective Date in connection with the creation and implementation of the CAT.

Accordingly, the CAT NMS Plan specifically permits the recovery of costs, including legal and consulting costs, reasonably incurred prior to November 2016 in connection with the creation and implementation of the CAT.

Furthermore, the costs incurred to create and implement the CAT prior to the effective date of the CAT NMS Plan ("Pre-Formation Costs") were reasonable both in scope and amount, in accordance with the requirements of Section 11.1(c) of the CAT NMS Plan. During the four-year period from 2012 to 2016, a total of \$13,842,881 in Pre-Formation Costs were incurred. This is an average of approximately \$3.5 million per year over this period. The Pre-Formation Costs fell into three categories: legal costs, consulting costs and public relations costs. This includes legal costs of \$3,196,434; consulting costs of \$10,589,273; and public relations costs of \$57,174. The legal, consulting and public relations services were performed by WilmerHale, Deloitte and Peppercomm, respectively. The selection considerations and fees for these three firms are described in detail above and are described further below. The Pre-Formation Costs are direct costs of CAT, which have been funded entirely by the Participants through non-interest-bearing notes. The Pre-Formation Costs do not include the significant costs incurred by each of the individual Participants in responding to the adoption of Rule 613.

The Pre-Formation Costs are reasonable and appropriate as they reflect the extensive efforts that were necessary to create the CAT NMS Plan as mandated after the SEC's adoption of Rule 613. As described in more detail below, these efforts included, among other things, developing a plan for selecting the Plan Processor, soliciting and evaluating bids, engaging a diverse set of market participants and the SEC in the development of the Plan, interacting with the SEC in their oversight of the development of the Plan, and seeking appropriate

¹³⁰ *Id.* at 77129 n.12.

¹³¹ FAM Adopting Release at 31335 (May 22, 2020). Section 36 of the Exchange Act grants the Commission the authority to "conditionally or unconditionally exempt any person, security, or transaction . . . from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors." 15 U.S.C. 78mm(a)(1). Under Rule 608(e) of Regulation NMS, the Commission may "exempt from [Rule 608], either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanism of, a national market system." 17 CFR 242.608(e).

¹³² Section 12.3 of the CAT NMS Plan ("[T]o the extent the SEC grants exemptive relief applicable to any provision of this Agreement, Participants and Industry Members shall be entitled to comply with such provision pursuant to the terms of the exemptive relief so granted at the time such relief is granted irrespective of whether this Agreement has been amended.")

¹³³ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹³⁴ See, e.g., Rule 613(a)(1)(vii)(D) of the CAT NMS Plan.

exemptive relief to address areas of concern in Rule 613.¹³⁵

(i) Request for Proposal (“RFP”)

The Participants determined to utilize an RFP to ensure that potential alternative solutions for creating the Plan could be presented and considered, and that a detailed and meaningful cost-benefit analysis could be performed. The SEC supported the use of an RFP, and approved its use as it is described in extensive detail in the CAT NMS Plan.¹³⁶

In the context of the SEC’s adoption of Rule 613, commenters urged the Commission to utilize an RFP process to assist in the planning and design of the NMS plan.¹³⁷ Specifically, the Commission explained:

In this regard, several commenters suggested that the Commission undergo a RFP or request for information (“RFI”) process to create and implement a consolidated audit trail. Specifically, FIF urged the Commission to perform a RFP process “to determine the best technical solution for developing a consolidated audit trail.” FIF suggested that the Commission “should outline a set of goals and guiding principles they are striving to achieve as part of the adopted CAT filing and leave the determination of data elements and other technical requirements to [an] industry working group.” Similarly, Direct Edge suggested that Commission staff should form and engage in a working group to develop an RFP for publication by the Commission. DirectEdge explained that an RFP process would facilitate the identification of the costs and benefits of the audit trail, as well as the consideration of a wider range of technological solutions. Further, commenters, including Broadridge Financial Solutions, Inc., a technology provider, also requested more specific information about the audit trail system to better assess the Commission’s initial cost estimates and to determine the best approach to the consolidated audit trail.¹³⁸

In response to these comments, the Commission modified Rule 613 to require the Participants to address certain important considerations

regarding the features and details of the NMS plan and to extend the timeframe for submission of the CAT NMS Plan by the Participants from the 90 days as originally proposed to 270 days, in part, to accommodate a process that would address these considerations.¹³⁹ As the SEC noted, “[i]n light of the numerous specific requirements of Rule 613, the Participants concluded that publication of a request for proposal (‘RFP’) was necessary to ensure that potential alternative solutions to creating the consolidated audit trail can be presented and considered by the Participants and that a detailed and meaningful cost/benefit analysis can be performed, both of which are required considerations to be addressed in the CAT NMS Plan.”¹⁴⁰

The SEC specifically recognized that the Participants planned to use an RFP when it approved the Selection Plan, and stated that the RFP was a reasonable approach.¹⁴¹ As the SEC described in its approval order for the Selection Plan, “[t]he Participants filed the [Selection] Plan to govern how the SROs will proceed with formulating and submitting the CAT NMS Plan—and, as part of that process, how to review, evaluate, and narrow down the bids submitted in response to the RFP (‘Bids’)—and ultimately choosing the plan processor that will build, operate, and maintain the consolidated audit trail (‘Plan Processor’).”¹⁴² After evaluating the Selection Plan, including the use of an RFP process, the Commission stated that it “believes the [Selection] Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail.”¹⁴³

On February 26, 2013, the Participants published an RFP soliciting bids from parties interested in serving as the plan processor for the CAT. Initially, 31 firms submitted intentions to bid. In the following months, the Participants engaged with potential bidders with respect to, among other things, the selection process, selection criteria, and potential bidders’ questions and concerns. On March 21, 2014, the Participants received ten bids in response to the RFP.

(ii) Selection Plan

On September 4, 2013, the Participants filed with the Commission a national market system plan to govern the process for Participant review of the bids submitted in response to the RFP, the procedures for evaluating the bids, and, ultimately, selection of the plan processor (the “Selection Plan”).¹⁴⁴ The Commission approved the Selection Plan as filed on February 21, 2014.¹⁴⁵ In approving the Selection Plan, the Commission concluded that “it is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor.”¹⁴⁶

The Selection Plan divided the review and evaluation of bids, and the selection of the plan processor, into various stages. Specifically, pursuant to the Selection Plan, a selection committee reviewed all bids and determined which bids contained sufficient information to allow the Participants to meaningfully assess and evaluate the bids. The ten submitted bids were deemed “Qualified Bids,” and so passed to the next stage, in which each bidder presented its bids to the Participants on a confidential basis. On July 1, 2014, after conducting careful analysis and comparison of the bids, the Selection Committee voted and selected a shortlist of six eligible bidders. The Selection Committee determined which shortlisted bidders would be provided the opportunity to revise their bids. After the Selection Committee assessed and evaluated the revised bids, the Selection Committee selected the plan processor via two rounds of voting by the Participants, as described in the Selection Plan.

The Selection Plan established an Operating Committee responsible for formulating, drafting, and filing with the Commission the CAT NMS Plan and for ensuring that the Participants’ joint obligations under Rule 613 were met in a timely and efficient manner. In formulating the CAT NMS Plan, the Participants also engaged multiple persons across a wide range of roles and expertise, engaged the consulting firm Deloitte as project manager, and engaged the law firm WilmerHale to serve as legal counsel in drafting the Plan. Within this structure, the Participants focused on, among other things, comparative analyses of the proposed technologies and operating models, development of funding models to support the building and operation of the CAT, and detailed review of

¹³⁵ The Participants described in detail the process for drafting the CAT NMS Plan in its original filing of the CAT NMS Plan. See Letter from Mike Simon, on behalf of the Participants of the CAT NMS Plan, to Brent J. Fields, Secretary, Commission (Sept. 30, 2014). A non-exclusive list of filings and activities associated with CAT, including certain pre-2016 filings, are available on the SEC’s website: <https://www.sec.gov/divisions/marketreg/rule613-info>.

¹³⁶ See detailed discussion of RFP questions in Appendix C of the CAT NMS Plan, and incorporation of RFP requirements in Appendix D at D–2.

¹³⁷ For example, in its comments on proposed Rule 613, FIF suggested “that the SROs should select the processor through a ‘request for proposal.’” Rule 613 Adopting Release at 45785.

¹³⁸ Rule 613 Adopting Release at 45738–39.

¹³⁹ Rule 613 Adopting Release at 45739.

¹⁴⁰ Securities Exchange Act Rel. No. 71596 (Feb. 21, 2014), 79 FR 11152, 11152 (Feb. 27, 2014) (“Selection Plan Approval Order”).

¹⁴¹ *Id.*

¹⁴² *Id.* at 11153.

¹⁴³ *Id.* at 11159.

¹⁴⁴ See Securities Exchange Act Rel. No. 70892 (Nov. 15, 2013), 78 FR 69910 (Nov. 21, 2013).

¹⁴⁵ See Selection Plan Approval Order.

¹⁴⁶ Selection Plan Approval Order at 11160.

governance considerations. Given the complexity and scope of developing the CAT NMS Plan, these efforts were extensive.

When it approved the CAT NMS Plan in 2016, the Commission reiterated its belief that the Selection Plan remains a “reasonable approach,” that “the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor,” and that “the process set forth in the Selection Plan should be permitted to continue”:

In approving the Selection Plan, the Commission stated that the Selection Plan is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor. The Commission also found that the Selection Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail. The Commission believes that the process set out in the Selection Plan for selecting a Plan Processor remains a reasonable approach, which will facilitate the selection of Plan Processor through a fair, transparent and competitive process and that no modifications to the Selection Plan are required to meet the approval standard. . . . In response to the comment that offered support for a specific Bidder, the Commission agrees with the Participants that the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor and thus believes that the process set forth in the Selection Plan should be permitted to continue.¹⁴⁷

(iii) Engagement with Market Participants and SEC

During the process of developing the CAT NMS Plan, the Participants engaged in extensive and meaningful dialogue with market participants and the SEC. To this end, the Participants created a website to update the public on the progress of the CAT NMS Plan, published a request for comment on multiple issues related to the Plan, held multiple public events to inform the industry of the progress of the CAT and to address inquiries, and formed, and later expanded, a DAG to solicit more input from a representative industry group.¹⁴⁸

The DAG included representatives of Participants and Industry Members and conducted meetings to discuss, among other things, technical and operational aspects the Participants were

considering for the Plan. The Participants issued press releases soliciting participants for the DAG, and a wide spectrum of firms was deliberately chosen to provide insight from various industry segments affected by CAT. The DAG meetings included discussions of topics such as option market maker quote reporting, requirements for capturing Customer IDs, timestamps and clock synchronization, reporting requirements for order handling scenarios, costs and funding, error handling and corrections, and potential elimination of systems made redundant by the CAT. From the inception of the DAG through September 2014, the DAG participated in 36 meetings, as well as a variety of DAG subcommittee meetings.

(iv) Request for Exemption From Certain Requirements Under Rule 613

Following multiple discussions between the Participants and both the DAG and the bidders, as well as among the Participants themselves, the Participants recognized that some provisions of Rule 613 would not permit certain solutions to be included in the Plan that the Participants, in coordination with the DAG, determined advisable to effectuate the most efficient and cost-effective CAT. Specifically, “the SROs reached the conclusion that additional flexibility in certain of the minimum requirements specified in Rule 613 would allow them to propose a more efficient and cost-effective approach without adversely affecting the reliability or accuracy of CAT Data, or its security and confidentiality.”¹⁴⁹ Consequently, the Participants submitted a request for exemptive relief from certain provisions of Rule 613 regarding: (1) options market maker quotes; (2) Customer-IDs; (3) CAT-Reporter-IDs; (4) CAT-Order-IDs on allocation reports; and (5) timestamp granularity.¹⁵⁰ The Participants filed two supplements to the request for exemptive relief.¹⁵¹

After reviewing the exemptive request, the Commission determined that it was appropriate in the public interest and consistent with the protection of investors to grant the requested exemptive relief.¹⁵² In

granting the exemptive relief, the Commission stated:

[T]he Commission is persuaded to provide flexibility in the discrete areas discussed in the Exemption Request so that the alternative approaches can be included in the CAT NMS Plan and subject to notice and comment. Doing so could allow for more efficient and cost-effective approaches than otherwise would be permitted. The Commission at this stage is not deciding whether the proposed approaches detailed below are more efficient or effective than those in Rule 613. However, the Commission believes the proposed approaches should be within the permissible range of alternatives available to the SROs.¹⁵³

The Commission further stated that the requested exemptive relief is consistent with the protection of investors. The Commission noted that:

Doing so will provide the public an opportunity to consider and comment on whether these proposed alternative approaches would indeed be more efficient and cost-effective than those otherwise required by Rule 613, and whether such approaches would adversely affect the reliability or accuracy of CAT Data or otherwise undermine the goals of Rule 613. Moreover, if—as the SROs represent—efficiency gains and cost savings would result from including the proposed approaches in the CAT NMS Plan without adverse effects, then the resultant benefits could potentially flow to investors (e.g., lower broker-dealer reporting costs resulting in fewer costs passed on to Customers).¹⁵⁴

The Participants incorporated the exemptive relief into the proposed CAT NMS Plan, which was noticed for comment, and the Commission ultimately approved the CAT NMS Plan with the more efficient and cost-effective alternative approaches described in the exemptive relief. Accordingly, the Participants believe that the costs incurred in developing the exemptive request were critical to the creation of a better CAT than was originally contemplated by Rule 613, and therefore should be recoverable as part of Historical CAT Assessment 1.

(v) Request for Extensions for Filing the CAT NMS Plan

Rule 613(a)(1) under Regulation NMS required the Participants to jointly file the CAT NMS Plan on or before April 28, 2013, less than a year after the adoption of Rule 613. In recognition of the complexity of the project to create the CAT NMS Plan as well as industry interest in limiting or eliminating certain requirements of Rule 613 (e.g., addressing the reporting of options market maker quotes), the Participants requested two extensions of the

¹⁴⁹ Securities Exchange Rel. No. 77265 (Mar. 1, 2016), 81 FR 11856 (Mar. 7, 2016) (“2016 Exemptive Order”).

¹⁵⁰ Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Jan. 30, 2015).

¹⁵¹ See Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Apr. 3, 2015); Letter from the SROs to Brent J. Fields, Secretary, Commission (Sept. 2, 2015).

¹⁵² See 2016 Exemptive Order.

¹⁵³ *Id.* at 11857.

¹⁵⁴ *Id.*

¹⁴⁷ See CAT NMS Plan Approval Order at 84737.

¹⁴⁸ See Section D(11) of Appendix C of the CAT NMS Plan.

deadline to file the CAT NMS Plan. The Participants described the need for additional time as follows:

The SROs stated in their Request Letter that they do not believe that the 270-day time period provided for in Rule 613(a)(1) provides sufficient time for the development of the RFP, formulation and submission of bids, and review and evaluation of such bids. The SROs also stated that they believe additional time beyond the 270 days provided for in Rule 613(a)(1) is necessary in order to provide sufficient time for effective consultation with and input from the industry and the public on the proposed solution chosen by the SROs for the creation of the consolidated audit trail at the conclusion of the RFP process and the NMS plan itself.¹⁵⁵

In recognition of the need for additional time to refine the technical description of and requirements for the CAT and to allow for additional evaluation of the proposed cost and funding considerations, the SEC granted two extensions of this deadline.¹⁵⁶ The SEC determined that both extensions were appropriate, in the public interest, and consistent with the protection of investors.¹⁵⁷ In reaching this conclusion, the Commission stated that “it understands that the creation of a consolidated audit trail is a significant undertaking and that a proposed NMS plan must include detailed information and discussion about many things.”¹⁵⁸ The SEC also noted the following:

This additional time to complete the RFP process should allow the SROs to engage in a more thoughtful and comprehensive process for the development of an NMS plan. In this regard, the Commission notes that the additional time to solicit comment from the industry and the public at certain key points in the development of the NMS plan could identify issues that can be resolved earlier in the development of the consolidated audit trail and prior to filing the NMS plan with the Commission.¹⁵⁹

Given the Commission’s recognition of the reasonableness and value of the extension of the deadline to file the CAT NMS Plan, the Participants believe that the costs incurred in developing the extension request were important to the process of developing the CAT NMS Plan, and therefore should be recoverable as part of Historical CAT Assessment 1.

(vi) Submission and Approval of the CAT NMS Plan

After extensive analyses and discussions with the DAG, bidders, market participants and the SEC staff, the Participants finalized the draft of the CAT NMS Plan and filed the CAT NMS Plan with the SEC on September 30, 2014. Following additional discussions, the Participants filed several amendments to the CAT NMS Plan during 2015 and 2016. With these additional changes, the SEC published the CAT NMS Plan for notice and comment in May 2016.¹⁶⁰ Following the comment period, the SEC approved the Plan in November 2016.¹⁶¹

(vii) Legal Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include legal costs of \$3,196,434. The legal services were performed by WilmerHale. The selection considerations and fees for WilmerHale were described in detail above. Prior to the creation of CAT LLC, WilmerHale was engaged to represent the consortium of SROs, not the individual Participants. For administrative purposes, FINRA agreed to receive such legal bills, although such costs were shared among the Participants. Therefore, the legal costs incurred with respect to WilmerHale do not include legal costs incurred by the individual Participants. These pre-formation legal costs are described in detail above and are further described below:

- Analyzed various legal matters associated with the Selection Plan and drafted an amendment to Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the DAG;
- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on the CAT NMS Plan;
- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG, and governance support during the transition to the new governance structure under the CAT NMS Plan;

- Drafted exemptive requests;
- Provided interpretations related to the CAT NMS Plan;
- Provided support with regard to discussions among the exchanges, FINRA and other third parties, such as Deloitte;
- Provided tax advice with regard to CAT’s status as a tax-exempt organization; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

(viii) Consulting Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include consulting costs of \$10,589,273. The consulting services were performed by Deloitte. The selection considerations and fees for Deloitte were described in detail above. Prior to the creation of CAT LLC, for administrative purposes, Deloitte was engaged by FINRA to provide consulting services related to CAT, but the costs were shared by the consortium of SROs per agreement. Therefore, the consulting costs incurred with respect to Deloitte do not include consulting costs incurred by the individual Participants. The pre-formation consulting costs include the following:

- Established and implemented program operations for the CAT project, including the program management office and workflow design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participants’ independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, reviewing technical requirements of other NMS plans, analyzing OATS and CAT requirements, and drafting appendices to the Plan;
- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Provided support for industry outreach sessions, including with regard to program design and agenda development, program support and logistics and coordination; and

¹⁵⁵ Securities Exchange Act Rel. No. 69060 (Mar. 7, 2013), 78 FR 15771, 15772 (Mar. 12, 2013) (“March 2013 Exemptive Order”).

¹⁵⁶ See March 2013 Exemptive Order; Securities Exchange Act Rel. No. 71018 (Dec. 6, 2013), 78 FR 75669 (Dec. 12, 2013) (“December 2013 Exemptive Order”).

¹⁵⁷ March 2013 Exemptive Order at 15772; December 2013 Exemptive Order at 75670.

¹⁵⁸ March 2013 Exemptive Order at 15772.

¹⁵⁹ *Id.* at 15773.

¹⁶⁰ See Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

¹⁶¹ See CAT NMS Plan Approval Order.

- Provided support in fact finding, drafting content and meeting coordination for WilmerHale with regard to the CAT and the development of the CAT NMS Plan.

Such Pre-Formation Costs did not include costs related to the Chair of the CAT NMS Plan Operating Committee, as the CAT NMS Plan had not yet been adopted.

(ix) Public Relations Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include public relations costs of \$57,174. The public relations services were performed by Peppercomm. The selection considerations and fees for Peppercomm are described in detail above. The costs related to Peppercomm were shared among the SROs. Therefore, the public relations costs do not include public relations costs incurred by the individual Participants. The pre-formation public relations costs include services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT.

(B) Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs related to cloud hosting services as a part of Historical CAT Assessments. CAT LLC believes that the costs related to cloud hosting services described in detail above are reasonable and appropriate given the strict data processing timelines and storage requirements imposed by the Commission-approved CAT NMS Plan and should be recoverable as a part of Historical CAT Assessment 1.

(i) Reasonableness of AWS Costs Given the Requirements of the CAT NMS Plan

CAT LLC believes that the costs for the cloud hosting services are reasonable, both in terms of the level of the fees paid by CAT LLC for cloud hosting services provided by AWS and the scope of the services performed by AWS for CAT LLC. CAT LLC believes that both the scope and amount of the costs for cloud hosting services are reasonable given the current requirements of the CAT NMS Plan adopted pursuant to Rule 613, including the strict data processing timeline,

storage and other technical requirements under the Commission-approved CAT NMS Plan.

CAT LLC believes that the level of fees for the cloud hosting services is reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.

CAT LLC also believes that the scope of services provided by AWS for the CAT are appropriate given the current requirements of the Commission-approved CAT NMS Plan. As described above, the cloud hosting services costs reflect a variety of factors including, among other things:

- *Breadth of Cloud Activities.* AWS was engaged by FCAT, the Plan Processor, to provide a broad range of services to the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS necessary to the CAT include storage services, databases, compute services, and other services (such as networking, management tools and development operations (“DevOps”) tools). AWS also was engaged to provide the various environments for CAT, such as the development, performance testing, test and production environments, which are required by the CAT NMS Plan.

- *High Data Volume.* The cost for AWS services for the CAT is a function of the volume of CAT Data. While it is not linear, the greater the amount of CAT Data, the greater the cost of AWS services to the CAT. The data volume handled by AWS now far exceeds the original volume estimates for the CAT.

- *Plan Requirements.* The cost for AWS services also reflects the technical requirements necessary to meet the stringent performance and other requirements for processing CAT Data. These Plan-dictated processing timelines, storage, testing, security and other technical requirements are significant drivers of AWS costs.

- *Cost Avoidance Efforts.* CAT LLC and FCAT have engaged in ongoing efforts to seek to avoid and minimize AWS costs where permissible under the Plan. Accordingly, these cost avoidance efforts have limited the extent of AWS costs.

In addition, various requirements of the CAT NMS Plan adopted pursuant to Rule 613 contribute to the significant cloud hosting services costs, and that various Plan requirements could be amended or removed without affecting the regulatory purpose of the CAT. Indeed, CAT LLC has repeatedly sought exemptive relief and filed amendments to the CAT NMS Plan, and has even

filed suit against the Commission, to seek to revise or eliminate certain costly requirements related to the CAT.

However, despite these efforts, absent the Commission granting exemptive relief or approving cost savings amendments to the CAT NMS Plan, CAT LLC, the Participants and Industry Members are all required to comply with such requirements.

(ii) Effect of CAT Design on CAT Costs

(a) Efficient CAT Design

CAT is reasonably designed to efficiently and effectively utilize cloud computing and storage services, given the requirements of the Commission-approved CAT NMS Plan, including requirements related to security, operational reliance and quality assurance, and maintainability.

The Plan Processor uses state-of-the-art software that meets the strict security standards of the CAT NMS Plan. CAT utilizes a big data processing framework that is extensively used by large data processing companies, such as Apple, Meta, Netflix, IBM and Google. As such, it has substantial commercial support and support in the open-source community. It is also well suited for use with regard to iterative types of algorithms and query functions and analytics that the CAT requires, and it provides the heightened security necessary for the CAT.

The development and implementation of the design of CAT is not and has not been static. CAT LLC and the Plan Processor are always evaluating new innovations and service offerings from AWS and other providers to seek to maximize efficiency and cost avoidance while still satisfying the requirements of the CAT NMS Plan. These efforts have led to substantial savings to date. The cloud hosting costs for 2023 were less than the cloud hosting costs for 2022 by \$8 million despite processing seven trillion more events in 2023 due to the efficiency and cost avoidance efforts for cloud hosting services. For example, when AWS introduced new storage options, FCAT adopted the cost-efficient new storage option after establishing that the new offering would satisfy the security and other standards of the CAT NMS Plan. This change led to millions of dollars of savings in storage costs. Similarly, when AWS introduced a new compute processor, FCAT adopted this new compute processor, which lead to millions of dollars in savings in compute costs. However, in other cases, new cloud technology developments could not be implemented in CAT because they would not satisfy the

security or other requirements of the CAT NMS Plan.

When evaluating the design of the CAT, it must be kept in mind that the CAT is not a typical commercial technology project. The ability to make use of technology approaches that may lead to cost avoidance is also subject to the restrictive requirements of the CAT NMS Plan, such as processing timeframes, requirements for retention of data versions, query requirements, and security standards. Because such requirements are set forth in the CAT NMS Plan, any modification of such requirements are subject to the time-consuming process of amending the CAT NMS Plan or seeking an exemption from the relevant requirement. For example, CAT LLC recently has filed an amendment to address several of these expensive Plan requirements.¹⁶²

(b) CAT Was Designed to Minimize Industry Member Effort

The CAT System also was designed to minimize the extent to which Industry Members would need to alter their systems to report to CAT. During the design process, Industry Member groups argued that it would make more sense financially for the CAT to accommodate differences in industry systems, than for all Industry Members to change their systems. Moreover, such design choices would facilitate consistency, uniformity and accuracy in reporting. Requiring the CAT to make such accommodations may increase CAT costs while accommodating CAT Reporters.

Based on the requirements in the CAT NMS Plan and/or in response to industry requests for functionality to be embedded with the Plan Processor to streamline or limit Industry Member system changes, the CAT has been designed to limit the effect on Industry Members. The following provides examples of such accommodations:

- *Industry Member Reporting.* In light of the complexity of Industry Member market activity, the CAT's order reporting and linkage scenarios document for Industry Members is over 800 pages in length, addressing nearly 200 scenarios.¹⁶³ The Industry Member Technical Specifications allow for dozens of specific event types, which drive complexity for the Plan Processor, but streamline reporting for Industry

Members. Furthermore, the Plan Processor greatly expanded Industry Member linkage requirements to support, among other things, child events and supplemental events, allowing for "stateless as-you-go" and "batch end-of-day" reporting when all data is available. Accordingly, CAT takes on the significant cost and effort of providing the required linkages between CAT events; correspondingly, Industry Members are not required to perform this costly task.

- *File Submission Process.* The CAT was designed to accommodate the varying needs of CAT Reporters with regard to the file submission process. For example, in a 2018 letter, FIF stated that "[t]he SFTP-based submission process is cumbersome, exposes industry members to unnecessary complexity, and puts the burden of support on the CAT Reporter rather than imbedding more functionality into the Plan Processor."¹⁶⁴ Currently, FCAT provides two mechanisms for submitting files: SFTP via a private network, and the Web via Reporter Web Portal.

- *Error Corrections.* The industry also emphasized the need for the CAT to provide error correction tools and functionalities to identify, rectify and re-submit corrections within the required timeframe. For example, FIF stated in a 2018 letter the following:

To be clear, if OATS-like error correction tools are not made available on Day 1, hundreds of firms will be required to create and test their own tools or obtain vendor alternatives prior to the CAT Go-Live Date. Proprietary tools will require additional system builds, access to and ingestion of CAT data to perform system validation, and testing which will further stress the limited number of subject matter experts ("SMEs") dedicated to the implementation of CAT reporting. Should this occur, inevitably firms (especially small firms who lack the necessary IT staff to write code and develop proprietary systems), may be put in the position of passing onto investors the cost required to build hundreds of redundant systems.¹⁶⁵

CAT provides various tools to help Industry Members identify and rectify errors.

- *Data Ingestion Format.* The industry also recommended that CAT adopt a flexible input format that provides an option for Industry Members to submit data in formats that are already in use to reduce costs and potential reporting errors. For example, FIF argued the following:

FIF CAT WG is not proposing a specific format; rather, we are proposing flexibility of input formats which includes support of existing formats (e.g., OATS, FIX) as well as a baseline specification where all fields are defined, and normalized. The input formats must be clearly and thoroughly defined in Technical Specifications, including FAQs.

Mandating a uniform format for reporting data to the CAT simplifies the task for the Central Repository of consolidating/storing data, but it puts the burden on each CAT Reporter to accurately translate their current (e.g., OATS) reporting information into a uniform CAT interface. However, that is likely to yield more errors because it is very dependent on accurate, complete and timely information (Technical Specifications, FAQs, meta-data, competent CAT help desk) available to CAT Reporters, availability of sophisticated CAT test tools to validate interface protocols, and the skill levels of the estimated 300+ unique CAT Reporters/Submitters during Phase 1 of CAT. Concentrating the responsibility of data conversions with the Central Repository is a reasonable trade-off that should yield fewer errors, and greater accuracy.¹⁶⁶

CAT provides such a flexible input format.

(c) Effect of Initial Plan Processor Design

The costs for cloud hosting services are appropriate and have not been adversely affected by the original design and approaches of the Initial Plan Processor. FCAT's design costs are the result of the requirements of the Commission-approved CAT NMS Plan.

When FCAT took over as the Plan Processor from Thesys, it utilized certain aspects of the technical specifications created by Thesys in its design. However, FCAT has not maintained aspects of the original design that would not be appropriate for the CAT. FCAT revised and enhanced the original technical specifications of the CAT System to increase its efficiency and efficacy, and to ensure its compliance with the CAT NMS Plan. For example, the Initial Plan Processor's approach utilized many more fields than FCAT's approach, which relies on additional linkages. With the additional linkages, the CAT System takes on more of the CAT-related burdens than the Industry Members. Such an approach serves to facilitate consistency, uniformity and accuracy in reporting.

Moreover, FCAT did not utilize the system built by the Initial Plan Processor; it rebuilt the CAT System based on revised technical specifications. For example, the Initial Plan Processor used an on-premises processing approach which was not

¹⁶² See, e.g., Securities Exchange Act Rel. No. 99938 (Apr. 10, 2024), 89 FR 26983 (Apr. 16, 2024); Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (Mar. 27, 2024) (proposing amendments to the CAT NMS Plan for \$23 million in annual savings).

¹⁶³ See CAT Industry Member Reporting Scenarios v.4.10 (Oct. 21, 2022).

¹⁶⁴ Letter from Janet Early, FIF, to Thesys CAT (Mar. 29, 2018).

¹⁶⁵ Letter from Christopher Bok, FIF, to Jay Clayton, Chair, Commission, at 4 (Dec. 11, 2018).

¹⁶⁶ Letter from Mary Lou Von Kaenel, Managing Director, FIF, to Brent Fields, Secretary, Commission at 92 (July 18, 2016), <https://www.sec.gov/comments/4-698/4698-13.pdf>.

geared toward the huge amounts of data stored in the CAT, while FCAT adopted a cloud-based solution in response to such data demands.

Furthermore, given the very short timeframe to develop the CAT System and the prior optimization of certain query tools (e.g., Diver) for regulatory use with significant amounts of data, FCAT determined to rely upon certain existing FINRA tools and adapt them for use with the CAT.

(iii) Consideration of AWS Alternatives

CAT LLC continues to support the selection of AWS as the cloud hosting services provider for CAT given the compliance, operational, and security requirements of the CAT. Independent analyses confirm these conclusions, noting that “AWS is an excellent choice for either strategic or tactical use and recommends considering AWS for almost all cloud IaaS or IaaS+PaaS scenarios.”¹⁶⁷ AWS provides the following benefits to CAT, among others:

- **Broad Suitability.** AWS has a long track record of successfully serving cloud customers with mission-critical projects.
- **Proven Scalability.** AWS has demonstrated that it is capable of building and delivering services on a large scale.
- **Track Record of Innovation.** AWS continues to rapidly innovate, both in terms of new domains of capability and at a fundamental level, thereby facilitating innovation for its customers.
- **Resiliency/Dependability.** Another benefit of AWS is its resiliency; it has a strong track record of stable services. As noted in a review of cloud service providers, “[c]ustomers like to have a broad set of options for resilience and for their cloud providers to have a strong track record of stable services (continuously available, without operational quirks). Only AWS fulfills both desires.”¹⁶⁸
- **Technical and Customer Support.** AWS consistently provides high-quality technical and customer support and engagement. Given the size, scope and regulatory importance of CAT, customer support and engagement that CAT has with the highest levels of AWS are very important to the success of the CAT.
- **Scale.** AWS is capable of supporting large-scale solutions, which is critical given the size and magnitude of the CAT.

- **Security.** AWS provides the security features necessary for the CAT.

In addition, the nature of the CAT, including the amount of data it must process and the size of its data footprint, does not allow for a multi-cloud solution as this would be cost prohibitive and greatly increase the security boundary and associated risk profile of the CAT. For example, a multi-cloud hosting option would increase costs, complexity, and risk for operations with regard to, for example, DevOps, production support, and networking. Similarly, with regard to security, a multi-cloud solution would increase risk, including with regard to the need for data transfers between cloud providers and the expansion of the security boundary. With regard to labor, a multi-cloud solution would lose economies of scale due to the need to support unique cloud requirements. Accordingly, the use of single-cloud solution continues to provide advantages with regard to cost, complexity, and risk. Indeed, “[t]he best practice is to focus on a single primary strategic provider.”¹⁶⁹

Furthermore, if another cloud service provider were determined to be a better match for the CAT at some future date, switching cloud service providers would be a very significant, expensive and time-consuming effort. Such an effort would likely be a 10-to-15-year commitment at a substantial expense. Such a move would require the replication or redesign of the underlying cloud environments (e.g., organizational setup, identify management, accounts, environments, DevOps tooling like release management/config management/network management), as the new provider likely would not have the same infrastructure and software. Once that process has been completed, an exabyte of CAT data would need to be securely migrated to the new platform.

(C) Funding Model Filings

CAT LLC believes that the recovery of costs related to the development of the funding model is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

Funding the CAT is a critical aspect of Rule 613 and the CAT NMS Plan. Article XI of the CAT NMS Plan describes in detail the requirements for funding the CAT, and the Participants are required to comply with and enforce compliance with the funding requirements of the CAT NMS Plan, just as with other aspects of the Plan. Accordingly, the development and

implementation of a funding model for the CAT is as much a part of the requirements of the CAT NMS Plan as the development and operation of the CAT System. CAT LLC sees no reason to distinguish the efforts to develop a funding model from, for example, efforts to develop the CAT System, in seeking to recover reasonable CAT costs.

Moreover, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . legal costs.”¹⁷⁰ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . legal . . . costs.”¹⁷¹ In keeping with these provisions, this filing provides a brief description of reasonably budgeted legal costs above. These legal costs include costs related to the development of the CAT Funding Model.

In addition, the legal costs incurred for the assistance in developing the CAT Funding Model are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the specialized services were performed by experienced counsel at negotiated rates for such services that reflect both the extent of the services and market rates. Moreover, the scope of the legal costs associated with the development of the funding model reflect the complexity of the task in satisfying the detailed requirements of the CAT NMS Plan, the standards of the Exchange Act, and the many perspectives of the different market constituents potentially affected by or interested in the funding model, including Industry Members, Participants and investors. The many and varied comments by market participants on CAT funding over the years demonstrate the complexity of the task.

(D) Costs Related to Litigation with the SEC

CAT LLC believes that the recovery of legal costs related to the litigation with the SEC regarding the CAT NMS Plan is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that

¹⁶⁷ See, e.g., Lydia Leong and Adrian Wong, Solution Comparison for Strategic Cloud Integrated IaaS and PaaS Providers (July 28, 2023) (“Strategic Cloud Assessment Article”).

¹⁶⁸ Strategic Cloud Assessment Article.

¹⁶⁹ *Id.*

¹⁷⁰ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁷¹ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.¹⁷² Moreover, CAT LLC initiated such litigation, and incurred the related legal costs, because it was critical to address the Commission's interpretations of the CAT NMS Plan. Among other things, such interpretations threatened to impose unnecessary costs on the CAT, which would be borne by the Participants and Industry Members. Indeed, in response to the litigation, the Commission provided exemptive relief that allowed alternative, more cost-effective approaches to the implementation of the CAT. Specifically, in the 2023 exemptive order, the Commission stated:

The conditional exemptive relief in this Order allows for the implementation of alternative regulatory solutions that continue to advance the regulatory goals that Rule 613 and the CAT NMS Plan were intended to promote, while reducing the implementation and operational costs, burdens, and/or difficulties that would otherwise be incurred by the Participants and Industry Members that must fund the CAT.¹⁷³

CAT LLC believes it is reasonable and appropriate to incur costs to limit the need to incur even greater costs due to certain interpretations of the Plan.

In addition, the legal costs incurred during the litigation are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the specialized services were performed by experienced counsel at market rates for such services. As such, the legal costs related to this litigation incurred during the period covered by Historical CAT Assessment 1 were reasonable.

Finally, Industry Members will directly benefit from the result of the litigation because it has addressed CAT NMS Plan requirements that would have imposed significantly greater costs on the CAT. Accordingly, it is reasonable and appropriate that the costs of such litigation be included in the Historical CAT Costs 1.

(E) Costs Related to the Initial Plan Processor

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017, which was the date by which Participants were required to begin reporting to the CAT, due to the delay in the commencement of reporting to the CAT. As discussed above, the

Participants determined to exclude all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Thesys costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Thesys costs incurred after November 15, 2018 are the \$19,628,791 in capitalized developed technology costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these \$19,628,791 in costs.

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. CAT LLC notes that the development and implementation of the CAT System, while unprecedented in scope and design, is like any other large and innovative technology project in that, inevitably, there were adjustments and refinements in the technical approach as the project developed, even with substantial planning efforts and oversight prior to the build. This is even more likely when the project faces a very tight implementation schedule, such as the one imposed by the Commission in Rule 613 and the CAT NMS Plan. However, an adjusted approach does not mean that the funds were not valid expenditures and should not be recovered.

The reasonableness of Thesys costs should be evaluated by the Commission as of the time they were incurred, not in hindsight. As detailed above, the Commission concluded in 2016 that "the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor," and that "the process set forth in the Selection Plan should be permitted to continue."¹⁷⁴ Following this process, the Participants notified the Commission of the selection of Thesys as the Initial Plan Processor on January 17, 2017.¹⁷⁵ At the time, neither the Commission nor the industry argued that the selection of the Initial Plan Processor was unreasonable or otherwise inconsistent with the CAT NMS Plan, nor did they predict the selection would result in unanticipated delays in the implementation of the

CAT System. On the contrary, on April 4, 2017, the President of SIFMA wrote that "SIFMA looks forward to commencing work with the SROs and Thesys."¹⁷⁶

As noted in the CAT Funding Model Approval Order, "[i]n Rule 613, the Commission made the determination that the costs of the CAT should be shared by the Participants and Industry Members."¹⁷⁷ If the CAT Funding Model had existed on Day 1, the risk of any unanticipated costs or challenges associated with the Initial Plan Processor would have been fairly and reasonably shared among the Participants and Industry Members on an ongoing basis. Given that the Commission concluded in 2012 that the costs of the CAT would be shared by the Participants and Industry Members, it is not fair or reasonable to determine in hindsight that all of the risk involved in developing the CAT should be allocated entirely to the Participants.

(F) CAIS Implementation Costs

CAT LLC believes that the recovery of CAIS-related costs is appropriate, and that the amount and scope of such costs, as described above, are reasonable, and that the reasonableness of historical costs should be evaluated by the Commission as of the time they were incurred, not in hindsight.

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable CAIS operating costs as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that "the reasonably budgeted CAT costs shall include . . . CAIS operating fees."¹⁷⁸ In addition, the CAT NMS Plan also requires Participants to include in their fee filings "a brief description of the amount and type of the Historical CAT Costs, including . . . CAIS operating fees."¹⁷⁹ In keeping with these provisions, this filing provides a brief description of reasonably budgeted CAIS operating fees.

In addition, CAT LLC determined that the CAIS operating fees described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. The "CAIS Operating Costs" for Historical CAT Assessment 1 total

¹⁷⁶ Letter from Kenneth E. Bentsen, Jr., SIFMA, to Participants re: Selection of Thesys as CAT Processor (Apr. 4, 2017), <https://www.sifma.org/wp-content/uploads/2017/05/SIFMA-Submits-Comment-Letter-to-SRO-on-the-selection-of-Thesys-as-the-CAT-Processor.pdf>.

¹⁷⁷ CAT Funding Model Approval Order at 62650.

¹⁷⁸ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁷⁹ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁷² See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁷³ Settlement Exemptive Order at 77129–30.

¹⁷⁴ CAT NMS Plan Approval Order at 84737.

¹⁷⁵ Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/markreg/rule613-info-notice-of-plan-processor-selection.pdf>.

\$9,480,587, with Pre-FAM costs of \$2,072,908, FAM 1 costs of \$254,998, FAM 2 costs of \$1,590,298, and FAM 3 costs of \$5,562,383. As described above, the CAIS operating fees were incurred with regard to two categories of CAIS-related efforts: (1) the acceleration of the reporting of LTIDs; and (2) the development of the CAIS Technical Specifications and the building of CAIS. These two categories of costs are discussed in more detail below.

(i) LTID Reporting

During the period covered by Historical CAT Assessment 1, the CAIS operating costs included costs related to the acceleration of the reporting of LTIDs earlier than originally contemplated during this period at the request of the SEC and in accordance with exemptive relief granted by the SEC.¹⁸⁰ As the SEC approved in this exemptive relief, the Participants proposed “to require the reporting of LTIDs to the CAT in Phases 2c and 2d, instead of with the rest of Customer Account Information in Phase 2e, which potentially could result in an earlier elimination of broker-dealer recordkeeping, reporting and monitoring requirements of the Large Trader Rule.”¹⁸¹ To implement the reporting of LTIDs to the CAT, the following steps were taken during the period covered by Historical CAT Assessment 1:

- After FCAT developed the LTID Technical Specifications, the LTID Technical Specifications were published on January 31, 2020, with additional updates provided to the LTID Technical Specifications through April 2021.¹⁸²
- The LTID account information testing environment opened on August 24, 2020.
- The LTID account information reporting production environment opened on December 14, 2020.
- CAT Reporters were required to request their production readiness certification for account information related to LTIDs by the deadline of April 9, 2021.
- The LTID account information reporting for Phases 2a, 2b and 2c for Large Industry Members went live on April 26, 2021.
- The LTID account information reporting for Phases 2d for Large

Industry Members went live on December 13, 2021.

- The LTID account information reporting for Phases 2a, 2b, 2c and 2d for Small Industry Members went live on April 26, 2021.

Throughout this project, FCAT and CAT LLC worked closely with the industry on LTID and CAIS reporting. Between December 2019 and December 2021, at least 57 checkpoint calls, webinars, and technical working group meetings with industry representatives were hosted to address issues and to educate CAT Reporters regarding LTID and CAIS reporting.¹⁸³

The LTID reporting project was successfully completed in a timely fashion, and the fees related to the project were reasonable. Accordingly, CAT LLC appropriately seeks to recover such costs via Historical CAT Assessment 1.

(ii) CAIS Reporting

During the period covered by Historical CAT Assessment 1, FCAT began the development of the full CAIS Technical Specifications and the building of CAIS. The CAIS Technical Specifications were developed during this period as follows:

- Iterative drafts of the CAIS Technical Specifications were published on June 30, 2020, December 1, 2020, and January 1, 2021.¹⁸⁴
- The full, final CAIS Technical Specifications were published on January 29, 2021.
- Updated versions of the CAIS

Technical Specifications were published throughout 2021.¹⁸⁵ As discussed above, FCAT and CAT LLC frequently engaged with the industry regarding the development of CAIS, hosting regular checkpoint calls, webinars, and technical working group meetings with industry representatives to address any issues, including addressing the interplay between Industry Members’ existing customer systems and CAIS, and to educate CAT Reporters regarding LTID and CAIS reporting. Such engagement was critical to the CAIS development process as the CAIS project was unprecedented in terms of its content, scope and complexity.

During this period, FCAT also commenced the building of the CAIS system in accordance with the CAIS Technical Specifications during the period covered by Historical CAT Assessment 1. The CAIS system was ready for industry testing shortly after the end of this period in January 2022.

The CAIS Technical Specifications and the CAIS system, as developed during this period, continue to be in use today. Industry Members have been required to report, and have continuously reported, required data to CAIS on a daily basis since November 7, 2022, consistent with interim reporting obligations. The CAIS system accepts and validates the CAIS data submitted by Industry Members and provides Industry Members with initial feedback on data errors. In light of the unprecedented nature of the CAIS system, certain changes to the system, such as changes related to error corrections and the CAIS regulatory portal, were necessary to finalize CAIS reporting. FCAT worked to address these remaining issues,¹⁸⁶ and, as of May 31, 2024, FCAT indicated that it had achieved the final CAIS reporting milestone. Accordingly, CAT LLC appropriately seeks to recover CAIS operating costs via Historical CAT Assessment 1.

(G) Public Relations Costs

CAT LLC believes that the recovery of public relations costs is appropriate and that the amount and scope of such costs, as described above, are reasonable.

The Commission has long recognized that external public relations costs are reasonably associated with creating, implementing and maintaining the CAT. In the CAT NMS Plan Approval Order, the Commission estimated that the Participants had collectively spent approximately \$2,400,000 in preparation of the CAT NMS Plan on external public relations, legal, and consulting costs, and estimated that the Participants would continue to incur external public relations costs associated with maintaining the CAT upon approval of the CAT NMS Plan.¹⁸⁷

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for public relations services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . .

¹⁸⁰ See Phased Reporting Exemptive Relief Order at 23079–80.

¹⁸¹ *Id.* at 23078–79, n.70.

¹⁸² The LTID Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

¹⁸³ Such contact points with the industry are described in detail on the Events web page of the CAT website (<https://www.catnmsplan.com/events>).

¹⁸⁴ The CAIS Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

¹⁸⁵ Six updated versions of the CAIS Technical Specifications were published during 2021, in March, May, June, August, October and December.

¹⁸⁶ See, e.g., CAT Q4 2023 Quarterly Progress Report (Jan. 30, 2024) (<https://www.catnmsplan.com/sites/default/files/2024-01/CAT-Q4-2023-QPR.pdf>).

¹⁸⁷ CAT NMS Plan Approval Order at 84917–18.

public relations costs.”¹⁸⁸ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . public relations costs.”¹⁸⁹ In keeping with these provisions, a brief description of reasonable public relations costs are described above.

In addition, CAT LLC determined that the public relations costs described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. The services performed by the public relations firms through 2021 were limited in scope to assist CAT LLC, which has no employees of its own, to be better positioned to understand and address CAT matters to the benefit of all market participants and to communicate on important CAT topics with the public. In addition, the costs for these services were appropriately limited. During the 10-year period covered by Historical CAT Assessment 1, the average cost per year for these services was approximately \$36,000.

(H) Legal Costs Related to the Limitation of Liability Provision in CAT Reporter Agreements

CAT LLC believes that the recovery of legal costs related to the limitation of liability provision, including costs related to the proceedings before the SEC and costs related to the proposed amendment to the Consolidated Audit Trail Reporter Agreement and the Consolidated Audit Trail Reporting Agent Agreement (the “Reporting Agreements”) is appropriate and that the amount and scope of such costs as described above are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.¹⁹⁰ In addition, CAT LLC determined that the legal costs incurred for the assistance with regard to the limitation of liability provisions are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1.

Moreover, it is critical that CAT LLC, which has no employees of its own, have the ability to fund a legal defense in litigation and other legal proceedings against it. In response to CAT LLC requiring Industry Members to agree to

the limitation of liability provision to submit data to the CAT, SIFMA filed an application for review of actions taken by CAT LLC and the Participants pursuant to Sections 19(d) and 19(f) of the Exchange Act. Contemporaneously with the filing of this proceeding, SIFMA moved for a stay of the requirement that Industry Members sign a Reporter Agreement, or in the alternative, asked the Commission to further delay the launch of CAT reporting on June 22, 2020. CAT LLC must have the resources to defend itself from litigious actions by others, like these.

Although a limitation of liability provision ultimately was not adopted as proposed, it was a reasonable provision to propose for the CAT Reporter Agreements, given that such provisions are in accordance with industry norms. Limitations of liability are ubiquitous within the securities industry and have long governed the economic relationships between self-regulatory organizations and the entities that they regulate. For example, U.S. securities exchanges have adopted rules to limit their liability for losses that Industry Members incur through their use of exchange facilities.¹⁹¹ Similarly, FINRA’s former order audit trail, OATS, which has functioned as an integrated audit trail of order, quote, and trade data for equity securities, required FINRA members to acknowledge an agreement that includes a limitation of liability provision.¹⁹² In addition, such a provision was intended to ensure the financial stability of the CAT. Accordingly, it was reasonable for CAT LLC to propose the use of such a provision.¹⁹³

Furthermore, as described above, the specialized services were performed by experienced counsel at market rates for such services. Accordingly, the legal costs for the efforts related to the limitation of liability provision were reasonable.

(I) Costs for the Chair of CAT Operating Committee

CAT LLC believes that the recovery of consulting costs related to the Chair of

the CAT Operating Committee is appropriate and that the amount and scope of such costs are reasonable.

As a preliminary matter, the selection of the Chair of the Operating Committee complies with the requirements of Section 4.2 of the CAT NMS Plan. The initial Chair that served during the period covered by Historical CAT Assessment was designated by a Participant as the Participant’s alternate voting member. Accordingly, the Chair is a representative of the Participants, as required by the CAT NMS Plan.

In addition, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for consulting as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . consulting . . .” costs.¹⁹⁴ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . consulting”¹⁹⁵ costs. In keeping with these provisions, a brief description of reasonable consulting costs is included in this filing, and such reasonable consulting costs include the costs related to the Chair position.

The Participants determined that the position of the Chair was a critical role for the implementation of the CAT, and an independent Chair would appropriately consider and address the views of each of the Participants. The Participants also determined that it was important to have a Chair with a strong background regarding issues related to the regulatory obligations of self-regulatory organizations, including their obligations under national market system plans. The compensation paid to the Chair is appropriate for a person with such background and skills. The average annual amount paid to the Chair from 2017 through the end of FAM 3 was \$292,733.30. Separate from the Chair, CAT LLC relies upon a Leadership Team of representatives of the SROs to oversee the day-to-day implementation of the CAT NMS Plan. CAT LLC does not compensate any member of the Leadership Team.

¹⁸⁸ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁸⁹ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁹⁰ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁹¹ See, e.g., NASDAQ Equities Rule 4626.

¹⁹² FINRA Rule 1013(a)(1)(R) requires all applicants for FINRA Membership to acknowledge the FINRA Entitlement Program Agreement and Terms of Use, which applies to OATS. Industry Members click to indicate that they agree to its terms—including its limitation of liability provision—every time they access FINRA’s OATS system to report trade information (*i.e.*, repeatedly over the course of a trading day for many Industry Members).

¹⁹³ See Letter from Michael Simon, Chair, CAT Operating Committee, to Vanessa Countryman, Secretary, Commission (Dec. 18, 2020).

¹⁹⁴ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁹⁵ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

(11) Fee Implementation Assistance for Industry Members

(A) Reconciliation of CAT Invoices

(i) Reconciliation of CAT Invoices to Underlying Trades Provided by CAT

CAT LLC understands that there are three types of reconciliation processes related to the invoices:

- *Reconciliation of CAT Invoices to Underlying Trades*: Reconciling the CAT invoice amount to the underlying trades provided by CAT;
- *Matching Trades to Books and Records*: Providing the means to match the underlying trades provided by CAT with CAT invoices to other books and records independently maintained by individual CAT Reporters (e.g., exchange trade journals/ acknowledgements) and data sources of self-regulatory organizations independent of CAT; and
- *Order Originator Identification*: Providing the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices, which would facilitate firms' ability to pass through CAT Fees to their customers.

As discussed further below, CAT LLC only considers the first type of process to be a "reconciliation" and the only type of process that is required under the CAT NMS Plan. CAT LLC provides the means to reconcile the CAT invoice amount to the underlying trades provided by CAT.

The CAT NMS Plan does not require CAT LLC to facilitate the second type of process: matching underlying trades for a CAT invoice with a firm's internal books and records. CAT LLC has access only to the underlying trades provided by CAT; it does not have access to a firm's internal books and records. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying trades with their own books and records.

The CAT NMS Plan also does not require CAT LLC to provide the ability to identify the order originator for the underlying trades for the CAT invoices. Accordingly, the billing guidance and processes do not provide CAT Reporters with the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices. CAT LLC has been working closely with CAT Reporters to explain its billing approach and to address any outstanding billing questions. But, it should not be lost that CAT LLC

provides information sufficient to allow CAT Reporters to reconcile CAT invoice amounts with the underlying trades provided by CAT LLC.

(ii) Match the Underlying Trades Provided by CAT With CAT Invoices to Firms' Internal Books and Records Independent of CAT

The CAT NMS Plan does not require CAT LLC to facilitate the matching of underlying trades for a CAT invoice with a firm's internal books and records, which may consist of trading data from various sources external to CAT. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying trades with their own books and records.

In this regard, it is important to recognize that CAT LLC has developed a billing approach that greatly improves upon existing billing practices for similar regulatory fees (e.g., fees related to Section 31). Accordingly, with the additional information voluntarily provided by CAT LLC, CAT Reporters generally will have sufficient information to match their underlying trades provided by CAT with their own internal books and records that are independent of CAT or to SRO data that is independent of CAT data. However, CAT LLC emphasizes that providing such additional information is not required by the CAT NMS Plan.

To facilitate the introduction of CAT fees, CAT LLC has worked with FCAT to develop an approach to CAT billing that is consistent with existing billing constructs used with regard to Section 31-related sales values fees, subject to certain enhancements. Under this billing approach, FCAT is providing additional linkage elements, not necessarily provided in the Section 31-sales value fee context, to facilitate CAT Reporters' ability to match the underlying trades provided by CAT with their internal books and records and to reduce the complexity of that process. Specifically, FCAT is providing various key elements of the trade itself, such as the tradeID and branch sequence,¹⁹⁶ to CAT Reporters in the trade billing details provided with their CAT invoices ("Additional Trade

Details"). As a result, CAT Reporters now have numerous alternative methods for matching a trade with their internal books and records where they previously did not have such matching methods in other fee contexts.

With the Additional Trade Details, CAT LLC and FCAT believe that the overwhelming majority of underlying trades provided by CAT bills can be matched with a CAT Reporter's internal books and records. CAT LLC recognizes that there may be certain cases in which such matching is more difficult given various firm-specific considerations, but believes that such instances are significantly more limited than with regard to the SRO fees charged in relation to Section 31.¹⁹⁷ By providing Additional Trade Details that are not available in other fee contexts, FCAT enhances the Industry Members' ability to match the underlying trades provided with CAT invoices with books and records and SRO data, both of which are independent of CAT data.

(iii) CAT LLC Is Not Required To Facilitate CAT Reporters' Ability To Pass Through Fees to Their Customers

Similar to other regulatory fees, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Accordingly, Historical CAT Assessment 1 does not address the process by which any CAT Reporters may pass through the fee to their customers. Likewise, the CAT billing approach provided by the Plan Processor is designed to address the needs of CAT Reporters with regard to the reconciliation of CAT invoices with the underlying trades provided by CAT LLC with the invoices; they are not designed to address issues related to any pass-through fees. Accordingly, facilitating CAT Reporters' ability to pass through fees to their clients is outside the scope of this fee filing. Nevertheless, as described below, CAT LLC and the Plan Processor have expended significant efforts to provide

¹⁹⁶ See CAT Technical Specifications for Billing Trade Details; Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>); CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

¹⁹⁷ For years, broker-dealers have faced similar reconciliation issues with regard to SRO fees related to Section 31. Broker-dealers have responded to this issue in the Section 31 context by exercising their discretion as to whether and the manner and extent to which they pass on those fees (e.g., by rounding up its fees to the nearest cent, or decide to charge for, or not charge for, certain transactions, or assess a specific fee or incorporate the costs into other fee programs). See, e.g., Securities Exchange Act Rel. No. 49928 (June 28, 2004), 69 FR 41060, 41072 (July 7, 2004) (noting that broker-dealers may "over-collect" Section 31-related fees charged to their clients due to rounding practices, and double-counting with regard to certain transactions).

technical assistance to Industry Members regarding the implementation of Historical CAT Assessment 1, including providing Additional Trade Details that provide significant details about each underlying trade.

(a) Originating Brokers Versus Executing Brokers

In its approval of the CAT Funding Model, the Commission approved charging CAT fees to the CAT Executing Broker, rather than the originating broker. This fee filing must comply with the requirements of the CAT Funding Model, and, therefore, charges the Historical CAT Assessment 1 to CAT Executing Brokers.

Moreover, charging originating brokers would introduce significant complexity to the billing process from the CAT's perspective, and would increase the costs of implementing CAT fees. Charging the CAT Executing Broker is simple and straightforward, and leverages a one-to-one relationship between billable events (trades) and billable parties, similar to other transaction-based fees. In contrast, for a single trade event, there may be many originating brokers, and each trade must be broken down on a pro-rata basis, to account for one or more layers of aggregation, disaggregation, and representation of the underlying orders. While CAT is indeed designed to capture and unwind complex aggregation scenarios, the data and linkages are structured to facilitate regulatory use, and not a billing mechanism that assesses fees on a distinct set of executed trades; it is not simply a matter of using existing CAT linkages. Furthermore, charging originating brokers would implicate issues related to lifecycle linkage rates, and issues related to corrections, cancellations and allocations, while charging CAT Executing Brokers would avoid such issues.

(b) Identification of Order Originator for Underlying Trades

As noted, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT Fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Nevertheless, the Additional Trade Details provided with regard to the underlying trades on CAT invoices may assist with this process. Like with Section 31-related sales value fees, however, it is not always possible to trace every fee on a transaction back to the originating party. Industry Members have faced these issues under Section 31-related sales values fees for

many years.¹⁹⁸ However, with the Additional Trade Details provided under the CAT billing approach, in many cases, CAT Reporters will be able to identify the order originator for the underlying trades provided by CAT with CAT invoices. In some cases, CAT LLC believes that certain issues related to certain types of market activity may implicate CAT Reporters' ability to identify the order originator for a limited set of underlying trades for the CAT invoices. Although CAT LLC does not believe that it is required to address these issues, CAT LLC and FCAT have been carefully researching and analyzing these types of issues as they are identified, and have been working voluntarily to assist CAT Reporters with these issues as necessary and when possible. In addition, CAT LLC intends to continue to provide CAT Reporters with billing guidance through FAQs, CAT Alerts and Helpdesk responses to address outstanding billing questions.

(B) Significant Technical Assistance

CAT LLC has worked with FCAT to provide significant technical assistance to Industry Members to allow the Industry Members to understand how Historical CAT Assessment 1 will be implemented and billed, including webinars, CAT alerts, mock invoices, and responses to questions posed to the FCAT Help Desk.

- *Technical Specifications and Scenarios.* CAT LLC has provided detailed technical documentation for CAT billing, including (1) technical specifications, which describe the CAT Billing Trade Details Files associated with monthly CAT invoices, including detailed information about data elements and file formats as well as access instructions, network and transport options;¹⁹⁹ (2) trade details

schemas;²⁰⁰ and (3) CAT billing scenarios.²⁰¹

- *Industry Webinars.* CAT LLC has hosted two industry webinars specifically dedicated to CAT billing. The first webinar, hosted on September 28, 2023, discussed the operational implementation of the CAT Reporter billing process.²⁰² The second webinar, hosted on November 7, 2023, provided (1) a demonstration of the CAT Reporter Portal and how to access CAT billing documents, including CAT invoices; and (2) additional information on underlying trade details in relation to the CAT Reporter billing process and an overview of the CAT Contact Management System.²⁰³ 485 participants and 394 participants attended the two webinars, respectively.

- *CAT Alert.* CAT LLC has published a detailed CAT Alert that describes how FCAT, as the Plan Processor acting on behalf of CAT LLC, will calculate applicable fees, issue invoices to and collect payment from CAT Executing Brokers.²⁰⁴

- *Frequently Asked Questions (FAQs).* CAT LLC also has continued to engage with the industry on billing issues by making responses to billing FAQs available on the CAT website. The FAQs address a broad range of frequently asked questions, including, for example, which Industry Members will receive invoices, how fees are calculated, when and how fees are required to be paid, how to access invoices, and how to update the billing contact. To date, responses to 27 FAQs are available on the CAT website, and CAT LLC will provide additional responses to FAQs as warranted.²⁰⁵

- *Mock Invoices.* To assist Industry Members with compliance with the commencement of Historical CAT Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices for Historical CAT Assessment 1 since December 2023 for billable activity occurring in

¹⁹⁸ "FINRA charges a Regulatory Transaction Fee ("RTF") to industry members to reimburse FINRA for the Section 31 fees that FINRA pays to the Commission. FINRA does not currently provide industry members with the data that industry members require for proper reconciliation of RTF fees. This has been a major problem for the industry for many years." Letter from Howard Meyerson, Managing Director, FIF, to Robert Cook, Chief Executive Officer, FINRA at 2 (Dec. 15, 2023) (<https://fif.com/index.php/working-groups/category/271-comment-letters?download=2820:fif-letter-to-finra-on-pass-through-of-finra-cat-fees&view=category>).

¹⁹⁹ CAT Technical Specifications for Billing Trade Details, Version 1.0 r1 (Dec. 8, 2023) (https://catnmsplan.com/sites/default/files/2023-12/12.07.2023-CAT-Technical-Specifications-for-Billing-Trade-Details-v1.0r1_CLEAN.pdf).

²⁰⁰ Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>).

²⁰¹ CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

²⁰² CAT Billing Webinar, Part 1 (Sept. 28, 2023) (<https://www.catnmsplan.com/events/part-1-cat-billing-webinar>).

²⁰³ CAT Billing Webinar, Part 2 (Nov. 7, 2023) (<https://www.catnmsplan.com/events/part-2-cat-billing-webinar>).

²⁰⁴ See CAT Alert 2023-02 (Oct. 12, 2023) (<https://www.catnmsplan.com/sites/default/files/2023-10/10.12.23-CAT-Alert-2023-02.pdf>).

²⁰⁵ See CAT Billing FAQs, Section V of CAT FAQs (https://www.catnmsplan.com/faq?search_api_fulltext=&field_topics=271&sort_by=field_faq_number).

November 2023. The mock invoices are in the same form as the actual, payable invoices, including both the relevant transaction data and the corresponding fee (as originally contemplated). However, no payments are required in response to such mock invoices; they are to be used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data provides CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended to facilitate the payment of Historical CAT Assessment 1. For the November, December, and January billing periods, FCAT has generated trade detail files for 569 distinct firms that are CAT Executing Brokers. As such, CAT Reporters have actively engaged in the billing process via the mock invoices.

- *Help Desk Assistance.* CAT LLC also provides detailed, individualized assistance to Industry Members regarding CAT fees and the billing process through the FCAT Help Desk.²⁰⁶ For example, the Help Desk has assisted with 406 cases related to the billing of CAT fees from July 2023 through March 2024.

By providing such detailed and sustained assistance to Industry Members regarding CAT fees and billing, CAT LLC has successfully addressed questions raised by Industry Members regarding the CAT fees and billing processes.

(C) Ample Preparation Time

CAT LLC has provided Industry Members with ample time to comply with the implementation of Historical CAT Assessment 1. CAT LLC originally proposed issuing the first invoices for Historical CAT Assessment 1 in December 2023 based on transactions in Eligible Securities in November 2023. In consideration of the feedback about the need for additional time to implement the new fee, CAT LLC pushed back this timeline by four months, proposing to issue the first Historical CAT Assessment 1 in April 2024 based on transactions in March 2024.²⁰⁷ This filing pushes this timeline back even further for implementing Historical CAT

Assessment 1, proposing to issue the first invoices for Historical CAT Assessment 1 in November 2024 based on transactions in Eligible Securities in October 2024. Moreover, as discussed above, during these additional months, FCAT has been working closely with Industry Members to provide guidance regarding their mock bills and reconciliation efforts related thereto.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of the Exchange Act. The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,²⁰⁸ which requires, among other things, that the Exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and not designed to permit unfair discrimination between customers, issuers, brokers and dealers. The Exchange also believes that the proposed rule change is consistent with the provisions of Section 6(b)(4) of the Act,²⁰⁹ because it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(8) of the Act,²¹⁰ which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. These provisions also require that the Exchange be "so organized and [have] the capacity to be able to carry out the purposes" of the Act and "to comply, and . . . to enforce compliance by its members and persons associated with its members," with the provisions of the Exchange Act.²¹¹ Accordingly, a reasonable reading of the Act indicates that it intended that regulatory funding be sufficient to permit an exchange to fulfill its statutory responsibility under the Act, and contemplated that such funding would be achieved through equitable assessments on the members, issuers, and other users of an exchange's facilities.

The Exchange believes that this proposal is consistent with the Act

because it implements provisions of the Plan and is designed to assist the Exchange in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan "is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act."²¹² To the extent that this proposal implements the Plan and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

The Exchange believes that the proposed fees paid by the CEBBs and CEBs are reasonable, equitably allocated and not unfairly discriminatory. First, the Historical CAT Assessment 1 fees to be collected are directly associated with the costs of establishing and maintaining the CAT, where such costs include Plan Processor costs and costs related to technology, legal, consulting, insurance, professional and administration, and public relations costs. The Exchange has already incurred such development and implementation costs and the proposed Historical CAT Assessment 1 fees, therefore, would allow the Exchange to collect certain of such costs in a fair and reasonable manner from Industry Members, as contemplated by the CAT NMS Plan.

The proposed Historical CAT Assessment 1 fees would be charged to Industry Members in support of the maintenance of a consolidated audit trail for regulatory purposes. The proposed fees, therefore, are consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business operations. The proposed fees would not cover Exchange services unrelated to the CAT. In addition, any surplus would be used as a reserve to offset future fees. Given the direct relationship between CAT fees and CAT costs, the Exchange believes that the proposed fees are reasonable, equitable and not unfairly discriminatory.

As further discussed below, the SEC approved the CAT Funding Model, finding it was reasonable and that it equitably allocates fees among Participants and Industry Members. The Exchange believes that the proposed fees adopted pursuant to the CAT

²⁰⁶ The CAT NMS Plan requires that the Plan Processor "staff a CAT help desk, as described in Appendix D, CAT Help Desk, to provide technical expertise." Section 6.10(c)(vi) of the CAT NMS Plan. See also Section 10.3 of Appendix D of the CAT NMS Plan for a description of the Plan requirements for the CAT Help Desk.

²⁰⁷ See Securities Exchange Act Release No. 34-99378 (January 17, 2024), 89 FR 10582 (February 13, 2024) (SR-LTSE-2024-02).

²⁰⁸ 15 U.S.C. 78f(b)(6).

²⁰⁹ 15 U.S.C. 78f(b)(4).

²¹⁰ 15 U.S.C. 78f(b)(8).

²¹¹ See Section 6(b)(1) of the Exchange Act.

²¹² CAT NMS Plan Approval Order at 84697.

Funding Model approved by the SEC are reasonable, equitably allocated and not unfairly discriminatory.

(1) Implementation of CAT Funding Model in CAT NMS Plan

Section 11.1(b) of the CAT NMS Plan states that “[t]he Participants shall file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves.” Per Section 11.1(b) of the CAT NMS Plan, the Exchange has filed this fee filing to implement the Industry Member CAT fees included in the CAT Funding Model. The Exchange believes that this proposal is consistent with the Exchange Act because it is consistent with, and implements, the CAT Funding Model in the CAT NMS Plan, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the CAT NMS Plan. In approving the CAT NMS Plan, the SEC noted that the Plan “is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.”²¹³ Similarly, in approving the CAT Funding Model, the SEC concluded that the CAT Funding Model met this standard.²¹⁴ As this proposal implements the Plan and the CAT Funding Model described therein, and applies specific requirements to Industry Members in compliance with the Plan, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Exchange Act.

(2) Calculation of Fee Rate for Historical CAT Assessment 1 is Reasonable

The SEC has determined that the CAT Funding Model is reasonable and satisfies the requirements of the Exchange Act. Specifically, the SEC has concluded that the method for determining Historical CAT Assessments as set forth in Section 11.3 of the CAT NMS Plan, including the formula for calculating the Historical Fee Rate, the identification of the parties responsible for payment and the transactions subject to the fee rate for the Historical CAT Assessment, is reasonable and satisfies the Exchange Act.²¹⁵ In each respect, as discussed above, Historical CAT Assessment 1 is calculated, and would be applied, in

accordance with the requirements applicable to Historical CAT Assessments as set forth in the CAT NMS Plan. Furthermore, as discussed below, the Exchange believes that each of the figures for the variables in the SEC-approved formula for calculating the fee rate for Historical CAT Assessment 1 is reasonable and consistent with the Exchange Act. Calculation of the Historical Fee Rate for Historical CAT Assessment 1 requires the figures for the Historical CAT Costs 1, the executed equivalent share volume for the prior twelve months, the determination of Historical Recovery Period 1, and the projection of the executed equivalent share volume for Historical Recovery Period 1. Each of these variables is reasonable and satisfies the Exchange Act, as discussed throughout this filing.

(A) Historical CAT Costs 1

The formula for calculating a Historical Fee Rate requires the amount of Historical CAT Costs to be recovered. Specifically, Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan requires a fee filing to provide:

a brief description of the amount and type of the Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs.

In accordance with this requirement, the Exchange has set forth the amount and type of Historical CAT Costs 1 for each of these categories of costs above.

Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan also requires that the fee filing provide “sufficient detail to demonstrate that the Historical CAT Costs are reasonable and appropriate.” As discussed below, the Exchange believes that the amounts set forth in this filing for each of these cost categories is “reasonable and appropriate.” Each of the costs included in Historical CAT Costs 1 are reasonable and appropriate because the costs are consistent with standard industry practice, based on the need to comply with the requirements of the CAT NMS Plan, incurred subject to negotiations performed on an arm’s length basis, and/or are consistent with the needs of any legal entity, particularly one with no employees.

(i) Technology: Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover costs related to cloud hosting services as a part of

Historical CAT Assessments.²¹⁶ CAT LLC determined that the costs related to cloud hosting services described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. As described above, the cloud hosting services costs reflect, among other things, the breadth of the CAT cloud activities, data volume far in excess of the original volume estimates, the need for specialized cloud services given the volume and unique nature of the CAT, the processing time requirements of the Plan, and regular efforts to seek to minimize costs where permissible under the Plan. CAT LLC determined that use of cloud hosting services is necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT, and that the fees for cloud hosting services negotiated by FCAT were reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.²¹⁷ Indeed, the actual costs of the CAT are far in excess of the original estimated costs of the CAT due to various factors, including the higher volumes and greater complexity of the CAT than anticipated when Rule 613 was originally adopted.

To comply with the requirements of the Plan, the breadth of the cloud activities related to the CAT is substantial. The cloud services not only include the production environment for the CAT, but they also include two industry testing environments, support environments for quality assurance and stress testing and disaster recovery capabilities. Moreover, the cloud storage costs are driven by the requirements of the Plan, which requires the storage of multiple versions of the data, from the original submitted version of the data through various processing steps, to the final version of the data.

Data volume is a significant driver of costs for cloud hosting services. When the Commission adopted the CAT NMS Plan in 2016, it estimated that the CAT would need to receive 58 billion records per day²¹⁸ and that annual operating costs for the CAT would range from \$36.5 million to \$55 million.²¹⁹ Through 2021, the actual data volumes have been five times that original

²¹⁶ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²¹⁷ For a discussion of the amount and type of cloud hosting services fees, see Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

²¹⁸ Appendix D–4 of the CAT NMS Plan at n.262.

²¹⁹ CAT NMS Plan Approval Order at 84801.

²¹³ CAT NMS Plan Approval Order at 84696.

²¹⁴ CAT Funding Model Approval Order at 62686.

²¹⁵ *Id.* at 62662–63.

estimate. The data volumes for each period are set forth in detail above.²²⁰

In addition to the effect of the data volume on the cloud hosting costs, the processing timelines set forth in the Plan contribute to the cloud hosting costs. Although CAT LLC has proactively sought to manage cloud hosting costs while complying with the Plan, including through requests to the Commission for exemptive relief and an amendment to the CAT NMS Plan, stringent CAT NMS Plan requirements do not allow for any material flexibility in cloud architecture design choices, processing timelines (e.g., the use of non-peak processing windows), or lower-cost storage tiers. As a result, the required CAT processing timelines contribute to the cloud hosting costs of the CAT.

The costs for cloud hosting services also reflect the need for specialized cloud hosting services given the data volume and unique processing needs of the CAT. The data volume as well as the data processing needs of the CAT necessitate the use of cloud hosting services. The equipment, power and services required for an on-premises data model, the alternative to cloud hosting services, would be cost prohibitive. Moreover, as CAT was being developed, there were limited cloud hosting providers that could satisfy all the necessary CAT requirements, including the operational and security criteria. Over time more providers offering cloud hosting services that would satisfy these criteria have entered the market. CAT LLC will continue to evaluate alternative cloud hosting services, recognizing that the time and cost to move to an alternative cloud provider would be substantial.

The reasonableness of the cloud hosting services costs is further supported by key cost discipline mechanisms for the CAT—a cost-based funding structure, cost transparency, cost management efforts (including regular efforts to lower compute and storage costs where permitted by the Plan) and oversight. Together, these mechanisms help ensure the ongoing reasonableness of the CAT's costs and the level of fees assessed to support those costs.²²¹

(ii) Technology: Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to operating fees

as a part of Historical CAT Assessments.²²² CAT LLC determined that the costs related to operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The operating fees include the negotiated fees paid by CAT LLC to the Plan Processor to operate and maintain the system for order-related information and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (e.g., management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the selection of FCAT as the Plan Processor was reasonable and appropriate given its expertise with securities regulatory reporting, after a process of considering other potential candidates.²²³ CAT LLC also determined that the fixed price contract, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, was reasonable and appropriate, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity.²²⁴ The services performed by FCAT for each period and the costs related to such services are described above.²²⁵

(iii) Technology: CAIS Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to CAIS operating fees as a part of Historical CAT Assessments.²²⁶ CAT LLC determined that the costs related to CAIS operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The CAIS operating fees include the fees paid to the Plan Processor to operate and maintain CAIS and to perform the business operations related to the system, including compliance, security, testing, training, communications with the industry (e.g., management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the FCAT-negotiated fees for Kingland's CAIS-related services, negotiated on an arm's length basis with the goals of managing costs

and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity, were reasonable and appropriate.²²⁷ The services performed by Kingland for each period and the costs for each period are described above.²²⁸

(iv) Technology: Change Request Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to change request fees as a part of Historical CAT Assessments.²²⁹ CAT LLC determined that the costs related to change request fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. It is common practice to utilize a change request process to address evolving needs in technology projects. This is particularly true for a project like CAT that is the first of its kind, both in substance and in scale. The substance and costs of each of the change requests are evaluated by the Operating Committee, and approved in accordance with the requirements for Operating Committee meetings. In each case, CAT LLC determined that the change requests were necessary to implement the CAT. As described above, the change requests cover various technology changes, including, for example, changes related to CAT reporting, data feeds and exchange functionality. CAT LLC also determined that the costs for each change request were appropriate for the relevant technology change. A description of the change requests for each FAM Period and their total costs are set described above.²³⁰ As noted above, the total costs for change requests through FAM Period 3 represent a small percentage of Historical CAT Costs 1—that is, 0.25% of Historical CAT Costs 1.

(v) Capitalized Developed Technology Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to capitalized developed technology costs as a part of Historical CAT Assessments.²³¹ Capitalized developed technology costs include costs related to certain

²²⁷ See Sections 3(a)(2)(B)(i)(c), 3(a)(2)(B)(ii)(c), 3(a)(2)(B)(iii)(c) and 3(a)(2)(B)(iv)(c) above.

²²⁸ *Id.*

²²⁹ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²³⁰ See Sections 3(a)(2)(B)(i)(d), 3(a)(2)(B)(ii)(d), 3(a)(2)(B)(iii)(d) and 3(a)(2)(B)(iv)(d) above.

²³¹ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²² Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²³ See Section 3(a)(2)(B)(i)(b) above.

²²⁴ See Sections 3(a)(2)(B)(i)(b), 3(a)(2)(B)(ii)(b), 3(a)(2)(B)(iii)(b) and 3(a)(2)(B)(iv)(b) above.

²²⁵ *Id.*

²²⁶ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²⁰ See Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

²²¹ See Securities Exchange Act Rel. No. 97151 (Mar. 15, 2023), 88 FR 17086, 17117 (Mar. 21, 2023) (describing key cost discipline mechanisms for the CAT).

development costs, costs related to certain modifications, upgrades and other changes to the CAT, CAIS implementation fees and license fees. The amount and type of costs for each period are described in more detail above.²³² CAT LLC determined that these costs are reasonable and should be included as a part of Historical CAT Costs 1.

These costs involve the activity of both the Initial Plan Processor and FCAT, as the successor Plan Processor.²³³ With regard to the Initial Plan Processor, the Participants utilized an RFP to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan. CAT LLC entered into an agreement with the Initial Plan Processor in which CAT LLC would pay the Initial Plan Processor a negotiated, fixed price fee.²³⁴ In addition, as described above, CAT LLC determined that it is appropriate to enter into an agreement with FCAT as the successor Plan Processor.²³⁵

(vi) Legal

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to legal fees as a part of Historical CAT Assessments.²³⁶ CAT LLC determined that the legal costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Given the unique nature of the CAT, the number of parties involved with the CAT (including, for example, the SEC, Participants, Industry Members, and vendors) and the many regulatory issues associated with the CAT, the scope of the necessary legal services are substantial. CAT LLC determined that the scope of the legal services is necessary to implement and maintain the CAT and that the legal rates reflect the specialized services necessary for such a project. When hiring each law firm for a CAT project, CAT LLC interviewed multiple firms, and determined to hire each firm based on a variety of factors, including the relevant expertise and fees. In each case,

²³² See Sections 3(a)(2)(B)(i)(e), 3(a)(2)(B)(ii)(e), 3(a)(2)(B)(iii)(e) and 3(a)(2)(B)(iv)(e) above.

²³³ *Id.*

²³⁴ See Section 3(a)(2)(B)(i)(e) above.

²³⁵ See Section 3(a)(2)(B)(i)(b) above.

²³⁶ Section 11.3(b)(iii)(B)(II)(B)(2) of the CAT NMS Plan.

CAT LLC determined that the hourly fee rates were in line with market rates for the specialized legal expertise. In addition, CAT LLC determined that the total costs incurred for each CAT project were appropriate given the breadth of services provided. The services performed by each law firm for each period and the costs related to such services are described above.²³⁷

(vii) Consulting

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover consulting costs as a part of Historical CAT Assessments.²³⁸ CAT LLC determined that the consulting costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Because there are no CAT employees²³⁹ and because of the significant number of issues associated with the CAT, the consultants provided assistance in the management of various CAT matters and the processes related to such matters.²⁴⁰ CAT LLC considered a variety of factors in choosing a consulting firm and determined to select Deloitte after an interview process.²⁴¹ CAT LLC also determined that the consulting services were provided at reasonable market rates, as the fees were negotiated annually and comparable to the rates charged by other consulting firms for similar work.²⁴² Moreover, the total costs for such consulting services were appropriate in light of the breadth of services provided by Deloitte. The services performed by Deloitte and the costs related to such services are described above.²⁴³

(viii) Insurance

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover insurance costs as a part of Historical CAT Assessments.²⁴⁴ CAT LLC determined that the insurance costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that it is common practice

²³⁷ See Sections 3(a)(2)(B)(i)(f), 3(a)(2)(B)(ii)(f), 3(a)(2)(B)(iii)(f) and 3(a)(2)(B)(iv)(f) above.

²³⁸ Section 11.3(b)(iii)(B)(II)(B)(3) of the CAT NMS Plan.

²³⁹ As stated in the filing of the proposed CAT NMS Plan, “[i]t is the intent of the Participants that the Company have no employees.” Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614, 30621 (May 17, 2016).

²⁴⁰ CAT LLC uses certain third parties to perform tasks that may be performed by administrators for other NMS Plans. See, e.g., CTA Plan and CQ Plan.

²⁴¹ See Section 3(a)(2)(B)(i)(g) above.

²⁴² See Sections 3(a)(2)(B)(i)(g), 3(a)(2)(B)(ii)(g), 3(a)(2)(B)(iii)(g) and 3(a)(2)(B)(iv)(g) above.

²⁴³ *Id.*

²⁴⁴ Section 11.3(b)(iii)(B)(II)(B)(4) of the CAT NMS Plan.

to have directors’ and officers’ liability insurance, and errors and omissions liability insurance. CAT LLC further determined that it was important to have cyber security insurance given the nature of the CAT, and such a decision is consistent with the CAT NMS Plan, which states that the cyber incident response plan may include “[i]nsurance against security breaches.”²⁴⁵ In selecting the insurance providers for these policies, CAT LLC engaged in an evaluation of alternative insurers, including a comparison of the pricing offered by the alternative insurers.²⁴⁶ Based on this analysis, CAT LLC determined that the selected insurance policies provided appropriate coverage at reasonable market rates.²⁴⁷

(ix) Professional and Administration

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover professional and administration costs as a part of Historical CAT Assessments.²⁴⁸ CAT LLC determined that the professional and administration costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Because there are no CAT employees, all required accounting, financial, tax, cash management and treasury functions for CAT LLC have been outsourced at market rates. In addition, the required annual financial statement audit of CAT LLC is included in professional and administration costs, which costs are also at market rates.

CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm’s relevant expertise and fees.²⁴⁹ The hourly fee rates for this firm were in line with market rates for the financial advisory services provided.²⁵⁰ Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Anchin. The services performed by Anchin and the

²⁴⁵ Section 4.1.5 of Appendix D of the CAT NMS Plan.

²⁴⁶ See Sections 3(a)(2)(B)(i)(h), 3(a)(2)(B)(ii)(h), 3(a)(2)(B)(iii)(h) and 3(a)(2)(B)(iv)(h) above.

²⁴⁷ *Id.*

²⁴⁸ Section 11.3(b)(iii)(B)(II)(B)(5) of the CAT NMS Plan.

²⁴⁹ See Section 3(a)(2)(B)(i)(i) above.

²⁵⁰ See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

costs related to such services are described above.²⁵¹

CAT LLC also determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the role given the balance of these considerations.²⁵² Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services.²⁵³ Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Grant Thornton. The services performed by Grant Thornton and the costs related to such services are described above.²⁵⁴

The professional and administrative costs also include costs related to the receipt of certain market data from Exegy. After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy. Exegy provided the data elements required by the CAT NMS Plan, and the fees were reasonable and in line with market rates for the market data received.²⁵⁵

The professional and administrative costs also include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation and operation of the controls specified by NIST Special Publication 800-53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees

were reasonable and in line with market rates for such an assessment.²⁵⁶

(x) Public Relations Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover public relations costs as a part of Historical CAT Assessments.²⁵⁷ CAT LLC determined that the public relations costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that the types of public relations services utilized were beneficial to the CAT and market participants more generally. Public relations services were important for various reasons, including monitoring comments made by market participants about CAT and understanding issues related to the CAT discussed on the public record.²⁵⁸ By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT issues to the benefit of all market participants.²⁵⁹ Moreover, CAT LLC determined that the rates charged for such services were in line with market rates.²⁶⁰ As noted above, the total public relations costs through FAM Period 3 represent a small percentage of Historical CAT Costs 1—that is, 0.1% of Historical CAT Costs 1.

(B) Total Executed Equivalent Share Volume for the Prior 12 Months

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. CAT LLC determined the total executed equivalent share volume for the prior twelve months by counting executed equivalent shares in the same manner as it will count executed equivalent shares for CAT billing purposes.

(C) Historical Recovery Period 1

CAT LLC has determined to establish a Historical Recovery Period of 24 months for Historical CAT Assessment 1 and that such length is reasonable. CAT LLC determined that the length of Historical Recovery Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans notes to the Participants in a timely fashion. CAT

LLC determined that 24 months for Historical Recovery Period 1 would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to Section 31.²⁶¹ In addition, in establishing a Historical Recovery Period of 24 months, CAT LLC recognized that the total costs for Historical CAT Assessment 1 was less than the total costs for 2022 and 2023, and therefore it would be appropriate to recover those costs in two years.

(D) Projected Executed Equivalent Share Volume for Historical Recovery Period 1

CAT LLC has determined to calculate the projected total executed equivalent share volume for the 24 months of Historical Recovery Period 1 by doubling the executed equivalent share volume for the prior 12 months. CAT LLC determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has remained relatively constant in recent years. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395, the executed equivalent share volume for 2022 was 4,039,821,841,560.31, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6. Accordingly, the projected total executed equivalent share volume for Historical Recovery Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.²⁶²

(E) Actual Fee Rate for Historical CAT Assessment 1

(i) Decimal Places

As noted in the Plan amendment for the CAT Funding Model, as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee rate.²⁶³ Accordingly, proposed paragraph (a)(1)(B) of the fee schedule would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 by one-third, and rounding the result to 6 decimal places. CAT LLC determined that the use of six decimal places is reasonable as it balances the

²⁵¹ *Id.*

²⁵² See Section 3(a)(2)(B)(i)(i) above.

²⁵³ See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

²⁵⁴ *Id.*

²⁵⁵ See Section 3(a)(2)(B)(i)(i) above.

²⁵⁶ *Id.*

²⁵⁷ Section 11.3(b)(iii)(B)(III)(B)(6) of the CAT NMS Plan.

²⁵⁸ See Section 3(a)(2)(B)(i)(j) above.

²⁵⁹ See Sections 3(a)(2)(B)(i)(j), 3(a)(2)(B)(ii)(j), 3(a)(2)(B)(iii)(j) and 3(a)(2)(B)(iv)(j) above.

²⁶⁰ *Id.*

²⁶¹ As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model Approval Order at 62682.

²⁶² This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

²⁶³ CAT Funding Model Approval Order at 62658, n.658.

accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

(ii) Reasonable Fee Level

The Exchange believes that imposing Historical CAT Assessment 1 with a fee rate of \$0.000013 per executed equivalent share is reasonable because it provides for a revenue stream for the Company that is aligned with Historical CAT Costs 1 and such costs would be spread out over an appropriate recovery period, as discussed above. Moreover, the Exchange believes that the level of the fee rate is reasonable, as it is comparable to other transaction-based fees. Indeed, Historical CAT Assessment 1 is significantly lower than fees assessed pursuant to Section 31 (*e.g.*, \$0.0009 per share to 0.0004 per share),²⁶⁴ and, as a result, the magnitude of Historical CAT Assessment 1 is small, and therefore will mitigate any potential adverse economic effects or inefficiencies.²⁶⁵ Furthermore, the reasonable fee rate for Historical CAT Assessment 1 further supports CAT LLC's decision to seek to recover all Historical CAT Costs prior to 2022, rather than establishing separate Historical CAT Assessments for pre-FAM, FAM 1, FAM 2 and FAM 3 costs.

(3) Historical CAT Assessment 1 Provides for an Equitable Allocation of Fees

Historical CAT Assessment 1 provides for an equitable allocation of fees, as it equitably allocates CAT costs between and among the Participants and Industry Members. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act, including the formula for calculating Historical CAT Assessments as well as the Industry Members to be charged the Historical CAT Assessments.²⁶⁶ In approving the CAT Funding Model, the SEC stated that "[t]he Participants have sufficiently demonstrated that the proposed allocation of fees is reasonable."²⁶⁷ Accordingly, the CAT Funding Model sets forth the requirements for allocating fees related to Historical CAT Costs among Participants and Industry Members, and the fee filings for Historical CAT Assessments must comply with those requirements.

Historical CAT Assessment 1 provides for an equitable allocation of fees as it complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. For example, as described above, the calculation of Historical CAT Assessment 1 complies with the formula set forth in Section 11.3(b) of the CAT NMS Plan. In addition, Historical CAT Assessment 1 would be charged to CEBBs and CEBBs in accordance with Section 11.3(b) of the CAT NMS Plan. Furthermore, the Participants would continue to remain responsible for their designated share of Past CAT Costs through the cancellation of loans made by the Participants to CAT LLC.

In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1—Historical CAT Costs 1 (including Excluded Costs), the count for the executed equivalent share volume for the prior 12 months, the length of the Historical Recovery Period, and the projected executed equivalent share volume for the Historical Recovery Period—are reasonable. Moreover, these inputs lead to a reasonable fee rate for Historical CAT Assessment 1 that is lower than other fee rates for transaction-based fees. A reasonable fee rate allocated in accordance with the requirements of the CAT Funding Model provides for an equitable allocation of fees.

(4) Historical CAT Assessment 1 is Not Unfairly Discriminatory

Historical CAT Assessment 1 is not an unfairly discriminatory fee. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act. In reaching this conclusion, the SEC analyzed the potential effect of Historical CAT Assessments calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Historical CAT Assessment 1 complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1 and the resulting fee rate for Historical CAT Assessment 1 is

reasonable. Therefore, Historical CAT Assessment 1 does not impose an unfairly discriminatory fee on Industry Members.

Finally, the Exchange believes the proposed fees established pursuant to the CAT Funding Model promote just and equitable principles of trade, and, in general, protect investors and the public interest, and are provided in a transparent manner and specificity in the fee schedule. The Exchange also believes that the proposed fees are reasonable because they would provide ease of calculation, ease of billing and other administrative functions, and predictability of a fee based on fixed rate per executed equivalent share. Such factors are crucial to estimating a reliable revenue stream for CAT LLC and for permitting Exchange members to reasonably predict their payment obligations for budgeting purposes.

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

Section 6(b)(8) of the Act²⁶⁸ requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that Historical CAT Assessment 1 implements provisions of the CAT NMS Plan that were approved by the Commission and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan.

In addition, all Participants (including exchanges and FINRA) are proposing to introduce Historical CAT Assessment 1 on behalf of CAT LLC to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive fee filing, and, therefore, it does not raise competition issues between and among the Participants.

Furthermore, in approving the CAT Funding Model, the SEC analyzed the potential competitive impact of the CAT Funding Model, including competitive issues related to market services, trading services and regulatory services, efficiency concerns, and capital formation.²⁶⁹ The SEC also analyzed the potential effect of CAT fees calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA),

²⁶⁴ CAT Funding Model Approval Order at 62663, 62682.

²⁶⁵ *Id.*

²⁶⁶ See Section 11.3(b) of the CAT NMS Plan.

²⁶⁷ CAT Funding Model Approval Order at 62629.

²⁶⁸ 15 U.S.C. 78f(b)(8).

²⁶⁹ CAT Funding Model Approval Order at 62676–86.

Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Based on this analysis, the SEC approved the CAT Funding Model as compliant with the Exchange Act. Historical CAT Assessment 1 is calculated and implemented in accordance with the CAT Funding Model as approved by the SEC.

As discussed above, each of the inputs into the calculation of Historical CAT Assessment 1 is reasonable and the resulting fee rate for Historical CAT Assessment 1 calculated in accordance with the CAT Funding Model is reasonable. Therefore, Historical CAT Assessment 1 would not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act.

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

The Exchange neither solicited nor received comments on the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act²⁷⁰ and Rule 19b-4(f)(2) thereunder.²⁷¹

²⁷⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁷¹ 17 CFR 240.19b-4(f)(2).

because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-LTSE-2024-05 on the subject line.

Paper Comments

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

All submissions should refer to file number SR-LTSE-2024-05. This file number should be included on the subject line if email 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 (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-LTSE-2024-05 and should be submitted on or before October 3, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷²

Sherry R. Haywood,

Assistant Secretary.

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²⁷² 17 CFR 200.30-3(a)(12).



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Part VI

Securities and Exchange Commission

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100947; File No. SR–MEMX–2024–34]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail

September 5, 2024.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b–4 thereunder,² notice is hereby given that on August 29, 2024, MEMX LLC (“MEMX” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing with the Commission a proposed rule change to establish fees for Industry Members³ related to certain historical costs of the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”) incurred prior to January 1, 2022. These fees would be payable to Consolidated Audit Trail, LLC (“CAT LLC” or “the Company”)⁴ and referred to as Historical CAT Assessment 1, and would be described in a section of the Exchange’s fee schedule entitled “Consolidated Audit Trail Funding Fees.” The fee rate for Historical CAT Assessment 1 will be \$0.000013 per executed equivalent share. CAT Executing Brokers will receive their first monthly invoice for Historical CAT Assessment 1 in November 2024 calculated based on their transactions as CAT Executing Brokers for the Buyer (“CEBB”) and/or CAT Executing Brokers for the Seller

(“CEBS”) in October 2024. A notice of the proposed rule change for publication in the *Federal Register* is attached hereto as Exhibit 1, and the text of the proposed rule change is attached as Exhibit 5.

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

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

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

1. Purpose

On July 11, 2012, the Commission adopted Rule 613 of Regulation NMS, which required the self-regulatory organizations (“SROs”) to submit a national market system (“NMS”) plan to create, implement and maintain a consolidated audit trail that would capture customer and order event information for orders in NMS securities across all markets, from the time of order inception through routing, cancellation, modification or execution.⁵ On November 15, 2016, the Commission approved the CAT NMS Plan.⁶ Under the CAT NMS Plan, the Operating Committee has the discretion to establish funding for CAT LLC to operate the CAT, including establishing fees for Industry Members to be assessed by CAT LLC that would be implemented on behalf of CAT LLC by the Participants.⁷ The Operating Committee adopted a revised funding model to fund the CAT (“CAT Funding Model”). On September 6, 2023, the Commission approved the CAT Funding Model, after concluding that the model was reasonable and that it satisfied the requirements of Section 11A of the Exchange Act and Rule 608 thereunder.⁸

The CAT Funding Model provides a framework for the recovery of the costs to create, develop and maintain the CAT, including providing a method for allocating costs to fund the CAT among Participants and Industry Members. The CAT Funding Model establishes two categories of fees: (1) CAT fees assessed by CAT LLC and payable by certain Industry Members to recover a portion of historical CAT costs previously paid by the Participants (“Historical CAT Assessment” fees); and (2) CAT fees assessed by CAT LLC and payable by Participants and Industry Members to fund prospective CAT costs (“Prospective CAT Costs” fees).⁹

Under the CAT Funding Model, “[t]he Operating Committee will establish one or more fees (each a ‘Historical CAT Assessment’) to be payable by Industry Members with regard to CAT costs previously paid by the Participants (‘Past CAT Costs’).”¹⁰ In establishing a Historical CAT Assessment, the Operating Committee will determine a “Historical Recovery Period” and calculate a “Historical Fee Rate” for that Historical Recovery Period. Then, for each month in which a Historical CAT Assessment is in effect, each CEBB and CEBS would be required to pay the fee—the Historical CAT Assessment—for each transaction in Eligible Securities executed by the CEBB or CEBS 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.¹¹

Each Historical CAT Assessment to be paid by CEBBs and CEBSs is designed to contribute toward the recovery of two-thirds of the Historical CAT Costs. Because the Participants previously have paid Past CAT Costs via loans to the Company, the Participants would not be required to pay any Historical

⁹ Under the CAT Funding Model, the Operating Committee may establish one or more Historical CAT Assessments. Section 11.3(b) of the CAT NMS Plan. This filing only establishes Historical CAT Assessment 1 related to certain Historical CAT Costs as described herein; it does not address any other potential Historical CAT Assessment related to other Historical CAT Costs. In addition, under the CAT Funding Model, the Operating Committee also may establish CAT Fees related to CAT costs going forward. Section 11.3(a) of the CAT NMS Plan. This filing does not address any potential CAT Fees related to CAT costs going forward. Any such other fee for any other Historical CAT Assessment or CAT Fee for Prospective CAT Costs will be subject to a separate fee filing.

¹⁰ Section 11.3(b) of the CAT NMS Plan.

¹¹ In approving the CAT Funding Model, the Commission stated that, “[i]n the Commission’s view, the proposed recovery of the Past CAT Costs via the Historical CAT Assessment is reasonable.” CAT Funding Model Approval Order at 62662.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ An “Industry Member” is defined as “a member of a national securities exchange or a member of a national securities association.” See Rule 4.5(u). See also Section 1.1 of the CAT NMS Plan. Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the CAT NMS Plan and/or the CAT Compliance Rule. See Rule 4.5.

⁴ The term “CAT LLC” may be used to refer to Consolidated Audit Trail, LLC or CAT NMS, LLC, depending on the context.

⁵ Securities Exchange Act Rel. No. 67457 (July 18, 2012), 77 FR 45721 (Aug. 1, 2012) (“Rule 613 Adopting Release”).

⁶ Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (“CAT NMS Plan Approval Order”).

⁷ Section 11.1(b) of the CAT NMS Plan.

⁸ Securities Exchange Act Rel. No. 98290 (Sept. 6, 2023), 88 FR 62628 (Sept. 12, 2023) (“CAT Funding Model Approval Order”).

CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made by the Participants to the Company on a pro rata basis based on the outstanding loan amounts due under the loans, instead of through the payment of a CAT fee.¹² In addition, the Participants also will be 100% responsible for certain Excluded Costs (as discussed below).

CAT LLC proposes to charge CEBBs and CEBs (as described in more detail below) Historical CAT Assessment 1 to recover certain historical CAT costs incurred prior to January 1, 2022, in accordance with the CAT Funding Model. To implement this fee on behalf of CAT LLC, the CAT NMS Plan requires the Participants to "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.'" ¹³ The Plan further states that "Participants will be required to file with the SEC pursuant to Section 19(b) of the Exchange Act a filing for each Historical CAT Assessment."¹⁴

Accordingly, the purpose of this filing is to implement a Historical CAT Assessment on behalf of CAT LLC for Industry Members, referred to as Historical CAT Assessment 1, in accordance with the CAT NMS Plan.¹⁵

The Exchange previously filed a fee filing to implement Historical CAT Assessment 1. On February 13, 2024, the SEC published this prior filing for Historical CAT Assessment 1, temporarily suspended the fee filing, and instituted proceedings to determine whether to approve or disapprove the fee filing.¹⁶ The Exchange is withdrawing its original fee filing for Historical CAT Assessment 1. This Historical CAT Assessment 1 replaces the prior Historical CAT Assessment 1 that was previously filed with the Commission.

(1) CAT Executing Brokers

Historical CAT Assessment 1 will be charged to each CEBB and CEBs for each applicable transaction in Eligible Securities.¹⁷ The CAT NMS Plan defines a "CAT Executing Broker" to mean:

(a) with respect to a transaction in an Eligible Security that is executed on an exchange, the Industry Member identified as the Industry Member responsible for the

order on the buy-side of the transaction and the Industry Member responsible for the sell-side of the transaction in the equity order trade event and option trade event in the CAT Data submitted to the CAT by the relevant exchange pursuant to the Participant Technical Specifications; and (b) with respect to a transaction in an Eligible Security that is executed otherwise than on an exchange and required to be reported to an equity trade reporting facility of a registered national securities association, the Industry Member identified as the executing broker and the Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event in the CAT Data submitted to the CAT by FINRA pursuant to the Participant Technical Specifications; provided, however, in those circumstances where there is a non-Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event or no contra-side executing broker is identified in the TRF/ORF/ADF transaction data event, then the Industry Member identified as the executing broker in the TRF/ORF/ADF transaction data event would be treated as CAT Executing Broker for the Buyer and for the Seller.¹⁸

The following fields of the Participant Technical Specifications indicate the CAT Executing Brokers for the transactions executed on an exchange.

EQUITY ORDER TRADE (EOT)¹⁹

No.	Field name	Data type	Description	Include key
12.n.8/13.n.8	member	Member Alias	The identifier for the member firm that is responsible for the order on this side of the trade. Not required if there is no order for the side as indicated by the NOBUYID/NOSELLID instruction. This must be provided if orderID is provided.	C

OPTION TRADE (OT)²⁰

No.	Field name	Data type	Description	Include key
16.n.13/17.n.13	member	Member Alias	The identifier for the member firm that is responsible for the order ..	R

In addition, the following fields of the Participant Technical Specifications would indicate the CAT Executing

Brokers for the transactions executed otherwise than on an exchange.

¹² Section 11.3(b)(ii) of the CAT NMS Plan.

¹³ Section 11.1(b) of the CAT NMS Plan.

¹⁴ Section 11.3(b)(iii)(B)(I) of the CAT NMS Plan.

¹⁵ Note that there may be one or more Historical CAT Assessments depending on the timing of the completion of the Financial Accountability Milestones, among other things. Section 11.3(b) of the CAT NMS Plan.

¹⁶ See Exchange Act Release No. 99356 (January 17, 2024), 89 FR 10697 (February 13, 2024) (SR-MEMX-2024-01).

¹⁷ In its approval of the CAT Funding Model, the Commission determined that charging CAT fees to CAT Executing Brokers was reasonable. In reaching this conclusion the Commission noted that the use

of CAT Executing Brokers is appropriate because the CAT Funding Model is based upon the calculation of *executed* equivalent shares, and, therefore, charging CAT Executing Brokers would reflect their executing role in each transaction. Furthermore, the Commission noted that, because CAT Executing Brokers are already identified in transaction reports from the exchanges and FINRA's equity trade reporting facilities recorded in CAT Data, charging CAT Executing Brokers could streamline the billing process. CAT Funding Model Approval Order at 62629.

¹⁸ Section 1.1 of the CAT NMS Plan. Note that CEBBs and CEBs may, but are not required to, pass-through their CAT fees to their clients, who

may, in turn, pass their fees to their clients until they are imposed ultimately on the account that executed the transaction. See CAT Funding Model Approval Order at 62649.

¹⁹ See Table 23, Section 4.7 (Order Trade Event) of the CAT Reporting Technical Specifications for Plan Participants, Version 4.1.0-r21 (Apr. 15, 2024), https://www.catnmsplan.com/sites/default/files/2024-04/04.15.2024-CAT_Reporting_Technical_Specifications_for_Participants_4.1.0-r21.pdf ("CAT Reporting Technical Specifications for Plan Participants").

²⁰ See Table 51, Section 5.2.5.1 (Simple Option Trade Event) of the CAT Reporting Technical Specifications for Plan Participants.

TRF/ORF/ADF TRANSACTION DATA EVENT (TRF)²¹

No.	Field name	Data type	Description	Include key
26	reportingExecutingMpid	Member Alias	MPID of the executing party	R
28	contraExecutingMpid	Member Alias	MPID of the contra-side executing party	C

(2) Calculation of Historical Fee Rate 1

The Operating Committee determined the Historical Fee Rate to be used in calculating Historical CAT Assessment 1 (“Historical Fee Rate 1”) by dividing the Historical CAT Costs for Historical CAT Assessment 1 (“Historical CAT Costs 1”) by the projected total executed share volume of all transactions in Eligible Securities for the Historical Recovery Period for Historical CAT Assessment 1 (“Historical Recovery Period 1”), as discussed in detail below. Based on this calculation, the Operating Committee has determined that Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. This rate is then divided by three and rounded to determine the fee rate of \$0.000013 per executed equivalent share that will be assessed to CEBBs and CEBs, as also discussed in detail below.

(A) Executed Equivalent Shares for Transactions in Eligible Securities

Under the CAT NMS Plan, for purposes of calculating each Historical CAT Assessment, executed equivalent shares in a transaction in Eligible Securities will be reasonably counted as follows: (1) each executed share for a transaction in NMS Stocks will be counted as one executed equivalent share; (2) each executed contract for a transaction in Listed Options will be counted based on the multiplier applicable to the specific Listed Options (*i.e.*, 100 executed equivalent shares or such other applicable multiplier); and

(3) each executed share for a transaction in OTC Equity Securities shall be counted as 0.01 executed equivalent share.²²

(B) Historical CAT Costs 1

The CAT NMS Plan states that “[t]he Operating Committee will reasonably determine the Historical CAT Costs sought to be recovered by each Historical CAT Assessment, where the Historical CAT Costs will be Past CAT Costs minus Past CAT Costs reasonably excluded from Historical CAT Costs by the Operating Committee. Each Historical CAT Assessment will seek to recover from CAT Executing Brokers two-thirds of Historical CAT Costs incurred during the period covered by the Historical CAT Assessment.”²³ As described in detail below, Historical CAT Costs 1 would be \$318,059,819. This figure includes Past CAT Costs of \$401,312,909 minus certain Excluded Costs of \$83,253,090. Participants collectively will remain responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), plus the Excluded Costs of \$83,253,090. CEBBs collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), and CEBs collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67).

The following describes in detail Historical CAT Costs 1 with regard to four separate historical time periods as well as Past CAT Costs excluded from Historical CAT Costs 1 (“Excluded Costs”). The following cost details are

provided in accordance with the requirement in the CAT NMS Plan to provide in the fee filing “a brief description of the amount and type of Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs.”²⁴ Each of the costs described below are reasonable, appropriate and necessary for the creation, implementation and maintenance of CAT.

(i) Historical CAT Costs Incurred Prior to June 22, 2020 (Pre-FAM Costs)

Historical CAT Costs 1 would include costs incurred by CAT prior to June 22, 2020 (“Pre-FAM Period”) and already funded by the Participants, excluding Excluded Costs (described further below). Historical CAT Costs 1 would include costs for the Pre-FAM Period of \$124,290,730. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$41,430,243.33), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$41,430,243.33) and CEBs paying one-third (\$41,430,243.33). These costs do not include Excluded Costs, as discussed further below. The following table breaks down Historical CAT Costs 1 for the Pre-FAM Period into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs 1 for pre-FAM period (prior to June 22, 2020)*
Capitalized Developed Technology Costs**	\$51,847,150
Technology Costs	33,568,579
Cloud Hosting Services	10,268,840
Operating Fees	21,085,485
CAIS Operating Fees	2,072,908
Change Request Fees	141,346
Legal	19,674,463
Consulting	17,013,414

²¹ See Table 61, Section 6.1 (TRF/ORF/ADF Transaction Data Event) of the CAT Reporting Technical Specifications for Plan Participants.

²² Section 11.3(a)(i)(B) and 11.3(b)(i)(B) of the CAT NMS Plan. In approving the CAT Funding

Model, the Commission concluded that “the use of executed equivalent share volume as the basis of the proposed cost allocation methodology is reasonable and consistent with the approach taken

by the funding principles of the CAT NMS Plan.” CAT Funding Model Approval Order at 62640.

²³ Section 11.3(b)(i)(C) of the CAT NMS Plan.

²⁴ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs 1 for pre-FAM period (prior to June 22, 2020)*
Insurance	880,419
Professional and administration	1,082,036
Public relations	224,669
Total Operating Expenses	124,290,730

* The costs described in this table of costs for the Pre-FAM Period were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website. In addition, in accordance with Section 6.6(a)(i) of the CAT NMS Plan, in 2018 CAT LLC provided the SEC with "an independent audit of fees, costs, and expenses incurred by the Participants on behalf of the Company prior to the Effective Date of the Plan that will be publicly available." The audit is available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$2,115,545 incurred during the period prior to June 22, 2020 have been appropriately excluded from the above table.²⁵

The Pre-FAM Period includes a broad range of CAT-related activity from 2012 through June 22, 2020, including the evaluation of the requirements of SEC Rule 613, the development of the CAT NMS Plan, the evaluation and selection of the initial and successor Plan Processors, the commencement of the creation and implementation of the CAT to comply with Rule 613 and the CAT NMS Plan, including technical specifications for transaction reporting and regulatory access, and related technology and the commencement of reporting to the CAT. The following describes the costs for each of the categories for the Pre-FAM Period.

(a) Technology Costs—Cloud Hosting Services.

The \$10,268,840 in technology costs for cloud hosting services represent costs incurred for services provided by the cloud services provider for the CAT, Amazon Web Services, Inc. ("AWS"), during the Pre-FAM Period.

As part of its proposal for acting as the successor Plan Processor for the CAT, FCAT selected AWS as a subcontractor to provide cloud hosting services. In 2019, after reviewing the capabilities of other cloud services providers, FCAT determined that AWS was the only cloud services provider at that time sufficiently mature and capable of providing the full suite of necessary cloud services for the CAT, including, for example, the security, resiliency and complexity necessary for the CAT computing requirements. The use of cloud hosting services is standard for this type of high-volume data activity and reasonable and necessary

for implementation of the CAT, particularly given the substantial data volumes associated with the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT the fees incurred by the Plan Processor for cloud hosting services provided by AWS as FCAT's subcontractor [*sic*] on a monthly basis for the cloud hosting services, and FCAT, in turn, pays such fees to AWS. The fees for cloud hosting services were negotiated by FCAT on an arm's length basis with the goals of managing cost and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the expected volume of data, the breadth of services provided and market rates for similar services. The fees for cloud hosting services during the Pre-FAM Period were paid to FCAT by CAT NMS, LLC²⁶ and subsequently Consolidated Audit Trail, LLC (as previously noted, both entities are referred to generally as "CAT LLC"),²⁷ and FCAT, in turn, paid AWS. CAT LLC was funded via loan contributions by the Participants.²⁸

AWS was engaged by FCAT to provide a broad array of cloud hosting

services for the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS include storage services, databases, compute services and other services (such as networking, management tools and DevOps tools). AWS also was engaged to provide various environments for CAT, such as development, performance testing, test and production environments.

The cost for AWS services for the CAT is a function of the volume of CAT Data. The greater the amount of CAT Data, the greater the cost of AWS services to the CAT. During the Pre-FAM Period from the engagement of AWS in February 2019 through June 2020, AWS provided cloud hosting services for volumes of CAT Data far in excess of the volume predictions set forth in the CAT NMS Plan. The CAT NMS Plan states, when all CAT Reporters are submitting their data to the CAT, it "must be sized to receive[,] process and load more than 58 billion records per day,"²⁹ and that "[i]t is expected that the Central Repository will grow to more than 29 petabytes of raw, uncompressed data."³⁰ However, the volume of CAT Data for the Pre-FAM Period was far in excess of these predicted levels. By the end of this period, data submitted to the CAT included options and equities Participant Data,³¹ Phase 2a and Phase 2b Industry Member Data³² (including certain linkages), as well as SIP Data,³³ reference data and other types of Other Data.³⁴ The following chart provides data regarding the average daily volume,

²⁵ With respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

²⁶ CAT NMS, LLC was formed by FINRA and the U.S. national securities exchanges to implement the requirements of SEC Rule 613 under the Exchange Act. SEC Rule 613 required the SROs to jointly submit to the SEC the CAT NMS Plan to create, implement and maintain the CAT. The SEC approved the CAT NMS Plan on November 15, 2016. CAT NMS Plan Approval Order.

²⁷ On August 29, 2019, the Participants formed a new Delaware limited liability company named Consolidated Audit Trail, LLC for the purpose of conducting activities related to the CAT from and after the effectiveness of the proposed amendment of the CAT NMS Plan to replace CAT NMS, LLC. See Securities Exchange Act Rel. No. 87149 (Sept. 27, 2019), 84 FR 52905 (Oct. 3, 2019).

²⁸ For each of the costs paid by CAT NMS, LLC and Consolidated Audit Trail, LLC as discussed throughout this filing, CAT NMS, LLC and Consolidated Audit Trail, LLC paid these costs via loan contributions by the Participants to CAT NMS, LLC and Consolidated Audit Trail, LLC, respectively.

²⁹ Appendix D-4 of the CAT NMS Plan at n.262.

³⁰ Appendix D-5 of the CAT NMS Plan.

³¹ See Section 6.3(d) of the CAT NMS Plan.

³² See Securities Exchange Rel. No. 88702 (Apr. 20, 2020), 85 FR 23075 (Apr. 24, 2020) ("Phased Reporting Exemptive Relief Order") for a description of Phase 2a and Phase 2b Industry Member Data.

³³ See Section 6.5(a)(ii) of the CAT NMS Plan.

³⁴ See Appendix C-108 of the CAT NMS Plan.

cumulative total events, total compute hours and storage footprint of the CAT during the Pre-FAM Period.³⁵

hours and storage footprint of the CAT during the Pre-FAM Period.³⁵

	Date range: 3/29/19 to 4/12/20 *	Date range: 4/13/20 to 6/21/20 **
Average Daily Volume in Billions		
Participant—Equities	5	5
Participant—Options	80	981
Industry Member—Equities		3
Industry Member—Options		0.04
SIP—Options & Equities	64	70
Average Total Daily Volume	149	166
Cumulative Total Events for the Period	3,890	4,990
Total Compute Hours for the Period	*** N/A	5,663,247
Storage Footprint at End of Period (Petabytes)	30.57	47.96

* The Participant Equities in RSA format.

** Start of Industry Member reporting on 4/13/2020

*** Note that, although there were compute hours during this period, data related to such compute hours are no longer available in current data.

(b) Technology Costs—Operating Fees

The \$21,085,485 in technology costs related to operating fees represent costs incurred with regard to activities of FCAT as the Plan Processor. Operating fees are those fees paid by CAT LLC to FCAT as the Plan Processor to operate and maintain the CAT and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (e.g., management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management as required by the CAT NMS Plan.

FCAT was selected to assume the role of the successor Plan Processor. Prior to this selection, the Participants engaged in discussions with two prior Bidders³⁶ for the successor Plan Processor role. The Operating Committee formed a Selection Subcommittee in accordance with Section 4.12 of the CAT NMS Plan to evaluate and review Bids and to make a recommendation to the Operating Committee with respect to the selection of the successor Plan Processor. In an April 9, 2019 letter to the Commission, the Participants described the reasons for its selection of the successor Plan Processor:

The Selection Subcommittee considered factors including, but not limited to, the following, in recommending FINRA to the Operating Committee as the successor Plan Processor:

a. FINRA's specialized technical expertise and capabilities in the area of broker-dealer technology;

b. The need to appoint a successor Plan Processor with specialized expertise to

develop, implement, and maintain the CAT System in accordance with the CAT NMS Plan and SEC Rule 613;

c. FINRA's detailed proposal in response to CATLLC's recent inquiries; and

d. FINRA's data query and analytics systems demonstration to the Participants.

Based on these and other factors, the Selection Subcommittee determined that FINRA was the most appropriate Bidder to become the successor Plan Processor.³⁷

On February 26, 2019, the Operating Committee (with FINRA recusing itself) voted to select FINRA as the successor Plan Processor pursuant to Section 6.1(t) of the CAT NMS Plan.³⁸ On March 29, 2019, CAT LLC and FCAT (a wholly owned subsidiary of FINRA) entered into a Plan Processor Agreement pursuant to which FCAT would perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT a negotiated monthly fixed price for the operation of the CAT. This fixed price contract was negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity. The operating fees during the Pre-FAM Period were paid to FCAT by CAT LLC.

From March 29, 2019 (the commencement of the Plan Processor Agreement with FCAT) through June 22, 2020 (the end of the Pre-FAM Period),

the Plan Processor's activities with respect to the CAT included the following:

- Commenced user acceptance testing with market data provided by Exegy Incorporated ("Exegy"), a market data provider;³⁹

- Published Technical Specifications and related reporting scenarios documents for Phase 2a, 2b and 2c reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;

- Facilitated testing for Phase 2a and 2b reporting for Industry Members;

- Began developing Technical Specifications and related reporting scenarios documents for Phase 2d reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;

- Published Central Repository Access Technical Specifications, and provided regulator access to test data from Industry Members;

- Facilitated Participant exchanges that support options market makers sending Quote Sent Time to the CAT;

- Facilitated the introduction of OPRA and Options NBBO Other Data to CAT;

- Addressed compliance items, including drafting CAT policies and procedures, and addressing requirements under Regulation SCI;

- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;

³⁵ Note that the volume data described in this table does not include CAIS data.

³⁶ The term "Bidder" is defined in Section 1.1 of the CAT NMS Plan.

³⁷ Letter from Michael J. Simon, Chair, CAT NMS, LLC Operating Committee, to Brent J. Fields, Secretary, SEC (Apr. 9, 2019), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection-040919.pdf>.

³⁸ *Id.*

³⁹ The use of Exegy to provide market data, including the costs and market data provided, is discussed below in Section 3(a)(2)(B)(i)(i).

- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with Participants, the SEC and its staff;
- Operated the FINRA CAT Helpdesk, which is the primary source for answers to questions about CAT, including questions regarding: clock synchronization, firm reporting responsibilities, interpretive questions, technical specifications for reporting to CAT and more;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content;⁴⁰ and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

The \$2,072,908 in technology costs related to CAIS operating fees represent the fees paid for FCAT's subcontractor charged with the development and operation of CAT's Customer and Account Information System ("CAIS"). The CAT is required under the CAT NMS Plan to capture and store Customer Identifying Information and Customer Account Information in a database separate from the transactional database and to create a CAT-Customer-ID for each Customer.

During the Pre-FAM Period, the CAIS-related services were provided by the Plan Processor through the Plan Processor's subcontractor, Kingland Systems Incorporation ("Kingland"). Kingland had experience operating in the securities regulatory technology space, and as a part of its proposal for acting as the Plan Processor for the CAT, FCAT selected Kingland as a subcontractor to provide certain CAIS-related services.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay to the Plan Processor the fees incurred by FCAT for CAIS-related services provided by FCAT through Kingland on a monthly basis. FCAT negotiated the fees for Kingland's CAIS-related services

on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity. The fees for CAIS-related services during the Pre-FAM Period were paid by CAT LLC to FCAT. FCAT, in turn, paid Kingland.

During the Pre-FAM Period, Kingland began development of the CAIS Technical Specifications and the building of CAIS. In addition, Kingland also worked on the build related to the CCID Alternative, an alternative approach to customer information that was not included in the CAT NMS Plan as originally adopted.⁴¹ Furthermore, Kingland also worked on the acceleration of the reporting of large trader identifiers ("LTID") earlier than originally contemplated during this period, in accordance with exemptive relief granted by the SEC.⁴²

(d) Technology Costs—Change Request Fees

The technology costs related to change request fees include costs related to certain modifications, upgrades or other changes to the CAT. Change requests are standard practice and necessary to reflect operational changes, including changes related to new market developments, such as new market participants. In general, if CAT LLC determines that a modification, upgrade or other change to the functionality or service is necessary and appropriate, CAT LLC will submit a request for such a change to the Plan Processor. The Plan Processor will then respond to the request with a proposal for implementing the change, including the cost (if any) of such a change. CAT LLC then determines whether to approve the proposed change. The change request costs were paid by CAT LLC to FCAT. During the Pre-FAM Period, CAT LLC incurred costs of \$141,346 related to change requests implemented by FCAT. Such change requests related to a development fee regarding the OPRA and SIP data feeds, and the reprocessing of certain exchange data.⁴³

⁴¹ For a discussion of the CCID Alternative, see Securities Exchange Act Rel. No. 88393 (Mar. 17, 2020), 85 FR 16152 (Mar. 20, 2020).

⁴² Phased Reporting Exemptive Relief Order at 23079–80.

⁴³ Note that CAT LLC also has incurred costs related to specific Industry Members (e.g., reprocessing costs related to Industry Member reporting errors).

(e) Technology Costs—Capitalized Developed Technology Costs

This category of costs includes capitalizable application development costs incurred in the development of the CAT. The capitalized developed technology costs for the Pre-FAM Period of \$51,847,150 relate to technology provided by the Initial Plan Processor and the successor Plan Processor.

Initial Plan Processor: Thesys CAT, LLC. The capitalized developed technology costs related to the Initial Plan Processor include costs incurred with regard to testing for Participant reporting, Participant reporting to the CAT, a security assessment of the CAT, and the development of the billing function for the CAT.

On January 17, 2017, the Selection Committee of the CAT NMS Plan selected the Initial Plan Processor, Thesys Technologies, LLC, for the CAT NMS Plan pursuant to Article V of the CAT NMS Plan.⁴⁴ The Participants utilized a request for proposal ("RFP") to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan, taking into consideration that the Initial Plan Processor had experience operating in the securities regulatory technology space, among other considerations. On April 6, 2017, CAT LLC entered into an agreement with Thesys CAT LLC ("Thesys CAT"), a Thesys affiliate, to perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT. Under the agreement, CAT LLC would pay Thesys CAT a negotiated, fixed price fee for its role as the Initial Plan Processor. Effective January 30, 2019, the Plan Processor Agreement with Thesys CAT was terminated, and FCAT was subsequently selected as the successor Plan Processor.

From January 17, 2017 through January 30, 2019, the time in which the Thesys CAT was engaged for the CAT, but excluding the period from November 15, 2017 through January 30, 2019, the Initial Plan Processor engaged in various activities with respect to the CAT, including preparing iterative drafts of Participant Technical

⁴⁴ Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf>.

⁴⁰ The CAT website is <https://www.catnmsplan.com>.

Specifications, Industry Member Technical Specifications and the Central Repository Access Technical Specifications. In addition, Thesys CAT also developed CAT technology, addressed compliance items, including drafting CAT policies and procedures, addressing Regulation SCI requirements, establishing a CAT Compliance Officer and a Chief Information Security Officer, addressed security-related matters for the CAT, and worked towards the initiation of Participant reporting per the Participant Technical Specifications.

Successor Plan Processor: FCAT. The capitalized developed technology costs related to FCAT include: (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, including the completion of go-live functionality related to options ingestion and validation, equities regulatory services agreement query tool updates and unlinked options data query, options linkages release, Industry Member Phase 2a file submission and data integrity (including error corrections), and Industry Member testing, including reporting relationships, ATS order type management, basic reporting statistics, SFTP data integrity feedback and error correction; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including a one-time development fee for a secure analytics workspace, a one-time development fee of an Industry Member connectivity solution, and a one-time development fee for the acceleration of multi-factor authentication; (3) CAIS implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$19,674,463 represent the fees paid for legal services provided by two law firms, Wilmer Cutler Pickering Hale and Dorr LLP ("WilmerHale") and Pillsbury Winthrop Shaw Pittman LLP ("Pillsbury"), during the Pre-FAM Period. The legal costs exclude those costs incurred from November 15, 2017 through November 15, 2018.

Law Firm: WilmerHale. Following the adoption of Rule 613, the Participants determined it was necessary to engage external legal counsel to advise the Participants with respect to corporate and regulatory legal matters related to the CAT, including drafting and developing the CAT NMS Plan. The Participants considered a variety of

factors in their analysis of prospective law firms, including (1) the firm's qualifications, resources and expertise; (2) the firm's relevant experience and understanding of the regulatory matters raised by the CAT and in advising on matters of similar scope; (3) the composition of the legal team; and (4) professional fees. Following a series of interviews, the Participants acting as a consortium determined that WilmerHale was well qualified given the balance of these considerations and engaged WilmerHale in February 2013.

WilmerHale's billing rates are negotiated on an annual basis and are determined with reference to the rates charged by other leading law firms for similar work. The Participants assess WilmerHale's performance and review prospective budgets and staffing plans submitted by WilmerHale on an annual basis. WilmerHale's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading law firms for similar work.

The legal costs for WilmerHale during the Pre-FAM Period included costs incurred from 2013 until June 22, 2020 to address corporate and regulatory legal matters related to the CAT. The legal fees for this law firm during the period from February 2013 until the formation of the CAT NMS, LLC on November 15, 2016 were paid directly by the exchanges and FINRA to WilmerHale. After the formation of CAT NMS LLC, the legal fees were paid by CAT LLC to WilmerHale.

After WilmerHale was engaged in 2013 through the end of the Pre-FAM Period on June 22, 2020 (excluding the legal costs from November 15, 2017 through November 15, 2018), WilmerHale provided legal assistance to the CAT on a variety of matters, including with regard to the following:

- Analyzed various legal matters associated with the Selection Plan, and drafted an amendment to the Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the Development Advisory Group ("DAG");
- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on CAT NMS Plan;
- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint

Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan, and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;

- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan and related filings;
- Negotiated and drafted the plan processor agreements with the Initial Plan Processor and the successor Plan Processor;
- Provided assistance with compliance with Regulation SCI;
- Assisted with clock synchronization study;
- Provided assistance with respect to the establishment of CAT security;
- Drafted exemptive requests from CAT NMS Plan requirements, including with regard to options market maker quotes, Customer IDs, CAT Reporter IDs, linking allocations to executions, CAT reporting timeline, FDIDs, customer and account information, timestamp granularity, small industry members, data facility reporting and linkage, allocation reports, SRO-assigned market participant identifiers and cancelled trade indicators, thereby seeking to implement changes that would be cost effective and benefit Industry Members and Participants;
- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Provided advice regarding CAT policies and procedures;
- Analyzed the SEC's amendment of the CAT NMS Plan regarding financial accountability;
- Provided interpretations of and related to the CAT NMS Plan;
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues; and
- Assisted with third-party vendor agreements.

Law Firm: Pillsbury. The legal costs for CAT during the Pre-FAM Period include costs related to the legal services performed by Pillsbury. The Participants interviewed this law firm as well as other potential law firms to provide legal assistance regarding certain liability matters. After considering a variety of factors in its analysis, including the relevant expertise and fees of the firm, CAT LLC

determined to hire Pillsbury in April 2019. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees were paid by CAT LLC to Pillsbury. The legal costs for Pillsbury during the Pre-FAM Period included costs incurred from April 2019 until June 22, 2020 to address legal matters regarding the agreements between CAT Reporters and CAT LLC concerning certain terms associated with CAT Reporting (the "Reporter Agreement"). During that period, Pillsbury advised CAT LLC regarding applicable legal matters, participated in negotiations between the Participants and Industry Members, participated in meetings with senior SEC staff, the Chairman, and Commissioners, represented CAT LLC and the Participants in an SEC administrative proceeding, and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, litigation involving CAT LLC is an expense of operating the CAT, and, therefore, is appropriately an obligation of both Participants and Industry Members under the CAT Funding Model.

(g) Consulting Costs

The consulting costs of \$17,013,414 represent the fees paid to the consulting firm Deloitte & Touche LLP ("Deloitte") as project manager during the Pre-FAM Period, from October 2012 until June 22, 2020. These consulting costs include costs for advisory services related to the operation of the CAT, and meeting facilitation and communications coordination, vendor support and financial analyses.

To help facilitate project management given the unprecedented complexity and scope of the CAT project, the Participants determined it was necessary to engage a consulting firm to assist with the CAT project in 2012, following the adoption of Rule 613. A variety of factors were considered in the analysis of prospective consulting firms, including (1) the firm's qualifications, resources, and expertise; (2) the firm's relevant experience and understanding of the regulatory issues raised by the CAT and in coordinating matters of similar scope; (3) the composition of the consulting team; and (4) professional fees. Following a series of interviews, the exchanges and FINRA as a consortium determined that Deloitte was well qualified given the balance of

these considerations and engaged Deloitte on October 1, 2012.

Deloitte's fee rates are negotiated on an annual basis and are in line with market rates for this type of specialized consulting work. CAT LLC assesses Deloitte's performance and reviews prospective budgets and staffing plans submitted by Deloitte on an annual basis. Deloitte's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading consulting firms for similar work.

The consulting costs for CAT during the period from 2012 until the formation of the CAT NMS, LLC were paid directly by the Participants to Deloitte. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC to Deloitte. CAT LLC reviewed the consulting fees each month and approved the invoices.

After Deloitte was hired in 2012 through the end of the Pre-FAM Period on June 22, 2020 (excluding the consulting costs from November 15, 2017 through November 15, 2018), Deloitte provided a variety of consulting services, including the following:

- Established and implemented program operations for the CAT project, including the program management [*sic*] office and workstream design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participant's independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, analyzing OATS and CAT requirements, and drafting appendices to the Plan;
- Assisted with cost and funding-related activities for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (*e.g.*, Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;

- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;

- Assisted with industry outreach and communications regarding the CAT, including assistance with industry outreach events, the development of the CAT website, frequently asked questions, and coordinating with the CAT LLC's public relations firm;

- Provided support for updating the SEC on the progress of the development of the CAT;

- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress;

- Coordinated efforts regarding the selection of the successor Plan Processor;

- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor, including support for the Operating Committee and successor Plan Processor for the new role; and

- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$880,419 represent the cost incurred for insurance for CAT during the Pre-FAM Period. Commencing in 2020, CAT LLC performed an evaluation of various potential alternatives for CAT insurance policies, which included engaging in discussions with different insurance companies and conducting cost comparisons of various alternative approaches to insurance. Based on an analysis of a variety of factors, including coverage and premiums, CAT LLC determined to purchase cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance from USI Insurance Services LLC ("USI"). Such policies are standard for corporate entities, and cyber security liability insurance is important for the CAT System. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

In adopting the CAT NMS Plan, the Commission amended the Plan to add a requirement that CAT LLC's financial

statements be prepared in compliance with GAAP, audited by an independent public accounting firm, and made publicly available.⁴⁵ The professional and administration costs include costs related to accounting and accounting advisory services to support the operating and financial functions of CAT, financial statement audit services by an independent accounting firm, preparation of tax returns, and various cash management and treasury functions. In addition, professional and administration costs for the Pre-FAM Period include costs related to the receipt of market data and a security assessment. The costs for these professional and administration services were \$1,082,036 for the Pre-FAM Period.

Financial Advisory Firm: Anchin Accountants & Advisors ("Anchin"). CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT in April 2018. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The hourly fee rates for this firm were in line with market rates for these financial advisory services. The fees for these services were paid by CAT LLC to Anchin.

After Anchin was hired in April 2018 through the end of the Pre-FAM Period on June 22, 2020 (excluding the period from April 2018 through November 15, 2018), Anchin provided a variety of services, including the following:

- Developed, updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Addressed accounting and financial reporting matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC,

including supporting the dissolution of CAT NMS, LLC;

- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Accounting Firm: Grant Thornton LLP ("Grant Thornton"). In February 2020, CAT LLC determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the proposed role given the balance of these considerations. Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services. The fees for these services were paid by CAT LLC to Grant Thornton.

Market Data Provider: Exegy. The professional and administrative costs for the Pre-FAM Period included costs related to the receipt of certain market data for the CAT pursuant to an agreement with the CAT LLC, and then with FCAT. Exegy provided SIP Data required by the CAT NMS Plan.

After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy from July 2018 through March 2019. CAT LLC determined that, unlike certain other vendors, Exegy provided market data that included all data elements required by the CAT NMS Plan.⁴⁶ In addition, the fees were reasonable and in line with market rates for the market data received. Accordingly, the professional and administrative costs for the Pre-FAM Period include the Exegy costs from November 2018 through March

2019. The cost of the market data was reasonable for the market data received. The fees for the market data were paid directly by CAT LLC to Exegy.

Upon the termination of the contract between CAT LLC and Exegy, FCAT entered into a contract with Exegy to purchase the required market data from Exegy in July 2019. All costs under the contract were treated as a direct pass through cost to CAT LLC. Therefore, the fees for the market data were paid by CAT LLC to FCAT, who, in turn, paid Exegy for the market data.

Security Assessment: RSM US LLP ("RSM"). The operating costs for the Pre-FAM Period include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation, and operation of the controls specified by NIST Special Publication 800–53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment. RSM performed the assessment from October 2018 through December 2018. Accordingly, the costs for the Pre-FAM Period include the costs incurred in November and December 2018. The cost for the security assessment were paid directly to RSM by CAT LLC.

(j) Public Relations Costs

The public relations costs of \$224,669 represent the fees paid to public relations firms during the Pre-FAM Period for professional communications services to CAT, including media relations consulting, strategy and execution. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants. Specifically, the public relations firms provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). Public relations services were

⁴⁵ Section 9.2 of the CAT NMS Plan.

⁴⁶ See Section 6.5(a)(ii) of the CAT NMS Plan.

important for various reasons, including monitoring comments made by market participants about CAT and understanding issues related to the CAT discussed on the public record.

The services performed by each of the public relations firms were comparable. The fees for such services were reasonable and in line with market rates. Only one public relations firm was engaged at a time; the three firms were engaged sequentially as the primary public relations contact moved among the three firms during this time period.

Public Relations Firm: Peppercomm, Inc. ("Peppercomm"). The national securities exchanges and FINRA, acting as a consortium, determined to hire the public relations firm Peppercomm in October 2014 and continued to engage this firm through September 2017. The exchanges and FINRA made this engagement decision after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fee rates for this public relations firm were negotiated on an arm's length basis and were in line with

market rates for these types of services. The public relations costs during the period from October 2014 until the formation of the CAT NMS, LLC were paid directly by the exchanges and FINRA to the public relations firm. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC.

Public Relations Firm: Sloane & Company ("Sloane"). CAT LLC determined to hire a new public relations firm, Sloane, in March 2018, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Sloane. CAT LLC continued the engagement with Sloane until February 2020.

Public Relations Firm: Peak Strategies. CAT LLC determined to hire a new public relations firm, Peak Strategies, in March 2020, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market

rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Peak Strategies.

(ii) Historical CAT Costs Incurred in Financial Accountability Milestone Period 1

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 1 of the Financial Accountability Milestones ("FAM Period 1"),⁴⁷ which covers the period from June 22, 2020—July 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 1 of \$6,377,343. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$2,125,781), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBBs paying one-third (\$2,125,781). The following table breaks down Historical CAT Costs 1 for FAM Period 1 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 1 *
Capitalized Developed Technology Costs **	\$1,684,870
Technology Costs:	3,996,800
Cloud Hosting Services	2,642,122
Operating Fees	1,099,680
CAIS Operating Fees	254,998
Change Request Fees	
Legal	481,687
Consulting	137,209
Insurance	
Professional and administration	69,077
Public relations	7,700
Total Operating Expenses	6,377,343

* The costs described in this table of costs for FAM Period 1 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$362,121 incurred during FAM Period 1 have been appropriately excluded from the above table.⁴⁸

By the completion of FAM Period 1, CAT LLC was required to implement the reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of equities transaction data and options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.⁴⁹ CAT LLC completed the requirements of FAM Period 1 by July 31, 2020. The following

describes the costs for each of the categories for FAM Period 1.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 1 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking,

management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production environments, during the FAM 1 Period. Accordingly, the \$2,642,122 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 1. The fee arrangement for AWS described above with regard to the Pre-FAM

⁴⁷ Section 11.6(a)(i)(A) of the CAT NMS Plan.

⁴⁸ As discussed above, with respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized

over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁴⁹ See definition of "Initial Industry Member Core Equity and Options Reporting" in Section 1.1 of the CAT NMS Plan.

Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. Moreover, CAT LLC continued to believe that AWS's maturity in the cloud services space as well as the significant cost and time necessary to move the CAT to a different cloud services provider supported the continued engagement of AWS.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the FAM 1 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data,

Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well as SIP Data, reference data and other types of Other Data. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 1.⁵⁰

	Date range: 6/22/20–7/31/20
Average Daily Volume in Billions	
Participant—Equities	6
Participant—Options	103
Industry Member—Equities	7
Industry Member—Options	0.31
SIP—Options & Equities	74
Average Total Daily Volume	185
Cumulative Total Events for the Period	5,190
Total Compute Hours for the Period	2,612,082
Storage Footprint at End of Period (Petabytes)	57.47

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 1. Accordingly, the \$1,099,680 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 1. The fee arrangement for FCAT described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, FCAT's activities with respect to the CAT included the following:

- Published iterative drafts of draft Technical Specifications for Phase 2d, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Published iterative drafts of CAIS Technical Specifications, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Facilitated Industry Member reporting of Quote Sent Time on Options Market Maker quotes;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;

- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;

- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 1. Accordingly, the \$254,998 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 1. The fee arrangement for Kingland described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work

on the CAIS Technical Specifications and build related to CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

CAT LLC did not incur costs related to change requests during FAM Period 1.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 1 of \$1,684,870 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include: (1) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including separate production and industry test entitlements, and reprocessing of exchange event timestamps; (2) implementation fees; and (3) license fees.

(f) Legal Costs

The legal costs of \$481,687 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 1.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 1 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM

⁵⁰ Note that the volume data described in this table does not include CAIS data.

Period 1 were paid by CAT LLC to WilmerHale. During FAM Period 1, WilmerHale provided legal assistance to the CAT including with regard to the following:

- Assisted with the development of the CAT funding model and drafted related amendments and fee filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, verbal activity, options market maker quote sent time, TRF linkages, and allocations;
- Provided interpretations related to CAT NMS Plan requirements, including the Financial Accountability Milestone amendment;
- Assisted with compliance with Regulation SCI;
- Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the drafting of the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Assisted with communications and presentations for the industry regarding CAIS;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for Compliance Subcommittee, including with regard to response to OCIE examinations and the annual assessment;
- Provided guidance regarding CAT technical specifications;
- Assisted with third-party vendor agreements; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to Pillsbury. During FAM Period 1, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(g) Consulting Costs

The consulting costs of \$137,209 represent the fees paid to Deloitte as project manager during FAM Period 1. CAT LLC continued to employ Deloitte during FAM Period 1 based on, among other things, their expertise and cumulative experience with the CAT. The fee rates for Deloitte during FAM Period 1 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 1 were paid by CAT LLC to the consulting firm. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 1, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

Although insurance was in effect during FAM Period 1, CAT LLC did not incur costs related to insurance during FAM Period 1.

(i) Professional and Administration Costs

Financial Advisory Firm: Anchin. The professional and administration costs of \$69,077 represent the fees paid to Anchin during FAM Period 1. CAT LLC continued to employ Anchin during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these type of financial advisory services. The fees for these services during FAM Period 1 were paid by CAT LLC to Anchin. During FAM Period 1, Anchin provided a variety of services, including the following:

- Maintained internal controls;

- Provided cash management and treasury functions;

- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;

- Provided accounting research and consultations on various accounting, financial reporting and tax matters;

- Addressed various accounting, financial reporting and operating inquiries from Participants;

- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;

- Supported compliance with the CAT NMS Plan;

- Worked with and provided support to the Operating Committee and various CAT working groups; and

- Prepared monthly and quarterly financial statements.

(j) Public Relations Costs

The public relations costs of \$7,700 represent the fees paid to Peak Strategies during FAM Period 1. CAT LLC continued to employ Peak Strategies during FAM Period 1 based on, among other things, their expertise and history with the project. The fee rates for this firm were reasonable and in line with market rates for these types of services. The fees for these services during FAM Period 1 were paid by CAT LLC to Peak Strategies. During FAM Period 1, Peak Strategies continued to provide professional communications services to CAT LLC, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(iii) Historical CAT Costs Incurred in Financial Accountability Milestone Period 2

Historical CAT Costs 1 would include costs incurred by CAT LLC and already funded by Participants during Period 2 of the Financial Accountability Milestones ("FAM Period 2"),⁵¹ which

covers the period from August 1, 2020—December 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 2 of \$42,976,478. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$14,325,493), and Industry Members would be

responsible for the remaining two-thirds, with CEBBs paying one-third (\$14,325,493) and CEBBs paying one-third (\$14,325,493). The following table breaks down Historical CAT Costs 1 for FAM Period 2 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 2 *
Capitalized Developed Technology Costs **	\$6,761,094
<i>Technology Costs:</i>	31,460,033
Cloud Hosting Services	20,709,212
Operating Fees	9,108,700
CAIS Operating Fees	1,590,298
Change Request Fees	51,823
Legal	2,766,644
Consulting	532,146
Insurance	976,098
Professional and administration	438,523
Public relations	41,940
Total Operating Expenses	42,976,478

* The costs described in this table of costs for FAM Period 2 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$1,892,505 incurred during FAM Period 2 have been appropriately excluded from the above table.⁵²

By the completion of FAM Period 2, CAT LLC was required to implement the following with regard to the CAT:

(a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, CustomerID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission.⁵³

CAT LLC completed the requirements of FAM Period 2 by December 31, 2020.

The following describes the costs for each of the categories for FAM Period 2.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 2 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production environments, during the FAM 2 Period. Accordingly, the \$20,709,212 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 2. The fee arrangement for AWS described above with regard to the Pre-FAM

Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the FAM 2 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well as SIP Data, and Other Data, including reference data. In addition, Industry Members began reporting LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 2.⁵⁴

	Date Range: 8/1/20–12/31/20
Average Daily Volume in Billions:	
Participant—Equities	6
Participant—Options	116
Industry Member—Equities	11

⁵¹ Section 11.6(a)(i)(B) of the CAT NMS Plan.

⁵² As discussed above, with respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized

over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁵³ See definition of "Full Implementation of Core Equity Reporting Requirements" in Section 1.1 of the CAT NMS Plan.

⁵⁴ Note that the volume data described in this table does not include CAIS data.

	Date Range: 8/1/20–12/31/20
Industry Member—Options	0.98
SIP—Options & Equities	80
Average Total Daily Volume	282
Cumulative Total Events for the Period	2,170
Total Compute Hours for the Period	15,660,392
Storage Footprint at End of Period (Petabytes)	114.59

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 2. Accordingly, the \$9,108,700 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 2. The fee arrangement for FCAT described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, FCAT's activities with respect to the CAT included publishing the Technical Specifications for Phase 2d and overseeing the reporting of firm to firm and intrafirm linkages by Industry Members. In addition, FCAT also continued to engage in the following activities during FAM Period 2:

- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the development and implementation of the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 2. Accordingly, the \$1,590,298 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 2. The fee arrangement for Kingland described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

During FAM Period 2, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 2, CAT incurred costs of \$51,823 related to a change request regarding the addition of functionality for exchange Participants to report rejected messages to the CAT.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 2 of \$6,761,094 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor,

including costs related to separate production and industry test entitlements, market maker reference data, and back-processing of exchange exception logic; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$2,766,644 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 2.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 2 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to WilmerHale. During FAM Period 2, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, allocations, exchange activity, OTQT, initial data validation, error corrections and recordkeeping;
- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs and technical specifications;
- Provided support for the Operating Committee, Compliance Subcommittees, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6 of the CAT NMS Plan;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for the Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
- Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
- Provided guidance regarding SRO rule filings for the retirement of systems;

- Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;

- Assisted with third-party vendor agreements (e.g., with regard to Anchin, Grant Thornton and insurance policies);

- Assisted with change requests; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to Pillsbury. During FAM Period 2, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted and filed a proposed amendment to the CAT NMS Plan regarding liability matters. As discussed above, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(g) Consulting Costs

The consulting costs of \$532,146 represent the fees paid to Deloitte as project manager during FAM Period 2. CAT LLC continued to employ Deloitte during FAM Period 2 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 2 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 2 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 2, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;

- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;

- Provided support for updating the SEC on the progress of the development of the CAT; and

- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$976,098 represent the fees paid for insurance during FAM Period 2. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$438,523 represent the fees paid to Anchin and Grant Thornton for financial services provided during FAM Period 2.

Financial Advisory Firm: Anchin. CAT LLC continued to engage Anchin during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these types of financial advisory services. The fees for these services during FAM Period 2 were paid by CAT LLC to Anchin. During FAM Period 2, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated [sic] bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from the Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;

- Worked with and provided support to the Operating Committee and various CAT working groups;

- Prepared monthly, quarterly and annual financial statements;

- Supported the annual financial statement audit by an independent auditor; and

- Reviewed historical costs from inception.

Accounting Firm: Grant Thornton. CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 2 based on, among other things, its expertise and cumulative knowledge of CAT LLC. CAT LLC continued to believe that Grant Thornton was well qualified for its role and its fee rates were in line with market rates for these accounting services. The fees for these services during FAM Period 2 were paid by CAT LLC to Grant Thornton. During FAM Period 2, Grant Thornton performed a financial statement audit for CAT LLC as an independent accounting firm.

(j) Public Relations Costs

The public relations costs of \$41,940 represent the fees paid to Peak Strategies during FAM Period 2. CAT LLC continued to employ Peak Strategies during FAM Period 2 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 2 were paid by CAT LLC to Peak Strategies. During FAM Period 2, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(iv) Historical CAT Costs Incurred in Financial Accountability Milestone Period 3

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 3 of the Financial Accountability Milestones (“FAM Period 3”),⁵⁵ which

covers the period from January 1, 2021—December 31, 2021. Historical CAT Costs 1 would include costs for FAM Period 3 of \$144,415,268. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$48,138,423), and Industry Members would be

responsible for the remaining two-thirds, with CEBBs paying one-third (\$48,138,423) and CEBBs paying one-third (\$48,138,423). The following table breaks down Historical CAT Costs 1 for FAM Period 3 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM period 3 *
Capitalized Developed Technology Costs **	\$10,763,372
Technology Costs	123,639,402
Cloud Hosting Services	94,574,759
Operating Fees	23,106,091
CAIS Operating Fees	5,562,383
Change Request Fees	396,169
Legal	6,333,248
Consulting	1,408,209
Insurance	1,582,714
Professional and administration	595,923
Public relations	92,400
Total Operating Expenses	144,415,268

* The costs described in this table of costs for FAM Period 3 were calculated based upon CAT LLC’s review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$5,108,044 incurred during FAM Period 3 have been appropriately excluded from the above table.⁵⁶

By the completion of FAM Period 3, CAT LLC was required to implement the following requirements with regard the CAT:

(a) reporting to the Order Audit Trail System (“OATS”) is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or

order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)–(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met.⁵⁷

CAT LLC completed the requirements of FAM Period 3 by December 31, 2021. The following describes the costs for each of the categories for FAM Period 3.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 3 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production

environments, during the FAM 3 Period. Accordingly, the \$94,574,759 in technology costs for cloud hosting services represents costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 3. The fee arrangement for AWS described above for the earlier periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During FAM Period 3, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a, Phase 2b, Phase 2c and Phase 2d Industry Member Data (including certain linkages), SIP Data, Other Data, including reference data, and LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 3.⁵⁸

⁵⁵ Section 11.6(a)(i)(C) of the CAT NMS Plan.

⁵⁶ As discussed above, with respect to certain costs that were “appropriately excluded,” such excluded costs relate to the amortization of capitalized technology costs, which are amortized

over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁵⁷ See definition of “Full Availability and Regulatory Utilization of Transactional Database Functionality” in Section 1.1 of the CAT NMS Plan.

⁵⁸ Note that the volume data described in this table does not include CAIS data.

	Date Range: 1/1/21 to 4/25/21	Date Range: 4/26/21/to 12/31/21 *
Average Daily Volume in Billions:		
Participant—Equities	9	9
Participant—Options	135	136
Industry Member—Equities	20	19
Industry Member—Options	2	2
SIP—Options & Equities	129	137
Average Total Daily Volume	297	304
Cumulative Total Events for the Period	7,480	5,310
Total Compute Hours for the Period	15,860,304	33,487,318
Storage Footprint at End of Period (Petabytes)	180.22	284.62

* Start of Participant Equities in CAT format and SIP Equities on 4/26/21.

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 3. Accordingly, the \$23,106,091 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 3. The fee arrangement for FCAT described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, FCAT's activities with respect to the CAT included the following:

- Facilitated Phase 2c and Phase 2d testing for Industry Members;
- Oversaw creation of linkages of the lifecycle of order events based on the received data through Phase 2d;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the

use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement with FCAT discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 3. Accordingly, the \$5,562,383 in technology costs for CAIS operating fees represents costs incurred for services provided by Kingland during FAM Period 3. The fee arrangement for Kingland described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs. The full CAIS Technical Specifications were published during FAM Period 3.

(d) Technology Costs—Change Request Fees

During FAM Period 3, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 3, CAT incurred costs of \$396,169 related to change requests, including the following: (1) the addition of functionality for exchange Participants to report rejected messages to the CAT; (2) the migration of MIRS query engine to AWS to reduce operational costs and increase resiliency; and (3) updating the Participant Technical Specifications to allow for two-sided Participant option quote reporting.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 3 of \$10,763,372

include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor, including the transition from equity data received by FINRA pursuant to various regulatory services agreements between FINRA and Participant exchanges to the equity CAT Data, and the completion of the Industry Member Phase 2d options manual and complex orders go-live requirements; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to off-exchange volume concentration, Participant 24-hour trading and an external metastore; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$6,333,248 represent the fees paid for legal services provided by three law firms, WilmerHale, Pillsbury & Covington & Burling LLP ("Covington") during FAM Period 3.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 3 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to WilmerHale. During FAM Period 3, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements, including, for example, verbal activity regarding Phase 2c cutover, error reports, error

corrections, Phase 2d Reporting, unique Order-ID on internal route events, reporting addresses, recordkeeping, and unique CCID for foreign customers;

- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs, CAIS requirements, ADF, and technical specifications;
 - Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
 - Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6(c) of the CAT NMS Plan;
 - Drafted SRO rule filings related to the CAT Compliance Rule;
 - Provided support for Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
 - Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
 - Provided guidance regarding SRO rule filings for the retirement of systems;
 - Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;
 - Provided assistance with change requests;
 - Provided guidance and regulatory support for litigation regarding the response to the SEC's exemptive orders;
 - Assisted with communications with the industry, including CAT Alerts and presentations;
 - Provided guidance regarding the confidentiality of CAT Data, including third-party information requests;
 - Assisted with cost management analysis and proposals; and
 - Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.
- Law Firm: Pillsbury.* CAT LLC continued to employ Pillsbury during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to Pillsbury. During FAM Period 3, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During this period, Pillsbury advised CAT LLC regarding applicable legal matters, reviewed and responded to comment letters regarding the proposed Plan amendment, participated in meetings with senior SEC staff, responded to comments

submitted following the SEC's April 6, 2021 order instituting proceedings,⁵⁹ and assessed legal matters regarding the SEC's October 29, 2021 order denying the proposed Plan amendment.⁶⁰

Law Firm: Covington. CAT LLC hired Covington for litigation with the SEC regarding certain exemptive orders related to the CAT, including orders issued in December 2020.⁶¹ CAT LLC interviewed this law firm as well as other potential law firms, considering a variety of factors in its analysis for choosing legal assistance, including the relevant expertise and fees of the potential lawyers. CAT LLC approved the engagement of Covington in January 2021. The fee rates for this law firm, which were calculated based on hourly rates, were in line with market rates for specialized services. The legal fees for FAM Period 3 for this firm were paid by CAT LLC to Covington.

After Covington was hired in 2021 through the end of 2021, the firm provided legal assistance regarding the litigation with the SEC regarding the 2020 Orders. These services included researching, drafting, and filing motions to stay the 2020 orders and related materials in proceedings before the SEC, as well as researching, drafting, and filing petitions for judicial review of the 2020 Orders in proceedings before the U.S. Court of Appeals for the D.C. Circuit. Covington oversaw ongoing litigation proceedings on these matters, and also supported WilmerHale with respect to settlement negotiations with the SEC staff regarding the 2020 Orders.

In addition to these services, CAT LLC engaged Covington in November 2021 to provide assistance with respect to the SEC's disapproval of CAT NMS Plan amendments concerning a proposed limitation on liability in the event of a data breach or similar event. Covington provided advice concerning CAT's response to the SEC's disapproval order. This work accounted for a minority of Covington's fees in 2021.⁶²

⁵⁹ Securities Exchange Act Rel. No. 91487 (Apr. 6, 2021), 86 FR 19054 (Apr. 12, 2021).

⁶⁰ Securities Exchange Act Rel. No. 93484 (Oct. 29, 2021), 86 FR 60933 (Nov. 4, 2021).

⁶¹ See Securities Exchange Act Rel. No. 90688 (Dec. 16, 2020), 85 FR 83634 (Dec. 22, 2020); and Securities Exchange Act Rel. No. 90689 (Dec. 16, 2020), 85 FR 83667 (Dec. 22, 2020) (collectively, the "2020 Orders").

⁶² As discussed above with regard to Pillsbury's work on liability matters, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, such activity is a necessary part of the operation of the CAT.

(g) Consulting Costs

The consulting costs of \$1,408,209 represent the fees paid to Deloitte as project manager during FAM Period 3. CAT LLC continued to employ Deloitte during FAM Period 3 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 3 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 3 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 3, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$1,582,714 represent the fees paid for insurance during FAM Period 3. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$595,923 represent the fees paid to Anchin and Grant Thornton for financial services during FAM Period 3.

Financial Advisory Firm: Anchin. CAT LLC continued to employ Anchin during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for

this firm were in line with market rates for these financial advisory services. The fees for these services during FAM Period 3 were paid by CAT LLC to Anchin. During FAM Period 3, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated *[sic]* bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Accounting Firm: Grant Thornton. CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 3 based on, among other things, their expertise and cumulative knowledge of CAT LLC. CAT LLC determined that Grant Thornton was well qualified for its role and that its fixed fee rates were in line with market rates for these accountant services. The

fees for these services during FAM Period 3 were paid by CAT LLC to Grant Thornton. During FAM Period 3, Grant Thornton provided audited financial statements for CAT LLC.

(j) Public Relations Costs

The public relations costs of \$92,400 represent the fees paid to Peak Strategies during FAM Period 3. CAT LLC continued to employ Peak Strategies during FAM Period 3 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 3 were paid by CAT LLC to Peak Strategies. During FAM Period 3, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (*e.g.*, congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (*e.g.*, amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(v) Excluded Costs

Historical CAT Costs 1 would not include three categories of CAT costs (“Excluded Costs”): (1) \$14,749,362 of

costs related to the termination of the relationship with the Initial Plan Processor; (2) \$48,874,937, which are all CAT costs incurred from November 15, 2017 through November 15, 2018; and (3) \$19,628,791, which are costs paid to the the Initial Plan Processor from November 16, 2018 through February 2019 when the relationship with the Initial Plan Processor was concluded. The Participants would remain responsible for 100% of these costs, which total \$83,253,090. CAT LLC determined to exclude these Excluded Costs from Historical CAT Costs 1 because these costs relate to the delay in the start of reporting to the CAT and the conclusion of the relationship with the Initial Plan Processor.⁶³

(a) Costs Related to Conclusion of Relationship With Initial Plan Processor

First, Historical CAT Costs 1 would not include \$14,749,362 of costs related to the conclusion of the relationship with the Initial Plan Processor. Such costs include costs related to the American Arbitration Association, the legal assistance of Pillsbury with regard to the arbitration with the Initial Plan Processor, and the settlement costs related to the arbitration with the Initial Plan Processor. The Participants would remain responsible for 100% of these \$14,749,362 in costs.

(b) Costs Incurred From November 15, 2017 Through November 15, 2018

Second, Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018. CAT LLC determined to exclude all costs during this one-year period of \$48,874,937 from fees charged to Industry Members due to the delay in the start of reporting to the CAT. The Participants would remain responsible for 100% of these \$48,874,937 in costs. The following table breaks down these costs into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Excluded costs for November 15, 2017—November 15, 2018*
Capitalized Developed Technology Costs	\$37,852,083
Technology Costs	
Cloud Hosting Services	
Operating Fees	
CAIS Operating Fees	
Change Request Fees	

⁶³In approving the CAT Funding Model, the Commission states that the proposed exclusion of the first two categories of Excluded Costs “is reasonable in the Commission’s view because it would not require all costs incurred by the Participants to be recovered from Industry Members

through the Historical CAT Assessment, specifically excluding those costs related to the delay in the start of reporting to the CAT and costs related to the conclusion of the relationship with the Initial Plan Processor.” CAT Funding Model Approval Order at 62663. In addition to the first two

categories of Excluded Costs, CAT LLC is now proposing a third category of Excluded Costs that would exclude all costs paid to the Initial Plan Processor after November 15, 2018.

Operating expense	Excluded costs for November 15, 2017— November 15, 2018 *
Legal	\$6,143,278
Consulting	\$4,452,106
Insurance	
Professional and administration	\$340,145
Public relations	\$87,325
Total Operating Expenses	\$48,874,937

* The costs described in this table of Excluded Costs were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

The following provides additional detail regarding the Excluded Costs.

(I) Technology Costs—Cloud Hosting Services, Operating Fees, CAIS Operating Fees and Change Request Fees

CAT LLC did not incur technology costs related to the categories of cloud hosting services, operating fees, CAIS operating fees or change requests during the period from November 15, 2017 through November 15, 2018.

(II) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for the period from November 15, 2017 through November 15, 2018 include capitalizable application development costs of \$37,852,083 incurred in the development of the CAT by the Initial Plan Processor. Such costs include development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Initial Plan Processor. Such costs include costs related to Industry Member technical specifications for orders and transactions, the system security plan, testing and production for Participant CAT reporting, third-party security assessment and response, query portal, onboarding of the Chief Information Security Officer, and ingestion of FINRA TRF data and FINRA data related to halts and corporate actions.

(III) Legal Costs

The legal costs of \$6,143,278 represent the fees paid to WilmerHale for legal services from November 15, 2017 through November 15, 2018. During this period, WilmerHale provided legal assistance to the CAT including with regard to the following:

- Provided legal support for the governance of the CAT, including governance support for the Operating Committee, Advisory Committee, Compliance Subcommittee, and CAT working groups;

- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan;
- Provided assistance related to CAT security;
- Drafted exemptive requests, including requests related to PII;
- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Provided interpretations of and related to the CAT NMS Plan;
- Provided advice with regard to regulator access to the CAT;
- Assisted with the Plan Processor transition;
- Provided assistance regarding communications with the industry regarding the CAT;
- Provided advice regarding Customer Account Information and PII;
- Provided support for litigation related to SEC exemptive orders; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretative and implementation issues.

(IV) Consulting Costs

The consulting costs of \$4,452,106 represent the fees paid to Deloitte for their role as project manager for the CAT from November 15, 2017 through November 15, 2018. During this period, Deloitte engaged in the following activities with respect to the CAT:

- Implemented program operations for the CAT project;
- Provided governance support to the Operating Committee, including support for Subcommittees and working groups of the Operating Committee (e.g., Compliance Subcommittee, Cost and Funding Working Group, Technical Working Group, Industry Outreach Working Group, Security Working Group and Steering Committee);
- Assisted with cost and funding issues for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;

- Provided support for updating the SEC on the progress of the development of the CAT; and

- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress.

(V) Insurance

CAT LLC did not incur costs related to insurance during the period from November 15, 2017 through November 15, 2018.

(VI) Professional and Administration Costs

The professional and administration costs of \$340,145 represent the fees paid to Anchin, Exegy and RSM from November 15, 2017 through November 15, 2018.

Financial Advisory Firm: Anchin. From the commencement of its engagement [sic] in April 2018 through November 15, 2018, Anchin engaged in the following activities with respect to the CAT:

- Developed, updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Addressed accounting and financial matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC, including supporting the dissolution of CAT NMS, LLC;

- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Market Data Provider: Exegy. From July 2018 through November 15, 2018, CAT LLC purchased market data from Exegy (as described in more detail above).

Security Assessment: RSM. From October 2018 through November 15, 2018, CAT LLC incurred costs for RSM's performance of a security assessment (as described in more detail above).

(VII) Public Relations Costs

The public relations costs of \$87,325 represent the fees paid to Sloane from November 15, 2017 through November 15, 2018. From the commencement of its engagement [*sic*] in March 2018 through November 15, 2018, Sloane provided professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, Sloane provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (*e.g.*, congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (*e.g.*, amendments to the CAT NMS Plan).

(c) Costs Paid to Initial Plan Processor From November 16, 2018 Through February 2019

Third, Historical CAT Costs 1 would not include the \$19,628,791 in costs paid to the Initial Plan Processor from November 16, 2018 through February 2019 when CAT LLC's relationship with the Initial Plan Processor concluded. CAT LLC determined that Historical CAT Costs 1 would not include any fees paid to the Initial Plan Processor after November 15, 2017,⁶⁴ which was the date by which Participants were

required to begin reporting to the CAT.⁶⁵ As discussed above, the Participants determined that Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Initial Plan Processor costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Initial Plan Processor costs incurred after November 15, 2018 are the \$19,628,791 in costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these \$19,628,791 in costs.

(C) Historical Recovery Period 1

Under the CAT NMS Plan, the Operating Committee is required to reasonably establish the length of the Historical Recovery Period used in calculating each Historical Fee Rate based upon the amount of the Historical CAT Costs to be recovered by the Historical CAT Assessment, and to describe the reasons for its length.⁶⁶ The Historical Recovery Period used in calculating the Historical Fee Rate may not be less than 24 months or more than five years.⁶⁷ The Operating Committee has determined to establish a Historical Recovery Period 1 of 24 months for Historical CAT Assessment 1.

The Operating Committee determined that the length of Historical Recovery Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans to the Participants in a timely fashion. The Operating Committee determined that 24 months for Historical Recovery Period 1 would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to

Section 31.⁶⁸ In addition, in establishing a Historical Recovery Period of 24 months, the Operating Committee recognized that the total costs for Historical CAT Assessment 1 were less than the total costs for 2022 and 2023,⁶⁹ and therefore it would be reasonable and appropriate to recover costs subject to this filing over an approximate two-year period.

The length of the Historical Recovery Period 1 and the reasons for its length are provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.⁷⁰

(D) Projected Total Executed Equivalent Share Volume

The calculation of Historical Fee Rate 1 also requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for Historical Recovery Period 1. Under the CAT NMS Plan, the Operating Committee is required to "reasonably determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each Historical Recovery Period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months."⁷¹ The Operating Committee is required to base its projection on the prior twelve months, but it may use its discretion to analyze the likely volume for the upcoming year. Such discretion would allow the Operating Committee to use its judgment when estimating projected total executed equivalent share volume if the volume over the prior twelve months was unusual or otherwise unfit to serve as the basis of a future volume estimate.⁷²

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. The Operating Committee has determined to calculate the projected total executed equivalent share volume for the 24 months of Historical Recovery Period 1 by doubling the executed equivalent share volume for the prior 12 months. The

⁶⁴ The SEC approved the CAT NMS Plan on November 15, 2016, and Participant reporting was required to begin on the first anniversary of this date, November 15, 2017. See Section 6.3 of the CAT NMS Plan and CAT NMS Plan Approval Order.

⁶⁵ Section 11.3(b)(i)(D)(I) and Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

⁶⁶ Section 11.3(b)(i)(D)(I) of the CAT NMS Plan. In the CAT Funding Model Approval Order, the SEC stated that "[i]n the Commission's view, it is reasonable for the Operating Committee to establish the length of the Historical Recovery Period to be no less than 24 months and no more than five years." CAT Funding Model Approval Order at 62664.

⁶⁸ As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model at 62682.

⁶⁹ The total CAT costs for 2022 were approximately \$186 million and the total CAT costs for 2023 were approximately \$233 million.

⁷⁰ Section 11.3(b)(iii)(B)(II)(C) of the CAT NMS Plan.

⁷¹ Section 11.3(b)(i)(E) of the CAT NMS Plan.

⁷² CAT Funding Model Approval Order at 62664.

⁶⁴ As discussed below, CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. See Section 3(a)(10)(E) below.

Operating Committee determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has remained relatively constant. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395, the executed equivalent share volume for 2022 was 4,039,821,841,560.31, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6. Accordingly, the projected total executed equivalent share volume for Historical Recovery Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.⁷³

The projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1 and a description of the calculation of the projection is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.⁷⁴

(E) Historical Fee Rate 1

Historical Fee Rate 1 would be calculated by dividing Historical CAT Costs 1 by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1, as described in detail above.⁷⁵ Specifically, Historical Fee Rate 1 would be calculated by dividing \$318,059,819 by 7,961,507,681,810.42. As a result, the Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. Historical Fee Rate 1 is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide the Historical Fee Rate in a fee filing for a Historical CAT Assessment.⁷⁶

(3) Past CAT Costs and Participants

Participants would not be required to pay any fees associated with Historical CAT Assessment 1 as the Participants previously have paid all Past CAT Costs. The CAT NMS Plan explains that:

Because Participants previously have paid Past CAT Costs via loans to the Company,

Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs and such other additional Past CAT Costs as reasonably determined by the Operating Committee will be paid by the cancellation of loans made to the Company on a pro rata basis based on the outstanding loan amounts due under the loans.⁷⁷

The CAT NMS Plan further states that "Historical CAT Assessments are designed to recover two-thirds of the Historical CAT Costs."⁷⁸

(4) Monthly Fees

CEBBs and CEBs would be required to pay fees for Historical CAT Assessment 1 on a monthly basis for the period in which Historical CAT Assessment 1 is in effect.⁷⁹ A CEBB or CEBs's fee for each month would be calculated based on the transactions in Eligible Securities executed by the CEBB or CEBs from the prior month.⁸⁰ Proposed paragraph (a)(1)(A) of the fee schedule would state that each CAT Executing Broker would receive its first invoice in November 2024, and "would receive an invoice each month thereafter in which Historical CAT Assessment 1 is in effect." Proposed paragraph (a)(1)(B) of the fee schedule would state that "Consolidated Audited Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis." In addition, proposed paragraph (b)(1) of the fee schedule states that each CEBB and CEBs is required to pay its CAT fees "each month."

(5) Actual Recovery Period for Historical CAT Assessment 1

The CAT NMS Plan states that, "[n]otwithstanding the length of the Historical Recovery Period used in calculating the Historical Fee Rate, each Historical CAT Assessment calculated using the Historical Fee Rate will remain in effect until all Historical CAT Costs for the Historical CAT Assessment are collected."⁸¹ Accordingly, Historical CAT Assessment 1 will remain in effect until all Historical CAT Costs 1 have been collected. The actual

recovery period for Historical CAT Assessment 1 may be shorter or longer than Historical Recovery Period 1 depending on the actual executed equivalent share volumes during the time that Historical CAT Assessment 1 is in effect.⁸²

(6) Consolidated Audit Trail Funding Fees

To implement Historical CAT Assessment 1, a new section would be added to the Exchange's fee schedule for "Consolidated Audit Trail Funding Fees", and it would include the proposed paragraphs described below.

(A) Fee Schedule for Historical CAT Assessment 1

The CAT NMS Plan states that:

Each month in which a Historical CAT Assessment is in effect, each CEBB and each CEBs shall pay a fee for each transaction in Eligible Securities executed by the CEBB or CEBs 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 reasonably determined pursuant to paragraph (b)(i) of this Section 11.3.⁸³

Accordingly, based on the factors discussed above, the Exchange proposes to add paragraph (a)(1) to the Consolidated Audit Trail Funding Fees section of its fee schedule. Proposed paragraph (a)(1) would state the following:

(A) Each CAT Executing Broker shall receive its first invoice for Historical CAT Assessment 1 in November 2024, which shall set forth the Historical CAT Assessment 1 fees calculated based on transactions in October 2024, and shall receive an invoice for Historical CAT Assessment 1 for each month thereafter in which Historical CAT Assessment 1 is in effect.

(B) Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis. Each month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer ("CEBB") and/or the CAT Executing Broker for the Seller ("CEBs") (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of \$0.000013 per executed equivalent share.

⁸² In approving the CAT Funding Model, the Commission stated that, "[i]n the Commission's view, it is reasonable for Industry Members to be charged a Historical CAT Assessment until all Historical CAT Costs for the Historical CAT Assessment are collected." CAT Funding Model Approval Order at 62665.

⁸³ Section 11.3(b)(iii)(A) of the CAT NMS Plan.

⁷³ This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

⁷⁴ Section 11.3(b)(iii)(B)(II)(D) of the CAT NMS Plan.

⁷⁵ In approving the CAT Funding Model, the Commission stated that "[t]he calculation of the Historical Fee Rate 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 is reasonable." CAT Funding Model Approval Order at 62664.

⁷⁶ Section 11.3(b)(iii)(B)(II)(A) of the CAT NMS Plan.

⁷⁷ Section 11.3(b)(ii) of the CAT NMS Plan.

⁷⁸ *Id.* In approving the CAT Funding Model, the Commission stated that "[t]he proposed allocation of the Historical CAT Assessment solely to CEBs and CEBBs, and ultimately Industry Members, is reasonable. The Historical CAT Assessment will still be divided into thirds," as the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made to the Company. CAT Funding Model Approval Order at 62666.

⁷⁹ See Section 11.3(b)(iii)(A) of the CAT NMS Plan.

⁸⁰ See proposed paragraph (a)(1)(B) of the fee schedule.

⁸¹ Section 11.3(b)(i)(D)(II) of the CAT NMS Plan.

(C) Historical CAT Assessment 1 will remain in effect until \$212,039,879.34 (two-thirds of Historical CAT Costs 1) are collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time. Consolidated Audit Trail, LLC will provide notice when Historical CAT Assessment 1 will no longer be in effect.

(D) Each CAT Executing Broker shall be required to pay each invoice for Historical CAT Assessment 1 in accordance with paragraph (b).

As noted in the Plan amendment for the CAT Funding Model, “as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee rate.”⁸⁴ Accordingly, proposed paragraph (a)(1)(B) of the fee schedule would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 of \$0.00003994969693072937 by one-third, and rounding the result to 6 decimal places.⁸⁵ The Operating Committee determined to use six decimal places to balance the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

The proposed language in paragraph (a)(1)(A) of the fee schedule would describe when CAT Executing Brokers would receive their first monthly invoice for Historical CAT Assessment 1. Specifically, CAT Executing Brokers would receive their first monthly invoice for Historical CAT Assessment 1 in November 2024 and the fees set forth in that invoice would be calculated based on transactions executed in the prior month, that is, transactions executed in October 2024. The payment for the first invoice would be required within 30 days after the receipt of the first invoice (unless a longer period is indicated), as described in paragraph (b)(2) of the fee schedule.

Proposed paragraph (a)(1)(A) of the fee schedule also would describe the monthly cadence of the invoices for Historical CAT Assessment 1. Specifically, after the first invoices are provided to CAT Executing Brokers in November 2024, invoices will be sent to CAT Executing Brokers each month

thereafter while Historical CAT Assessment 1 is in effect.

Proposed paragraph (a)(1)(B) of the fee schedule would describe the invoices for Historical CAT Assessment 1. Proposed paragraph (a)(1)(B) of the fee schedule would state that “Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis.” Proposed paragraph (a)(1)(B) of the fee schedule also would describe the fees to be set forth in the invoices for Historical CAT Assessment 1. Specifically, it would state that “[e]ach month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer (“CEBB”) and/or the CAT Executing Broker for the Seller (“CEBS”) (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of \$0.000013 per executed equivalent share.”

Furthermore, proposed paragraph (a)(1)(C) of the fee schedule would describe how long Historical CAT Assessment 1 would remain in effect. It would state that “Historical CAT Assessment 1 will remain in effect until \$212,039,879.34 (two-thirds of Historical CAT Costs 1) are collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time.” This proposed paragraph would further state that “Consolidated Audit Trail, LLC will provide notice when Historical CAT Assessment 1 will no longer be in effect.”

Historical CAT Assessment 1 will be assessed for all transactions executed in each month through the end of the month in which two-thirds of Historical CAT Costs 1 are assessed, and then CAT LLC will provide notice that Historical CAT Assessment 1 is no longer in effect. Since Historical CAT Assessment 1 is a monthly fee based on transaction volume from the prior month, Historical CAT Assessment 1 may collect more than two-thirds of Historical CAT Costs 1. To the extent that occurs, any excess money collected during the final month in which Historical CAT Assessment 1 is in effect will be used to offset future fees and/or to fund the reserve for the CAT.

Finally, proposed paragraph (a)(1)(D) of the fee schedule sets forth the requirement for the CAT Executing Brokers to pay the invoices for Historical CAT Assessment 1. It would

state that “[e]ach CAT Executing Broker shall be required to pay each invoice for Historical CAT Assessment 1 in accordance with paragraph (b).”

(B) Manner of Payment

Paragraph (b)(1) to the “Consolidated Audit Trail Funding Fees” section of its fee schedule describes the manner of payment of Industry Member CAT fees. Paragraph (b)(1) states that “[e]ach CAT Executing Broker shall pay its CAT fees as required pursuant to paragraph (a) each month to the Consolidated Audit Trail, LLC in the manner prescribed by the Consolidated Audit Trail, LLC.” The CAT NMS Plan requires the Operating Committee to establish a system for the collection of CAT fees.⁸⁶ The Plan Processor has established a billing system for CAT fees.⁸⁷ Therefore, the Exchange proposes to require CAT Executing Brokers to pay Historical CAT Assessment 1 in accordance with such system.

(C) Failure to Pay CAT Fees

The CAT NMS Plan further states that:

Participants shall require each Industry Member to pay all applicable fees authorized under this Article XI within thirty (30) days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due (as determined in accordance with the preceding sentence), such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (a) the Prime Rate plus 300 basis points; or (b) the maximum rate permitted by applicable law.⁸⁸

Accordingly, the Exchange previously has added this requirement to the Exchange’s fee schedule. Specifically, paragraph (b)(2) of the fee schedule states:

Each CAT Executing Broker shall pay the CAT fees required pursuant to paragraph (a) within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If a CAT Executing Broker fails to pay any such CAT fee when due, such CAT Executing Broker shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of (i) the Prime Rate plus 300

⁸⁶ Section 11.4 of the CAT NMS Plan.

⁸⁷ The billing process and system are described in CAT Alert 2023-02 as well as the CAT FAQs related to the billing of CAT fees, the Industry Member CAT Reporter Portal User Guide, the FCAT Industry Member Onboarding Guide, the FCAT Connectivity Supplement for Industry Members and the CAT Billing Webinars (dated Sept. 28, 2023, and Nov. 7, 2023), each available on the CAT website.

⁸⁸ Section 11.4 of the CAT NMS Plan.

⁸⁴ CAT Funding Model Approval Order at 62658, n.658.

⁸⁵ Dividing \$0.00003994969693072937 by three equals \$0.00001331656564357646. Rounding \$0.00001331656564357646 to six decimal places equals \$0.000013.

basis points, or (ii) the maximum rate permitted by applicable law.

The requirements of paragraph (b)(2) would apply to Historical CAT Assessment 1.

(7) Historical CAT Assessment Details

The CAT NMS Plan states that:

Details regarding the calculation of a CAT Executing Broker's Historical CAT Assessment will be provided upon request to such CAT Executing Broker. At a minimum, such details would include each CAT Executing Broker's executed equivalent share volume and corresponding fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.⁸⁹

Such information would provide CEBBs and CEBBs with the ability to understand the details regarding the calculation of their Historical CAT Assessment.⁹⁰ CAT LLC will provide CAT Executing Brokers with these details regarding the calculation of their Historical CAT Assessments on their monthly invoice for the Historical CAT Assessment.

In addition, CAT LLC will make certain aggregate statistics regarding Historical CAT Assessments publicly available. Specifically, the CAT NMS Plan states that, “[f]or each Historical CAT Assessment, at a minimum, CAT LLC will make publicly available the aggregate executed equivalent share volume and corresponding aggregate fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise on an exchange, and (3) by buy-side transactions and sell-side transactions.”⁹¹ Such aggregate statistics will be available on the CAT website.

Furthermore, CAT LLC will make publicly available on the CAT website the total amount invoiced each month that Historical CAT Assessment 1 is in effect as well as the total amount

invoiced for Historical CAT Assessment 1 for all months since its commencement. CAT LLC also will make publicly available on the CAT website the total costs to be collected from Industry Members for Historical CAT Assessment 1. By reviewing statistics regarding how much has been invoiced and how much remains to be invoiced for Historical CAT Assessment 1, Industry Members would have sufficient information to reasonably track how much longer Historical CAT Assessment 1 is likely to be in place.

(8) Implementation Assistance

To assist Industry Members with compliance with the commencement of Historical CAT Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices prior to the commencement of Historical CAT Assessment 1. Specifically, CAT Executing Brokers have received mock invoices based on transaction data each month since November 2023. The mock invoices are in the same form as the actual, payable invoices, including both the relevant transaction data and the corresponding fee. However, no payments have been required in response to such mock invoices; they have been used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data has provided CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended to facilitate the payment of Historical CAT Assessment 1.

(9) Financial Accountability Milestones

The CAT NMS Plan states that “[n]o Participant will make a filing with the SEC pursuant to Section 19(b) of the Exchange Act regarding any Historical CAT Assessment until any applicable Financial Accountability Milestone described in Section 11.6 has been satisfied.”⁹² The CAT NMS Plan further states that “in all filings submitted by the Participants to the Commission under Section 19(b) of the Exchange Act, to establish or implement Post-Amendment Industry Member Fees pursuant to this Article, . . . the Participants shall clearly indicate whether such fees are related to Post-Amendment Expenses incurred during Period 1, Period 2, Period 3, or Period 4.”⁹³ As discussed in detail below, all

applicable Financial Accountability Milestones for Historical CAT Assessment 1—that is, Period 1, Period 2 and Period 3 of the Financial Accountability Milestones—have been satisfied. Furthermore, as discussed below, this filing clearly indicates that Historical CAT Assessment 1 relates to Post-Amendment Expenses incurred during Periods 1, 2 and 3 of the Financial Accountability Milestones.

(A) Period 1 of the Financial Accountability Milestones

In accordance with Section 11.6(b) of the CAT NMS Plan, Historical CAT Assessment 1 seeks to recover costs that are related to “all fees, costs, and expenses (including legal and consulting fees, costs, and expenses) incurred by or for the Company in connection with the development, implementation and operation of the CAT from the effective date of [Section 11.6 of the CAT NMS Plan] until such time as Full Implementation of CAT NMS Plan Requirements has been achieved”⁹⁴ (“Post-Amendment Expenses”) incurred during FAM Period 1. FAM Period 1 began on June 22, 2020, the effective date of Section 11.6 of the CAT NMS Plan, and concluded on July 31, 2020, the date of Initial Industry Member Core Equity and Options Reporting. Section 1.1 of the CAT NMS Plan defines “Initial Industry Member Core Equity and Options Reporting” as:

The reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of both: (a) equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information; and (b) options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants' Quarterly Progress Reports.⁹⁵ As indicated by the Participants' Quarterly Progress Report for the third quarter of 2020,⁹⁶ Initial Industry Member Core Equity and Option Reporting was completed on schedule on July 22, 2020, which is prior to the July 31, 2020 deadline.

Under the FAM Period 1 requirement of Initial Industry Member Core Equity and Options Reporting, Industry

⁸⁹ Section 11.3(a)(iv)(A) of the CAT NMS Plan.

⁹⁰ In approving the CAT Funding Model, the Commission stated that, “[i]n the Commission's view, providing CAT Execut[ing] Brokers information regarding the calculation of their CAT Fees will aid in transparency and permit CAT Execut[ing] Brokers to confirm the accuracy of their invoices for CAT Fees.” CAT Funding Model Approval Order at 62667.

⁹¹ Section 11.3(a)(iv)(B) of the CAT NMS Plan. In approving the CAT Funding Model, the Commission stated that “[t]he publication of the aggregate executed equivalent share volume and aggregate fee is appropriate because it would allow Participants and CAT Executing Brokers a high-level validation of executed volume and fees.” CAT Funding Model Approval Order at 62667.

⁹² Section 11.3(b)(iii)(B)(III) of the CAT NMS Plan.

⁹³ Section 11.6(b) of the CAT NMS Plan.

⁹⁴ Section 11.6 of the CAT NMS Plan.

⁹⁵ The Quarterly Progress Reports are available at <https://www.catnmsplan.com/implementation-plan>.

⁹⁶ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020) and Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021).

Members—excluding Small Industry Members that are not OATS reporters—were required to report two categories of data to the CAT: equities transaction data and options transaction data (both excluding Customer Account Information, Customer-ID, and Customer Identifying Information) by July 31, 2020. Pursuant to exemptive relief provided by the Commission, the Commission authorized the Participants' Compliance Rules to allow core equity reporting for Industry Members (Phase 2a) to begin on June 22, 2020 and core options reporting for Industry Members (Phase 2b) to begin on July 20, 2020.⁹⁷

In adopting the FAMs, the Commission stated that the equities transaction reporting required for FAM Period 1 “is consistent with the functionality that the Participants describe on the CAT NMS Plan website as ‘Production Go-Live for Equities 2a file submission and data integrity validations.’”⁹⁸ The Phase 2a Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order, and includes the following data related to Eligible Securities that are equities:

- All events and scenarios covered by OATS, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions;
- Reportable Events for: (1) proprietary orders, including market maker orders, for Eligible Securities that are equities; (2) electronic quotes in listed equity Eligible Securities (*i.e.*, NMS stocks) sent to a national securities exchange or FINRA’s Alternative Display Facility (“ADF”); (3) electronic quotes in unlisted Eligible Securities (*i.e.*, OTC Equity Securities) received by an Industry Member operating an interdealer quotation system (“IDQS”); and (4) electronic quotes in unlisted Eligible Securities sent to an IDQS or

other quotation system not operated by a Participant or Industry Member;

- Firm Designated IDs (“FDIDs”), which Industry Members must report to the CAT as required by Sections 6.3(d)(i)(A) and 6.4(d)(ii)(C) of the CAT NMS Plan;

- Industry Members would be required to report all street side representative orders, including both agency and proprietary orders and mark such orders as representative orders, except in certain limited exceptions as described in the Industry Member Technical Specifications;

- The link between the street side representative order and the order being represented when: (1) the representative order was originated specifically to represent a single order received either from a customer or another broker-dealer; and (2) there is (a) an existing direct electronic link in the Industry Member’s system between the order being represented and the representative order and (b) any resulting executions are immediately and automatically applied to the represented order in the Industry Member’s system;

- Manual and Electronic Capture Time for Manual Order Events;

- Special handling instructions for the original receipt or origination of an order during Phase 2a; and

- When routing an order, whether the order was routed as an intermarket sweep order (“ISO”).

In Phase 2a, Industry Members were not required to report modifications of a previously routed order in certain limited instances, nor were they required to report a cancellation of an order received from a Customer after the order has been executed.⁹⁹

The Quarterly Progress Report for the third quarter of 2020 states that “Interim Step: Production Go-Live for Equities 2a file submission and data integrity validation (Large Industry Members and Small OATS Reporters)” was completed on June 22, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of “equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information” was completed on June 22, 2020.

In adopting the FAMs, the Commission stated that the options transaction reporting required for FAM Period 1 is “consistent with the functionality that the Participants describe on the CAT NMS Plan website as ‘Production Go-Live for Options 2b

file submission and data integrity validations.’”¹⁰⁰ The Phase 2b Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order, and includes the Industry Member Data related to Eligible Securities that are options and related to simple electronic option orders, excluding electronic paired option orders. A simple electronic option order is an order to buy or sell a single option that is not related to or dependent on any other transaction for pricing and timing of execution that is either received or routed electronically by an Industry Member. Electronic receipt of an order is defined as the initial receipt of an order by an Industry Member in electronic form in standard format directly into an order handling or execution system. Electronic routing of an order is the routing of an order via electronic medium in standard format from one Industry Member’s order handling or execution system to an exchange or another Industry Member. An electronic paired option order is an electronic option order that contains both the buy and sell side that is routed to another Industry Member or exchange for crossing and/or price improvement as a single transaction on an exchange. Responses to auctions of simple orders and paired simple orders would be reportable in Phase 2b. Furthermore, combined orders in options would be treated in Phase 2b in the same way as equity representative orders are treated in Phase 2a. A combined order would mean, as permitted by SRO rules, a single, simple order in Listed Options created by combining individual, simple orders in Listed Options from a customer with the same exchange origin code before routing to an exchange. During Phase 2b, the single combined order sent to an exchange must be reported and marked as a combined order, but the linkage to the underlying orders is not required to be reported until Phase 2d.¹⁰¹

The Quarterly Progress Report for the third quarter of 2020 states that “Interim Step: Production Go-Live for Options 2b file submission and data integrity validations” was completed on July 20, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of “options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information” was completed on July 20, 2020.

¹⁰⁰ FAM Adopting Release at 31330, n.98.

¹⁰¹ Phased Reporting Exemptive Relief Order at 23078.

⁹⁷ See Phased Reporting Exemptive Relief Order. Under the CAT NMS Plan as adopted, the Participants were required, through their Compliance Rules, to require their Large Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2018, and to require their Small Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2019. Sections 6.7(a)(v) and (vi) of the CAT NMS Plan. The SEC granted exemptive relief from these provisions of the CAT NMS Plan to allow for the phased implementation of Industry Member reporting via five phases addressing the reporting requirements for Phase 2a Industry Member Data, Phase 2b Industry Member Data, Phase 2c Industry Member Data, Phase 2d Industry Member Data and Phase 2e Industry Member Data.

⁹⁸ Securities Exchange Act Rel. No. 88890 (May 15, 2020), 85 FR 31322, 31330 n.97 (May 22, 2020) (“FAM Adopting Release”).

⁹⁹ Phased Reporting Exemptive Relief Order at 23076–78.

As discussed above, the Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from June 22, 2020 through July 31, 2020. The total costs for this period, as discussed above, are \$6,377,343. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBBs paying one-third (\$2,125,781).

(B) Period 2 of the Financial Accountability Milestones

Historical CAT Assessment 1 seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 2. FAM Period 2 began on August 1, 2020, and concluded on December 31, 2020, the date of the Full Implementation of Core Equity Reporting. Section 1.1 of the CAT NMS Plan defines “Full Implementation of Core Equity Reporting” as:

the point at which: (a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants’ Quarterly Progress Reports. As indicated by the Participants’ Quarterly Progress Report for the fourth quarter of 2020,¹⁰² Full Implementation of Core Equity

Reporting was completed on schedule by December 31, 2020.

Specifically, the Full Implementation of Core Equity Reporting requires the satisfaction of two prongs. The first prong requires Participants to have fully implemented the first phase of equities transaction reporting for Industry Members (excluding Small Industry Members that are not OATS reporters) at an Error Rate of less than 5%. In addition, equities transaction data produced by the CAT at this stage must also be sufficiently interlinked so as to permit full analysis of an order’s lifecycle across the national market, excluding full linkage of representative orders. As CAT LLC reported on its Quarterly Progress Reports, Phase 2a was fully implemented as of October 26, 2020, including intra-firm, inter-firm, national securities exchange, and trade reporting facilities linkages.¹⁰³ In addition to the reporting of Phase 2a Industry Member Data as described above with regard to FAM Period 1, the following linkage data was added to the CAT as described in the Quarterly Progress Reports for the third and fourth quarter of 2020:

- “Production Go-Live for Equities 2a Intrafirm Linkage validations” was completed on 7/27/2020;¹⁰⁴
- “Production Go-Live for Firm to Firm Linkage validations for Equities 2a (Large Industry Members and Small OATS Reporters)” was completed on October 26, 2020; and
- “Production Go-Live for Equities 2a Exchange and TRF Linkage validations (Large Industry Members and Small OATS Reporters)” was completed on October 26, 2020.

Furthermore, as CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2020, the average overall error rate for Phase 2a Industry Member Data was less than 5% as of December 31, 2020. The average overall error rate was calculated by dividing the compliance errors by processed records.

The second prong of this FAM requires that the equities transaction data collected by the CAT at this stage be made available to regulators through two basic query tools required by the CAT NMS Plan—a targeted query tool that will enable regulators to retrieve data via an online query screen with a variety of predefined selection criteria, and a user-defined direct query tool that will provide regulators with the ability to query data using all available

attributes and data sources.¹⁰⁵ As CAT LLC reported on its Quarterly Progress Reports, the query tool functionality incorporating the data from Phase 2a was available to the Participants and the Commission as of December 31, 2020.¹⁰⁶

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.¹⁰⁷

As discussed above, Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from August 1, 2020 through December 31, 2020. The total costs for this period, as discussed above, are \$42,976,478. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remain [*sic*] two-thirds, with CEBBs paying one-third (\$14,325,492.70) and CEBBs paying one-third (\$14,325,492.70).

(C) Period 3 of the Financial Accountability Milestones

Historical CAT Assessment 1 seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 3. FAM Period 3 began on January 1, 2021, and concluded on December 31, 2021, the date of the Full Availability and Regulatory Utilization of Transactional Database Functionality. Section 1.1 of the CAT NMS Plan defines “Full Availability and Regulatory Utilization of Transactional Database Functionality” as:

the point at which: (a) reporting to the Order Audit Trail System (“OATS”) is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple

¹⁰⁵ Section 6.10(c)(i)(A) of the CAT NMS Plan requires the Plan Processor to “provide Participants and the SEC with access to all CAT Data stored in the Central Repository” via an “online targeted query tool.” Appendix D, Sections 8.1.1–8.1.3 of the CAT NMS Plan describes the required functionality associated with this regulatory tool. Appendix D, Section 8.2.1 describes the required functionality associated with a user-defined direct query tool that will “deliver large sets of data that can then be used in internal surveillance or market analysis applications.”

¹⁰⁶ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020); Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021); and Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰⁷ Securities Exchange Act Rel. No. 98848 (Nov. 2, 2023), 88 FR 77128, 77129 n.13 (Nov. 8, 2023) (“Settlement Exemptive Order”).

¹⁰² Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰³ For a description of the requirements of Phases 2a, see Phased Reporting Exemptive Relief Order.

¹⁰⁴ Q3 2020 Quarterly Progress Report (Oct. 20, 2021).

electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)–(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants' Quarterly Progress Reports. As indicated by the Participants' Quarterly Progress Report for the fourth quarter of 2021,¹⁰⁸ Full Availability and Regulatory Utilization of Transactional Database Functionality was completed on schedule by December 31, 2021.

Specifically, the "Full Availability and Regulatory Utilization of Transactional Database Functionality" requires the satisfaction of five prongs. The first prong requires that reporting to the Order Audit Trail System ("OATS") is no longer required for new orders. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021,¹⁰⁹ FINRA retired OATS effective September 1, 2021.¹¹⁰ Accordingly, after the retirement of OATS, reporting to OATS was no longer required.

In addition to Phase 2a and Phase 2b Industry Member Data, the second and third prongs of "Full Availability and Regulatory Utilization of Transactional

Database Functionality" require Industry Member reporting of Phase 2c Industry Member Data and Phase 2d Industry Member Data. The Phase 2c Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order. That Order states that "Phase 2c Industry Member Data" is Industry Member Data related to Eligible Securities that are equities other than Phase 2a Industry Member Data, Phase 2d Industry Member Data, or Phase 2e Industry Member Data. Specifically, the Phase 2c Industry Member Data includes Industry Member Data that is related to Eligible Securities that are equities and that is related to: (1) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (2) quotes in unlisted Eligible Securities sent to an IDQS operated by a CAT Reporter (reportable by the Industry Member sending the quotes) (except for quotes reportable in Phase 2d, as discussed below); (3) electronic quotes in listed equity Eligible Securities (*i.e.*, NMS stocks) that are not sent to a national securities exchange or FINRA's Alternative Display Facility; (4) reporting changes to client instructions regarding modifications to algorithms; (5) marking as a representative order any order originated to work a customer order in price guarantee scenarios, such as a guaranteed VWAP; (6) flagging rejected external routes to indicate a route was not accepted by the receiving destination; (7) linkage of duplicate electronic messages related to a Manual Order Event between the electronic event and the original manual route; (8) special handling instructions on order route reports (other than the ISO, which is required to be reported in Phase 2a); (9) quote identifier on trade events; (10) reporting of LTIDs (if applicable) for accounts with Reportable Events that are reportable to CAT as of and including Phase 2c; (11) reporting of date account opened or Account Effective Date (as applicable) for accounts and reporting of a flag indicating the Firm Designated ID type as account or relationship; (12) order effective time for orders that are received by an Industry Member and do not become effective until a later time; (13) the modification or cancellation of an internal route of an order; and (14) linkages to the customer orders(s) being represented for representative order scenarios, including agency average price trades, net trades, aggregated orders, and disconnected Order Management System ("OMS")—Execution Management System ("EMS")

scenarios, as required in the Industry Member Technical Specifications.¹¹¹

Phase 2c Industry Member Data also includes electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are equities and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: (1) an equity bid or offer is displayed publicly or has been communicated (a) for listed securities to the ADF operated by FINRA; or (b) for unlisted equity securities to an "interdealer quotation system," as defined in FINRA Rule 6420(c); or (2) an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing; *i.e.*, no further manual or electronic action is required by the responder providing the quote in order to execute or cause a trade to be executed). With respect to OTC Equity Securities, OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter (other than such an IDQS that does not match and execute orders) are reportable by the Industry Member sending them in Phase 2c. Accordingly, any response to a request for quote or other form of solicitation response provided in a standard electronic format (*e.g.*, FIX) that meets this quote definition (*i.e.*, an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing) would be reportable in Phase 2c.¹¹²

The Phase 2d Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order. "Phase 2d Industry Member Data" is Industry Member Data that is related to Eligible Securities that are options other than Phase 2b Industry Member Data, Industry Member Data that is related to Eligible Securities that are equities other than Phase 2a Industry Member Data or Phase 2c Industry Member Data, and Industry Member Data other than Phase 2e Industry Member Data. Phase 2d Industry Member Data includes with respect to the Eligible Securities that are options: (1) simple manual orders; (2) electronic and manual paired orders; (3) all complex orders with linkages to all CAT-reportable legs; (4) LTIDs (if applicable) for accounts with Reportable Events for Phase 2d; (5) date account

¹⁰⁸ Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹⁰⁹ *Id.*

¹¹⁰ Securities Exchange Act Rel. No. 92239 (June 23, 2021), 86 FR 34293 (June 29, 2021).

¹¹¹ Phase Reporting Exemptive Relief Order at 23078–79.

¹¹² *Id.* at 23079.

opened or Account Effective Date (as applicable) for accounts with an LTID and flag indicating the Firm Designated ID type as account or relationship for such accounts; (6) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (7) the modification or cancellation of an internal route of an order; and (8) linkage between a combined order and the original customer orders. Phase 2d Industry Member Data also would include electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are options and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: a listed option bid or offer which is accessible electronically by customers or other market participants and is immediately actionable (*i.e.*, no further action is required by the responder providing the quote in order to execute or cause a trade to be executed). Accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (*e.g.*, FIX) that meets this definition is reportable in Phase 2d for options.¹¹³

Phase 2d Industry Member Data also includes with respect to Eligible Securities that are options or equities (1) receipt time of cancellation and modification instructions through Order Cancel Request and Order Modification Request events; (2) modifications of previously routed orders in certain instances; and (3) OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter that does not match and execute orders. In addition, subject to any exemptive or other relief, Phase 2d Industry Member Data will include verbal or manual quotes on an exchange floor or in the over-the-counter market, where verbal quotes and manual quotes are defined as bids or offers in Eligible Securities provided verbally or that are provided or received other than via a CAT Reporter's order handling and execution system (*e.g.*, quotations provided via email or instant messaging).¹¹⁴

The Quarterly Progress Report for the fourth quarter of 2021 states that "Phase 2a was fully implemented as of October 26, 2020;" "Phase 2b was fully implemented as of January 4, 2021;" "Phase 2c was implemented as of April 26, 2021;" and "Phase 2d was fully

implemented as of December 13, 2021."¹¹⁵ The Quarterly Progress Reports for 2021 provide additional detail regarding the implementation of these steps including the following:

- "Production Go-Live for Equities 2c reporting requirements (Large Industry Members)" was completed on April 26, 2021;
- "LTID Account Information Reporting Go-Live for Phases 2a, 2b and 2c (Large Industry Members)" was completed on April 26, 2021;
- "FCAT Plan Processor creates linkages of the lifecycle of order events based on the received data through Phase 2d Production Go-Live for Options 2d reporting requirements (Large Industry Members)" was completed on December 13, 2021;
- "Production Go-Live for Options 2d reporting requirements (Large Industry Members)" was completed on December 13, 2021;
- "Production Go-Live for Options 2b reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "Production Go-Live for Equities 2c reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "Production Go-Live for Options 2d reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "LTID Account Information Reporting Go-Live for Phases 2d (Large Industry Members)" was completed on December 13, 2021; and
- "LTID Account Information Reporting Go-Live for Phases 2a, 2b, 2c and 2d (Small Industry Members)" was completed on December 13, 2021.¹¹⁶

The third prong of "Full Availability and Regulatory Utilization of Transactional Database Functionality" also imposes an Error Rate requirement of 5% or less. The Quarterly Progress Report for the fourth quarter of 2021 states the average overall error rate was less than 5% as of December 31, 2021. The average overall error rate was calculated by dividing the compliance errors by processed records.

The fourth prong of "Full Availability and Regulatory Utilization of Transactional Database Functionality" requires that the data collected by the CAT at this stage be made available to

regulators through an online targeted query tool and a user-defined direct query tool. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021, the query tool functionality incorporating the data from Phases 2a, 2b, 2c and 2d was available to the Participants and to the Commission as of December 31, 2021.¹¹⁷

The fifth prong requires the requirements of Section 6.10(a) of the CAT NMS Plan to have been met. Section 6.10(a) of the CAT NMS Plan requires the Participants to use the tools described in Appendix D to "develop and implement a surveillance system, or enhance existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository." The Exchange implemented a surveillance system, or enhanced existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository as of December 31, 2021 in accordance with Section 6.10(a) of the CAT NMS Plan.¹¹⁸

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.¹¹⁹

As discussed above, Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from January 1, 2021 through December 31, 2021. The total costs for this period, as discussed above, are \$144,415,268. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remain [*sic*] two-thirds, with CEBBs paying one-third (\$48,138,422.70) and CEBBs paying one-third (\$48,138,422.70).

(D) Additional Considerations Related to the Financial Accountability Milestones

As discussed above, CAT LLC has satisfied the Financial Accountability Milestones ("FAMs") for Periods 1

¹¹⁷ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁸ See Q1 2021 Quarterly Progress Report (Apr. 30, 2021); Q2 2021 Quarterly Progress Report (July 27, 2021); Q3 2021 Quarterly Progress Report (Nov. 1, 2021); Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁹ Settlement Exemptive Order at 77129 n.13.

¹¹³ *Id.*

¹¹⁴ *Id.* at 23079–80.

¹¹⁵ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁶ See Q2 2021 Quarterly Progress Report (July 27, 2021); and Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

through 3.¹²⁰ As discussed below, none of the circumstances related to NIA Electronic RFQ Responses, the 2023 Verbal Quotes Exemption, the November 2023 Order, or Executing Broker reporting, affect the conclusion that the FAMs for Periods 1 through 3 were satisfied in a timely fashion.

(i) NIA Electronic RFQ Responses

CAT LLC does not believe that the exemptive relief relating to the reporting of electronic responses for quotes (“RFQs”) that are not immediately actionable (“NIA Electronic RFQ Responses”) affect the conclusion that FAMs 1 through 3 have been satisfied. The only reason CAT LLC pursued this relief is because certain Industry Members introduced concerns that NIA Electronic RFQ Responses could be considered “orders” reportable pursuant to Rule 613(j)(8) and some Industry Members were not prepared to report such orders to CAT. Thus, the relief was requested on behalf of Industry Members. CAT LLC itself has not taken any position on whether NIA Electronic RFQ Responses are “orders,” as the definition of “order” is an SEC rule and the trading processes for NIA Electronic RFQ Responses are the Industry Members’, not those of the Participants or CAT LLC. Accordingly, CAT LLC stated in its letter that “Industry Members must determine whether trading interest falls within the definition of an ‘order’ for CAT purposes. To the extent an NIA Electronic RFQ Response is not considered an ‘order’ as defined in Rule 613(j)(8) and the CAT NMS Plan, it would not be reportable to CAT.”¹²¹

Only “orders” as defined in SEC Rule 613(j)(8) are reportable to CAT. There is no agreement across the industry or among regulators as to whether NIA Electronic RFQ Responses are “orders” reportable to CAT. Certain Industry Members have raised the question as to whether NIA Electronic RFQ Responses are orders, but others have argued that they are not orders under Rule 613(j)(8).¹²² Indeed, members of the

Advisory Committee, which CAT LLC relies upon for guidance with regard to Industry Member issues, have not had a definitive view on whether NIA Electronic RFQ Responses are orders. As Rule 613(j)(8) is an SEC rule, CAT LLC believes that only the SEC can provide a definitive determination as to if, and under what circumstances, an NIA Electronic RFQ Response is considered an “order” reportable to CAT. The issue has persisted for some time. As a result, CAT LLC filed an exemptive request regarding NIA Electronic RFQ Responses for clarity on the interpretive issue. As recently as April 2024, Industry Members have re-raised this issue stating that the SEC agrees that it must provide additional guidance on this interpretive issue to resolve the CAT reporting issue for NIA Electronic RFQ Responses:

As further discussed in the prior FIF letters, even if the Commission had the legal authority to require the reporting of NIA RFQ responses to CAT without an amendment to Rule 613, the Commission has not provided guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT. In subsequent discussions with industry members, Commission representatives have agreed that, prior to NIA RFQ responses being reportable to CAT, it would be necessary for the Commission to provide further guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT.¹²³

On May 20, 2024, the Commission granted CAT LLC’s request for exemptive relief from certain CAT reporting requirements pertaining to NIA Electronic RFQ Responses to the extent such responses are considered “orders” reportable pursuant to Rule 613(j)(8).¹²⁴ The Commission, however, did not provide additional guidance regarding the conditions under which NIA Electronic RFQ Responses would be reportable to CAT. The Commission stated in its exemptive order that “[t]o the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for the Financial Accountability Milestones, provided that any conditions of the exemption are satisfied.”¹²⁵

When the Commission proposed the FAMs, the Participants expressed concern that, “by conditioning the ability of CAT LLC and the Participants to collect Post-Amendment Industry Member Fees on factors dependent on

the efforts of Industry Members, the Commission’s proposals inadvertently establish a perverse incentive for Industry Members to devote less than maximum efforts to comply with their obligations related to the CAT as they will pay less fees in such instances.”¹²⁶ The Participants further warned that “Industry Members may request or require unanticipated reporting delays to address Industry Member implementation issues or concerns,” but that, “[f]aced with financial penalties for missed deadlines, the Participants may not be able to fully address legitimate industry concerns or accommodate requests for delays with respect to future deadlines.”¹²⁷ CAT LLC has engaged in good faith to help address NIA Electronic RFQ Responses and other concerns relevant to the ability of Industry Members to meet their CAT reporting obligations. CAT LLC should not be penalized financially for seeking in good faith to resolve a difficult interpretive issue for the benefit of Industry Members.

(ii) 2023 Verbal Quotes Exemption

CAT LLC does not believe that the Commission’s May 19, 2023 order granting temporary exemptive relief relating to certain verbal floor activity and unstructured verbal and electronic upstairs activity (the “2023 Verbal Quotes Exemption”) affects the conclusion that FAMs 1 through 3 have been satisfied. The 2023 Verbal Quotes Exemption, which was issued on May 19, 2023, is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. The relevant exemption for this time period is the Commission’s November 12, 2020 order, which granted relief for the same activity through July 31, 2023 (the “2020 Verbal Quotes Order”).¹²⁸ The Commission has stated that, “to the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for a Financial Accountability Milestone, provided that the conditions of the exemption are satisfied.”¹²⁹ Here, the

¹²⁰ In May 2020, the Commission adopted amendments to the CAT NMS Plan that establish four Financial Accountability Milestones and set target deadlines by which these milestones must be achieved. These amendments also reduce the amount of any fees, costs, and expenses that may be recovered from Industry Members if the Participants fail to meet the target deadlines. FAM Adopting Release.

¹²¹ See Letter from Brandon Becker, Chair, CAT NMS Plan Operating Committee to Vanessa Countryman, Secretary, Commission (Feb. 13, 2024) at 2.

¹²² See, e.g., Letter from Howard Meyerson, Managing Director, FIF, to Sai Rao, Counsel for Trading and Markets, Office of the Chair (Apr. 25, 2024).

¹²³ *Id.*

¹²⁴ Securities Exchange Act Rel. No. 100181 (May 20, 2024), 89 FR 45715 (May 23, 2024).

¹²⁵ *Id.* at n.11.

¹²⁶ See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission at 9 (Oct. 28, 2019).

¹²⁷ *Id.* at 10.

¹²⁸ Securities Exchange Act Rel. No. 90405, 85 FR 73544 (Nov. 18, 2020) (the “2020 Verbal Quotes Exemption”).

¹²⁹ See, e.g., Securities Exchange Act Rel. No. 89051 (June 11, 2020), 85 FR 36631, 36633 (June 17, 2020). The straightforward reading of the Commission’s statement is that compliance with the conditions of an exemption will be measured as of the deadline for a particular FAM Period.

2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3.¹³⁰

(iii) November 2023 Order

CAT LLC does not believe that the Commission's November 2, 2023 order granting relief from certain CAT NMS Plan requirements (the "November 2023 Order") affects the conclusion that FAMs 1 through 3 have been satisfied. The November 2023 Order is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. As described in the November 2023 Order, the relevant exemptive orders for this time period were issued on December 16, 2020, which also states that "the Commission has determined that the Participants have sufficiently complied with the conditions set forth in the prior Orders and with the technical requirements for Quarterly Progress Reports set forth in section 6.6(c) of the CAT NMS Plan, including for purposes of determining compliance with any applicable Financial Accountability Milestones."¹³¹ The November 2023 Exemption Order is consistent with the Commission's repeated statements in the FAM adopting release that it would have "authority to grant exemptive relief from any requirement associated with a particular Financial Accountability Milestone," citing Section 36 of the Exchange Act and Rule 608.¹³² Similarly, the CAT NMS Plan

expressly contemplates the Commission's ability to grant exemptive relief from any CAT NMS Plan requirement.¹³³

(iv) Executing Broker Reporting

CAT LLC also completed the requirements of FAM Period 2, including the required linkages, by December 31, 2020. Although Participant exchanges may report the Executing Broker to CAT differently in certain situations, these reporting differences are irrelevant for linkage purposes as the fields used for CAT Executing Broker are not used for linkage.

(10) Additional Support for Reasonableness of Historical CAT Costs

The CAT Funding Model approved by the Commission permits the recovery of reasonable costs in each of the categories of CAT costs sought to be recovered via Historical CAT Assessment 1.¹³⁴ As described in detail above and in further detail below, the CAT costs to be recovered for each category are reasonable. The following discusses in further details how each of the following costs are reasonable: (1) costs incurred prior to the effective date of the CAT NMS Plan; (2) cloud hosting services costs; (3) costs related to funding model filings; (4) costs related to litigation with the SEC regarding the CAT NMS Plan; (5) costs related to the Initial Plan Processor; (6) CAIS implementation costs; (7) public relations costs; (8) legal costs related to the limitation of liability provision in the CAT Reporter agreements; and (9) costs for the Chair of CAT Operating Committee. As discussed in detail below, each of these costs is reasonable and should be recoverable in accordance with the CAT Funding Model.

(A) Costs Incurred Prior to the Effective Date of CAT NMS Plan

CAT LLC believes that it is reasonable to seek recovery of costs incurred prior to when the CAT NMS Plan became effective in November 2016, such as legal and consulting fees incurred to

create the CAT NMS Plan. Rule 613 specifically mandates that the CAT be created, implemented and maintained, and further provides that the CAT NMS Plan include a proposed allocation of estimated costs to fund the creation, implementation and maintenance of the CAT among the Participants (referred to as "plan sponsors"), and between the Participants and Industry Members (referred to as "members of the plan sponsors").¹³⁵ Consistent with Rule 613, the CAT NMS Plan, as approved by the Commission, specifically authorizes charging Industry Members fees for costs reasonably incurred prior to the date of the approval of the CAT NMS Plan by the Commission in November 2016, including legal and consulting costs. Section 11.1(c) of the CAT NMS Plan states that:

[i]n 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) reasonably incurred by Participants on behalf of the Company prior to the Effective Date in connection with the creation and implementation of the CAT.

Accordingly, the CAT NMS Plan specifically permits the recovery of costs, including legal and consulting costs, reasonably incurred prior to November 2016 in connection with the creation and implementation of the CAT.

Furthermore, the costs incurred to create and implement the CAT prior to the effective date of the CAT NMS Plan ("Pre-Formation Costs") were reasonable both in scope and amount, in accordance with the requirements of Section 11.1(c) of the CAT NMS Plan. During the four-year period from 2012 to 2016, a total of \$13,842,881 in Pre-Formation Costs were incurred. This is an average of approximately \$3.5 million per year over this period. The Pre-Formation Costs fell into three categories: legal costs, consulting costs and public relations costs. This includes legal costs of \$3,196,434; consulting costs of \$10,589,273; and public relations costs of \$57,174. The legal, consulting and public relations services were performed by WilmerHale, Deloitte and Peppercomm, respectively. The selection considerations and fees for these three firms are described in detail above and are described further below. The Pre-Formation Costs are direct costs of CAT, which have been funded entirely by the Participants through non-interest-bearing notes. The Pre-Formation Costs do not include the significant costs incurred by each of the

¹³⁰ As a condition to the 2020 Verbal Quotes Exemption, the Commission required that the Participants provide a written status update on the reporting of these quotes and orders by July 31, 2022, including the estimated costs of reporting these quotes and orders and an implementation plan for the reporting of these quotes and orders. As noted, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3. In any event, on June 3, 2022, the Participants provided the required written status update. See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (June 3, 2022).

¹³¹ *Id.* at 77129 n.12.

¹³² FAM Adopting Release at 31335 (May 22, 2020). Section 36 of the Exchange Act grants the Commission the authority to "conditionally or unconditionally exempt any person, security, or transaction . . . from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors." 15 U.S.C. 78mm(a)(1). Under Rule 608(e) of Regulation NMS, the Commission may "exempt from [Rule 608], either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is

consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanism of, a national market system." 17 CFR 242.608(e).

¹³³ Section 12.3 of the CAT NMS Plan ("[T]o the extent the SEC grants exemptive relief applicable to any provision of this Agreement, Participants and Industry Members shall be entitled to comply with such provision pursuant to the terms of the exemptive relief so granted at the time such relief is granted irrespective of whether this Agreement has been amended.")

¹³⁴ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹³⁵ See, e.g., Rule 613(a)(1)(vii)(D) of the CAT NMS Plan.

individual Participants in responding to the adoption of Rule 613.

The Pre-Formation Costs are reasonable and appropriate as they reflect the extensive efforts that were necessary to create the CAT NMS Plan as mandated after the SEC's adoption of Rule 613. As described in more detail below, these efforts included, among other things, developing a plan for selecting the Plan Processor, soliciting and evaluating bids, engaging a diverse set of market participants and the SEC in the development of the Plan, interacting with the SEC in their oversight of the development of the Plan, and seeking appropriate exemptive relief to address areas of concern in Rule 613.¹³⁶

(i) Request for Proposal ("RFP")

The Participants determined to utilize an RFP to ensure that potential alternative solutions for creating the Plan could be presented and considered, and that a detailed and meaningful cost-benefit analysis could be performed. The SEC supported the use of an RFP, and approved its use as it is described in extensive detail in the CAT NMS Plan.¹³⁷

In the context of the SEC's adoption of Rule 613, commenters urged the Commission to utilize an RFP process to assist in the planning and design of the NMS plan.¹³⁸ Specifically, the Commission explained:

In this regard, several commenters suggested that the Commission undergo a RFP or request for information ("RFI") process to create and implement a consolidated audit trail. Specifically, FIF urged the Commission to perform a RFP process "to determine the best technical solution for developing a consolidated audit trail." FIF suggested that the Commission "should outline a set of goals and guiding principles they are striving to achieve as part of the adopted CAT filing and leave the determination of data elements and other technical requirements to [an] industry working group." Similarly, Direct Edge suggested that Commission staff should form and engage in a working group to develop an

RFP for publication by the Commission. DirectEdge explained that an RFP process would facilitate the identification of the costs and benefits of the audit trail, as well as the consideration of a wider range of technological solutions. Further, commenters, including Broadridge Financial Solutions, Inc., a technology provider, also requested more specific information about the audit trail system to better assess the Commission's initial cost estimates and to determine the best approach to the consolidated audit trail.¹³⁹

In response to these comments, the Commission modified Rule 613 to require the Participants to address certain important considerations regarding the features and details of the NMS plan and to extend the timeframe for submission of the CAT NMS Plan by the Participants from the 90 days as originally proposed to 270 days, in part, to accommodate a process that would address these considerations.¹⁴⁰ As the SEC noted, "[i]n light of the numerous specific requirements of Rule 613, the Participants concluded that publication of a request for proposal ('RFP') was necessary to ensure that potential alternative solutions to creating the consolidated audit trail can be presented and considered by the Participants and that a detailed and meaningful cost/benefit analysis can be performed, both of which are required considerations to be addressed in the CAT NMS Plan."¹⁴¹

The SEC specifically recognized that the Participants planned to use an RFP when it approved the Selection Plan, and stated that the RFP was a reasonable approach.¹⁴² As the SEC described in its approval order for the Selection Plan, "[t]he Participants filed the [Selection] Plan to govern how the SROs will proceed with formulating and submitting the CAT NMS Plan—and, as part of that process, how to review, evaluate, and narrow down the bids submitted in response to the RFP ('Bids')—and ultimately choosing the plan processor that will build, operate, and maintain the consolidated audit trail ('Plan Processor')."¹⁴³ After evaluating the Selection Plan, including the use of an RFP process, the Commission stated that it "believes the [Selection] Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids

in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail."¹⁴⁴

On February 26, 2013, the Participants published an RFP soliciting bids from parties interested in serving as the plan processor for the CAT. Initially, 31 firms submitted intentions to bid. In the following months, the Participants engaged with potential bidders with respect to, among other things, the selection process, selection criteria, and potential bidders' questions and concerns. On March 21, 2014, the Participants received ten bids in response to the RFP.

(ii) Selection Plan

On September 4, 2013, the Participants filed with the Commission a national market system plan to govern the process for Participant review of the bids submitted in response to the RFP, the procedures for evaluating the bids, and, ultimately, selection of the plan processor (the "Selection Plan").¹⁴⁵ The Commission approved the Selection Plan as filed on February 21, 2014.¹⁴⁶ In approving the Selection Plan, the Commission concluded that "it is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor."¹⁴⁷

The Selection Plan divided the review and evaluation of bids, and the selection of the plan processor, into various stages. Specifically, pursuant to the Selection Plan, a selection committee reviewed all bids and determined which bids contained sufficient information to allow the Participants to meaningfully assess and evaluate the bids. The ten submitted bids were deemed "Qualified Bids," and so passed to the next stage, in which each bidder presented its bids to the Participants on a confidential basis. On July 1, 2014, after conducting careful analysis and comparison of the bids, the Selection Committee voted and selected a shortlist of six eligible bidders. The Selection Committee determined which shortlisted bidders would be provided the opportunity to revise their bids. After the Selection Committee assessed and evaluated the revised bids, the Selection Committee selected the plan processor via two rounds of voting by the Participants, as described in the Selection Plan.

The Selection Plan established an Operating Committee responsible for

¹³⁶ The Participants described in detail the process for drafting the CAT NMS Plan in its original filing of the CAT NMS Plan. See Letter from Mike Simon, on behalf of the Participants of the CAT NMS Plan, to Brent J. Fields, Secretary, Commission (Sept. 30, 2014). A non-exclusive list of filings and activities associated with CAT, including certain pre-2016 filings, are available on the SEC's website: <https://www.sec.gov/divisions/marketreg/rule613-info>.

¹³⁷ See detailed discussion of RFP questions in Appendix C of the CAT NMS Plan, and incorporation of RFP requirements in Appendix D at D-2.

¹³⁸ For example, in its comments on proposed Rule 613, FIF suggested "that the SROs should select the processor through a 'request for proposal.'" Rule 613 Adopting Release at 45785.

¹³⁹ Rule 613 Adopting Release at 45738–39.

¹⁴⁰ Rule 613 Adopting Release at 45739.

¹⁴¹ Securities Exchange Act Rel. No. 71596 (Feb. 21, 2014), 79 FR 11152, 11152 (Feb. 27, 2014) ("Selection Plan Approval Order").

¹⁴² *Id.*

¹⁴³ *Id.* at 11153.

¹⁴⁴ *Id.* at 11159.

¹⁴⁵ See Securities Exchange Act Rel. No. 70892 (Nov. 15, 2013), 78 FR 69910 (Nov. 21, 2013).

¹⁴⁶ See Selection Plan Approval Order.

¹⁴⁷ Selection Plan Approval Order at 11160.

formulating, drafting, and filing with the Commission the CAT NMS Plan and for ensuring that the Participants' joint obligations under Rule 613 were met in a timely and efficient manner. In formulating the CAT NMS Plan, the Participants also engaged multiple persons across a wide range of roles and expertise, engaged the consulting firm Deloitte as project manager, and engaged the law firm WilmerHale to serve as legal counsel in drafting the Plan. Within this structure, the Participants focused on, among other things, comparative analyses of the proposed technologies and operating models, development of funding models to support the building and operation of the CAT, and detailed review of governance considerations. Given the complexity and scope of developing the CAT NMS Plan, these efforts were extensive.

When it approved the CAT NMS Plan in 2016, the Commission reiterated its belief that the Selection Plan remains a "reasonable approach," that "the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor," and that "the process set forth in the Selection Plan should be permitted to continue":

In approving the Selection Plan, the Commission stated that the Selection Plan is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor. The Commission also found that the Selection Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail. The Commission believes that the process set out in the Selection Plan for selecting a Plan Processor remains a reasonable approach, which will facilitate the selection of Plan Processor through a fair, transparent and competitive process and that no modifications to the Selection Plan are required to meet the approval standard. . . . In response to the comment that offered support for a specific Bidder, the Commission agrees with the Participants that the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor and thus believes that the process set forth in the Selection Plan should be permitted to continue.¹⁴⁸

(iii) Engagement With Market Participants and SEC

During the process of developing the CAT NMS Plan, the Participants engaged in extensive and meaningful

dialogue with market participants and the SEC. To this end, the Participants created a website to update the public on the progress of the CAT NMS Plan, published a request for comment on multiple issues related to the Plan, held multiple public events to inform the industry of the progress of the CAT and to address inquiries, and formed, and later expanded, a DAG to solicit more input from a representative industry group.¹⁴⁹

The DAG included representatives of Participants and Industry Members and conducted meetings to discuss, among other things, technical and operational aspects the Participants were considering for the Plan. The Participants issued press releases soliciting participants for the DAG, and a wide spectrum of firms was deliberately chosen to provide insight from various industry segments affected by CAT. The DAG meetings included discussions of topics such as option market maker quote reporting, requirements for capturing Customer IDs, timestamps and clock synchronization, reporting requirements for order handling scenarios, costs and funding, error handling and corrections, and potential elimination of systems made redundant by the CAT. From the inception of the DAG through September 2014, the DAG participated in 36 meetings, as well as a variety of DAG subcommittee meetings.

(iv) Request for Exemption From Certain Requirements Under Rule 613

Following multiple discussions between the Participants and both the DAG and the bidders, as well as among the Participants themselves, the Participants recognized that some provisions of Rule 613 would not permit certain solutions to be included in the Plan that the Participants, in coordination with the DAG, determined advisable to effectuate the most efficient and cost-effective CAT. Specifically, "the SROs reached the conclusion that additional flexibility in certain of the minimum requirements specified in Rule 613 would allow them to propose a more efficient and cost-effective approach without adversely affecting the reliability or accuracy of CAT Data, or its security and confidentiality."¹⁵⁰ Consequently, the Participants submitted a request for exemptive relief from certain provisions of Rule 613 regarding: (1) options market maker quotes; (2) Customer-IDs; (3) CAT-

Reporter-IDs; (4) CAT-Order-IDs on allocation reports; and (5) timestamp granularity.¹⁵¹ The Participants filed two supplements to the request for exemptive relief.¹⁵²

After reviewing the exemptive request, the Commission determined that it was appropriate in the public interest and consistent with the protection of investors to grant the requested exemptive relief.¹⁵³ In granting the exemptive relief, the Commission stated:

[T]he Commission is persuaded to provide flexibility in the discrete areas discussed in the Exemption Request so that the alternative approaches can be included in the CAT NMS Plan and subject to notice and comment. Doing so could allow for more efficient and cost-effective approaches than otherwise would be permitted. The Commission at this stage is not deciding whether the proposed approaches detailed below are more efficient or effective than those in Rule 613. However, the Commission believes the proposed approaches should be within the permissible range of alternatives available to the SROs.¹⁵⁴

The Commission further stated that the requested exemptive relief is consistent with the protection of investors. The Commission noted that:

Doing so will provide the public an opportunity to consider and comment on whether these proposed alternative approaches would indeed be more efficient and cost-effective than those otherwise required by Rule 613, and whether such approaches would adversely affect the reliability or accuracy of CAT Data or otherwise undermine the goals of Rule 613. Moreover, if—as the SROs represent—efficiency gains and cost savings would result from including the proposed approaches in the CAT NMS Plan without adverse effects, then the resultant benefits could potentially flow to investors (e.g., lower broker-dealer reporting costs resulting in fewer costs passed on to Customers).¹⁵⁵

The Participants incorporated the exemptive relief into the proposed CAT NMS Plan, which was noticed for comment, and the Commission ultimately approved the CAT NMS Plan with the more efficient and cost-effective alternative approaches described in the exemptive relief. Accordingly, the Participants believe that the costs incurred in developing the exemptive request were critical to the creation of a better CAT than was

¹⁵¹ Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Jan. 30, 2015).

¹⁵² See Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Apr. 3, 2015); Letter from the SROs to Brent J. Fields, Secretary, Commission (Sept. 2, 2015).

¹⁵³ See 2016 Exemptive Order.

¹⁵⁴ *Id.* at 11857.

¹⁵⁵ *Id.*

¹⁴⁹ See Section D(11) of Appendix C of the CAT NMS Plan.

¹⁵⁰ Securities Exchange Rel. No. 77265 (Mar. 1, 2016), 81 FR 11856 (Mar. 7, 2016) ("2016 Exemptive Order").

¹⁴⁸ See CAT NMS Plan Approval Order at 84737.

originally contemplated by Rule 613, and therefore should be recoverable as part of Historical CAT Assessment 1.

(v) Request for Extensions for Filing the CAT NMS Plan

Rule 613(a)(1) under Regulation NMS required the Participants to jointly file the CAT NMS Plan on or before April 28, 2013, less than a year after the adoption of Rule 613. In recognition of the complexity of the project to create the CAT NMS Plan as well as industry interest in limiting or eliminating certain requirements of Rule 613 (*e.g.*, addressing the reporting of options market maker quotes), the Participants requested two extensions of the deadline to file the CAT NMS Plan. The Participants described the need for additional time as follows:

The SROs stated in their Request Letter that they do not believe that the 270-day time period provided for in Rule 613(a)(1) provides sufficient time for the development of the RFP, formulation and submission of bids, and review and evaluation of such bids. The SROs also stated that they believe additional time beyond the 270 days provided for in Rule 613(a)(1) is necessary in order to provide sufficient time for effective consultation with and input from the industry and the public on the proposed solution chosen by the SROs for the creation of the consolidated audit trail at the conclusion of the RFP process and the NMS plan itself.¹⁵⁶

In recognition of the need for additional time to refine the technical description of and requirements for the CAT and to allow for additional evaluation of the proposed cost and funding considerations, the SEC granted two extensions of this deadline.¹⁵⁷ The SEC determined that both extensions were appropriate, in the public interest, and consistent with the protection of investors.¹⁵⁸ In reaching this conclusion, the Commission stated that “it understands that the creation of a consolidated audit trail is a significant undertaking and that a proposed NMS plan must include detailed information and discussion about many things.”¹⁵⁹ The SEC also noted the following:

This additional time to complete the RFP process should allow the SROs to engage in a more thoughtful and comprehensive process for the development of an NMS plan. In this regard, the Commission notes that the

additional time to solicit comment from the industry and the public at certain key points in the development of the NMS plan could identify issues that can be resolved earlier in the development of the consolidated audit trail and prior to filing the NMS plan with the Commission.¹⁶⁰

Given the Commission’s recognition of the reasonableness and value of the extension of the deadline to file the CAT NMS Plan, the Participants believe that the costs incurred in developing the extension request were important to the process of developing the CAT NMS Plan, and therefore should be recoverable as part of Historical CAT Assessment 1.

(vi) Submission and Approval of the CAT NMS Plan

After extensive analyses and discussions with the DAG, bidders, market participants and the SEC staff, the Participants finalized the draft of the CAT NMS Plan and filed the CAT NMS Plan with the SEC on September 30, 2014. Following additional discussions, the Participants filed several amendments to the CAT NMS Plan during 2015 and 2016. With these additional changes, the SEC published the CAT NMS Plan for notice and comment in May 2016.¹⁶¹ Following the comment period, the SEC approved the Plan in November 2016.¹⁶²

(vii) Legal Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include legal costs of \$3,196,434. The legal services were performed by WilmerHale. The selection considerations and fees for WilmerHale were described in detail above. Prior to the creation of CAT LLC, WilmerHale was engaged to represent the consortium of SROs, not the individual Participants. For administrative purposes, FINRA agreed to receive such legal bills, although such costs were shared among the Participants. Therefore, the legal costs incurred with respect to WilmerHale do not include legal costs incurred by the individual Participants. These pre-formation legal costs are described in detail above and are further described below:

- Analyzed various legal matters associated with the Selection Plan and drafted an amendment to Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the DAG;

- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on the CAT NMS Plan;

- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (*e.g.*, Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG, and governance support during the transition to the new governance structure under the CAT NMS Plan;

- Drafted exemptive requests;
- Provided interpretations related to the CAT NMS Plan;

- Provided support with regard to discussions among the exchanges, FINRA and other third parties, such as Deloitte;

- Provided tax advice with regard to CAT’s status as a tax-exempt organization; and

- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

(viii) Consulting Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include consulting costs of \$10,589,273. The consulting services were performed by Deloitte. The selection considerations and fees for Deloitte were described in detail above. Prior to the creation of CAT LLC, for administrative purposes, Deloitte was engaged by FINRA to provide consulting services related to CAT, but the costs were shared by the consortium of SROs per agreement. Therefore, the consulting costs incurred with respect to Deloitte do not include consulting costs incurred by the individual Participants. The pre-formation consulting costs include the following:

- Established and implemented program operations for the CAT project, including the program management office and workstream design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participants’ independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, reviewing technical requirements of other NMS plans, analyzing OATS and CAT requirements, and drafting appendices to the Plan;

¹⁵⁶ Securities Exchange Act Rel. No. 69060 (Mar. 7, 2013), 78 FR 15771, 15772 (Mar. 12, 2013) (“March 2013 Exemptive Order”).

¹⁵⁷ See March 2013 Exemptive Order; Securities Exchange Act Rel. No. 71018 (Dec. 6, 2013), 78 FR 75669 (Dec. 12, 2013) (“December 2013 Exemptive Order”).

¹⁵⁸ March 2013 Exemptive Order at 15772; December 2013 Exemptive Order at 75670.

¹⁵⁹ March 2013 Exemptive Order at 15772.

¹⁶⁰ *Id.* at 15773.

¹⁶¹ See Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

¹⁶² See CAT NMS Plan Approval Order.

- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG;

- Provided support for updating the SEC on the progress of the development of the CAT;

- Provided support for industry outreach sessions, including with regard to program design and agenda development, program support and logistics and coordination; and
- Provided support in fact finding, drafting content and meeting coordination for WilmerHale with regard to the CAT and the development of the CAT NMS Plan.

Such Pre-Formation Costs did not include costs related to the Chair of the CAT NMS Plan Operating Committee, as the CAT NMS Plan had not yet been adopted.

(ix) Public Relations Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include public relations costs of \$57,174. The public relations services were performed by Peppercomm. The selection considerations and fees for Peppercomm are described in detail above. The costs related to Peppercomm were shared among the SROs. Therefore, the public relations costs do not include public relations costs incurred by the individual Participants. The pre-formation public relations costs include services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT.

(B) Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs related to cloud hosting services as a part of Historical CAT Assessments. CAT LLC believes that the costs related to cloud hosting services described in detail above are reasonable and appropriate given the strict data processing timelines and storage requirements imposed by the Commission-approved CAT NMS Plan

and should be recoverable as a part of Historical CAT Assessment 1.

(i) Reasonableness of AWS Costs Given the Requirements of the CAT NMS Plan

CAT LLC believes that the costs for the cloud hosting services are reasonable, both in terms of the level of the fees paid by CAT LLC for cloud hosting services provided by AWS and the scope of the services performed by AWS for CAT LLC. CAT LLC believes that both the scope and amount of the costs for cloud hosting services are reasonable given the current requirements of the CAT NMS Plan adopted pursuant to Rule 613, including the strict data processing timeline, storage and other technical requirements under the Commission-approved CAT NMS Plan.

CAT LLC believes that the level of fees for the cloud hosting services is reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.

CAT LLC also believes that the scope of services provided by AWS for the CAT are appropriate given the current requirements of the Commission-approved CAT NMS Plan. As described above, the cloud hosting services costs reflect a variety of factors including, among other things:

- *Breadth of Cloud Activities.* AWS was engaged by FCAT, the Plan Processor, to provide a broad range of services to the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS necessary to the CAT include storage services, databases, compute services, and other services (such as networking, management tools and development operations (“DevOps”) tools). AWS also was engaged to provide the various environments for CAT, such as the development, performance testing, test and production environments, which are required by the CAT NMS Plan.

- *High Data Volume.* The cost for AWS services for the CAT is a function of the volume of CAT Data. While it is not linear, the greater the amount of CAT Data, the greater the cost of AWS services to the CAT. The data volume handled by AWS now far exceeds the original volume estimates for the CAT.

- *Plan Requirements.* The cost for AWS services also reflects the technical requirements necessary to meet the stringent performance and other requirements for processing CAT Data. These Plan-dictated processing timelines, storage, testing, security and

other technical requirements are significant drivers of AWS costs.

- *Cost Avoidance Efforts.* CAT LLC and FCAT have engaged in ongoing efforts to seek to avoid and minimize AWS costs where permissible under the Plan. Accordingly, these cost avoidance efforts have limited the extent of AWS costs.

In addition, various requirements of the CAT NMS Plan adopted pursuant to Rule 613 contribute to the significant cloud hosting services costs, and that various Plan requirements could be amended or removed without affecting the regulatory purpose of the CAT. Indeed, CAT LLC has repeatedly sought exemptive relief and filed amendments to the CAT NMS Plan, and has even filed suit against the Commission, to seek to revise or eliminate certain costly requirements related to the CAT. However, despite these efforts, absent the Commission granting exemptive relief or approving cost savings amendments to the CAT NMS Plan, CAT LLC, the Participants and Industry Members are all required to comply with such requirements.

(ii) Effect of CAT Design on CAT Costs

(a) Efficient CAT Design

CAT is reasonably designed to efficiently and effectively utilize cloud computing and storage services, given the requirements of the Commission-approved CAT NMS Plan, including requirements related to security, operational reliance and quality assurance, and maintainability.

The Plan Processor uses state-of-the-art software that meets the strict security standards of the CAT NMS Plan. CAT utilizes a big data processing framework that is extensively used by large data processing companies, such as Apple, Meta, Netflix, IBM and Google. As such, it has substantial commercial support and support in the open-source community. It is also well suited for use with regard to iterative types of algorithms and query functions and analytics that the CAT requires, and it provides the heightened security necessary for the CAT.

The development and implementation of the design of CAT is not and has not been static. CAT LLC and the Plan Processor are always evaluating new innovations and service offerings from AWS and other providers to seek to maximize efficiency and cost avoidance while still satisfying the requirements of the CAT NMS Plan. These efforts have led to substantial savings to date. The cloud hosting costs for 2023 were less than the cloud hosting costs for 2022 by \$8 million despite processing seven

trillion more events in 2023 due to the efficiency and cost avoidance efforts for cloud hosting services. For example, when AWS introduced new storage options, FCAT adopted the cost-efficient new storage option after establishing that the new offering would satisfy the security and other standards of the CAT NMS Plan. This change led to millions of dollars of savings in storage costs. Similarly, when AWS introduced a new compute processor, FCAT adopted this new compute processor, which led to millions of dollars in savings in compute costs. However, in other cases, new cloud technology developments could not be implemented in CAT because they would not satisfy the security or other requirements of the CAT NMS Plan.

When evaluating the design of the CAT, it must be kept in mind that the CAT is not a typical commercial technology project. The ability to make use of technology approaches that may lead to cost avoidance is also subject to the restrictive requirements of the CAT NMS Plan, such as processing timeframes, requirements for retention of data versions, query requirements, and security standards. Because such requirements are set forth in the CAT NMS Plan, any modification of such requirements are subject to the time-consuming process of amending the CAT NMS Plan or seeking an exemption from the relevant requirement. For example, CAT LLC recently has filed an amendment to address several of these expensive Plan requirements.¹⁶³

(b) CAT Was Designed To Minimize Industry Member Effort

The CAT System also was designed to minimize the extent to which Industry Members would need to alter their systems to report to CAT. During the design process, Industry Member groups argued that it would make more sense financially for the CAT to accommodate differences in industry systems, than for all Industry Members to change their systems. Moreover, such design choices would facilitate consistency, uniformity and accuracy in reporting. Requiring the CAT to make such accommodations may increase CAT costs while accommodating CAT Reporters.

Based on the requirements in the CAT NMS Plan and/or in response to industry requests for functionality to be embedded with the Plan Processor to

streamline or limit Industry Member system changes, the CAT has been designed to limit the effect on Industry Members. The following provides examples of such accommodations:

- *Industry Member Reporting.* In light of the complexity of Industry Member market activity, the CAT's order reporting and linkage scenarios document for Industry Members is over 800 pages in length, addressing nearly 200 scenarios.¹⁶⁴ The Industry Member Technical Specifications allow for dozens of specific event types, which drive complexity for the Plan Processor, but streamline reporting for Industry Members. Furthermore, the Plan Processor greatly expanded Industry Member linkage requirements to support, among other things, child events and supplemental events, allowing for "stateless as-you-go" and "batch end-of-day" reporting when all data is available. Accordingly, CAT takes on the significant cost and effort of providing the required linkages between CAT events; correspondingly, Industry Members are not required to perform this costly task.

- *File Submission Process.* The CAT was designed to accommodate the varying needs of CAT Reporters with regard to the file submission process. For example, in a 2018 letter, FIF stated that "[t]he SFTP-based submission process is cumbersome, exposes industry members to unnecessary complexity, and puts the burden of support on the CAT Reporter rather than imbedding more functionality into the Plan Processor."¹⁶⁵ Currently, FCAT provides two mechanisms for submitting files: SFTP via a private network, and the Web via Reporter Web Portal.

- *Error Corrections.* The industry also emphasized the need for the CAT to provide error correction tools and functionalities to identify, rectify and re-submit corrections within the required timeframe. For example, FIF stated in a 2018 letter the following:

To be clear, if OATS-like error correction tools are not made available on Day 1, hundreds of firms will be required to create and test their own tools or obtain vendor alternatives prior to the CAT Go-Live Date. Proprietary tools will require additional system builds, access to and ingestion of CAT data to perform system validation, and testing which will further stress the limited number of subject matter experts ("SMEs") dedicated to the implementation of CAT reporting. Should this occur, inevitably firms (especially small firms who lack the

necessary IT staff to write code and develop proprietary systems), may be put in the position of passing onto investors the cost required to build hundreds of redundant systems.¹⁶⁶

CAT provides various tools to help Industry Members identify and rectify errors.

- *Data Ingestion Format.* The industry also recommended that CAT adopt a flexible input format that provides an option for Industry Members to submit data in formats that are already in use to reduce costs and potential reporting errors. For example, FIF argued the following:

FIF CAT WG is not proposing a specific format; rather, we are proposing flexibility of input formats which includes support of existing formats (e.g., OATS, FIX) as well as a baseline specification where all fields are defined, and normalized. The input formats must be clearly and thoroughly defined in Technical Specifications, including FAQs.

Mandating a uniform format for reporting data to the CAT simplifies the task for the Central Repository of consolidating/storing data, but it puts the burden on each CAT Reporter to accurately translate their current (e.g., OATS) reporting information into a uniform CAT interface. However, that is likely to yield more errors because it is very dependent on accurate, complete and timely information (Technical Specifications, FAQs, meta-data, competent CAT help desk) available to CAT Reporters, availability of sophisticated CAT test tools to validate interface protocols, and the skill levels of the estimated 300+ unique CAT Reporters/Submitters during Phase 1 of CAT. Concentrating the responsibility of data conversions with the Central Repository is a reasonable trade-off that should yield fewer errors, and greater accuracy.¹⁶⁷

CAT provides such a flexible input format.

(c) Effect of Initial Plan Processor Design

The costs for cloud hosting services are appropriate and have not been adversely affected by the original design and approaches of the Initial Plan Processor. FCAT's design costs are the result of the requirements of the Commission-approved CAT NMS Plan.

When FCAT took over as the Plan Processor from Thesys, it utilized certain aspects of the technical specifications created by Thesys in its design. However, FCAT has not maintained aspects of the original design that would not be appropriate for the CAT. FCAT revised and enhanced the original technical specifications of the CAT System to increase its

¹⁶³ See, e.g., Securities Exchange Act Rel. No. 99938 (Apr. 10, 2024), 89 FR 26983 (Apr. 16, 2024); Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (Mar. 27, 2024) (proposing amendments to the CAT NMS Plan for \$23 million in annual savings).

¹⁶⁴ See CAT Industry Member Reporting Scenarios v.4.10 (Oct. 21, 2022).

¹⁶⁵ Letter from Janet Early, FIF, to Thesys CAT (Mar. 29, 2018).

¹⁶⁶ Letter from Christopher Bok, FIF, to Jay Clayton, Chair, Commission, at 4 (Dec. 11, 2018).

¹⁶⁷ Letter from Mary Lou Von Kaenel, Managing Director, FIF, to Brent Fields, Secretary, Commission at 92 (July 18, 2016), <https://www.sec.gov/comments/4-698/4698-13.pdf>.

efficiency and efficacy, and to ensure its compliance with the CAT NMS Plan. For example, the Initial Plan Processor's approach utilized many more fields than FCAT's approach, which relies on additional linkages. With the additional linkages, the CAT System takes on more of the CAT-related burdens than the Industry Members. Such an approach serves to facilitate consistency, uniformity and accuracy in reporting.

Moreover, FCAT did not utilize the system built by the Initial Plan Processor; it rebuilt the CAT System based on revised technical specifications. For example, the Initial Plan Processor used an on-premises processing approach which was not geared toward the huge amounts of data stored in the CAT, while FCAT adopted a cloud-based solution in response to such data demands.

Furthermore, given the very short timeframe to develop the CAT System and the prior optimization of certain query tools (e.g., Diver) for regulatory use with significant amounts of data, FCAT determined to rely upon certain existing FINRA tools and adapt them for use with the CAT.

(iii) Consideration of AWS Alternatives

CAT LLC continues to support the selection of AWS as the cloud hosting services provider for CAT given the compliance, operational, and security requirements of the CAT. Independent analyses confirm these conclusions, noting that "AWS is an excellent choice for either strategic or tactical use and recommends considering AWS for almost all cloud IaaS or IaaS+PaaS scenarios."¹⁶⁸ AWS provides the following benefits to CAT, among others:

- **Broad Suitability.** AWS has a long track record of successfully serving cloud customers with mission-critical projects.
- **Proven Scalability.** AWS has demonstrated that it is capable of building and delivering services on a large scale.
- **Track Record of Innovation.** AWS continues to rapidly innovate, both in terms of new domains of capability and at a fundamental level, thereby facilitating innovation for its customers.
- **Resiliency/Dependability.** Another benefit of AWS is its resiliency; it has a strong track record of stable services. As noted in a review of cloud service providers, "[c]ustomers like to have a broad set of options for resilience and

for their cloud providers to have a strong track record of stable services (continuously available, without operational quirks). Only AWS fulfills both desires."¹⁶⁹

- **Technical and Customer Support.** AWS consistently provides high-quality technical and customer support and engagement. Given the size, scope and regulatory importance of CAT, customer support and engagement that CAT has with the highest levels of AWS are very important to the success of the CAT.

- **Scale.** AWS is capable of supporting large-scale solutions, which is critical given the size and magnitude of the CAT.

- **Security.** AWS provides the security features necessary for the CAT.

In addition, the nature of the CAT, including the amount of data it must process and the size of its data footprint, does not allow for a multi-cloud solution as this would be cost prohibitive and greatly increase the security boundary and associated risk profile of the CAT. For example, a multi-cloud hosting option would increase costs, complexity, and risk for operations with regard to, for example, DevOps, production support, and networking. Similarly, with regard to security, a multi-cloud solution would increase risk, including with regard to the need for data transfers between cloud providers and the expansion of the security boundary. With regard to labor, a multi-cloud solution would lose economies of scale due to the need to support unique cloud requirements. Accordingly, the use of single-cloud solution continues to provide advantages with regard to cost, complexity, and risk. Indeed, "[t]he best practice is to focus on a single primary strategic provider."¹⁷⁰

Furthermore, if another cloud service provider were determined to be a better match for the CAT at some future date, switching cloud service providers would be a very significant, expensive and time-consuming effort. Such an effort would likely be a 10-to-15-year commitment at a substantial expense. Such a move would require the replication or redesign of the underlying cloud environments (e.g., organizational setup, identify management, accounts, environments, DevOps tooling likes release management/config management/network management), as the new provider likely would not have the same infrastructure and software. Once that process has been completed, an exabyte of CAT data would need to

be securely migrated to the new platform.

(C) Funding Model Filings

CAT LLC believes that the recovery of costs related to the development of the funding model is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

Funding the CAT is a critical aspect of Rule 613 and the CAT NMS Plan. Article XI of the CAT NMS Plan describes in detail the requirements for funding the CAT, and the Participants are required to comply with and enforce compliance with the funding requirements of the CAT NMS Plan, just as with other aspects of the Plan. Accordingly, the development and implementation of a funding model for the CAT is as much a part of the requirements of the CAT NMS Plan as the development and operation of the CAT System. CAT LLC sees no reason to distinguish the efforts to develop a funding model from, for example, efforts to develop the CAT System, in seeking to recover reasonable CAT costs.

Moreover, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that "the reasonably budgeted CAT costs shall include . . . legal costs."¹⁷¹ In addition, the CAT NMS Plan also requires Participants to include in their fee filings "a brief description of the amount and type of the Historical CAT Costs, including . . . legal . . . costs."¹⁷² In keeping with these provisions, this filing provides a brief description of reasonably budgeted legal costs above. These legal costs include costs related to the development of the CAT Funding Model.

In addition, the legal costs incurred for the assistance in developing the CAT Funding Model are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the specialized services were performed by experienced counsel at negotiated rates for such services that reflect both the extent of the services and market rates. Moreover, the scope of the legal costs associated with the development of the funding model reflect the complexity of the task in satisfying the detailed requirements of the CAT NMS Plan, the standards of the Exchange Act, and the many perspectives of the different

¹⁶⁸ See, e.g., Lydia Leong and Adrian Wong, Solution Comparison for Strategic Cloud Integrated IaaS and PaaS Providers (July 28, 2023) ("Strategic Cloud Assessment Article").

¹⁶⁹ Strategic Cloud Assessment Article.

¹⁷⁰ *Id.*

¹⁷¹ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁷² Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

market constituents potentially affected by or interested in the funding model, including Industry Members, Participants and investors. The many and varied comments by market participants on CAT funding over the years demonstrate the complexity of the task.

(D) Costs Related to Litigation With the SEC

CAT LLC believes that the recovery of legal costs related to the litigation with the SEC regarding the CAT NMS Plan is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.¹⁷³ Moreover, CAT LLC initiated such litigation, and incurred the related legal costs, because it was critical to address the Commission's interpretations of the CAT NMS Plan. Among other things, such interpretations threatened to impose unnecessary costs on the CAT, which would be borne by the Participants and Industry Members. Indeed, in response to the litigation, the Commission provided exemptive relief that allowed alternative, more cost-effective approaches to the implementation of the CAT. Specifically, in the 2023 exemptive order, the Commission stated:

The conditional exemptive relief in this Order allows for the implementation of alternative regulatory solutions that continue to advance the regulatory goals that Rule 613 and the CAT NMS Plan were intended to promote, while reducing the implementation and operational costs, burdens, and/or difficulties that would otherwise be incurred by the Participants and Industry Members that must fund the CAT.¹⁷⁴

CAT LLC believes it is reasonable and appropriate to incur costs to limit the need to incur even greater costs due to certain interpretations of the Plan.

In addition, the legal costs incurred during the litigation are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the specialized services were performed by experienced counsel at market rates for such services. As such, the legal costs related to this litigation incurred during the period covered by Historical CAT Assessment 1 were reasonable.

Finally, Industry Members will directly benefit from the result of the

litigation because it has addressed CAT NMS Plan requirements that would have imposed significantly greater costs on the CAT. Accordingly, it is reasonable and appropriate that the costs of such litigation be included in the Historical CAT Costs 1.

(E) Costs Related to the Initial Plan Processor

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017, which was the date by which Participants were required to begin reporting to the CAT, due to the delay in the commencement of reporting to the CAT. As discussed above, the Participants determined to exclude all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Thesys costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Thesys costs incurred after November 15, 2018 are the \$19,628,791 in capitalized developed technology costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these \$19,628,791 in costs.

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. CAT LLC notes that the development and implementation of the CAT System, while unprecedented in scope and design, is like any other large and innovative technology project in that, inevitably, there were adjustments and refinements in the technical approach as the project developed, even with substantial planning efforts and oversight prior to the build. This is even more likely when the project faces a very tight implementation schedule, such as the one imposed by the Commission in Rule 613 and the CAT NMS Plan. However, an adjusted approach does not mean that the funds were not valid expenditures and should not be recovered.

The reasonableness of Thesys costs should be evaluated by the Commission as of the time they were incurred, not in hindsight. As detailed above, the Commission concluded in 2016 that "the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor," and that "the process set

forth in the Selection Plan should be permitted to continue."¹⁷⁵ Following this process, the Participants notified the Commission of the selection of Thesys as the Initial Plan Processor on January 17, 2017.¹⁷⁶ At the time, neither the Commission nor the industry argued that the selection of the Initial Plan Processor was unreasonable or otherwise inconsistent with the CAT NMS Plan, nor did they predict the selection would result in unanticipated delays in the implementation of the CAT System. On the contrary, on April 4, 2017, the President of SIFMA wrote that "SIFMA looks forward to commencing work with the SROs and Thesys."¹⁷⁷

As noted in the CAT Funding Model Approval Order, "[i]n Rule 613, the Commission made the determination that the costs of the CAT should be shared by the Participants and Industry Members."¹⁷⁸ If the CAT Funding Model had existed on Day 1, the risk of any unanticipated costs or challenges associated with the Initial Plan Processor would have been fairly and reasonably shared among the Participants and Industry Members on an ongoing basis. Given that the Commission concluded in 2012 that the costs of the CAT would be shared by the Participants and Industry Members, it is not fair or reasonable to determine in hindsight that all of the risk involved in developing the CAT should be allocated entirely to the Participants.

(F) CAIS Implementation Costs

CAT LLC believes that the recovery of CAIS-related costs is appropriate, and that the amount and scope of such costs, as described above, are reasonable, and that the reasonableness of historical costs should be evaluated by the Commission as of the time they were incurred, not in hindsight.

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable CAIS operating costs as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that "the reasonably budgeted CAT costs shall include . . . CAIS operating fees."¹⁷⁹ In addition, the CAT NMS Plan also

¹⁷⁵ CAT NMS Plan Approval Order at 84737.

¹⁷⁶ Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf>.

¹⁷⁷ Letter from Kenneth E. Bentsen, Jr., SIFMA, to Participants re: Selection of Thesys as CAT Processor (Apr. 4, 2017), <https://www.sifma.org/wp-content/uploads/2017/05/SIFMA-Submits-Comment-Letter-to-SRO-on-the-selection-of-Thesys-as-the-CAT-Processor.pdf>.

¹⁷⁸ CAT Funding Model Approval Order at 62650.

¹⁷⁹ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁷³ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁷⁴ Settlement Exemptive Order at 77129–30.

requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . CAIS operating fees.”¹⁸⁰ In keeping with these provisions, this filing provides a brief description of reasonably budgeted CAIS operating fees.

In addition, CAT LLC determined that the CAIS operating fees described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. The “CAIS Operating Costs” for Historical CAT Assessment 1 total \$9,480,587, with Pre-FAM costs of \$2,072,908, FAM 1 costs of \$254,998, FAM 2 costs of \$1,590,298, and FAM 3 costs of \$5,562,383. As described above, the CAIS operating fees were incurred with regard to two categories of CAIS-related efforts: (1) the acceleration of the reporting of LTIDs; and (2) the development of the CAIS Technical Specifications and the building of CAIS. These two categories of costs are discussed in more detail below.

(i) LTID Reporting

During the period covered by Historical CAT Assessment 1, the CAIS operating costs included costs related to the acceleration of the reporting of LTIDs earlier than originally contemplated during this period at the request of the SEC and in accordance with exemptive relief granted by the SEC.¹⁸¹ As the SEC approved in this exemptive relief, the Participants proposed “to require the reporting of LTIDs to the CAT in Phases 2c and 2d, instead of with the rest of Customer Account Information in Phase 2e, which potentially could result in an earlier elimination of broker-dealer recordkeeping, reporting and monitoring requirements of the Large Trader Rule.”¹⁸² To implement the reporting of LTIDs to the CAT, the following steps were taken during the period covered by Historical CAT Assessment 1:

- After FCAT developed the LTID Technical Specifications, the LTID Technical Specifications were published on January 31, 2020, with additional updates provided to the LTID Technical Specifications through April 2021.¹⁸³

- The LTID account information testing environment opened on August 24, 2020.

- The LTID account information reporting production environment opened on December 14, 2020.

- CAT Reporters were required to request their production readiness certification for account information related to LTIDs by the deadline of April 9, 2021.

- The LTID account information reporting for Phases 2a, 2b and 2c for Large Industry Members went live on April 26, 2021.

- The LTID account information reporting for Phases 2d for Large Industry Members went live on December 13, 2021.

- The LTID account information reporting for Phases 2a, 2b, 2c and 2d for Small Industry Members went live on April 26, 2021.

Throughout this project, FCAT and CAT LLC worked closely with the industry on LTID and CAIS reporting. Between December 2019 and December 2021, at least 57 checkpoint calls, webinars, and technical working group meetings with industry representatives were hosted to address issues and to educate CAT Reporters regarding LTID and CAIS reporting.¹⁸⁴

The LTID reporting project was successfully completed in a timely fashion, and the fees related to the project were reasonable. Accordingly, CAT LLC appropriately seeks to recover such costs via Historical CAT Assessment 1.

(ii) CAIS Reporting

During the period covered by Historical CAT Assessment 1, FCAT began the development of the full CAIS Technical Specifications and the building of CAIS. The CAIS Technical Specifications were developed during this period as follows:

- Iterative drafts of the CAIS Technical Specifications were published on June 30, 2020, December 1, 2020, and January 1, 2021.¹⁸⁵

- The full, final CAIS Technical Specifications were published on January 29, 2021.

- Updated versions of the CAIS Technical Specifications were published throughout 2021.¹⁸⁶

As discussed above, FCAT and CAT LLC frequently engaged with the industry regarding the development of CAIS, hosting regular checkpoint calls, webinars, and technical working group meetings with industry representatives to address any issues, including addressing the interplay between Industry Members’ existing customer systems and CAIS, and to educate CAT Reporters regarding LTID and CAIS reporting. Such engagement was critical to the CAIS development process as the CAIS project was unprecedented in terms of its content, scope and complexity.

During this period, FCAT also commenced the building of the CAIS system in accordance with the CAIS Technical Specifications during the period covered by Historical CAT Assessment 1. The CAIS system was ready for industry testing shortly after the end of this period in January 2022.

The CAIS Technical Specifications and the CAIS system, as developed during this period, continue to be in use today. Industry Members have been required to report, and have continuously reported, required data to CAIS on a daily basis since November 7, 2022, consistent with interim reporting obligations. The CAIS system accepts and validates the CAIS data submitted by Industry Members and provides Industry Members with initial feedback on data errors. In light of the unprecedented nature of the CAIS system, certain changes to the system, such as changes related to error corrections and the CAIS regulatory portal, were necessary to finalize CAIS reporting. FCAT worked to address these remaining issues,¹⁸⁷ and, as of May 31, 2024, FCAT indicated that it had achieved the final CAIS reporting milestone. Accordingly, CAT LLC appropriately seeks to recover CAIS operating costs via Historical CAT Assessment 1.

(G) Public Relations Costs

CAT LLC believes that the recovery of public relations costs is appropriate and that the amount and scope of such costs, as described above, are reasonable.

The Commission has long recognized that external public relations costs are reasonably associated with creating, implementing and maintaining the CAT. In the CAT NMS Plan Approval Order, the Commission estimated that the Participants had collectively spent approximately \$2,400,000 in

¹⁸⁰ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁸¹ See Phased Reporting Exemptive Relief Order at 23079–80.

¹⁸² *Id.* at 23078–79, n.70.

¹⁸³ The LTID Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

¹⁸⁴ Such contact points with the industry are described in detail on the Events web page of the CAT website (<https://www.catnmsplan.com/events>).

¹⁸⁵ The CAIS Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

¹⁸⁶ Six updated versions of the CAIS Technical Specifications were published during 2021, in March, May, June, August, October and December.

¹⁸⁷ See, e.g., CAT Q4 2023 Quarterly Progress Report (Jan. 30, 2024) (<https://www.catnmsplan.com/sites/default/files/2024-01/CAT-Q4-2023-QPR.pdf>).

preparation of the CAT NMS Plan on external public relations, legal, and consulting costs, and estimated that the Participants would continue to incur external public relations costs associated with maintaining the CAT upon approval of the CAT NMS Plan.¹⁸⁸

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for public relations services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . public relations costs.”¹⁸⁹ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . public relations costs.”¹⁹⁰ In keeping with these provisions, a brief description of reasonable public relations costs are described above.

In addition, CAT LLC determined that the public relations costs described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. The services performed by the public relations firms through 2021 were limited in scope to assist CAT LLC, which has no employees of its own, to be better positioned to understand and address CAT matters to the benefit of all market participants and to communicate on important CAT topics with the public. In addition, the costs for these services were appropriately limited. During the 10-year period covered by Historical CAT Assessment 1, the average cost per year for these services was approximately \$36,000.

(H) Legal Costs Related to the Limitation of Liability Provision in CAT Reporter Agreements

CAT LLC believes that the recovery of legal costs related to the limitation of liability provision, including costs related to the proceedings before the SEC and costs related to the proposed amendment to the Consolidated Audit Trail Reporter Agreement and the Consolidated Audit Trail Reporting Agent Agreement (the “Reporting Agreements”) is appropriate and that the amount and scope of such costs as described above are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of

Historical CAT Assessments.¹⁹¹ In addition, CAT LLC determined that the legal costs incurred for the assistance with regard to the limitation of liability provisions are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1.

Moreover, it is critical that CAT LLC, which has no employees of its own, have the ability to fund a legal defense in litigation and other legal proceedings against it. In response to CAT LLC requiring Industry Members to agree to the limitation of liability provision to submit data to the CAT, SIFMA filed an application for review of actions taken by CAT LLC and the Participants pursuant to Sections 19(d) and 19(f) of the Exchange Act. Contemporaneously with the filing of this proceeding, SIFMA moved for a stay of the requirement that Industry Members sign a Reporter Agreement, or in the alternative, asked the Commission to further delay the launch of CAT reporting on June 22, 2020. CAT LLC must have the resources to defend itself from litigious actions by others, like these.

Although a limitation of liability provision ultimately was not adopted as proposed, it was a reasonable provision to propose for the CAT Reporter Agreements, given that such provisions are in accordance with industry norms. Limitations of liability are ubiquitous within the securities industry and have long governed the economic relationships between self-regulatory organizations and the entities that they regulate. For example, U.S. securities exchanges have adopted rules to limit their liability for losses that Industry Members incur through their use of exchange facilities.¹⁹² Similarly, FINRA’s former order audit trail, OATS, which has functioned as an integrated audit trail of order, quote, and trade data for equity securities, required FINRA members to acknowledge an agreement that includes a limitation of liability provision.¹⁹³ In addition, such a provision was intended to ensure the financial stability of the CAT. Accordingly, it was reasonable for CAT

¹⁹¹ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁹² See, e.g., NASDAQ Equities Rule 4626.

¹⁹³ FINRA Rule 1013(a)(1)(R) requires all applicants for FINRA Membership to acknowledge the FINRA Entitlement Program Agreement and Terms of Use, which applies to OATS. Industry Members click to indicate that they agree to its terms—including its limitation of liability provision—every time they access FINRA’s OATS system to report trade information (*i.e.*, repeatedly over the course of a trading day for many Industry Members).

LLC to propose the use of such a provision.¹⁹⁴

Furthermore, as described above, the specialized services were performed by experienced counsel at market rates for such services. Accordingly, the legal costs for the efforts related to the limitation of liability provision were reasonable.

(I) Costs for the Chair of CAT Operating Committee

CAT LLC believes that the recovery of consulting costs related to the Chair of the CAT Operating Committee is appropriate and that the amount and scope of such costs are reasonable.

As a preliminary matter, the selection of the Chair of the Operating Committee complies with the requirements of Section 4.2 of the CAT NMS Plan. The initial Chair that served during the period covered by Historical CAT Assessment was designated by a Participant as the Participant’s alternate voting member. Accordingly, the Chair is a representative of the Participants, as required by the CAT NMS Plan.

In addition, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for consulting as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . consulting . . .” costs.¹⁹⁵ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . consulting”¹⁹⁶ costs. In keeping with these provisions, a brief description of reasonable consulting costs is included in this filing, and such reasonable consulting costs include the costs related to the Chair position.

The Participants determined that the position of the Chair was a critical role for the implementation of the CAT, and an independent Chair would appropriately consider and address the views of each of the Participants. The Participants also determined that it was important to have a Chair with a strong background regarding issues related to the regulatory obligations of self-regulatory organizations, including their obligations under national market system plans. The compensation paid to the Chair is appropriate for a person with such background and skills. The

¹⁹⁴ See Letter from Michael Simon, Chair, CAT Operating Committee, to Vanessa Countryman, Secretary, Commission (Dec. 18, 2020).

¹⁹⁵ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁹⁶ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁸⁸ CAT NMS Plan Approval Order at 84917–18.

¹⁸⁹ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁹⁰ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

average annual amount paid to the Chair from 2017 through the end of FAM 3 was \$292,733.30. Separate from the Chair, CAT LLC relies upon a Leadership Team of representatives of the SROs to oversee the day-to-day implementation of the CAT NMS Plan. CAT LLC does not compensate any member of the Leadership Team.

(11) Fee Implementation Assistance for Industry Members

(A) Reconciliation of CAT Invoices

(i) Reconciliation of CAT Invoices to Underlying Trades Provided by CAT

CAT LLC understands that there are three types of reconciliation processes related to the invoices:

- *Reconciliation of CAT Invoices to Underlying Trades:* Reconciling the CAT invoice amount to the underlying trades provided by CAT;
- *Matching Trades to Books and Records:* Providing the means to match the underlying trades provided by CAT with CAT invoices to other books and records independently maintained by individual CAT Reporters (e.g., exchange trade journals/acknowledgements) and data sources of self-regulatory organizations independent of CAT; and
- *Order Originator Identification:* Providing the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices, which would facilitate firms' ability to pass through CAT Fees to their customers.

As discussed further below, CAT LLC only considers the first type of process to be a "reconciliation" and the only type of process that is required under the CAT NMS Plan. CAT LLC provides the means to reconcile the CAT invoice amount to the underlying trades provided by CAT.

The CAT NMS Plan does not require CAT LLC to facilitate the second type of process: matching underlying trades for a CAT invoice with a firm's internal books and records. CAT LLC has access only to the underlying trades provided by CAT; it does not have access to a firm's internal books and records. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying trades with their own books and records.

The CAT NMS Plan also does not require CAT LLC to provide the ability to identify the order originator for the underlying trades for the CAT invoices. Accordingly, the billing guidance and

processes do not provide CAT Reporters with the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices. CAT LLC has been working closely with CAT Reporters to explain its billing approach and to address any outstanding billing questions. But, it should not be lost that CAT LLC provides information sufficient to allow CAT Reporters to reconcile CAT invoice amounts with the underlying trades provided by CAT LLC.

(ii) Match the Underlying Trades Provided by CAT With CAT Invoices to Firms' Internal Books and Records Independent of CAT

The CAT NMS Plan does not require CAT LLC to facilitate the matching of underlying trades for a CAT invoice with a firm's internal books and records, which may consist of trading data from various sources external to CAT. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying trades with their own books and records.

In this regard, it is important to recognize that CAT LLC has developed a billing approach that greatly improves upon existing billing practices for similar regulatory fees (e.g., fees related to Section 31). Accordingly, with the additional information voluntarily provided by CAT LLC, CAT Reporters generally will have sufficient information to match their underlying trades provided by CAT with their own internal books and records that are independent of CAT or to SRO data that is independent of CAT data. However, CAT LLC emphasizes that providing such additional information is not required by the CAT NMS Plan.

To facilitate the introduction of CAT fees, CAT LLC has worked with FCAT to develop an approach to CAT billing that is consistent with existing billing constructs used with regard to Section 31-related sales values fees, subject to certain enhancements. Under this billing approach, FCAT is providing additional linkage elements, not necessarily provided in the Section 31-sales value fee context, to facilitate CAT Reporters' ability to match the underlying trades provided by CAT with their internal books and records and to reduce the complexity of that process. Specifically, FCAT is providing various key elements of the trade itself, such as the tradeID and branch

sequence,¹⁹⁷ to CAT Reporters in the trade billing details provided with their CAT invoices ("Additional Trade Details"). As a result, CAT Reporters now have numerous alternative methods for matching a trade with their internal books and records where they previously did not have such matching methods in other fee contexts.

With the Additional Trade Details, CAT LLC and FCAT believe that the overwhelming majority of underlying trades provided by CAT bills can be matched with a CAT Reporter's internal books and records. CAT LLC recognizes that there may be certain cases in which such matching is more difficult given various firm-specific considerations, but believes that such instances are significantly more limited than with regard to the SRO fees charged in relation to Section 31.¹⁹⁸ By providing Additional Trade Details that are not available in other fee contexts, FCAT enhances the Industry Members' ability to match the underlying trades provided with CAT invoices with books and records and SRO data, both of which are independent of CAT data.

(iii) CAT LLC Is Not Required To Facilitate CAT Reporters' Ability To Pass Through Fees to Their Customers

Similar to other regulatory fees, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Accordingly, Historical CAT Assessment 1 does not address the process by which any CAT Reporters may pass through the fee to their customers. Likewise, the CAT billing approach provided by the Plan Processor is designed to address the needs of CAT Reporters with regard to the reconciliation of CAT invoices with

¹⁹⁷ See CAT Technical Specifications for Billing Trade Details; Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>); CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

¹⁹⁸ For years, broker-dealers have faced similar reconciliation issues with regard to SRO fees related to Section 31. Broker-dealers have responded to this issue in the Section 31 context by exercising their discretion as to whether and the manner and extent to which they pass on those fees (e.g., by rounding up its fees to the nearest cent, or decide to charge for, or not charge for, certain transactions, or assess a specific fee or incorporate the costs into other fee programs). See, e.g., Securities Exchange Act Rel. No. 49928 (June 28, 2004), 69 FR 41060, 41072 (July 7, 2004) (noting that broker-dealers may "over-collect" Section 31-related fees charged to their clients due to rounding practices, and double-counting with regard to certain transactions).

the underlying trades provided by CAT LLC with the invoices; they are not designed to address issues related to any pass-through fees. Accordingly, facilitating CAT Reporters' ability to pass through fees to their clients is outside the scope of this fee filing. Nevertheless, as described below, CAT LLC and the Plan Processor have expended significant efforts to provide technical assistance to Industry Members regarding the implementation of Historical CAT Assessment 1, including providing Additional Trade Details that provide significant details about each underlying trade.

(a) Originating Brokers Versus Executing Brokers

In its approval of the CAT Funding Model, the Commission approved charging CAT fees to the CAT Executing Broker, rather than the originating broker. This fee filing must comply with the requirements of the CAT Funding Model, and, therefore, charges the Historical CAT Assessment 1 to CAT Executing Brokers.

Moreover, charging originating brokers would introduce significant complexity to the billing process from the CAT's perspective, and would increase the costs of implementing CAT fees. Charging the CAT Executing Broker is simple and straightforward, and leverages a one-to-one relationship between billable events (trades) and billable parties, similar to other transaction-based fees. In contrast, for a single trade event, there may be many originating brokers, and each trade must be broken down on a pro-rata basis, to account for one or more layers of aggregation, disaggregation, and representation of the underlying orders. While CAT is indeed designed to capture and unwind complex aggregation scenarios, the data and linkages are structured to facilitate regulatory use, and not a billing mechanism that assesses fees on a distinct set of executed trades; it is not simply a matter of using existing CAT linkages. Furthermore, charging originating brokers would implicate issues related to lifecycle linkage rates, and issues related to corrections, cancellations and allocations, while charging CAT Executing Brokers would avoid such issues.

(b) Identification of Order Originator for Underlying Trades

As noted, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT Fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate

firms' ability to do so. Nevertheless, the Additional Trade Details provided with regard to the underlying trades on CAT invoices may assist with this process. Like with Section 31-related sales value fees, however, it is not always possible to trace every fee on a transaction back to the originating party. Industry Members have faced these issues under Section 31-related sales values fees for many years.¹⁹⁹ However, with the Additional Trade Details provided under the CAT billing approach, in many cases, CAT Reporters will be able to identify the order originator for the underlying trades provided by CAT with CAT invoices. In some cases, CAT LLC believes that certain issues related to certain types of market activity may implicate CAT Reporters' ability to identify the order originator for a limited set of underlying trades for the CAT invoices. Although CAT LLC does not believe that it is required to address these issues, CAT LLC and FCAT have been carefully researching and analyzing these types of issues as they are identified, and have been working voluntarily to assist CAT Reporters with these issues as necessary and when possible. In addition, CAT LLC intends to continue to provide CAT Reporters with billing guidance through FAQs, CAT Alerts and Helpdesk responses to address outstanding billing questions.

(B) Significant Technical Assistance

CAT LLC has worked with FCAT to provide significant technical assistance to Industry Members to allow the Industry Members to understand how Historical CAT Assessment 1 will be implemented and billed, including webinars, CAT alerts, mock invoices, and responses to questions posed to the FCAT Help Desk.

- *Technical Specifications and Scenarios.* CAT LLC has provided detailed technical documentation for CAT billing, including (1) technical specifications, which describe the CAT Billing Trade Details Files associated with monthly CAT invoices, including detailed information about data elements and file formats as well as access instructions, network and

transport options;²⁰⁰ (2) trade details schemas;²⁰¹ and (3) CAT billing scenarios.²⁰²

- *Industry Webinars.* CAT LLC has hosted two industry webinars specifically dedicated to CAT billing. The first webinar, hosted on September 28, 2023, discussed the operational implementation of the CAT Reporter billing process.²⁰³ The second webinar, hosted on November 7, 2023, provided (1) a demonstration of the CAT Reporter Portal and how to access CAT billing documents, including CAT invoices; and (2) additional information on underlying trade details in relation to the CAT Reporter billing process and an overview of the CAT Contact Management System.²⁰⁴ 485 participants and 394 participants attended the two webinars, respectively.

- *CAT Alert.* CAT LLC has published a detailed CAT Alert that describes how FCAT, as the Plan Processor acting on behalf of CAT LLC, will calculate applicable fees, issue invoices to and collect payment from CAT Executing Brokers.²⁰⁵

- *Frequently Asked Questions (FAQs).* CAT LLC also has continued to engage with the industry on billing issues by making responses to billing FAQs available on the CAT website. The FAQs address a broad range of frequently asked questions, including, for example, which Industry Members will receive invoices, how fees are calculated, when and how fees are required to be paid, how to access invoices, and how to update the billing contact. To date, responses to 27 FAQs are available on the CAT website, and CAT LLC will provide additional responses to FAQs as warranted.²⁰⁶

- *Mock Invoices.* To assist Industry Members with compliance with the commencement of Historical CAT

²⁰⁰ CAT Technical Specifications for Billing Trade Details, Version 1.0 r1 (Dec. 8, 2023) (https://catnmsplan.com/sites/default/files/2023-12/12.07.2023-CAT-Technical-Specifications-for-Billing-Trade-Details-v1.0r1_CLEAN.pdf).

²⁰¹ Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>).

²⁰² CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

²⁰³ CAT Billing Webinar, Part 1 (Sept. 28, 2023) (<https://www.catnmsplan.com/events/part-1-cat-billing-webinar>).

²⁰⁴ CAT Billing Webinar, Part 2 (Nov. 7, 2023) (<https://www.catnmsplan.com/events/part-2-cat-billing-webinar>).

²⁰⁵ See CAT Alert 2023-02 (Oct. 12, 2023) (<https://www.catnmsplan.com/sites/default/files/2023-10/10.12.23-CAT-Alert-2023-02.pdf>).

²⁰⁶ See CAT Billing FAQs, Section V of CAT FAQs (https://www.catnmsplan.com/faq?search_api_fulltext=&field_topics=271&sort_by=field_faq_number).

¹⁹⁹ "FINRA charges a Regulatory Transaction Fee ("RTF") to industry members to reimburse FINRA for the Section 31 fees that FINRA pays to the Commission. FINRA does not currently provide industry members with the data that industry members require for proper reconciliation of RTF fees. This has been a major problem for the industry for many years." Letter from Howard Meyerson, Managing Director, FIF, to Robert Cook, Chief Executive Officer, FINRA at 2 (Dec. 15, 2023) (<https://fif.com/index.php/working-groups/category/271-comment-letters?download=2820:fif-letter-to-finra-on-pass-through-of-finra-cat-fees&view=category>).

Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices for Historical CAT Assessment 1 since December 2023 for billable activity occurring in November 2023. The mock invoices are in the same form as the actual, payable invoices, including both the relevant transaction data and the corresponding fee (as originally contemplated). However, no payments are required in response to such mock invoices; they are to be used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data provides CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended to facilitate the payment of Historical CAT Assessment 1. For the November, December, and January billing periods, FCAT has generated trade detail files for 569 distinct firms that are CAT Executing Brokers. As such, CAT Reporters have actively engaged in the billing process via the mock invoices.

- *Help Desk Assistance.* CAT LLC also provides detailed, individualized assistance to Industry Members regarding CAT fees and the billing process through the FCAT Help Desk.²⁰⁷ For example, the Help Desk has assisted with 406 cases related to the billing of CAT fees from July 2023 through March 2024.

By providing such detailed and sustained assistance to Industry Members regarding CAT fees and billing, CAT LLC has successfully addressed questions raised by Industry Members regarding the CAT fees and billing processes.

(C) Ample Preparation Time

CAT LLC has provided Industry Members with ample time to comply with the implementation of Historical CAT Assessment 1. CAT LLC originally proposed issuing the first invoices for Historical CAT Assessment 1 in December 2023 based on transactions in Eligible Securities in November 2023. In consideration of the feedback about the need for additional time to implement the new fee, CAT LLC pushed back this timeline by four months, proposing to issue the first Historical CAT Assessment 1 in April 2024 based on

transactions in March 2024.²⁰⁸ This filing pushes this timeline back even further for implementing Historical CAT Assessment 1, proposing to issue the first invoices for Historical CAT Assessment 1 in November 2024 based on transactions in Eligible Securities in October 2024. Moreover, as discussed above, during these additional months, FCAT has been working closely with Industry Members to provide guidance regarding their mock bills and reconciliation efforts related thereto.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of the Exchange Act. The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,²⁰⁹ which requires, among other things, that the Exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and not designed to permit unfair discrimination between customers, issuers, brokers and dealers. The Exchange also believes that the proposed rule change is consistent with the provisions of Section 6(b)(4) of the Act,²¹⁰ because it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(8) of the Act,²¹¹ which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. These provisions also require that the Exchange be "so organized and [have] the capacity to be able to carry out the purposes" of the Act and "to comply, and . . . to enforce compliance by its members and persons associated with its members," with the provisions of the Exchange Act.²¹² Accordingly, a reasonable reading of the Act indicates that it intended that regulatory funding be sufficient to permit an exchange to fulfill its statutory responsibility under the Act, and contemplated that such funding would be achieved through equitable

assessments on the members, issuers, and other users of an exchange's facilities.

The Exchange believes that this proposal is consistent with the Act because it implements provisions of the Plan and is designed to assist the Exchange in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan "is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act."²¹³ To the extent that this proposal implements the Plan and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

The Exchange believes that the proposed fees paid by the CEBBs and CEBs are reasonable, equitably allocated and not unfairly discriminatory. First, the Historical CAT Assessment 1 fees to be collected are directly associated with the costs of establishing and maintaining the CAT, where such costs include Plan Processor costs and costs related to technology, legal, consulting, insurance, professional and administration, and public relations costs. The Exchange has already incurred such development and implementation costs and the proposed Historical CAT Assessment 1 fees, therefore, would allow the Exchange to collect certain of such costs in a fair and reasonable manner from Industry Members, as contemplated by the CAT NMS Plan.

The proposed Historical CAT Assessment 1 fees would be charged to Industry Members in support of the maintenance of a consolidated audit trail for regulatory purposes. The proposed fees, therefore, are consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business operations. The proposed fees would not cover Exchange services unrelated to the CAT. In addition, any surplus would be used as a reserve to offset future fees. Given the direct relationship between CAT fees and CAT costs, the Exchange believes that the proposed fees are reasonable, equitable and not unfairly discriminatory.

As further discussed below, the SEC approved the CAT Funding Model,

²⁰⁷ The CAT NMS Plan requires that the Plan Processor "staff a CAT help desk, as described in Appendix D, CAT Help Desk, to provide technical expertise." Section 6.10(c)(vi) of the CAT NMS Plan. See also Section 10.3 of Appendix D of the CAT NMS Plan for a description of the Plan requirements for the CAT Help Desk.

²⁰⁸ See Exchange Act Release No. 99356 (January 17, 2024), 89 FR 10697 (February 13, 2024) (SR-MEMX-2024-01).

²⁰⁹ 15 U.S.C. 78f(b)(6).

²¹⁰ 15 U.S.C. 78f(b)(4).

²¹¹ 15 U.S.C. 78f(b)(8).

²¹² See Section 6(b)(1) of the Exchange Act.

²¹³ CAT NMS Plan Approval Order at 84697.

finding it was reasonable and that it equitably allocates fees among Participants and Industry Members. The Exchange believes that the proposed fees adopted pursuant to the CAT Funding Model approved by the SEC are reasonable, equitably allocated and not unfairly discriminatory.

(1) Implementation of CAT Funding Model in CAT NMS Plan

Section 11.1(b) of the CAT NMS Plan states that “[t]he Participants shall file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves.” Per Section 11.1(b) of the CAT NMS Plan, the Exchange has filed this fee filing to implement the Industry Member CAT fees included in the CAT Funding Model. The Exchange believes that this proposal is consistent with the Exchange Act because it is consistent with, and implements, the CAT Funding Model in the CAT NMS Plan, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the CAT NMS Plan. In approving the CAT NMS Plan, the SEC noted that the Plan “is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.”²¹⁴ Similarly, in approving the CAT Funding Model, the SEC concluded that the CAT Funding Model met this standard.²¹⁵ As this proposal implements the Plan and the CAT Funding Model described therein, and applies specific requirements to Industry Members in compliance with the Plan, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Exchange Act.

(2) Calculation of Fee Rate for Historical CAT Assessment 1 Is Reasonable

The SEC has determined that the CAT Funding Model is reasonable and satisfies the requirements of the Exchange Act. Specifically, the SEC has concluded that the method for determining Historical CAT Assessments as set forth in Section 11.3 of the CAT NMS Plan, including the formula for calculating the Historical Fee Rate, the identification of the parties responsible for payment and the transactions subject to the fee rate for the Historical CAT Assessment, is

reasonable and satisfies the Exchange Act.²¹⁶ In each respect, as discussed above, Historical CAT Assessment 1 is calculated, and would be applied, in accordance with the requirements applicable to Historical CAT Assessments as set forth in the CAT NMS Plan. Furthermore, as discussed below, the Exchange believes that each of the figures for the variables in the SEC-approved formula for calculating the fee rate for Historical CAT Assessment 1 is reasonable and consistent with the Exchange Act. Calculation of the Historical Fee Rate for Historical CAT Assessment 1 requires the figures for the Historical CAT Costs 1, the executed equivalent share volume for the prior twelve months, the determination of Historical Recovery Period 1, and the projection of the executed equivalent share volume for Historical Recovery Period 1. Each of these variables is reasonable and satisfies the Exchange Act, as discussed throughout this filing.

(A) Historical CAT Costs 1

The formula for calculating a Historical Fee Rate requires the amount of Historical CAT Costs to be recovered. Specifically, Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan requires a fee filing to provide:

a brief description of the amount and type of the Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs.

In accordance with this requirement, the Exchange has set forth the amount and type of Historical CAT Costs 1 for each of these categories of costs above.

Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan also requires that the fee filing provide “sufficient detail to demonstrate that the Historical CAT Costs are reasonable and appropriate.” As discussed below, the Exchange believes that the amounts set forth in this filing for each of these cost categories is “reasonable and appropriate.” Each of the costs included in Historical CAT Costs 1 are reasonable and appropriate because the costs are consistent with standard industry practice, based on the need to comply with the requirements of the CAT NMS Plan, incurred subject to negotiations performed on an arm’s length basis, and/or are consistent with the needs of any legal entity, particularly one with no employees.

(i) Technology: Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover costs related to cloud hosting services as a part of Historical CAT Assessments.²¹⁷ CAT LLC determined that the costs related to cloud hosting services described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. As described above, the cloud hosting services costs reflect, among other things, the breadth of the CAT cloud activities, data volume far in excess of the original volume estimates, the need for specialized cloud services given the volume and unique nature of the CAT, the processing time requirements of the Plan, and regular efforts to seek to minimize costs where permissible under the Plan. CAT LLC determined that use of cloud hosting services is necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT, and that the fees for cloud hosting services negotiated by FCAT were reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.²¹⁸ Indeed, the actual costs of the CAT are far in excess of the original estimated costs of the CAT due to various factors, including the higher volumes and greater complexity of the CAT than anticipated when Rule 613 was originally adopted.

To comply with the requirements of the Plan, the breadth of the cloud activities related to the CAT is substantial. The cloud services not only include the production environment for the CAT, but they also include two industry testing environments, support environments for quality assurance and stress testing and disaster recovery capabilities. Moreover, the cloud storage costs are driven by the requirements of the Plan, which requires the storage of multiple versions of the data, from the original submitted version of the data through various processing steps, to the final version of the data.

Data volume is a significant driver of costs for cloud hosting services. When the Commission adopted the CAT NMS Plan in 2016, it estimated that the CAT would need to receive 58 billion records per day²¹⁹ and that annual operating

²¹⁷ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²¹⁸ For a discussion of the amount and type of cloud hosting services fees, see Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

²¹⁹ Appendix D-4 of the CAT NMS Plan at n.262.

²¹⁴ CAT NMS Plan Approval Order at 84696.

²¹⁵ CAT Funding Model Approval Order at 62686.

²¹⁶ *Id.* at 62662–63.

costs for the CAT would range from \$36.5 million to \$55 million.²²⁰ Through 2021, the actual data volumes have been five times that original estimate. The data volumes for each period are set forth in detail above.²²¹

In addition to the effect of the data volume on the cloud hosting costs, the processing timelines set forth in the Plan contribute to the cloud hosting costs. Although CAT LLC has proactively sought to manage cloud hosting costs while complying with the Plan, including through requests to the Commission for exemptive relief and an amendment to the CAT NMS Plan, stringent CAT NMS Plan requirements do not allow for any material flexibility in cloud architecture design choices, processing timelines (e.g., the use of non-peak processing windows), or lower-cost storage tiers. As a result, the required CAT processing timelines contribute to the cloud hosting costs of the CAT.

The costs for cloud hosting services also reflect the need for specialized cloud hosting services given the data volume and unique processing needs of the CAT. The data volume as well as the data processing needs of the CAT necessitate the use of cloud hosting services. The equipment, power and services required for an on-premises data model, the alternative to cloud hosting services, would be cost prohibitive. Moreover, as CAT was being developed, there were limited cloud hosting providers that could satisfy all the necessary CAT requirements, including the operational and security criteria. Over time more providers offering cloud hosting services that would satisfy these criteria have entered the market. CAT LLC will continue to evaluate alternative cloud hosting services, recognizing that the time and cost to move to an alternative cloud provider would be substantial.

The reasonableness of the cloud hosting services costs is further supported by key cost discipline mechanisms for the CAT—a cost-based funding structure, cost transparency, cost management efforts (including regular efforts to lower compute and storage costs where permitted by the Plan) and oversight. Together, these mechanisms help ensure the ongoing reasonableness of the CAT's costs and the level of fees assessed to support those costs.²²²

(ii) Technology: Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to operating fees as a part of Historical CAT Assessments.²²³ CAT LLC determined that the costs related to operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The operating fees include the negotiated fees paid by CAT LLC to the Plan Processor to operate and maintain the system for order-related information and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (e.g., management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the selection of FCAT as the Plan Processor was reasonable and appropriate given its expertise with securities regulatory reporting, after a process of considering other potential candidates.²²⁴ CAT LLC also determined that the fixed price contract, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, was reasonable and appropriate, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity.²²⁵ The services performed by FCAT for each period and the costs related to such services are described above.²²⁶

(iii) Technology: CAIS Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to CAIS operating fees as a part of Historical CAT Assessments.²²⁷ CAT LLC determined that the costs related to CAIS operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The CAIS operating fees include the fees paid to the Plan Processor to operate and maintain CAIS and to perform the business operations related to the system, including compliance, security, testing, training, communications with the industry (e.g., management of the FINRA CAT Helpdesk, FAQs, website and webinars)

and program management. CAT LLC determined that the FCAT-negotiated fees for Kingland's CAIS-related services, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity, were reasonable and appropriate.²²⁸ The services performed by Kingland for each period and the costs for each period are described above.²²⁹

(iv) Technology: Change Request Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to change request fees as a part of Historical CAT Assessments.²³⁰ CAT LLC determined that the costs related to change request fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. It is common practice to utilize a change request process to address evolving needs in technology projects. This is particularly true for a project like CAT that is the first of its kind, both in substance and in scale. The substance and costs of each of the change requests are evaluated by the Operating Committee, and approved in accordance with the requirements for Operating Committee meetings. In each case, CAT LLC determined that the change requests were necessary to implement the CAT. As described above, the change requests cover various technology changes, including, for example, changes related to CAT reporting, data feeds and exchange functionality. CAT LLC also determined that the costs for each change request were appropriate for the relevant technology change. A description of the change requests for each FAM Period and their total costs are set described above.²³¹ As noted above, the total costs for change requests through FAM Period 3 represent a small percentage of Historical CAT Costs 1—that is, 0.25% of Historical CAT Costs 1.

(v) Capitalized Developed Technology Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to capitalized developed technology costs as a part of

²²⁰ CAT NMS Plan Approval Order at 84801.

²²¹ See Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

²²² See Securities Exchange Act Rel. No. 97151 (Mar. 15, 2023), 88 FR 17086, 17117 (Mar. 21, 2023) (describing key cost discipline mechanisms for the CAT).

²²³ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²⁴ See Section 3(a)(2)(B)(i)(b) above.

²²⁵ See Sections 3(a)(2)(B)(i)(b), 3(a)(2)(B)(ii)(b), 3(a)(2)(B)(iii)(b) and 3(a)(2)(B)(iv)(b) above.

²²⁶ *Id.*

²²⁷ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²⁸ See Sections 3(a)(2)(B)(i)(c), 3(a)(2)(B)(ii)(c), 3(a)(2)(B)(iii)(c) and 3(a)(2)(B)(iv)(c) above.

²²⁹ *Id.*

²³⁰ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²³¹ See Sections 3(a)(2)(B)(i)(d), 3(a)(2)(B)(ii)(d), 3(a)(2)(B)(iii)(d) and 3(a)(2)(B)(iv)(d) above.

Historical CAT Assessments.²³²

Capitalized developed technology costs include costs related to certain development costs, costs related to certain modifications, upgrades and other changes to the CAT, CAIS implementation fees and license fees. The amount and type of costs for each period are described in more detail above.²³³ CAT LLC determined that these costs are reasonable and should be included as a part of Historical CAT Costs 1.

These costs involve the activity of both the Initial Plan Processor and FCAT, as the successor Plan Processor.²³⁴ With regard to the Initial Plan Processor, the Participants utilized an RFP to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan. CAT LLC entered into an agreement with the Initial Plan Processor in which CAT LLC would pay the Initial Plan Processor a negotiated, fixed price fee.²³⁵ In addition, as described above, CAT LLC determined that it was appropriate to enter into an agreement with FCAT as the successor Plan Processor.²³⁶

(vi) Legal

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to legal fees as a part of Historical CAT Assessments.²³⁷ CAT LLC determined that the legal costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Given the unique nature of the CAT, the number of parties involved with the CAT (including, for example, the SEC, Participants, Industry Members, and vendors) and the many regulatory issues associated with the CAT, the scope of the necessary legal services are substantial. CAT LLC determined that the scope of the legal services is necessary to implement and maintain the CAT and that the legal rates reflect the specialized services necessary for such a project. When hiring each law

firm for a CAT project, CAT LLC interviewed multiple firms, and determined to hire each firm based on a variety of factors, including the relevant expertise and fees. In each case, CAT LLC determined that the hourly fee rates were in line with market rates for the specialized legal expertise. In addition, CAT LLC determined that the total costs incurred for each CAT project were appropriate given the breadth of services provided. The services performed by each law firm for each period and the costs related to such services are described above.²³⁸

(vii) Consulting

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover consulting costs as a part of Historical CAT Assessments.²³⁹ CAT LLC determined that the consulting costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Because there are no CAT employees²⁴⁰ and because of the significant number of issues associated with the CAT, the consultants provided assistance in the management of various CAT matters and the processes related to such matters.²⁴¹ CAT LLC considered a variety of factors in choosing a consulting firm and determined to select Deloitte after an interview process.²⁴² CAT LLC also determined that the consulting services were provided at reasonable market rates, as the fees were negotiated annually and comparable to the rates charged by other consulting firms for similar work.²⁴³ Moreover, the total costs for such consulting services were appropriate in light of the breadth of services provided by Deloitte. The services performed by Deloitte and the costs related to such services are described above.²⁴⁴

(viii) Insurance

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover insurance costs as a part of Historical CAT Assessments.²⁴⁵ CAT

LLC determined that the insurance costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that it is common practice to have directors' and officers' liability insurance, and errors and omissions liability insurance. CAT LLC further determined that it was important to have cyber security insurance given the nature of the CAT, and such a decision is consistent with the CAT NMS Plan, which states that the cyber incident response plan may include "[i]nsurance against security breaches."²⁴⁶ In selecting the insurance providers for these policies, CAT LLC engaged in an evaluation of alternative insurers, including a comparison of the pricing offered by the alternative insurers.²⁴⁷ Based on this analysis, CAT LLC determined that the selected insurance policies provided appropriate coverage at reasonable market rates.²⁴⁸

(ix) Professional and Administration

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover professional and administration costs as a part of Historical CAT Assessments.²⁴⁹ CAT LLC determined that the professional and administration costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Because there are no CAT employees, all required accounting, financial, tax, cash management and treasury functions for CAT LLC have been outsourced at market rates. In addition, the required annual financial statement audit of CAT LLC is included in professional and administration costs, which costs are also at market rates.

CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees.²⁵⁰ The hourly fee rates for this firm were in line with market rates for the financial advisory services provided.²⁵¹ Moreover, the total costs for such financial advisory services was

²³² Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²³³ See Sections 3(a)(2)(B)(i)(e), 3(a)(2)(B)(ii)(e), 3(a)(2)(B)(iii)(e) and 3(a)(2)(B)(iv)(e) above.

²³⁴ *Id.*

²³⁵ See Section 3(a)(2)(B)(i)(e) above.

²³⁶ See Section 3(a)(2)(B)(i)(b) above.

²³⁷ Section 11.3(b)(iii)(B)(II)(B)(2) of the CAT NMS Plan.

²³⁸ See Sections 3(a)(2)(B)(i)(f), 3(a)(2)(B)(ii)(f), 3(a)(2)(B)(iii)(f) and 3(a)(2)(B)(iv)(f) above.

²³⁹ Section 11.3(b)(iii)(B)(II)(B)(3) of the CAT NMS Plan.

²⁴⁰ As stated in the filing of the proposed CAT NMS Plan, "[i]t is the intent of the Participants that the Company have no employees." Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614, 30621 (May 17, 2016).

²⁴¹ CAT LLC uses certain third parties to perform tasks that may be performed by administrators for other NMS Plans. See, e.g., CTA Plan and CQ Plan.

²⁴² See Section 3(a)(2)(B)(i)(g) above.

²⁴³ See Sections 3(a)(2)(B)(i)(g), 3(a)(2)(B)(ii)(g), 3(a)(2)(B)(iii)(g) and 3(a)(2)(B)(iv)(g) above.

²⁴⁴ *Id.*

²⁴⁵ Section 11.3(b)(iii)(B)(II)(B)(4) of the CAT NMS Plan.

²⁴⁶ Section 4.1.5 of Appendix D of the CAT NMS Plan.

²⁴⁷ See Sections 3(a)(2)(B)(i)(h), 3(a)(2)(B)(ii)(h), 3(a)(2)(B)(iii)(h) and 3(a)(2)(B)(iv)(h) above.

²⁴⁸ *Id.*

²⁴⁹ Section 11.3(b)(iii)(B)(II)(B)(5) of the CAT NMS Plan.

²⁵⁰ See Section 3(a)(2)(B)(i)(i) above.

²⁵¹ See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

appropriate in light of the breadth of services provided by Anchin. The services performed by Anchin and the costs related to such services are described above.²⁵²

CAT LLC also determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the role given the balance of these considerations.²⁵³ Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services.²⁵⁴ Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Grant Thornton. The services performed by Grant Thornton and the costs related to such services are described above.²⁵⁵

The professional and administrative costs also include costs related to the receipt of certain market data from Exegy. After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy. Exegy provided the data elements required by the CAT NMS Plan, and the fees were reasonable and in line with market rates for the market data received.²⁵⁶

The professional and administrative costs also include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation and operation of the controls specified by NIST Special Publication 800-53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in

its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment.²⁵⁷

(x) Public Relations Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover public relations costs as a part of Historical CAT Assessments.²⁵⁸ CAT LLC determined that the public relations costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that the types of public relations services utilized were beneficial to the CAT and market participants more generally. Public relations services were important for various reasons, including monitoring comments made by market participants about CAT and understanding issues related to the CAT discussed on the public record.²⁵⁹ By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT issues to the benefit of all market participants.²⁶⁰ Moreover, CAT LLC determined that the rates charged for such services were in line with market rates.²⁶¹ As noted above, the total public relations costs through FAM Period 3 represent a small percentage of Historical CAT Costs 1—that is, 0.1% of Historical CAT Costs 1.

(B) Total Executed Equivalent Share Volume for the Prior 12 Months

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. CAT LLC determined the total executed equivalent share volume for the prior twelve months by counting executed equivalent shares in the same manner as it will count executed equivalent shares for CAT billing purposes.

(C) Historical Recovery Period 1

CAT LLC has determined to establish a Historical Recovery Period of 24 months for Historical CAT Assessment 1 and that such length is reasonable. CAT LLC determined that the length of Historical Recovery Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the

need to repay the loans notes to the Participants in a timely fashion. CAT LLC determined that 24 months for Historical Recovery Period 1 would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to Section 31.²⁶² In addition, in establishing a Historical Recovery Period of 24 months, CAT LLC recognized that the total costs for Historical CAT Assessment 1 was less than the total costs for 2022 and 2023, and therefore it would be appropriate to recover those costs in two years.

(D) Projected Executed Equivalent Share Volume for Historical Recovery Period 1

CAT LLC has determined to calculate the projected total executed equivalent share volume for the 24 months of Historical Recovery Period 1 by doubling the executed equivalent share volume for the prior 12 months. CAT LLC determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has remained relatively constant in recent years. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395, the executed equivalent share volume for 2022 was 4,039,821,841,560.31, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6. Accordingly, the projected total executed equivalent share volume for Historical Recovery Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.²⁶³

(E) Actual Fee Rate for Historical CAT Assessment 1

(i) Decimal Places

As noted in the Plan amendment for the CAT Funding Model, as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee rate.²⁶⁴ Accordingly, proposed paragraph (a)(1)(B) of the fee schedule would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 by one-third, and rounding the result to 6 decimal places. CAT LLC

²⁵² *Id.*

²⁵³ See Section 3(a)(2)(B)(i)(i) above.

²⁵⁴ See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

²⁵⁵ *Id.*

²⁵⁶ See Section 3(a)(2)(B)(i)(i) above.

²⁵⁷ *Id.*

²⁵⁸ Section 11.3(b)(iii)(B)(III)(B)(6) of the CAT NMS Plan.

²⁵⁹ See Section 3(a)(2)(B)(i)(j) above.

²⁶⁰ See Sections 3(a)(2)(B)(i)(j), 3(a)(2)(B)(ii)(j), 3(a)(2)(B)(iii)(j) and 3(a)(2)(B)(iv)(j) above.

²⁶¹ *Id.*

²⁶² As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model Approval Order at 62682.

²⁶³ This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

²⁶⁴ CAT Funding Model Approval Order at 62658, n.658.

determined that the use of six decimal places is reasonable as it balances the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

(ii) Reasonable Fee Level

The Exchange believes that imposing Historical CAT Assessment 1 with a fee rate of \$0.000013 per executed equivalent share is reasonable because it provides for a revenue stream for the Company that is aligned with Historical CAT Costs 1 and such costs would be spread out over an appropriate recovery period, as discussed above. Moreover, the Exchange believes that the level of the fee rate is reasonable, as it is comparable to other transaction-based fees. Indeed, Historical CAT Assessment 1 is significantly lower than fees assessed pursuant to Section 31 (*e.g.*, \$0.0009 per share to 0.0004 per share),²⁶⁵ and, as a result, the magnitude of Historical CAT Assessment 1 is small, and therefore will mitigate any potential adverse economic effects or inefficiencies.²⁶⁶ Furthermore, the reasonable fee rate for Historical CAT Assessment 1 further supports CAT LLC's decision to seek to recover all Historical CAT Costs prior to 2022, rather than establishing separate Historical CAT Assessments for pre-FAM, FAM 1, FAM 2 and FAM 3 costs.

(3) Historical CAT Assessment 1 Provides for an Equitable Allocation of Fees

Historical CAT Assessment 1 provides for an equitable allocation of fees, as it equitably allocates CAT costs between and among the Participants and Industry Members. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act, including the formula for calculating Historical CAT Assessments as well as the Industry Members to be charged the Historical CAT Assessments.²⁶⁷ In approving the CAT Funding Model, the SEC stated that "[t]he Participants have sufficiently demonstrated that the proposed allocation of fees is reasonable."²⁶⁸ Accordingly, the CAT Funding Model sets forth the requirements for allocating fees related to Historical CAT Costs among Participants and Industry Members, and the fee filings for

Historical CAT Assessments must comply with those requirements.

Historical CAT Assessment 1 provides for an equitable allocation of fees as it complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. For example, as described above, the calculation of Historical CAT Assessment 1 complies with the formula set forth in Section 11.3(b) of the CAT NMS Plan. In addition, Historical CAT Assessment 1 would be charged to CEBBs and CEBBs in accordance with Section 11.3(b) of the CAT NMS Plan. Furthermore, the Participants would continue to remain responsible for their designated share of Past CAT Costs through the cancellation of loans made by the Participants to CAT LLC.

In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1—Historical CAT Costs 1 (including Excluded Costs), the count for the executed equivalent share volume for the prior 12 months, the length of the Historical Recovery Period, and the projected executed equivalent share volume for the Historical Recovery Period—are reasonable. Moreover, these inputs lead to a reasonable fee rate for Historical CAT Assessment 1 that is lower than other fee rates for transaction-based fees. A reasonable fee rate allocated in accordance with the requirements of the CAT Funding Model provides for an equitable allocation of fees.

(4) Historical CAT Assessment 1 Is Not Unfairly Discriminatory

Historical CAT Assessment 1 is not an unfairly discriminatory fee. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act. In reaching this conclusion, the SEC analyzed the potential effect of Historical CAT Assessments calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Historical CAT Assessment 1 complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. In addition, as discussed above, each of the inputs into the calculation of Historical CAT

Assessment 1 and the resulting fee rate for Historical CAT Assessment 1 is reasonable. Therefore, Historical CAT Assessment 1 does not impose an unfairly discriminatory fee on Industry Members.

Finally, the Exchange believes the proposed fees established pursuant to the CAT Funding Model promote just and equitable principles of trade, and, in general, protect investors and the public interest, and are provided in a transparent manner and specificity in the fee schedule. The Exchange also believes that the proposed fees are reasonable because they would provide ease of calculation, ease of billing and other administrative functions, and predictability of a fee based on fixed rate per executed equivalent share. Such factors are crucial to estimating a reliable revenue stream for CAT LLC and for permitting Exchange members to reasonably predict their payment obligations for budgeting purposes.

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

Section 6(b)(8) of the Act²⁶⁹ requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that Historical CAT Assessment 1 implements provisions of the CAT NMS Plan that were approved by the Commission and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan.

In addition, all Participants (including exchanges and FINRA) are proposing to introduce Historical CAT Assessment 1 on behalf of CAT LLC to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive fee filing, and, therefore, it does not raise competition issues between and among the Participants.

Furthermore, in approving the CAT Funding Model, the SEC analyzed the potential competitive impact of the CAT Funding Model, including competitive issues related to market services, trading services and regulatory services, efficiency concerns, and capital formation.²⁷⁰ The SEC also analyzed the potential effect of CAT fees calculated pursuant to the CAT Funding Model on affected categories of market

²⁶⁵ CAT Funding Model Approval Order at 62663, 62682.

²⁶⁶ *Id.*

²⁶⁷ See Section 11.3(b) of the CAT NMS Plan.

²⁶⁸ CAT Funding Model Approval Order at 62629.

²⁶⁹ 15 U.S.C. 78f(b)(8).

²⁷⁰ CAT Funding Model Approval Order at 62676–86.

participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Based on this analysis, the SEC approved the CAT Funding Model as compliant with the Exchange Act. Historical CAT Assessment 1 is calculated and implemented in accordance with the CAT Funding Model as approved by the SEC.

As discussed above, each of the inputs into the calculation of Historical CAT Assessment 1 is reasonable and the resulting fee rate for Historical CAT Assessment 1 calculated in accordance with the CAT Funding Model is reasonable. Therefore, Historical CAT Assessment 1 would not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act.

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

Not applicable.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act²⁷¹ and Rule 19b-4(f)(2) thereunder,²⁷²

because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-MEMX-2024-34 on the subject line.

Paper Comments

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

All submissions should refer to file number SR-MEMX-2024-34. This file number should be included on the subject line if email 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 (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-MEMX-2024-34 and should be submitted on or before October 3, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷³

Sherry R. Haywood,

Assistant Secretary.

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BILLING CODE 8011-01-P

²⁷¹ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁷² 17 CFR 240.19b-4(f)(2).

²⁷³ 17 CFR 200.30-3(a)(12).



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Part VII

Securities and Exchange Commission

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100948; File No. SR–MIAX–2024–34]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail

September 5, 2024.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b–4 thereunder,² notice is hereby given that on August 23, 2024, Miami International Securities Exchange, LLC (“MIAX” or “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing a proposal to amend the MIAX Fee Schedule (“Fee Schedule”) to establish fees for Industry Members³ related to certain historical costs of the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”) incurred prior to January 1, 2022. These fees would be payable to Consolidated Audit Trail, LLC (“CAT LLC” or “the Company”)⁴ and referred to as Historical CAT Assessment 1, and would be described in a section of the Exchange’s fee schedule entitled “Consolidated Audit Trail Funding Fees.” The fee rate for Historical CAT Assessment 1 will be \$0.000013 per executed equivalent share. CAT Executing Brokers will receive their first monthly invoice for Historical CAT Assessment 1 in November 2024 calculated based on their transactions as

CAT Executing Brokers for the Buyer (“CEBB”) and/or CAT Executing Brokers for the Seller (“CEBS”) in October 2024.

The text of the proposed rule change is available on the Exchange’s website at <https://www.miaxglobal.com/markets/us-options/all-options-exchanges/rule-filings>, at MIAX’s principal office, and at the Commission’s Public Reference Room.

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

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

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

1. Purpose

On July 11, 2012, the Commission adopted Rule 613 of Regulation NMS, which required the self-regulatory organizations (“SROs”) to submit a national market system (“NMS”) plan to create, implement and maintain a consolidated audit trail that would capture customer and order event information for orders in NMS securities across all markets, from the time of order inception through routing, cancellation, modification or execution.⁵ On November 15, 2016, the Commission approved the CAT NMS Plan.⁶ Under the CAT NMS Plan, the Operating Committee has the discretion to establish funding for CAT LLC to operate the CAT, including establishing fees for Industry Members to be assessed by CAT LLC that would be implemented on behalf of CAT LLC by the Participants.⁷ The Operating Committee adopted a revised funding model to fund the CAT (“CAT Funding Model”). On September 6, 2023, the Commission approved the CAT Funding Model, after concluding that the model was

reasonable and that it satisfied the requirements of Section 11A of the Exchange Act and Rule 608 thereunder.⁸

The CAT Funding Model provides a framework for the recovery of the costs to create, develop and maintain the CAT, including providing a method for allocating costs to fund the CAT among Participants and Industry Members. The CAT Funding Model establishes two categories of fees: (1) CAT fees assessed by CAT LLC and payable by certain Industry Members to recover a portion of historical CAT costs previously paid by the Participants (“Historical CAT Assessment” fees); and (2) CAT fees assessed by CAT LLC and payable by Participants and Industry Members to fund prospective CAT costs (“Prospective CAT Costs” fees).⁹

Under the CAT Funding Model, “[t]he Operating Committee will establish one or more fees (each a ‘Historical CAT Assessment’) to be payable by Industry Members with regard to CAT costs previously paid by the Participants (‘Past CAT Costs’).”¹⁰ In establishing a Historical CAT Assessment, the Operating Committee will determine a “Historical Recovery Period” and calculate a “Historical Fee Rate” for that Historical Recovery Period. Then, for each month in which a Historical CAT Assessment is in effect, each CEBB and CEBS would be required to pay the fee—the Historical CAT Assessment—for each transaction in Eligible Securities executed by the CEBB or CEBS 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.¹¹

Each Historical CAT Assessment to be paid by CEBBs and CEBSs is designed

⁸ Securities Exchange Act Rel. No. 98290 (Sept. 6, 2023), 88 FR 62628 (Sept. 12, 2023) (“CAT Funding Model Approval Order”).

⁹ Under the CAT Funding Model, the Operating Committee may establish one or more Historical CAT Assessments. Section 11.3(b) of the CAT NMS Plan. This filing only establishes Historical CAT Assessment 1 related to certain Historical CAT Costs as described herein; it does not address any other potential Historical CAT Assessment related to other Historical CAT Costs. In addition, under the CAT Funding Model, the Operating Committee also may establish CAT Fees related to CAT costs going forward. Section 11.3(a) of the CAT NMS Plan. This filing does not address any potential CAT Fees related to CAT costs going forward. Any such other fee for any other Historical CAT Assessment or CAT Fee for Prospective CAT Costs will be subject to a separate fee filing.

¹⁰ Section 11.3(b) of the CAT NMS Plan.

¹¹ In approving the CAT Funding Model, the Commission stated that, “[i]n the Commission’s view, the proposed recovery of the Past CAT Costs via the Historical CAT Assessment is reasonable.” CAT Funding Model Approval Order at 62662.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ An “Industry Member” is defined as “a member of a national securities exchange or a member of a national securities association.” See Exchange Rule 1701(u). See also Section 1.1 of the CAT NMS Plan. Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the CAT NMS Plan and/or the CAT Compliance Rule. See Exchange Rule 1701.

⁴ The term “CAT LLC” may be used to refer to Consolidated Audit Trail, LLC or CAT NMS, LLC, depending on the context.

⁵ Securities Exchange Act Rel. No. 67457 (July 18, 2012), 77 FR 45721 (Aug. 1, 2012) (“Rule 613 Adopting Release”).

⁶ Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (“CAT NMS Plan Approval Order”).

⁷ Section 11.1(b) of the CAT NMS Plan.

to contribute toward the recovery of two-thirds of the Historical CAT Costs. Because the Participants previously have paid Past CAT Costs via loans to the Company, the Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made by the Participants to the Company on a pro rata basis based on the outstanding loan amounts due under the loans, instead of through the payment of a CAT fee.¹² In addition, the Participants also will be 100% responsible for certain Excluded Costs (as discussed below).

CAT LLC proposes to charge CEBBs and CEBs (as described in more detail below) Historical CAT Assessment 1 to recover certain historical CAT costs incurred prior to January 1, 2022, in accordance with the CAT Funding Model. To implement this fee on behalf of CAT LLC, the CAT NMS Plan requires the Participants to "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.'" ¹³ The Plan further states that "Participants will be required to file

with the SEC pursuant to Section 19(b) of the Exchange Act a filing for each Historical CAT Assessment." ¹⁴ Accordingly, the purpose of this filing is to implement a Historical CAT Assessment on behalf of CAT LLC for Industry Members, referred to as Historical CAT Assessment 1, in accordance with the CAT NMS Plan.¹⁵

The Exchange previously filed a fee filing to implement Historical CAT Assessment 1. On January 17, 2024, the SEC published this prior filing for Historical CAT Assessment 1, temporarily suspended the fee filing, and instituted proceedings to determine whether to approve or disapprove the fee filing.¹⁶ The Exchange has withdrawn its original fee filing for Historical CAT Assessment 1. This Historical CAT Assessment 1 replaces the prior Historical CAT Assessment 1 that was previously filed with the Commission.

(1) CAT Executing Brokers

Historical CAT Assessment 1 will be charged to each CEBB and CEBs for each applicable transaction in Eligible Securities.¹⁷ The CAT NMS Plan defines a "CAT Executing Broker" to mean:

(a) with respect to a transaction in an Eligible Security that is executed on an exchange, the Industry Member identified as

the Industry Member responsible for the order on the buy-side of the transaction and the Industry Member responsible for the sell-side of the transaction in the equity order trade event and option trade event in the CAT Data submitted to the CAT by the relevant exchange pursuant to the Participant Technical Specifications; and (b) with respect to a transaction in an Eligible Security that is executed otherwise than on an exchange and required to be reported to an equity trade reporting facility of a registered national securities association, the Industry Member identified as the executing broker and the Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event in the CAT Data submitted to the CAT by FINRA pursuant to the Participant Technical Specifications; provided, however, in those circumstances where there is a non-Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event or no contra-side executing broker is identified in the TRF/ORF/ADF transaction data event, then the Industry Member identified as the executing broker in the TRF/ORF/ADF transaction data event would be treated as CAT Executing Broker for the Buyer and for the Seller.¹⁸

The following fields of the Participant Technical Specifications indicate the CAT Executing Brokers for the transactions executed on an exchange.

EQUITY ORDER TRADE (EOT) ¹⁹

No.	Field name	Data type	Description	Include key
12.n.8/13.n.8	member	Member Alias	The identifier for the member firm that is responsible for the order on this side of the trade. Not required if there is no order for the side as indicated by the NOBUYID/NOSELLID instruction. This must be provided if orderID is provided.	C

OPTION TRADE (OT) ²⁰

No.	Field name	Data type	Description	Include key
16.n.13/17.n.13	member	Member Alias	The identifier for the member firm that is responsible for the order ..	R

¹² Section 11.3(b)(ii) of the CAT NMS Plan.

¹³ Section 11.1(b) of the CAT NMS Plan.

¹⁴ Section 11.3(b)(iii)(B)(I) of the CAT NMS Plan.

¹⁵ Note that there may be one or more Historical CAT Assessments depending on the timing of the completion of the Financial Accountability Milestones, among other things. Section 11.3(b) of the CAT NMS Plan.

¹⁶ Securities Exchange Act Rel. No. 99367 (Jan. 17, 2024), 89 FR 10925 (Feb. 13, 2024) (SR-MIAX-2024-02).

¹⁷ In its approval of the CAT Funding Model, the Commission determined that charging CAT fees to CAT Executing Brokers was reasonable. In reaching this conclusion the Commission noted that the use

of CAT Executing Brokers is appropriate because the CAT Funding Model is based upon the calculation of *executed* equivalent shares, and, therefore, charging CAT Executing Brokers would reflect their executing role in each transaction. Furthermore, the Commission noted that, because CAT Executing Brokers are already identified in transaction reports from the exchanges and FINRA's equity trade reporting facilities recorded in CAT Data, charging CAT Executing Brokers could streamline the billing process. CAT Funding Model Approval Order at 62629.

¹⁸ Section 1.1 of the CAT NMS Plan. Note that CEBBs and CEBs may, but are not required to, pass-through their CAT fees to their clients, who may, in turn, pass their fees to their clients until

they are imposed ultimately on the account that executed the transaction. See CAT Funding Model Approval Order at 62649.

¹⁹ See Table 23, Section 4.7 (Order Trade Event) of the CAT Reporting Technical Specifications for Plan Participants, Version 4.1.0-r21 (Apr. 15, 2024), https://www.catnmsplan.com/sites/default/files/2024-04/04.15.2024-CAT_Reporting_Technical_Specifications_for_Participants_4.1.0-r21.pdf ("CAT Reporting Technical Specifications for Plan Participants").

²⁰ See Table 51, Section 5.2.5.1 (Simple Option Trade Event) of the CAT Reporting Technical Specifications for Plan Participants.

In addition, the following fields of the Participant Technical Specifications would indicate the CAT Executing Brokers for the transactions executed otherwise than on an exchange.

TRF/ORF/ADF TRANSACTION DATA EVENT (TRF)²¹

No.	Field name	Data type	Description	Include key
26	reportingExecutingMpid	Member Alias	MPID of the executing party	R
28	contraExecutingMpid	Member Alias	MPID of the contra-side executing party	C

(2) Calculation of Historical Fee Rate 1

The Operating Committee determined the Historical Fee Rate to be used in calculating Historical CAT Assessment 1 (“Historical Fee Rate 1”) by dividing the Historical CAT Costs for Historical CAT Assessment 1 (“Historical CAT Costs 1”) by the projected total executed share volume of all transactions in Eligible Securities for the Historical Recovery Period for Historical CAT Assessment 1 (“Historical Recovery Period 1”), as discussed in detail below. Based on this calculation, the Operating Committee has determined that Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. This rate is then divided by three and rounded to determine the fee rate of \$0.000013 per executed equivalent share that will be assessed to CEBBs and CEBSSs, as also discussed in detail below.

(A) Executed Equivalent Shares for Transactions in Eligible Securities

Under the CAT NMS Plan, for purposes of calculating each Historical CAT Assessment, executed equivalent shares in a transaction in Eligible Securities will be reasonably counted as follows: (1) each executed share for a transaction in NMS Stocks will be counted as one executed equivalent share; (2) each executed contract for a transaction in Listed Options will be counted based on the multiplier applicable to the specific Listed Options (*i.e.*, 100 executed equivalent shares or such other applicable multiplier); and

(3) each executed share for a transaction in OTC Equity Securities shall be counted as 0.01 executed equivalent share.²²

(B) Historical CAT Costs 1

The CAT NMS Plan states that “[t]he Operating Committee will reasonably determine the Historical CAT Costs sought to be recovered by each Historical CAT Assessment, where the Historical CAT Costs will be Past CAT Costs minus Past CAT Costs reasonably excluded from Historical CAT Costs by the Operating Committee. Each Historical CAT Assessment will seek to recover from CAT Executing Brokers two-thirds of Historical CAT Costs incurred during the period covered by the Historical CAT Assessment.”²³ As described in detail below, Historical CAT Costs 1 would be \$318,059,819. This figure includes Past CAT Costs of \$401,312,909 minus certain Excluded Costs of \$83,253,090. Participants collectively will remain responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), plus the Excluded Costs of \$83,253,090. CEBBs collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), and CEBSSs collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67). The following describes in detail Historical CAT Costs 1 with regard to four separate historical time periods as well as Past CAT Costs excluded from Historical CAT Costs 1 (“Excluded Costs”). The following cost

details are provided in accordance with the requirement in the CAT NMS Plan to provide in the fee filing “a brief description of the amount and type of Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs.”²⁴ Each of the costs described below are reasonable, appropriate and necessary for the creation, implementation and maintenance of CAT.

(i) Historical CAT Costs Incurred Prior to June 22, 2020 (Pre-FAM Costs)

Historical CAT Costs 1 would include costs incurred by CAT prior to June 22, 2020 (“Pre-FAM Period”) and already funded by the Participants, excluding Excluded Costs (described further below). Historical CAT Costs 1 would include costs for the Pre-FAM Period of \$124,290,730. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$41,430,243.33), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$41,430,243.33) and CEBSSs paying one-third (\$41,430,243.33). These costs do not include Excluded Costs, as discussed further below. The following table breaks down Historical CAT Costs 1 for the Pre-FAM Period into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs 1 for pre-FAM Period (prior to June 22, 2020) *
Capitalized Developed Technology Costs**	\$51,847,150
Technology Costs	33,568,579
Cloud Hosting Services	10,268,840
Operating Fees	21,085,485
CAIS Operating Fees	2,072,908

²¹ See Table 61, Section 6.1 (TRF/ORF/ADF Transaction Data Event) of the CAT Reporting Technical Specifications for Plan Participants.

²² Section 11.3(a)(i)(B) and 11.3(b)(i)(B) of the CAT NMS Plan. In approving the CAT Funding

Model, the Commission concluded that “the use of executed equivalent share volume as the basis of the proposed cost allocation methodology is reasonable and consistent with the approach taken

by the funding principles of the CAT NMS Plan.” CAT Funding Model Approval Order at 62640.

²³ Section 11.3(b)(i)(C) of the CAT NMS Plan.

²⁴ Section 11.3(b)(iii)(B)(II)(B) of the CAT NMS Plan.

Operating expense	Historical CAT costs 1 for pre-FAM Period (prior to June 22, 2020) *
Change Request Fees	141,346
Legal	19,674,463
Consulting	17,013,414
Insurance	880,419
Professional and administration	1,082,036
Public relations	224,669
Total Operating Expenses	124,290,730

* The costs described in this table of costs for the Pre-FAM Period were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website. In addition, in accordance with Section 6.6(a)(i) of the CAT NMS Plan, in 2018 CAT LLC provided the SEC with "an independent audit of fees, costs, and expenses incurred by the Participants on behalf of the Company prior to the Effective Date of the Plan that will be publicly available." The audit is available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$2,115,545 incurred during the period prior to June 22, 2020 have been appropriately excluded from the above table.²⁵

The Pre-FAM Period includes a broad range of CAT-related activity from 2012 through June 22, 2020, including the evaluation of the requirements of SEC Rule 613, the development of the CAT NMS Plan, the evaluation and selection of the initial and successor Plan Processors, the commencement of the creation and implementation of the CAT to comply with Rule 613 and the CAT NMS Plan, including technical specifications for transaction reporting and regulatory access, and related technology and the commencement of reporting to the CAT. The following describes the costs for each of the categories for the Pre-FAM Period.

(a) Technology Costs—Cloud Hosting Services

The \$10,268,840 in technology costs for cloud hosting services represent costs incurred for services provided by the cloud services provider for the CAT, Amazon Web Services, Inc. ("AWS"), during the Pre-FAM Period.

As part of its proposal for acting as the successor Plan Processor for the CAT, FCAT selected AWS as a subcontractor to provide cloud hosting services. In 2019, after reviewing the capabilities of other cloud services providers, FCAT determined that AWS was the only cloud services provider at that time sufficiently mature and capable of providing the full suite of necessary cloud services for the CAT, including, for example, the security, resiliency and complexity necessary for the CAT computing requirements. The use of cloud hosting services is standard

for this type of high-volume data activity and reasonable and necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT the fees incurred by the Plan Processor for cloud hosting services provided by AWS as FCAT's subcontractor [sic] on a monthly basis for the cloud hosting services, and FCAT, in turn, pays such fees to AWS. The fees for cloud hosting services were negotiated by FCAT on an arm's length basis with the goals of managing cost and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the expected volume of data, the breadth of services provided and market rates for similar services. The fees for cloud hosting services during the Pre-FAM Period were paid to FCAT by CAT NMS, LLC²⁶ and subsequently Consolidated Audit Trail, LLC (as previously noted, both entities are referred to generally as "CAT LLC"),²⁷ and FCAT, in turn, paid AWS. CAT LLC was funded via loan contributions by the Participants.²⁸

²⁶ CAT NMS, LLC was formed by FINRA and the U.S. national securities exchanges to implement the requirements of SEC Rule 613 under the Exchange Act. SEC Rule 613 required the SROs to jointly submit to the SEC the CAT NMS Plan to create, implement and maintain the CAT. The SEC approved the CAT NMS Plan on November 15, 2016. CAT NMS Plan Approval Order.

²⁷ On August 29, 2019, the Participants formed a new Delaware limited liability company named Consolidated Audit Trail, LLC for the purpose of conducting activities related to the CAT from and after the effectiveness of the proposed amendment of the CAT NMS Plan to replace CAT NMS, LLC. See Securities Exchange Act Rel. No. 87149 (Sept. 27, 2019), 84 FR 52905 (Oct. 3, 2019).

²⁸ For each of the costs paid by CAT NMS, LLC and Consolidated Audit Trail, LLC as discussed throughout this filing, CAT NMS, LLC and Consolidated Audit Trail, LLC paid these costs via loan contributions by the Participants to CAT NMS,

AWS was engaged by FCAT to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS include storage services, databases, compute services and other services (such as networking, management tools and DevOps tools). AWS also was engaged to provide various environments for CAT, such as development, performance testing, test and production environments.

The cost for AWS services for the CAT is a function of the volume of CAT Data. The greater the amount of CAT Data, the greater the cost of AWS services to the CAT. During the Pre-FAM Period from the engagement of AWS in February 2019 through June 2020, AWS provided cloud hosting services for volumes of CAT Data far in excess of the volume predictions set forth in the CAT NMS Plan. The CAT NMS Plan states, when all CAT Reporters are submitting their data to the CAT, it "must be sized to receive[,] process and load more than 58 billion records per day,"²⁹ and that "[i]t is expected that the Central Repository will grow to more than 29 petabytes of raw, uncompressed data."³⁰ However, the volume of CAT Data for the Pre-FAM Period was far in excess of these predicted levels. By the end of this period, data submitted to the CAT included options and equities Participant Data,³¹ Phase 2a and Phase 2b Industry Member Data³² (including

LLC and Consolidated Audit Trail, LLC, respectively.

²⁹ Appendix D-4 of the CAT NMS Plan at n.262.

³⁰ Appendix D-5 of the CAT NMS Plan.

³¹ See Section 6.3(d) of the CAT NMS Plan.

³² See Securities Exchange Rel. No. 88702 (Apr. 20, 2020), 85 FR 23075 (Apr. 24, 2020) ("Phased Reporting Exemptive Relief Order") for a description of Phase 2a and Phase 2b Industry Member Data.

²⁵ With respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

certain linkages), as well as SIP Data,³³ reference data and other types of Other Data.³⁴ The following chart provides

data regarding the average daily volume, cumulative total events, total compute

hours and storage footprint of the CAT during the Pre-FAM Period.³⁵

	Date range: 3/29/19 to 4/12/20 *	Date range: 4/13/20 to 6/21/20 **
Average Daily Volume in Billions:		
Participant—Equities	5	5
Participant—Options	80	981
Industry Member—Equities		3
Industry Member—Options		0.04
SIP—Options & Equities	64	70
Average Total Daily Volume	149	166
Cumulative Total Events for the Period	3,890	4,990
Total Compute Hours for the Period	*** N/A	5,663,247
Storage Footprint at End of Period (Petabytes)	30.57	47.96

* The Participant Equities in RSA format.

** Start of Industry Member reporting on 4/13/2020.

*** Note that, although there were compute hours during this period, data related to such compute hours are no longer available in current data.

(b) Technology Costs—Operating Fees

The \$21,085,485 in technology costs related to operating fees represent costs incurred with regard to activities of FCAT as the Plan Processor. Operating fees are those fees paid by CAT LLC to FCAT as the Plan Processor to operate and maintain the CAT and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.*, management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management as required by the CAT NMS Plan.

FCAT was selected to assume the role of the successor Plan Processor. Prior to this selection, the Participants engaged in discussions with two prior Bidders³⁶ for the successor Plan Processor role. The Operating Committee formed a Selection Subcommittee in accordance with Section 4.12 of the CAT NMS Plan to evaluate and review Bids and to make a recommendation to the Operating Committee with respect to the selection of the successor Plan Processor. In an April 9, 2019 letter to the Commission, the Participants described the reasons for its selection of the successor Plan Processor:

The Selection Subcommittee considered factors including, but not limited to, the following, in recommending FINRA to the Operating Committee as the successor Plan Processor:

a. FINRA's specialized technical expertise and capabilities in the area of broker-dealer technology;

b. The need to appoint a successor Plan Processor with specialized expertise to develop, implement, and maintain the CAT System in accordance with the CAT NMS Plan and SEC Rule 613;

c. FINRA's detailed proposal in response to CATLLC's recent inquiries; and

d. FINRA's data query and analytics systems demonstration to the Participants.

Based on these and other factors, the Selection Subcommittee determined that FINRA was the most appropriate Bidder to become the successor Plan Processor.³⁷

On February 26, 2019, the Operating Committee (with FINRA recusing itself) voted to select FINRA as the successor Plan Processor pursuant to Section 6.1(t) of the CAT NMS Plan.³⁸ On March 29, 2019, CAT LLC and FCAT (a wholly owned subsidiary of FINRA) entered into a Plan Processor Agreement pursuant to which FCAT would perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT a negotiated monthly fixed price for the operation of the CAT. This fixed price contract was negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the breadth of services

provided and market rates for similar types of activity. The operating fees during the Pre-FAM Period were paid to FCAT by CAT LLC.

From March 29, 2019 (the commencement of the Plan Processor Agreement with FCAT) through June 22, 2020 (the end of the Pre-FAM Period), the Plan Processor's activities with respect to the CAT included the following:

- Commenced user acceptance testing with market data provided by Exegy Incorporated ("Exegy"), a market data provider;³⁹

- Published Technical Specifications and related reporting scenarios documents for Phase 2a, 2b and 2c reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;

- Facilitated testing for Phase 2a and 2b reporting for Industry Members;

- Began developing Technical Specifications and related reporting scenarios documents for Phase 2d reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;

- Published Central Repository Access Technical Specifications, and provided regulator access to test data from Industry Members;

- Facilitated Participant exchanges that support options market makers sending Quote Sent Time to the CAT;

- Facilitated the introduction of OPRA and Options NBBO Other Data to CAT;

³³ See Section 6.5(a)(ii) of the CAT NMS Plan.

³⁴ See Appendix C–108 of the CAT NMS Plan.

³⁵ Note that the volume data described in this table does not include CAIS data.

³⁶ The term "Bidder" is defined in Section 1.1 of the CAT NMS Plan.

³⁷ Letter from Michael J. Simon, Chair, CAT NMS, LLC Operating Committee, to Brent J. Fields, Secretary, SEC (Apr. 9, 2019), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection-040919.pdf>.

³⁸ *Id.*

³⁹ The use of Exegy to provide market data, including the costs and market data provided, is discussed below in Section 3(a)(2)(B)(i)(i).

- Addressed compliance items, including drafting CAT policies and procedures, and addressing requirements under Regulation SCI;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with Participants, the SEC and its staff;
- Operated the FINRA CAT Helpdesk, which is the primary source for answers to questions about CAT, including questions regarding: clock synchronization, firm reporting responsibilities, interpretive questions, technical specifications for reporting to CAT and more;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content;⁴⁰ and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

The \$2,072,908 in technology costs related to CAIS operating fees represent the fees paid for FCAT's subcontractor charged with the development and operation of CAT's Customer and Account Information System ("CAIS"). The CAT is required under the CAT NMS Plan to capture and store Customer Identifying Information and Customer Account Information in a database separate from the transactional database and to create a CAT-Customer-ID for each Customer.

During the Pre-FAM Period, the CAIS-related services were provided by the Plan Processor through the Plan Processor's subcontractor, Kingland Systems Incorporation ("Kingland"). Kingland had experience operating in the securities regulatory technology space, and as a part of its proposal for acting as the Plan Processor for the CAT, FCAT selected Kingland as a subcontractor to provide certain CAIS-related services.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay to the Plan Processor the fees incurred by FCAT for CAIS-related services provided by FCAT through Kingland on a monthly basis. FCAT negotiated the fees for Kingland's CAIS-related services on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity. The fees for CAIS-related services during the Pre-FAM Period were paid by CAT LLC to FCAT. FCAT, in turn, paid Kingland.

During the Pre-FAM Period, Kingland began development of the CAIS Technical Specifications and the building of CAIS. In addition, Kingland also worked on the build related to the CCID Alternative, an alternative approach to customer information that was not included in the CAT NMS Plan as originally adopted.⁴¹ Furthermore, Kingland also worked on the acceleration of the reporting of large trader identifiers ("LTID") earlier than originally contemplated during this period, in accordance with exemptive relief granted by the SEC.⁴²

(d) Technology Costs—Change Request Fees

The technology costs related to change request fees include costs related to certain modifications, upgrades or other changes to the CAT. Change requests are standard practice and necessary to reflect operational changes, including changes related to new market developments, such as new market participants. In general, if CAT LLC determines that a modification, upgrade or other change to the functionality or service is necessary and appropriate, CAT LLC will submit a request for such a change to the Plan Processor. The Plan Processor will then respond to the request with a proposal for implementing the change, including the cost (if any) of such a change. CAT LLC then determines whether to approve the proposed change. The change request costs were paid by CAT LLC to FCAT. During the Pre-FAM Period, CAT LLC incurred costs of \$141,346 related to change requests implemented by FCAT. Such change requests related to a development fee regarding the OPRA

and SIP data feeds, and the reprocessing of certain exchange data.⁴³

(e) Technology Costs—Capitalized Developed Technology Costs

This category of costs includes capitalizable application development costs incurred in the development of the CAT. The capitalized developed technology costs for the Pre-FAM Period of \$51,847,150 relate to technology provided by the Initial Plan Processor and the successor Plan Processor.

Initial Plan Processor: Thesys CAT, LLC. The capitalized developed technology costs related to the Initial Plan Processor include costs incurred with regard to testing for Participant reporting, Participant reporting to the CAT, a security assessment of the CAT, and the development of the billing function for the CAT.

On January 17, 2017, the Selection Committee of the CAT NMS Plan selected the Initial Plan Processor, Thesys Technologies, LLC, for the CAT NMS Plan pursuant to Article V of the CAT NMS Plan.⁴⁴ The Participants utilized a request for proposal ("RFP") to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan, taking into consideration that the Initial Plan Processor had experience operating in the securities regulatory technology space, among other considerations. On April 6, 2017, CAT LLC entered into an agreement with Thesys CAT LLC ("Thesys CAT"), a Thesys affiliate, to perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT. Under the agreement, CAT LLC would pay Thesys CAT a negotiated, fixed price fee for its role as the Initial Plan Processor. Effective January 30, 2019, the Plan Processor Agreement with Thesys CAT was terminated, and FCAT was subsequently selected as the successor Plan Processor.

From January 17, 2017 through January 30, 2019, the time in which the Thesys CAT was engaged for the CAT,

⁴³ Note that CAT LLC also has incurred costs related to specific Industry Members (e.g., reprocessing costs related to Industry Member reporting errors).

⁴⁴ Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf>.

⁴⁰ The CAT website is <https://www.catnmsplan.com>.

⁴¹ For a discussion of the CCID Alternative, see Securities Exchange Act Rel. No. 88393 (Mar. 17, 2020), 85 FR 16152 (Mar. 20, 2020).

⁴² Phased Reporting Exemptive Relief Order at 23079–80.

but excluding the period from November 15, 2017 through January 30, 2019, the Initial Plan Processor engaged in various activities with respect to the CAT, including preparing iterative drafts of Participant Technical Specifications, Industry Member Technical Specifications and the Central Repository Access Technical Specifications. In addition, Thesys CAT also developed CAT technology, addressed compliance items, including drafting CAT policies and procedures, addressing Regulation SCI requirements, establishing a CAT Compliance Officer and a Chief Information Security Officer, addressed security-related matters for the CAT, and worked towards the initiation of Participant reporting per the Participant Technical Specifications.

Successor Plan Processor: FCAT. The capitalized developed technology costs related to FCAT include: (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, including the completion of go-live functionality related to options ingestion and validation, equities regulatory services agreement query tool updates and unlinked options data query, options linkages release, Industry Member Phase 2a file submission and data integrity (including error corrections), and Industry Member testing, including reporting relationships, ATS order type management, basic reporting statistics, SFTP data integrity feedback and error correction; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including a one-time development fee for a secure analytics workspace, a one-time development fee of an Industry Member connectivity solution, and a one-time development fee for the acceleration of multi-factor authentication; (3) CAIS implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$19,674,463 represent the fees paid for legal services provided by two law firms, Wilmer Cutler Pickering Hale and Dorr LLP ("WilmerHale") and Pillsbury Winthrop Shaw Pittman LLP ("Pillsbury"), during the Pre-FAM Period. The legal costs exclude those costs incurred from November 15, 2017 through November 15, 2018.

Law Firm: WilmerHale. Following the adoption of Rule 613, the Participants determined it was necessary to engage

external legal counsel to advise the Participants with respect to corporate and regulatory legal matters related to the CAT, including drafting and developing the CAT NMS Plan. The Participants considered a variety of factors in their analysis of prospective law firms, including (1) the firm's qualifications, resources and expertise; (2) the firm's relevant experience and understanding of the regulatory matters raised by the CAT and in advising on matters of similar scope; (3) the composition of the legal team; and (4) professional fees. Following a series of interviews, the Participants acting as a consortium determined that WilmerHale was well qualified given the balance of these considerations and engaged WilmerHale in February 2013.

WilmerHale's billing rates are negotiated on an annual basis and are determined with reference to the rates charged by other leading law firms for similar work. The Participants assess WilmerHale's performance and review prospective budgets and staffing plans submitted by WilmerHale on an annual basis. WilmerHale's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading law firms for similar work.

The legal costs for WilmerHale during the Pre-FAM Period included costs incurred from 2013 until June 22, 2020 to address corporate and regulatory legal matters related to the CAT. The legal fees for this law firm during the period from February 2013 until the formation of the CAT NMS, LLC on November 15, 2016 were paid directly by the exchanges and FINRA to WilmerHale. After the formation of CAT NMS LLC, the legal fees were paid by CAT LLC to WilmerHale.

After WilmerHale was engaged in 2013 through the end of the Pre-FAM Period on June 22, 2020 (excluding the legal costs from November 15, 2017 through November 15, 2018), WilmerHale provided legal assistance to the CAT on a variety of matters, including with regard to the following:

- Analyzed various legal matters associated with the Selection Plan, and drafted an amendment to the Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the Development Advisory Group ("DAG");
- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on CAT NMS Plan;
- Provided legal support for the formation of the legal entity, the

governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan, and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;

- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan and related filings;
- Negotiated and drafted the plan processor agreements with the Initial Plan Processor and the successor Plan Processor;
- Provided assistance with compliance with Regulation SCI;
- Assisted with clock synchronization study;
- Provided assistance with respect to the establishment of CAT security;
- Drafted exemptive requests from CAT NMS Plan requirements, including with regard to options market maker quotes, Customer IDs, CAT Reporter IDs, linking allocations to executions, CAT reporting timeline, FDIDs, customer and account information, timestamp granularity, small industry members, data facility reporting and linkage, allocation reports, SRO-assigned market participant identifiers and cancelled trade indicators, thereby seeking to implement changes that would be cost effective and benefit Industry Members and Participants;
- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Provided advice regarding CAT policies and procedures;
- Analyzed the SEC's amendment of the CAT NMS Plan regarding financial accountability;
- Provided interpretations of and related to the CAT NMS Plan;
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues; and
- Assisted with third-party vendor agreements.

Law Firm: Pillsbury. The legal costs for CAT during the Pre-FAM Period include costs related to the legal services performed by Pillsbury. The Participants interviewed this law firm as

well as other potential law firms to provide legal assistance regarding certain liability matters. After considering a variety of factors in its analysis, including the relevant expertise and fees of the firm, CAT LLC determined to hire Pillsbury in April 2019. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees were paid by CAT LLC to Pillsbury. The legal costs for Pillsbury during the Pre-FAM Period included costs incurred from April 2019 until June 22, 2020 to address legal matters regarding the agreements between CAT Reporters and CAT LLC concerning certain terms associated with CAT Reporting (the "Reporter Agreement"). During that period, Pillsbury advised CAT LLC regarding applicable legal matters, participated in negotiations between the Participants and Industry Members, participated in meetings with senior SEC staff, the Chairman, and Commissioners, represented CAT LLC and the Participants in an SEC administrative proceeding, and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, litigation involving CAT LLC is an expense of operating the CAT, and, therefore, is appropriately an obligation of both Participants and Industry Members under the CAT Funding Model.

(g) Consulting Costs

The consulting costs of \$17,013,414 represent the fees paid to the consulting firm Deloitte & Touche LLP ("Deloitte") as project manager during the Pre-FAM Period, from October 2012 until June 22, 2020. These consulting costs include costs for advisory services related to the operation of the CAT, and meeting facilitation and communications coordination, vendor support and financial analyses.

To help facilitate project management given the unprecedented complexity and scope of the CAT project, the Participants determined it was necessary to engage a consulting firm to assist with the CAT project in 2012, following the adoption of Rule 613. A variety of factors were considered in the analysis of prospective consulting firms, including (1) the firm's qualifications, resources, and expertise; (2) the firm's relevant experience and understanding of the regulatory issues raised by the CAT and in coordinating matters of

similar scope; (3) the composition of the consulting team; and (4) professional fees. Following a series of interviews, the exchanges and FINRA as a consortium determined that Deloitte was well qualified given the balance of these considerations and engaged Deloitte on October 1, 2012.

Deloitte's fee rates are negotiated on an annual basis and are in line with market rates for this type of specialized consulting work. CAT LLC assesses Deloitte's performance and reviews prospective budgets and staffing plans submitted by Deloitte on an annual basis. Deloitte's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading consulting firms for similar work.

The consulting costs for CAT during the period from 2012 until the formation of the CAT NMS, LLC were paid directly by the Participants to Deloitte. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC to Deloitte. CAT LLC reviewed the consulting fees each month and approved the invoices.

After Deloitte was hired in 2012 through the end of the Pre-FAM Period on June 22, 2020 (excluding the consulting costs from November 15, 2017 through November 15, 2018), Deloitte provided a variety of consulting services, including the following:

- Established and implemented program operations for the CAT project, including the program management [*sic*] office and workstream design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participant's independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, analyzing OATS and CAT requirements, and drafting appendices to the Plan;
- Assisted with cost and funding-related activities for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (*e.g.*, Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan and

governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;

- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with industry outreach and communications regarding the CAT, including assistance with industry outreach events, the development of the CAT website, frequently asked questions, and coordinating with the CAT LLC's public relations firm;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress;
- Coordinated efforts regarding the selection of the successor Plan Processor;
- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor, including support for the Operating Committee and successor Plan Processor for the new role; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$880,419 represent the cost incurred for insurance for CAT during the Pre-FAM Period. Commencing in 2020, CAT LLC performed an evaluation of various potential alternatives for CAT insurance policies, which included engaging in discussions with different insurance companies and conducting cost comparisons of various alternative approaches to insurance. Based on an analysis of a variety of factors, including coverage and premiums, CAT LLC determined to purchase cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance from USI Insurance Services LLC ("USI"). Such policies are standard for corporate entities, and cyber security liability insurance is important for the CAT System. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

In adopting the CAT NMS Plan, the Commission amended the Plan to add a requirement that CAT LLC's financial statements be prepared in compliance with GAAP, audited by an independent public accounting firm, and made publicly available.⁴⁵ The professional and administration costs include costs related to accounting and accounting advisory services to support the operating and financial functions of CAT, financial statement audit services by an independent accounting firm, preparation of tax returns, and various cash management and treasury functions. In addition, professional and administration costs for the Pre-FAM Period include costs related to the receipt of market data and a security assessment. The costs for these professional and administration services were \$1,082,036 for the Pre-FAM Period.

Financial Advisory Firm: Anchin Accountants & Advisors ("Anchin"). CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT in April 2018. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The hourly fee rates for this firm were in line with market rates for these financial advisory services. The fees for these services were paid by CAT LLC to Anchin.

After Anchin was hired in April 2018 through the end of the Pre-FAM Period on June 22, 2020 (excluding the period from April 2018 through November 15, 2018), Anchin provided a variety of services, including the following:

- Developed, updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and

financial budgets, including budget to actual fluctuation analyses;

- Addressed accounting and financial reporting matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC, including supporting the dissolution of CAT NMS, LLC;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Accounting Firm: Grant Thornton LLP ("Grant Thornton"). In February 2020, CAT LLC determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the proposed role given the balance of these considerations. Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services. The fees for these services were paid by CAT LLC to Grant Thornton.

Market Data Provider: Exegy. The professional and administrative costs for the Pre-FAM Period included costs related to the receipt of certain market data for the CAT pursuant to an agreement with the CAT LLC, and then with FCAT. Exegy provided SIP Data required by the CAT NMS Plan.

After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy from July 2018 through March 2019. CAT LLC determined that, unlike certain other vendors, Exegy provided market data that included all data elements required by the CAT NMS Plan.⁴⁶ In addition, the

fees were reasonable and in line with market rates for the market data received. Accordingly, the professional and administrative costs for the Pre-FAM Period include the Exegy costs from November 2018 through March 2019. The cost of the market data was reasonable for the market data received. The fees for the market data were paid directly by CAT LLC to Exegy.

Upon the termination of the contract between CAT LLC and Exegy, FCAT entered into a contract with Exegy to purchase the required market data from Exegy in July 2019. All costs under the contract were treated as a direct pass through cost to CAT LLC. Therefore, the fees for the market data were paid by CAT LLC to FCAT, who, in turn, paid Exegy for the market data.

Security Assessment: RSM US LLP ("RSM"). The operating costs for the Pre-FAM Period include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation, and operation of the controls specified by NIST Special Publication 800–53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment. RSM performed the assessment from October 2018 through December 2018. Accordingly, the costs for the Pre-FAM Period include the costs incurred in November and December 2018. The cost for the security assessment were paid directly to RSM by CAT LLC.

(j) Public Relations Costs

The public relations costs of \$224,669 represent the fees paid to public relations firms during the Pre-FAM Period for professional communications services to CAT, including media relations consulting, strategy and execution. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants. Specifically, the public relations firms provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and

⁴⁵ Section 9.2 of the CAT NMS Plan.

⁴⁶ See Section 6.5(a)(ii) of the CAT NMS Plan.

drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). Public relations services were important for various reasons, including monitoring comments made by market participants about CAT and understanding issues related to the CAT discussed on the public record.

The services performed by each of the public relations firms were comparable. The fees for such services were reasonable and in line with market rates. Only one public relations firm was engaged at a time; the three firms were engaged sequentially as the primary public relations contact moved among the three firms during this time period.

Public Relations Firm: Peppercomm, Inc. ("Peppercomm"). The national securities exchanges and FINRA, acting as a consortium, determined to hire the public relations firm Peppercomm in October 2014 and continued to engage this firm through September 2017. The exchanges and FINRA made this engagement decision after considering a variety of factors in its analysis,

including the firm's relevant expertise and fees. The fee rates for this public relations firm were negotiated on an arm's length basis and were in line with market rates for these types of services. The public relations costs during the period from October 2014 until the formation of the CAT NMS, LLC were paid directly by the exchanges and FINRA to the public relations firm. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC.

Public Relations Firm: Sloane & Company ("Sloane"). CAT LLC determined to hire a new public relations firm, Sloane, in March 2018, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Sloane. CAT LLC continued the engagement with Sloane until February 2020.

Public Relations Firm: Peak Strategies. CAT LLC determined to hire a new public relations firm, Peak Strategies, in March 2020, based on, among other things, their expertise and the primary contact's history with the

project. The fee rates for this public relations firm were in line with market rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Peak Strategies.

(ii) Historical CAT Costs Incurred in Financial Accountability Milestone Period 1

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 1 of the Financial Accountability Milestones ("FAM Period 1"),⁴⁷ which covers the period from June 22, 2020—July 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 1 of \$6,377,343. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$2,125,781), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBBs paying one-third (\$2,125,781). The following table breaks down Historical CAT Costs 1 for FAM Period 1 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 1 *
Capitalized Developed Technology Costs **	\$1,684,870
Technology Costs	3,996,800
Cloud Hosting Services	2,642,122
Operating Fees	1,099,680
CAIS Operating Fees	254,998
Change Request Fees	
Legal	481,687
Consulting	137,209
Insurance	
Professional and administration	69,077
Public relations	7,700
Total Operating Expenses	6,377,343

* The costs described in this table of costs for FAM Period 1 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$362,121 incurred during FAM Period 1 have been appropriately excluded from the above table.⁴⁸

By the completion of FAM Period 1, CAT LLC was required to implement the reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of equities transaction data and options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.⁴⁹ CAT LLC completed the requirements of FAM Period 1 by July 31, 2020. The following

describes the costs for each of the categories for FAM Period 1.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 1 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services,

databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production environments, during the FAM 1 Period. Accordingly, the \$2,642,122 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud

⁴⁷ Section 11.6(a)(i)(A) of the CAT NMS Plan.

⁴⁸ As discussed above, with respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized

over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁴⁹ See definition of "Initial Industry Member Core Equity and Options Reporting" in Section 1.1 of the CAT NMS Plan.

services provider, during FAM Period 1. The fee arrangement for AWS described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. Moreover, CAT LLC continued to believe that AWS's maturity in the cloud services space as well as the significant cost and time necessary to move the CAT to a different

cloud services provider supported the continued engagement of AWS.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the FAM 1 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included

options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well as SIP Data, reference data and other types of Other Data. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 1.⁵⁰

		Date range: 6/22/20–7/31/20
Average Daily Volume in Billions:		
Participant—Equities		6
Participant—Options		103
Industry Member—Equities		7
Industry Member—Options		0.31
SIP—Options & Equities		74
Average Total Daily Volume		185
Cumulative Total Events for the Period		5,190
Total Compute Hours for the Period		2,612,082
Storage Footprint at End of Period (Petabytes)		57.47

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 1. Accordingly, the \$1,099,680 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 1. The fee arrangement for FCAT described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, FCAT's activities with respect to the CAT included the following:

- Published iterative drafts of draft Technical Specifications for Phase 2d, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Published iterative drafts of CAIS Technical Specifications, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Facilitated Industry Member reporting of Quote Sent Time on Options Market Maker quotes;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;

• Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;

- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 1. Accordingly, the \$254,998 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 1. The fee arrangement for

Kingland described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

CAT LLC did not incur costs related to change requests during FAM Period 1.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 1 of \$1,684,870 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include: (1) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including separate production and industry test entitlements, and reprocessing of exchange event timestamps; (2) implementation fees; and (3) license fees.

⁵⁰ Note that the volume data described in this table does not include CAIS data.

(f) Legal Costs

The legal costs of \$481,687 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 1.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 1 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to WilmerHale. During FAM Period 1, WilmerHale provided legal assistance to the CAT including with regard to the following:

- Assisted with the development of the CAT funding model and drafted related amendments and fee filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, verbal activity, options market maker quote sent time, TRF linkages, and allocations;
- Provided interpretations related to CAT NMS Plan requirements, including the Financial Accountability Milestone amendment;
- Assisted with compliance with Regulation SCI;
- Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the drafting of the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Assisted with communications and presentations for the industry regarding CAIS;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for Compliance Subcommittee, including with regard to response to OCIE examinations and the annual assessment;
- Provided guidance regarding CAT technical specifications;
- Assisted with third-party vendor agreements; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to Pillsbury. During FAM Period 1, Pillsbury provided legal

assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(g) Consulting Costs

The consulting costs of \$137,209 represent the fees paid to Deloitte as project manager during FAM Period 1. CAT LLC continued to employ Deloitte during FAM Period 1 based on, among other things, their expertise and cumulative experience with the CAT. The fee rates for Deloitte during FAM Period 1 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 1 were paid by CAT LLC to the consulting firm. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 1, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

Although insurance was in effect during FAM Period 1, CAT LLC did not incur costs related to insurance during FAM Period 1.

(i) Professional and Administration Costs

Financial Advisory Firm: Anchin. The professional and administration costs of \$69,077 represent the fees paid to Anchin during FAM Period 1. CAT LLC

continued to employ Anchin during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these type of financial advisory services. The fees for these services during FAM Period 1 were paid by CAT LLC to Anchin. During FAM Period 1, Anchin provided a variety of services, including the following:

- Maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups; and
- Prepared monthly and quarterly financial statements.

(j) Public Relations Costs

The public relations costs of \$7,700 represent the fees paid to Peak Strategies during FAM Period 1. CAT LLC continued to employ Peak Strategies during FAM Period 1 based on, among other things, their expertise and history with the project. The fee rates for this firm were reasonable and in line with market rates for these types of services. The fees for these services during FAM Period 1 were paid by CAT LLC to Peak Strategies. During FAM Period 1, Peak Strategies continued to provide professional communications services to CAT LLC, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). As discussed above, such public

relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(iii) Historical CAT Costs Incurred in Financial Accountability Milestone Period 2

Historical CAT Costs 1 would include costs incurred by CAT LLC and already funded by Participants during Period 2 of the Financial Accountability Milestones ("FAM Period 2"),⁵¹ which covers the period from August 1, 2020–December 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 2 of \$42,976,478. The

Participants would remain responsible for one-third of this cost (which they have previously paid) (\$14,325,493), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$14,325,493) and CEBBs paying one-third (\$14,325,493). The following table breaks down Historical CAT Costs 1 for FAM Period 2 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 2 *
Capitalized Developed Technology Costs **	\$6,761,094
Technology Costs	31,460,033
Cloud Hosting Services	20,709,212
Operating Fees	9,108,700
CAIS Operating Fees	1,590,298
Change Request Fees	51,823
Legal	2,766,644
Consulting	532,146
Insurance	976,098
Professional and administration	438,523
Public relations	41,940
Total Operating Expenses	42,976,478

* The costs described in this table of costs for FAM Period 2 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$1,892,505 incurred during FAM Period 2 have been appropriately excluded from the above table.⁵²

By the completion of FAM Period 2, CAT LLC was required to implement the following with regard to the CAT:

(a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, CustomerID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission.⁵³

CAT LLC completed the requirements of FAM Period 2 by December 31, 2020.

The following describes the costs for each of the categories for FAM Period 2.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 2 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production environments, during the FAM 2 Period. Accordingly, the \$20,709,212 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 2. The fee arrangement for AWS described above with regard to the Pre-FAM

Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the FAM 2 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well as SIP Data, and Other Data, including reference data. In addition, Industry Members began reporting LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 2.⁵⁴

⁵¹ Section 11.6(a)(i)(B) of the CAT NMS Plan.

⁵² As discussed above, with respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized

over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁵³ See definition of "Full Implementation of Core Equity Reporting Requirements" in Section 1.1 of the CAT NMS Plan.

⁵⁴ Note that the volume data described in this table does not include CAIS data.

	Date range: 8/1/20–12/31/20
Average Daily Volume in Billions:	
Participant—Equities	6
Participant—Options	116
Industry Member—Equities	11
Industry Member—Options	0.98
SIP—Options & Equities	80
Average Total Daily Volume	282
Cumulative Total Events for the Period	2,170
Total Compute Hours for the Period	15,660,392
Storage Footprint at End of Period (Petabytes)	114.59

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 2. Accordingly, the \$9,108,700 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 2. The fee arrangement for FCAT described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, FCAT's activities with respect to the CAT included publishing the Technical Specifications for Phase 2d and overseeing the reporting of firm to firm and intrafirm linkages by Industry Members. In addition, FCAT also continued to engage in the following activities during FAM Period 2:

- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the development and implementation of the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data

access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 2. Accordingly, the \$1,590,298 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 2. The fee arrangement for Kingland described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

During FAM Period 2, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 2, CAT incurred costs of \$51,823 related to a change request regarding the addition of functionality for exchange Participants to report rejected messages to the CAT.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 2 of \$6,761,094 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the

CAT, as defined in the agreement between CAT LLC and the Plan Processor; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to separate production and industry test entitlements, market maker reference data, and back-processing of exchange exception logic; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$2,766,644 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 2.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 2 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to WilmerHale. During FAM Period 2, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, allocations, exchange activity, OTQT, initial data validation, error corrections and recordkeeping;
- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs and technical specifications;
- Provided support for the Operating Committee, Compliance Subcommittees, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6 of the CAT NMS Plan;

- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for the Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
- Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
- Provided guidance regarding SRO rule filings for the retirement of systems;
- Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;
- Assisted with third-party vendor agreements (e.g., with regard to Anchin, Grant Thornton and insurance policies);
- Assisted with change requests; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to Pillsbury. During FAM Period 2, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted and filed a proposed amendment to the CAT NMS Plan regarding liability matters. As discussed above, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(g) Consulting Costs

The consulting costs of \$532,146 represent the fees paid to Deloitte as project manager during FAM Period 2. CAT LLC continued to employ Deloitte during FAM Period 2 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 2 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 2 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 2, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;

- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$976,098 represent the fees paid for insurance during FAM Period 2. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$438,523 represent the fees paid to Anchin and Grant Thornton for financial services provided during FAM Period 2.

Financial Advisory Firm: Anchin. CAT LLC continued to engage Anchin during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these types of financial advisory services. The fees for these services during FAM Period 2 were paid by CAT LLC to Anchin. During FAM Period 2, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated [sic] bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;

- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from the Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audit by an independent auditor; and
- Reviewed historical costs from inception.

Accounting Firm: Grant Thornton. CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 2 based on, among other things, its expertise and cumulative knowledge of CAT LLC. CAT LLC continued to believe that Grant Thornton was well qualified for its role and its fee rates were in line with market rates for these accounting services. The fees for these services during FAM Period 2 were paid by CAT LLC to Grant Thornton. During FAM Period 2, Grant Thornton performed a financial statement audit for CAT LLC as an independent accounting firm.

(j) Public Relations Costs

The public relations costs of \$41,940 represent the fees paid to Peak Strategies during FAM Period 2. CAT LLC continued to employ Peak Strategies during FAM Period 2 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 2 were paid by CAT LLC to Peak Strategies. During FAM Period 2, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). As discussed above, such public

relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(iv) Historical CAT Costs Incurred in Financial Accountability Milestone Period 3

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 3 of the Financial Accountability Milestones ("FAM Period 3"),⁵⁵ which covers the period from January 1, 2021–December 31, 2021. Historical CAT Costs 1 would include costs for FAM Period 3 of \$144,415,268. The

Participants would remain responsible for one-third of this cost (which they have previously paid) (\$48,138,423), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$48,138,423) and CEBBs paying one-third (\$48,138,423). The following table breaks down Historical CAT Costs 1 for FAM Period 3 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 3*
Capitalized Developed Technology Costs**	\$10,763,372
Technology Costs	123,639,402
Cloud Hosting Services	94,574,759
Operating Fees	23,106,091
CAIS Operating Fees	5,562,383
Change Request Fees	396,169
Legal	6,333,248
Consulting	1,408,209
Insurance	1,582,714
Professional and administration	595,923
Public relations	92,400
Total Operating Expenses	144,415,268

* The costs described in this table of costs for FAM Period 3 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$5,108,044 incurred during FAM Period 3 have been appropriately excluded from the above table.⁵⁶

By the completion of FAM Period 3, CAT LLC was required to implement the following requirements with regard the CAT:

(a) reporting to the Order Audit Trail System ("OATS") is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from

order origination through order execution or order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)-(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met.⁵⁷

CAT LLC completed the requirements of FAM Period 3 by December 31, 2021. The following describes the costs for each of the categories for FAM Period 3.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 3 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production

environments, during the FAM 3 Period. Accordingly, the \$94,574,759 in technology costs for cloud hosting services represents costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 3. The fee arrangement for AWS described above for the earlier periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During FAM Period 3, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a, Phase 2b, Phase 2c and Phase 2d Industry Member Data (including certain linkages), SIP Data, Other Data, including reference data, and LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 3.⁵⁸

⁵⁵ Section 11.6(a)(i)(C) of the CAT NMS Plan.

⁵⁶ As discussed above, with respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized

over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁵⁷ See definition of "Full Availability and Regulatory Utilization of Transactional Database Functionality" in Section 1.1 of the CAT NMS Plan.

⁵⁸ Note that the volume data described in this table does not include CAIS data.

	Date range: 1/1/21 to 4/25/21	Date range: 4/26/21 to 12/31/21 *
Average Daily Volume in Billions:		
Participant—Equities	9	9
Participant—Options	135	136
Industry Member—Equities	20	19
Industry Member—Options	2	2
SIP—Options & Equities	129	137
Average Total Daily Volume	297	304
Cumulative Total Events for the Period	7,480	5,310
Total Compute Hours for the Period	15,860,304	33,487,318
Storage Footprint at End of Period (Petabytes)	180.22	284.62

* Start of Participant Equities in CAT format and SIP Equities on 4/26/21.

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 3. Accordingly, the \$23,106,091 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 3. The fee arrangement for FCAT described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, FCAT's activities with respect to the CAT included the following:

- Facilitated Phase 2c and Phase 2d testing for Industry Members;
- Oversaw creation of linkages of the lifecycle of order events based on the received data through Phase 2d;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the

use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement with FCAT discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 3. Accordingly, the \$5,562,383 in technology costs for CAIS operating fees represents costs incurred for services provided by Kingland during FAM Period 3. The fee arrangement for Kingland described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs. The full CAIS Technical Specifications were published during FAM Period 3.

(d) Technology Costs—Change Request Fees

During FAM Period 3, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 3, CAT incurred costs of \$396,169 related to change requests, including the following: (1) the addition of functionality for exchange Participants to report rejected messages to the CAT; (2) the migration of MIRS query engine to AWS to reduce operational costs and increase resiliency; and (3) updating the Participant Technical Specifications to allow for two-sided Participant option quote reporting.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 3 of \$10,763,372

include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor, including the transition from equity data received by FINRA pursuant to various regulatory services agreements between FINRA and Participant exchanges to the equity CAT Data, and the completion of the Industry Member Phase 2d options manual and complex orders go-live requirements; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to off-exchange volume concentration, Participant 24-hour trading and an external metastore; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$6,333,248 represent the fees paid for legal services provided by three law firms, WilmerHale, Pillsbury & Covington & Burling LLP ("Covington") during FAM Period 3.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 3 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to WilmerHale. During FAM Period 3, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements, including, for example, verbal activity regarding Phase 2c cutover, error reports, error

corrections, Phase 2d Reporting, unique Order-ID on internal route events, reporting addresses, recordkeeping, and unique CCID for foreign customers;

- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs, CAIS requirements, ADF, and technical specifications;

- Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;

- Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6(c) of the CAT NMS Plan;

- Drafted SRO rule filings related to the CAT Compliance Rule;

- Provided support for Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;

- Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;

- Provided guidance regarding SRO rule filings for the retirement of systems;

- Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;

- Provided assistance with change requests;

- Provided guidance and regulatory support for litigation regarding the response to the SEC's exemptive orders;

- Assisted with communications with the industry, including CAT Alerts and presentations;

- Provided guidance regarding the confidentiality of CAT Data, including third-party information requests;

- Assisted with cost management analysis and proposals; and

- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to Pillsbury. During FAM Period 3, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During this period, Pillsbury advised CAT LLC regarding applicable legal matters, reviewed and responded to comment letters regarding the proposed Plan amendment, participated in meetings with senior SEC staff, responded to comments

submitted following the SEC's April 6, 2021 order instituting proceedings,⁵⁹ and assessed legal matters regarding the SEC's October 29, 2021 order denying the proposed Plan amendment.⁶⁰

Law Firm: Covington. CAT LLC hired Covington for litigation with the SEC regarding certain exemptive orders related to the CAT, including orders issued in December 2020.⁶¹ CAT LLC interviewed this law firm as well as other potential law firms, considering a variety of factors in its analysis for choosing legal assistance, including the relevant expertise and fees of the potential lawyers. CAT LLC approved the engagement of Covington in January 2021. The fee rates for this law firm, which were calculated based on hourly rates, were in line with market rates for specialized services. The legal fees for FAM Period 3 for this firm were paid by CAT LLC to Covington.

After Covington was hired in 2021 through the end of 2021, the firm provided legal assistance regarding the litigation with the SEC regarding the 2020 Orders. These services included researching, drafting, and filing motions to stay the 2020 orders and related materials in proceedings before the SEC, as well as researching, drafting, and filing petitions for judicial review of the 2020 Orders in proceedings before the U.S. Court of Appeals for the D.C. Circuit. Covington oversaw ongoing litigation proceedings on these matters, and also supported WilmerHale with respect to settlement negotiations with the SEC staff regarding the 2020 Orders.

In addition to these services, CAT LLC engaged Covington in November 2021 to provide assistance with respect to the SEC's disapproval of CAT NMS Plan amendments concerning a proposed limitation on liability in the event of a data breach or similar event. Covington provided advice concerning CAT's response to the SEC's disapproval order. This work accounted for a minority of Covington's fees in 2021.⁶²

⁵⁹ Securities Exchange Act Rel. No. 91487 (Apr. 6, 2021), 86 FR 19054 (Apr. 12, 2021).

⁶⁰ Securities Exchange Act Rel. No. 93484 (Oct. 29, 2021), 86 FR 60933 (Nov. 4, 2021).

⁶¹ See Securities Exchange Act Rel. No. 90688 (Dec. 16, 2020), 85 FR 83634 (Dec. 22, 2020); and Securities Exchange Act Rel. No. 90689 (Dec. 16, 2020), 85 FR 83667 (Dec. 22, 2020) (collectively, the "2020 Orders").

⁶² As discussed above with regard to Pillsbury's work on liability matters, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, such activity is a necessary part of the operation of the CAT.

(g) Consulting Costs

The consulting costs of \$1,408,209 represent the fees paid to Deloitte as project manager during FAM Period 3. CAT LLC continued to employ Deloitte during FAM Period 3 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 3 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 3 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 3, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;

- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;

- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;

- Provided support for updating the SEC on the progress of the development of the CAT; and

- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$1,582,714 represent the fees paid for insurance during FAM Period 3. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$595,923 represent the fees paid to Anchin and Grant Thornton for financial services during FAM Period 3.

Financial Advisory Firm: Anchin.

CAT LLC continued to employ Anchin during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for

this firm were in line with market rates for these financial advisory services. The fees for these services during FAM Period 3 were paid by CAT LLC to Anchin. During FAM Period 3, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated [sic] bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Accounting Firm: Grant Thornton. CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 3 based on, among other things, their expertise and cumulative knowledge of CAT LLC. CAT LLC determined that Grant Thornton was well qualified for its role and that its fixed fee rates were in line with market rates for these accountant services. The

fees for these services during FAM Period 3 were paid by CAT LLC to Grant Thornton. During FAM Period 3, Grant Thornton provided audited financial statements for CAT LLC.

(j) Public Relations Costs

The public relations costs of \$92,400 represent the fees paid to Peak Strategies during FAM Period 3. CAT LLC continued to employ Peak Strategies during FAM Period 3 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 3 were paid by CAT LLC to Peak Strategies. During FAM Period 3, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(v) Excluded Costs

Historical CAT Costs 1 would not include three categories of CAT costs ("Excluded Costs"): (1) \$14,749,362 of

costs related to the termination of the relationship with the Initial Plan Processor; (2) \$48,874,937, which are all CAT costs incurred from November 15, 2017 through November 15, 2018; and (3) \$19,628,791, which are costs paid to the the Initial Plan Processor from November 16, 2018 through February 2019 when the relationship with the Initial Plan Processor was concluded. The Participants would remain responsible for 100% of these costs, which total \$83,253,090. CAT LLC determined to exclude these Excluded Costs from Historical CAT Costs 1 because these costs relate to the delay in the start of reporting to the CAT and the conclusion of the relationship with the Initial Plan Processor.⁶³

(a) Costs Related to Conclusion of Relationship With Initial Plan Processor

First, Historical CAT Costs 1 would not include \$14,749,362 of costs related to the conclusion of the relationship with the Initial Plan Processor. Such costs include costs related to the American Arbitration Association, the legal assistance of Pillsbury with regard to the arbitration with the Initial Plan Processor, and the settlement costs related to the arbitration with the Initial Plan Processor. The Participants would remain responsible for 100% of these \$14,749,362 in costs.

(b) Costs Incurred From November 15, 2017 Through November 15, 2018

Second, Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018. CAT LLC determined to exclude all costs during this one-year period of \$48,874,937 from fees charged to Industry Members due to the delay in the start of reporting to the CAT. The Participants would remain responsible for 100% of these \$48,874,937 in costs. The following table breaks down these costs into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Excluded costs for November 15, 2017–November 15, 2018*
Capitalized developed technology costs	\$37,852,083
<i>Technology Costs</i>	
Cloud Hosting Services	
Operating Fees	
CAIS Operating Fees	

⁶³In approving the CAT Funding Model, the Commission states that the proposed exclusion of the first two categories of Excluded Costs "is reasonable in the Commission's view because it would not require all costs incurred by the Participants to be recovered from Industry Members

through the Historical CAT Assessment, specifically excluding those costs related to the delay in the start of reporting to the CAT and costs related to the conclusion of the relationship with the Initial Plan Processor." CAT Funding Model Approval Order at 62663. In addition to the first two

categories of Excluded Costs, CAT LLC is now proposing a third category of Excluded Costs that would exclude all costs paid to the Initial Plan Processor after November 15, 2018.

Operating expense	Excluded costs for November 15, 2017– November 15, 2018 *
Change Request Fees	
Legal	6,143,278
Consulting	4,452,106
Insurance	
Professional and administration	340,145
Public relations	87,325
Total Operating Expenses	48,874,937

* The costs described in this table of Excluded Costs were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

The following provides additional detail regarding the Excluded Costs.

(I) Technology Costs—Cloud Hosting Services, Operating Fees, CAIS Operating Fees and Change Request Fees

CAT LLC did not incur technology costs related to the categories of cloud hosting services, operating fees, CAIS operating fees or change requests during the period from November 15, 2017 through November 15, 2018.

(II) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for the period from November 15, 2017 through November 15, 2018 include capitalizable application development costs of \$37,852,083 incurred in the development of the CAT by the Initial Plan Processor. Such costs include development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Initial Plan Processor. Such costs include costs related to Industry Member technical specifications for orders and transactions, the system security plan, testing and production for Participant CAT reporting, third-party security assessment and response, query portal, onboarding of the Chief Information Security Officer, and ingestion of FINRA TRF data and FINRA data related to halts and corporate actions.

(III) Legal Costs

The legal costs of \$6,143,278 represent the fees paid to WilmerHale for legal services from November 15, 2017 through November 15, 2018. During this period, WilmerHale provided legal assistance to the CAT including with regard to the following:

- Provided legal support for the governance of the CAT, including governance support for the Operating Committee, Advisory Committee,

Compliance Subcommittee, and CAT working groups;

- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan;
- Provided assistance related to CAT security;
- Drafted exemptive requests, including requests related to PII;
- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Provided interpretations of and related to the CAT NMS Plan;
- Provided advice with regard to regulator access to the CAT;
- Assisted with the Plan Processor transition;
- Provided assistance regarding communications with the industry regarding the CAT;
- Provided advice regarding Customer Account Information and PII;
- Provided support for litigation related to SEC exemptive orders; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretative and implementation issues.

(IV) Consulting Costs

The consulting costs of \$4,452,106 represent the fees paid to Deloitte for their role as project manager for the CAT from November 15, 2017 through November 15, 2018. During this period, Deloitte engaged in the following activities with respect to the CAT:

- Implemented program operations for the CAT project;
- Provided governance support to the Operating Committee, including support for Subcommittees and working groups of the Operating Committee (e.g., Compliance Subcommittee, Cost and Funding Working Group, Technical Working Group, Industry Outreach Working Group, Security Working Group and Steering Committee);
- Assisted with cost and funding issues for the CAT, including the development of the CAT funding model

and assistance with loans and the CAT bank account for CAT funding;

- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress.

(V) Insurance

CAT LLC did not incur costs related to insurance during the period from November 15, 2017 through November 15, 2018.

(VI) Professional and Administration Costs

The professional and administration costs of \$340,145 represent the fees paid to Anchin, Exegy and RSM from November 15, 2017 through November 15, 2018.

Financial Advisory Firm: Anchin.

From the commencement of its engagement [sic] in April 2018 through November 15, 2018, Anchin engaged in the following activities with respect to the CAT:

- Developed, updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Addressed accounting and financial matters relating to the transition from

CAT NMS, LLC to Consolidated Audit Trail, LLC, including supporting the dissolution of CAT NMS, LLC;

- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Market Data Provider: Exegy. From July 2018 through November 15, 2018, CAT LLC purchased market data from Exegy (as described in more detail above).

Security Assessment: RSM. From October 2018 through November 15, 2018, CAT LLC incurred costs for RSM's performance of a security assessment (as described in more detail above).

(VII) Public Relations Costs

The public relations costs of \$87,325 represent the fees paid to Sloane from November 15, 2017 through November 15, 2018. From the commencement of its engagement [*sic*] in March 2018 through November 15, 2018, Sloane provided professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, Sloane provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (*e.g.*, congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (*e.g.*, amendments to the CAT NMS Plan).

(c) Costs Paid to Initial Plan Processor From November 16, 2018 Through February 2019

Third, Historical CAT Costs 1 would not include the \$19,628,791 in costs paid to the Initial Plan Processor from November 16, 2018 through February 2019 when CAT LLC's relationship with the Initial Plan Processor concluded. CAT LLC determined that Historical CAT Costs 1 would not include any fees paid to the Initial Plan Processor after November 15, 2017,⁶⁴ which was the

date by which Participants were required to begin reporting to the CAT.⁶⁵ As discussed above, the Participants determined that Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Initial Plan Processor costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Initial Plan Processor costs incurred after November 15, 2018 are the \$19,628,791 in costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these \$19,628,791 in costs.

(C) Historical Recovery Period 1

Under the CAT NMS Plan, the Operating Committee is required to reasonably establish the length of the Historical Recovery Period used in calculating each Historical Fee Rate based upon the amount of the Historical CAT Costs to be recovered by the Historical CAT Assessment, and to describe the reasons for its length.⁶⁶ The Historical Recovery Period used in calculating the Historical Fee Rate may not be less than 24 months or more than five years.⁶⁷ The Operating Committee has determined to establish a Historical Recovery Period 1 of 24 months for Historical CAT Assessment 1.

The Operating Committee determined that the length of Historical Recovery Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans to the Participants in a timely fashion. The Operating Committee determined that 24 months for Historical Recovery Period 1 would establish a fee rate that

services performed by the Initial Plan Processor prior to November 15, 2017. *See* Section 3(a)(10)(E) below.

⁶⁵ The SEC approved the CAT NMS Plan on November 15, 2016, and Participant reporting was required to begin on the first anniversary of this date, November 15, 2017. *See* Section 6.3 of the CAT NMS Plan and CAT NMS Plan Approval Order.

⁶⁶ Section 11.3(b)(i)(D)(I) and Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

⁶⁷ Section 11.3(b)(i)(D)(I) of the CAT NMS Plan. In the CAT Funding Model Approval Order, the SEC stated that "[i]n the Commission's view, it is reasonable for the Operating Committee to establish the length of the Historical Recovery Period to be no less than 24 months and no more than five years." CAT Funding Model Approval Order at 62664.

is lower than other transaction-based fees, including fees assessed pursuant to Section 31.⁶⁸ In addition, in establishing a Historical Recovery Period of 24 months, the Operating Committee recognized that the total costs for Historical CAT Assessment 1 were less than the total costs for 2022 and 2023,⁶⁹ and therefore it would be reasonable and appropriate to recover costs subject to this filing over an approximate two-year period.

The length of the Historical Recovery Period 1 and the reasons for its length are provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.⁷⁰

(D) Projected Total Executed Equivalent Share Volume

The calculation of Historical Fee Rate 1 also requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for Historical Recovery Period 1. Under the CAT NMS Plan, the Operating Committee is required to "reasonably determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each Historical Recovery Period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months." ⁷¹ The Operating Committee is required to base its projection on the prior twelve months, but it may use its discretion to analyze the likely volume for the upcoming year. Such discretion would allow the Operating Committee to use its judgment when estimating projected total executed equivalent share volume if the volume over the prior twelve months was unusual or otherwise unfit to serve as the basis of a future volume estimate.⁷²

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. The Operating Committee has determined to calculate the projected total executed equivalent share volume for the 24 months of Historical Recovery Period 1 by

⁶⁸ As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model at 62682.

⁶⁹ The total CAT costs for 2022 were approximately \$186 million and the total CAT costs for 2023 were approximately \$233 million.

⁷⁰ Section 11.3(b)(iii)(B)(II)(C) of the CAT NMS Plan.

⁷¹ Section 11.3(b)(i)(E) of the CAT NMS Plan.

⁷² CAT Funding Model Approval Order at 62664.

⁶⁴ As discussed below, CAT LLC believes that it is appropriate to recover costs related to the

doubling the executed equivalent share volume for the prior 12 months. The Operating Committee determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has remained relatively constant. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395, the executed equivalent share volume for 2022 was 4,039,821,841,560.31, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6. Accordingly, the projected total executed equivalent share volume for Historical Recovery Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.⁷³

The projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1 and a description of the calculation of the projection is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.⁷⁴

(E) Historical Fee Rate 1

Historical Fee Rate 1 would be calculated by dividing Historical CAT Costs 1 by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1, as described in detail above.⁷⁵ Specifically, Historical Fee Rate 1 would be calculated by dividing \$318,059,819 by 7,961,507,681,810.42. As a result, the Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. Historical Fee Rate 1 is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide the Historical Fee Rate in a fee filing for a Historical CAT Assessment.⁷⁶

(3) Past CAT Costs and Participants

Participants would not be required to pay any fees associated with Historical CAT Assessment 1 as the Participants previously have paid all Past CAT Costs. The CAT NMS Plan explains that:

Because Participants previously have paid Past CAT Costs via loans to the Company, Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs and such other additional Past CAT Costs as reasonably determined by the Operating Committee will be paid by the cancellation of loans made to the Company on a pro rata basis based on the outstanding loan amounts due under the loans.⁷⁷

The CAT NMS Plan further states that "Historical CAT Assessments are designed to recover two-thirds of the Historical CAT Costs."⁷⁸

(4) Monthly Fees

CEBBs and CEBSs would be required to pay fees for Historical CAT Assessment 1 on a monthly basis for the period in which Historical CAT Assessment 1 is in effect.⁷⁹ A CEBB or CEBS's fee for each month would be calculated based on the transactions in Eligible Securities executed by the CEBB or CEBS from the prior month.⁸⁰ Proposed paragraph (a)(1)(A) of the fee schedule would state that each CAT Executing Broker would receive its first invoice in November 2024, and "would receive an invoice each month thereafter in which Historical CAT Assessment 1 is in effect." Proposed paragraph (a)(1)(B) of the fee schedule would state that "Consolidated Audited Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis." In addition, proposed paragraph (b)(1) of the fee schedule states that each CEBB and CEBS is required to pay its CAT fees "each month."

(5) Actual Recovery Period for Historical CAT Assessment 1

The CAT NMS Plan states that, "[n]otwithstanding the length of the Historical Recovery Period used in calculating the Historical Fee Rate, each Historical CAT Assessment calculated using the Historical Fee Rate will remain in effect until all Historical CAT Costs for the Historical CAT Assessment are collected."⁸¹ Accordingly, Historical CAT Assessment 1 will

remain in effect until all Historical CAT Costs 1 have been collected. The actual recovery period for Historical CAT Assessment 1 may be shorter or longer than Historical Recovery Period 1 depending on the actual executed equivalent share volumes during the time that Historical CAT Assessment 1 is in effect.⁸²

(6) Consolidated Audit Trail Funding Fees

To implement Historical CAT Assessment 1, a new section would be added to the Exchange's fee schedule for "Consolidated Audit Trail Funding Fees", and it would include the proposed paragraphs described below.

(A) Fee Schedule for Historical CAT Assessment 1

The CAT NMS Plan states that:

Each month in which a Historical CAT Assessment is in effect, each CEBB and each CEBS shall pay a fee for each transaction in Eligible Securities executed by the CEBB or CEBS 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 reasonably determined pursuant to paragraph (b)(i) of this Section 11.3.⁸³

Accordingly, based on the factors discussed above, the Exchange proposes to add paragraph (a)(1) to the Consolidated Audit Trail Funding Fees section of its fee schedule. Proposed paragraph (a)(1) would state the following:

(A) Each CAT Executing Broker shall receive its first invoice for Historical CAT Assessment 1 in November 2024, which shall set forth the Historical CAT Assessment 1 fees calculated based on transactions in October 2024, and shall receive an invoice for Historical CAT Assessment 1 for each month thereafter in which Historical CAT Assessment 1 is in effect.

(B) Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis. Each month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer ("CEBB") and/or the CAT Executing Broker for the Seller ("CEBS") (as

⁷³ This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

⁷⁴ Section 11.3(b)(iii)(B)(II)(D) of the CAT NMS Plan.

⁷⁵ In approving the CAT Funding Model, the Commission stated that "[t]he calculation of the Historical Fee Rate 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 is reasonable." CAT Funding Model Approval Order at 62664.

⁷⁶ Section 11.3(b)(iii)(B)(II)(A) of the CAT NMS Plan.

⁷⁷ Section 11.3(b)(ii) of the CAT NMS Plan.

⁷⁸ *Id.* In approving the CAT Funding Model, the Commission stated that "[t]he proposed allocation of the Historical CAT Assessment solely to CEBSs and CEBBs, and ultimately Industry Members, is reasonable. The Historical CAT Assessment will still be divided into thirds," as the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made to the Company. CAT Funding Model Approval Order at 62666.

⁷⁹ See Section 11.3(b)(iii)(A) of the CAT NMS Plan.

⁸⁰ See proposed paragraph (a)(1)(B) of the fee schedule.

⁸¹ Section 11.3(b)(i)(D)(II) of the CAT NMS Plan.

⁸² In approving the CAT Funding Model, the Commission stated that, "[i]n the Commission's view, it is reasonable for Industry Members to be charged a Historical CAT Assessment until all Historical CAT Costs for the Historical CAT Assessment are collected." CAT Funding Model Approval Order at 62665.

⁸³ Section 11.3(b)(iii)(A) of the CAT NMS Plan.

applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of \$0.000013 per executed equivalent share.

(C) Historical CAT Assessment 1 will remain in effect until \$212,039,879.34 (two-thirds of Historical CAT Costs 1) are collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time. Consolidated Audit Trail, LLC will provide notice when Historical CAT Assessment 1 will no longer be in effect.

(D) Each CAT Executing Broker shall be required to pay each invoice for Historical CAT Assessment 1 in accordance with paragraph (b).

As noted in the Plan amendment for the CAT Funding Model, “as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee rate.”⁸⁴ Accordingly, proposed paragraph (a)(1)(B) of the fee schedule would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 of \$0.00003994969693072937 by one-third, and rounding the result to 6 decimal places.⁸⁵ The Operating Committee determined to use six decimal places to balance the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

The proposed language in paragraph (a)(1)(A) of the fee schedule would describe when CAT Executing Brokers would receive their first monthly invoice for Historical CAT Assessment 1. Specifically, CAT Executing Brokers would receive their first monthly invoice for Historical CAT Assessment 1 in November 2024 and the fees set forth in that invoice would be calculated based on transactions executed in the prior month, that is, transactions executed in October 2024. The payment for the first invoice would be required within 30 days after the receipt of the first invoice (unless a longer period is

indicated), as described in paragraph (b)(2) of the fee schedule.

Proposed paragraph (a)(1)(A) of the fee schedule also would describe the monthly cadence of the invoices for Historical CAT Assessment 1. Specifically, after the first invoices are provided to CAT Executing Brokers in November 2024, invoices will be sent to CAT Executing Brokers each month thereafter while Historical CAT Assessment 1 is in effect.

Proposed paragraph (a)(1)(B) of the fee schedule would describe the invoices for Historical CAT Assessment 1.

Proposed paragraph (a)(1)(B) of the fee schedule would state that “Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis.” Proposed paragraph (a)(1)(B) of the fee schedule also would describe the fees to be set forth in the invoices for Historical CAT Assessment 1. Specifically, it would state that “[e]ach month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer (“CEBB”) and/or the CAT Executing Broker for the Seller (“CEBS”) (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of \$0.000013 per executed equivalent share.”

Furthermore, proposed paragraph (a)(1)(C) of the fee schedule would describe how long Historical CAT Assessment 1 would remain in effect. It would state that “Historical CAT Assessment 1 will remain in effect until \$212,039,879.34 (two-thirds of Historical CAT Costs 1) are collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time.” This proposed paragraph would further state that “Consolidated Audit Trail, LLC will provide notice when Historical CAT Assessment 1 will no longer be in effect.”

Historical CAT Assessment 1 will be assessed for all transactions executed in each month through the end of the month in which two-thirds of Historical CAT Costs 1 are assessed, and then CAT LLC will provide notice that Historical CAT Assessment 1 is no longer in effect. Since Historical CAT Assessment 1 is a monthly fee based on transaction volume from the prior month, Historical CAT Assessment 1 may collect more than two-thirds of Historical CAT Costs 1. To the extent that occurs, any excess

money collected during the final month in which Historical CAT Assessment 1 is in effect will be used to offset future fees and/or to fund the reserve for the CAT.

Finally, proposed paragraph (a)(1)(D) of the fee schedule sets forth the requirement for the CAT Executing Brokers to pay the invoices for Historical CAT Assessment 1. It would state that “[e]ach CAT Executing Broker shall be required to pay each invoice for Historical CAT Assessment 1 in accordance with paragraph (b).”

(B) Manner of Payment

Paragraph (b)(1) to the “Consolidated Audit Trail Funding Fees” section of its fee schedule describes the manner of payment of Industry Member CAT fees. Paragraph (b)(1) states that “[e]ach CAT Executing Broker shall pay its CAT fees as required pursuant to paragraph (a) each month to the Consolidated Audit Trail, LLC in the manner prescribed by the Consolidated Audit Trail, LLC.” The CAT NMS Plan requires the Operating Committee to establish a system for the collection of CAT fees.⁸⁶ The Plan Processor has established a billing system for CAT fees.⁸⁷ Therefore, the Exchange proposes to require CAT Executing Brokers to pay Historical CAT Assessment 1 in accordance with such system.

(C) Failure To Pay CAT Fees

The CAT NMS Plan further states that:

Participants shall require each Industry Member to pay all applicable fees authorized under this Article XI within thirty (30) days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due (as determined in accordance with the preceding sentence), such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (a) the Prime Rate plus 300 basis points; or (b) the maximum rate permitted by applicable law.⁸⁸

Accordingly, the Exchange previously has added this requirement to the Exchange’s fee schedule. Specifically, paragraph (b)(2) of the fee schedule states:

⁸⁶ Section 11.4 of the CAT NMS Plan.

⁸⁷ The billing process and system are described in CAT Alert 2023-02 as well as the CAT FAQs related to the billing of CAT fees, the Industry Member CAT Reporter Portal User Guide, the FCAT Industry Member Onboarding Guide, the FCAT Connectivity Supplement for Industry Members and the CAT Billing Webinars (dated Sept. 28, 2023, and Nov. 7, 2023), each available on the CAT website.

⁸⁸ Section 11.4 of the CAT NMS Plan.

⁸⁴ CAT Funding Model Approval Order at 62658, n.658.

⁸⁵ Dividing \$0.00003994969693072937 by three equals \$0.00001331656564357646. Rounding \$0.00001331656564357646 to six decimal places equals \$0.000013.

Each CAT Executing Broker shall pay the CAT fees required pursuant to paragraph (a) within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If a CAT Executing Broker fails to pay any such CAT fee when due, such CAT Executing Broker shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of (i) the Prime Rate plus 300 basis points, or (ii) the maximum rate permitted by applicable law.

The requirements of paragraph (b)(2) would apply to Historical CAT Assessment 1.

(7) Historical CAT Assessment Details

The CAT NMS Plan states that:

Details regarding the calculation of a CAT Executing Broker's Historical CAT Assessment will be provided upon request to such CAT Executing Broker. At a minimum, such details would include each CAT Executing Broker's executed equivalent share volume and corresponding fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.⁸⁹

Such information would provide CEBBs and CEBs with the ability to understand the details regarding the calculation of their Historical CAT Assessment.⁹⁰ CAT LLC will provide CAT Executing Brokers with these details regarding the calculation of their Historical CAT Assessments on their monthly invoice for the Historical CAT Assessment.

In addition, CAT LLC will make certain aggregate statistics regarding Historical CAT Assessments publicly available. Specifically, the CAT NMS Plan states that, "[f]or each Historical CAT Assessment, at a minimum, CAT LLC will make publicly available the aggregate executed equivalent share volume and corresponding aggregate fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise on an exchange, and (3) by buy-side transactions and sell-side transactions."⁹¹ Such aggregate

statistics will be available on the CAT website.

Furthermore, CAT LLC will make publicly available on the CAT website the total amount invoiced each month that Historical CAT Assessment 1 is in effect as well as the total amount invoiced for Historical CAT Assessment 1 for all months since its commencement. CAT LLC also will make publicly available on the CAT website the total costs to be collected from Industry Members for Historical CAT Assessment 1. By reviewing statistics regarding how much has been invoiced and how much remains to be invoiced for Historical CAT Assessment 1, Industry Members would have sufficient information to reasonably track how much longer Historical CAT Assessment 1 is likely to be in place.

(8) Implementation Assistance

To assist Industry Members with compliance with the commencement of Historical CAT Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices prior to the commencement of Historical CAT Assessment 1. Specifically, CAT Executing Brokers have received mock invoices based on transaction data each month since November 2023. The mock invoices are in the same form as the actual, payable invoices, including both the relevant transaction data and the corresponding fee. However, no payments have been required in response to such mock invoices; they have been used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data has provided CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended to facilitate the payment of Historical CAT Assessment 1.

(9) Financial Accountability Milestones

The CAT NMS Plan states that "[n]o Participant will make a filing with the SEC pursuant to Section 19(b) of the Exchange Act regarding any Historical CAT Assessment until any applicable Financial Accountability Milestone described in Section 11.6 has been satisfied."⁹² The CAT NMS Plan further states that "in all filings submitted by the Participants to the Commission

under Section 19(b) of the Exchange Act, to establish or implement Post-Amendment Industry Member Fees pursuant to this Article, . . . the Participants shall clearly indicate whether such fees are related to Post-Amendment Expenses incurred during Period 1, Period 2, Period 3, or Period 4."⁹³ As discussed in detail below, all applicable Financial Accountability Milestones for Historical CAT Assessment 1—that is, Period 1, Period 2 and Period 3 of the Financial Accountability Milestones—have been satisfied. Furthermore, as discussed below, this filing clearly indicates that Historical CAT Assessment 1 relates to Post-Amendment Expenses incurred during Periods 1, 2 and 3 of the Financial Accountability Milestones.

(A) Period 1 of the Financial Accountability Milestones

In accordance with Section 11.6(b) of the CAT NMS Plan, Historical CAT Assessment 1 seeks to recover costs that are related to "all fees, costs, and expenses (including legal and consulting fees, costs, and expenses) incurred by or for the Company in connection with the development, implementation and operation of the CAT from the effective date of [Section 11.6 of the CAT NMS Plan] until such time as Full Implementation of CAT NMS Plan Requirements has been achieved"⁹⁴ ("Post-Amendment Expenses") incurred during FAM Period 1. FAM Period 1 began on June 22, 2020, the effective date of Section 11.6 of the CAT NMS Plan, and concluded on July 31, 2020, the date of Initial Industry Member Core Equity and Options Reporting. Section 1.1 of the CAT NMS Plan defines "Initial Industry Member Core Equity and Options Reporting" as:

The reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of both: (a) equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information; and (b) options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants' Quarterly Progress Reports.⁹⁵ As indicated by the Participants' Quarterly Progress Report for the third quarter of

⁸⁹ Section 11.3(a)(iv)(A) of the CAT NMS Plan.

⁹⁰ In approving the CAT Funding Model, the Commission stated that, "[i]n the Commission's view, providing CAT Execut[ing] Brokers information regarding the calculation of their CAT Fees will aid in transparency and permit CAT Execut[ing] Brokers to confirm the accuracy of their invoices for CAT Fees." CAT Funding Model Approval Order at 62667.

⁹¹ Section 11.3(a)(iv)(B) of the CAT NMS Plan. In approving the CAT Funding Model, the Commission stated that "[t]he publication of the aggregate executed equivalent share volume and

aggregate fee is appropriate because it would allow Participants and CAT Executing Brokers a high-level validation of executed volume and fees." CAT Funding Model Approval Order at 62667.

⁹² Section 11.3(b)(iii)(B)(III) of the CAT NMS Plan.

⁹³ Section 11.6(b) of the CAT NMS Plan.

⁹⁴ Section 11.6 of the CAT NMS Plan.

⁹⁵ The Quarterly Progress Reports are available at <https://www.catnmsplan.com/implementation-plan>.

2020,⁹⁶ Initial Industry Member Core Equity and Option Reporting was completed on schedule on July 22, 2020, which is prior to the July 31, 2020 deadline.

Under the FAM Period 1 requirement of Initial Industry Member Core Equity and Options Reporting, Industry Members—excluding Small Industry Members that are not OATS reporters—were required to report two categories of data to the CAT: equities transaction data and options transaction data (both excluding Customer Account Information, Customer-ID, and Customer Identifying Information) by July 31, 2020. Pursuant to exemptive relief provided by the Commission, the Commission authorized the Participants' Compliance Rules to allow core equity reporting for Industry Members (Phase 2a) to begin on June 22, 2020 and core options reporting for Industry Members (Phase 2b) to begin on July 20, 2020.⁹⁷

In adopting the FAMs, the Commission stated that the equities transaction reporting required for FAM Period 1 “is consistent with the functionality that the Participants describe on the CAT NMS Plan website as ‘Production Go-Live for Equities 2a file submission and data integrity validations.’”⁹⁸ The Phase 2a Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order, and includes the following data related to Eligible Securities that are equities:

- All events and scenarios covered by OATS, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions;
- Reportable Events for: (1) proprietary orders, including market maker orders, for Eligible Securities that

are equities; (2) electronic quotes in listed equity Eligible Securities (*i.e.*, NMS stocks) sent to a national securities exchange or FINRA’s Alternative Display Facility (“ADF”); (3) electronic quotes in unlisted Eligible Securities (*i.e.*, OTC Equity Securities) received by an Industry Member operating an interdealer quotation system (“IDQS”); and (4) electronic quotes in unlisted Eligible Securities sent to an IDQS or other quotation system not operated by a Participant or Industry Member;

- Firm Designated IDs (“FDIDs”), which Industry Members must report to the CAT as required by Sections 6.3(d)(i)(A) and 6.4(d)(ii)(C) of the CAT NMS Plan;

- Industry Members would be required to report all street side representative orders, including both agency and proprietary orders and mark such orders as representative orders, except in certain limited exceptions as described in the Industry Member Technical Specifications;

- The link between the street side representative order and the order being represented when: (1) the representative order was originated specifically to represent a single order received either from a customer or another broker-dealer; and (2) there is (a) an existing direct electronic link in the Industry Member’s system between the order being represented and the representative order and (b) any resulting executions are immediately and automatically applied to the represented order in the Industry Member’s system;

- Manual and Electronic Capture Time for Manual Order Events;

- Special handling instructions for the original receipt or origination of an order during Phase 2a; and

- When routing an order, whether the order was routed as an intermarket sweep order (“ISO”).

In Phase 2a, Industry Members were not required to report modifications of a previously routed order in certain limited instances, nor were they required to report a cancellation of an order received from a Customer after the order has been executed.⁹⁹

The Quarterly Progress Report for the third quarter of 2020 states that “Interim Step: Production Go-Live for Equities 2a file submission and data integrity validation (Large Industry Members and Small OATS Reporters)” was completed on June 22, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of “equities transaction data,

excluding Customer Account Information, Customer-ID, and Customer Identifying Information” was completed on June 22, 2020.

In adopting the FAMs, the Commission stated that the options transaction reporting required for FAM Period 1 is “consistent with the functionality that the Participants describe on the CAT NMS Plan website as ‘Production Go-Live for Options 2b file submission and data integrity validations.’”¹⁰⁰ The Phase 2b Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order, and includes the Industry Member Data related to Eligible Securities that are options and related to simple electronic option orders, excluding electronic paired option orders. A simple electronic option order is an order to buy or sell a single option that is not related to or dependent on any other transaction for pricing and timing of execution that is either received or routed electronically by an Industry Member. Electronic receipt of an order is defined as the initial receipt of an order by an Industry Member in electronic form in standard format directly into an order handling or execution system. Electronic routing of an order is the routing of an order via electronic medium in standard format from one Industry Member’s order handling or execution system to an exchange or another Industry Member. An electronic paired option order is an electronic option order that contains both the buy and sell side that is routed to another Industry Member or exchange for crossing and/or price improvement as a single transaction on an exchange. Responses to auctions of simple orders and paired simple orders would be reportable in Phase 2b. Furthermore, combined orders in options would be treated in Phase 2b in the same way as equity representative orders are treated in Phase 2a. A combined order would mean, as permitted by SRO rules, a single, simple order in Listed Options created by combining individual, simple orders in Listed Options from a customer with the same exchange origin code before routing to an exchange. During Phase 2b, the single combined order sent to an exchange must be reported and marked as a combined order, but the linkage to the underlying orders is not required to be reported until Phase 2d.¹⁰¹

The Quarterly Progress Report for the third quarter of 2020 states that “Interim Step: Production Go-Live for Options 2b

⁹⁶ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020) and Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021).

⁹⁷ See Phased Reporting Exemptive Relief Order. Under the CAT NMS Plan as adopted, the Participants were required, through their Compliance Rules, to require their Large Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2018, and to require their Small Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2019. Sections 6.7(a)(v) and (vi) of the CAT NMS Plan. The SEC granted exemptive relief from these provisions of the CAT NMS Plan to allow for the phased implementation of Industry Member reporting via five phases addressing the reporting requirements for Phase 2a Industry Member Data, Phase 2b Industry Member Data, Phase 2c Industry Member Data, Phase 2d Industry Member Data and Phase 2e Industry Member Data.

⁹⁸ Securities Exchange Act Rel. No. 88890 (May 15, 2020), 85 FR 31322, 31330 n.97 (May 22, 2020) (“FAM Adopting Release”).

⁹⁹ Phased Reporting Exemptive Relief Order at 23076–78.

¹⁰⁰ FAM Adopting Release at 31330, n.98.

¹⁰¹ Phased Reporting Exemptive Relief Order at 23078.

file submission and data integrity validations” was completed on July 20, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of “options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information” was completed on July 20, 2020.

As discussed above, the Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from June 22, 2020 through July 31, 2020. The total costs for this period, as discussed above, are \$6,377,343. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBBs paying one-third (\$2,125,781).

(B) Period 2 of the Financial Accountability Milestones

Historical CAT Assessment 1 seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 2. FAM Period 2 began on August 1, 2020, and concluded on December 31, 2020, the date of the Full Implementation of Core Equity Reporting. Section 1.1 of the CAT NMS Plan defines “Full Implementation of Core Equity Reporting” as:

the point at which: (a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability

Milestone is considered complete as of the date identified in the Participants’ Quarterly Progress Reports. As indicated by the Participants’ Quarterly Progress Report for the fourth quarter of 2020,¹⁰² Full Implementation of Core Equity Reporting was completed on schedule by December 31, 2020.

Specifically, the Full Implementation of Core Equity Reporting requires the satisfaction of two prongs. The first prong requires Participants to have fully implemented the first phase of equities transaction reporting for Industry Members (excluding Small Industry Members that are not OATS reporters) at an Error Rate of less than 5%. In addition, equities transaction data produced by the CAT at this stage must also be sufficiently interlinked so as to permit full analysis of an order’s lifecycle across the national market, excluding full linkage of representative orders. As CAT LLC reported on its Quarterly Progress Reports, Phase 2a was fully implemented as of October 26, 2020, including intra-firm, inter-firm, national securities exchange, and trade reporting facilities linkages.¹⁰³ In addition to the reporting of Phase 2a Industry Member Data as described above with regard to FAM Period 1, the following linkage data was added to the CAT as described in the Quarterly Progress Reports for the third and fourth quarter of 2020:

- “Production Go-Live for Equities 2a Intrafirm Linkage validations” was completed on 7/27/2020;¹⁰⁴
- “Production Go-Live for Firm to Firm Linkage validations for Equities 2a (Large Industry Members and Small OATS Reporters)” was completed on October 26, 2020; and
- “Production Go-Live for Equities 2a Exchange and TRF Linkage validations (Large Industry Members and Small OATS Reporters)” was completed on October 26, 2020.

Furthermore, as CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2020, the average overall error rate for Phase 2a Industry Member Data was less than 5% as of December 31, 2020. The average overall error rate was calculated by dividing the compliance errors by processed records.

The second prong of this FAM requires that the equities transaction data collected by the CAT at this stage be made available to regulators through two basic query tools required by the

CAT NMS Plan—a targeted query tool that will enable regulators to retrieve data via an online query screen with a variety of predefined selection criteria, and a user-defined direct query tool that will provide regulators with the ability to query data using all available attributes and data sources.¹⁰⁵ As CAT LLC reported on its Quarterly Progress Reports, the query tool functionality incorporating the data from Phase 2a was available to the Participants and the Commission as of December 31, 2020.¹⁰⁶

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.¹⁰⁷

As discussed above, Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from August 1, 2020 through December 31, 2020. The total costs for this period, as discussed above, are \$42,976,478. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remain [*sic*] two-thirds, with CEBBs paying one-third (\$14,325,492.70) and CEBBs paying one-third (\$14,325,492.70).

(C) Period 3 of the Financial Accountability Milestones

Historical CAT Assessment 1 seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 3. FAM Period 3 began on January 1, 2021, and concluded on December 31, 2021, the date of the Full Availability and Regulatory Utilization of Transactional Database Functionality. Section 1.1 of the CAT NMS Plan

¹⁰⁵ Section 6.10(c)(i)(A) of the CAT NMS Plan requires the Plan Processor to “provide Participants and the SEC with access to all CAT Data stored in the Central Repository” via an “online targeted query tool.” Appendix D, Sections 8.1.1–8.1.3 of the CAT NMS Plan describes the required functionality associated with this regulatory tool. Appendix D, Section 8.2.1 describes the required functionality associated with a user-defined direct query tool that will “deliver large sets of data that can then be used in internal surveillance or market analysis applications.”

¹⁰⁶ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020); Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021); and Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰⁷ Securities Exchange Act Rel. No. 98848 (Nov. 2, 2023), 88 FR 77128, 77129 n.13 (Nov. 8, 2023) (“Settlement Exemptive Order”).

¹⁰² Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰³ For a description of the requirements of Phases 2a, see Phased Reporting Exemptive Relief Order.

¹⁰⁴ Q3 2020 Quarterly Progress Report (Oct. 20, 2021).

defines “Full Availability and Regulatory Utilization of Transactional Database Functionality” as:

the point at which: (a) reporting to the Order Audit Trail System (“OATS”) is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)–(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants’ Quarterly Progress Reports. As indicated by the Participants’ Quarterly Progress Report for the fourth quarter of 2021,¹⁰⁸ Full Availability and Regulatory Utilization of Transactional Database Functionality was completed on schedule by December 31, 2021.

Specifically, the “Full Availability and Regulatory Utilization of Transactional Database Functionality” requires the satisfaction of five prongs. The first prong requires that reporting to the Order Audit Trail System (“OATS”) is no longer required for new orders. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021,¹⁰⁹ FINRA retired OATS effective

September 1, 2021.¹¹⁰ Accordingly, after the retirement of OATS, reporting to OATS was no longer required.

In addition to Phase 2a and Phase 2b Industry Member Data, the second and third prongs of “Full Availability and Regulatory Utilization of Transactional Database Functionality” require Industry Member reporting of Phase 2c Industry Member Data and Phase 2d Industry Member Data. The Phase 2c Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order. That Order states that “Phase 2c Industry Member Data” is Industry Member Data related to Eligible Securities that are equities other than Phase 2a Industry Member Data, Phase 2d Industry Member Data, or Phase 2e Industry Member Data. Specifically, the Phase 2c Industry Member Data includes Industry Member Data that is related to Eligible Securities that are equities and that is related to: (1) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (2) quotes in unlisted Eligible Securities sent to an IDQS operated by a CAT Reporter (reportable by the Industry Member sending the quotes) (except for quotes reportable in Phase 2d, as discussed below); (3) electronic quotes in listed equity Eligible Securities (*i.e.*, NMS stocks) that are not sent to a national securities exchange or FINRA’s Alternative Display Facility; (4) reporting changes to client instructions regarding modifications to algorithms; (5) marking as a representative order any order originated to work a customer order in price guarantee scenarios, such as a guaranteed VWAP; (6) flagging rejected external routes to indicate a route was not accepted by the receiving destination; (7) linkage of duplicate electronic messages related to a Manual Order Event between the electronic event and the original manual route; (8) special handling instructions on order route reports (other than the ISO, which is required to be reported in Phase 2a); (9) quote identifier on trade events; (10) reporting of LTIDs (if applicable) for accounts with Reportable Events that are reportable to CAT as of and including Phase 2c; (11) reporting of date account opened or Account Effective Date (as applicable) for accounts and reporting of a flag indicating the Firm Designated ID type as account or relationship; (12) order effective time for orders that are received by an Industry Member and do not become effective until a later time;

(13) the modification or cancellation of an internal route of an order; and (14) linkages to the customer orders(s) being represented for representative order scenarios, including agency average price trades, net trades, aggregated orders, and disconnected Order Management System (“OMS”)—Execution Management System (“EMS”) scenarios, as required in the Industry Member Technical Specifications.¹¹¹

Phase 2c Industry Member Data also includes electronic quotes that are provided by or received in a CAT Reporter’s order/quote handling or execution systems in Eligible Securities that are equities and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: (1) an equity bid or offer is displayed publicly or has been communicated (a) for listed securities to the ADF operated by FINRA; or (b) for unlisted equity securities to an “interdealer quotation system,” as defined in FINRA Rule 6420(c); or (2) an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing; *i.e.*, no further manual or electronic action is required by the responder providing the quote in order to execute or cause a trade to be executed). With respect to OTC Equity Securities, OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter (other than such an IDQS that does not match and execute orders) are reportable by the Industry Member sending them in Phase 2c. Accordingly, any response to a request for quote or other form of solicitation response provided in a standard electronic format (*e.g.*, FIX) that meets this quote definition (*i.e.*, an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing) would be reportable in Phase 2c.¹¹²

The Phase 2d Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order. “Phase 2d Industry Member Data” is Industry Member Data that is related to Eligible Securities that are options other than Phase 2b Industry Member Data, Industry Member Data that is related to Eligible Securities that are equities other than Phase 2a Industry Member Data or Phase 2c Industry Member Data, and Industry Member Data other than Phase 2e

¹⁰⁸ Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹⁰⁹ *Id.*

¹¹⁰ Securities Exchange Act Rel. No. 92239 (June 23, 2021), 86 FR 34293 (June 29, 2021).

¹¹¹ Phase Reporting Exemptive Relief Order at 23078–79.

¹¹² *Id.* at 23079.

Industry Member Data. Phase 2d Industry Member Data includes with respect to the Eligible Securities that are options: (1) simple manual orders; (2) electronic and manual paired orders; (3) all complex orders with linkages to all CAT-reportable legs; (4) LTIDs (if applicable) for accounts with Reportable Events for Phase 2d; (5) date account opened or Account Effective Date (as applicable) for accounts with an LTID and flag indicating the Firm Designated ID type as account or relationship for such accounts; (6) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (7) the modification or cancellation of an internal route of an order; and (8) linkage between a combined order and the original customer orders. Phase 2d Industry Member Data also would include electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are options and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: a listed option bid or offer which is accessible electronically by customers or other market participants and is immediately actionable (*i.e.*, no further action is required by the responder providing the quote in order to execute or cause a trade to be executed). Accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (*e.g.*, FIX) that meets this definition is reportable in Phase 2d for options.¹¹³

Phase 2d Industry Member Data also includes with respect to Eligible Securities that are options or equities (1) receipt time of cancellation and modification instructions through Order Cancel Request and Order Modification Request events; (2) modifications of previously routed orders in certain instances; and (3) OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter that does not match and execute orders. In addition, subject to any exemptive or other relief, Phase 2d Industry Member Data will include verbal or manual quotes on an exchange floor or in the over-the-counter market, where verbal quotes and manual quotes are defined as bids or offers in Eligible Securities provided verbally or that are provided or received other than via a CAT Reporter's order handling and execution system (*e.g.*,

quotations provided via email or instant messaging).¹¹⁴

The Quarterly Progress Report for the fourth quarter of 2021 states that "Phase 2a was fully implemented as of October 26, 2020;" "Phase 2b was fully implemented as of January 4, 2021;" "Phase 2c was implemented as of April 26, 2021;" and "Phase 2d was fully implemented as of December 13, 2021."¹¹⁵ The Quarterly Progress Reports for 2021 provide additional detail regarding the implementation of these steps including the following:

- "Production Go-Live for Equities 2c reporting requirements (Large Industry Members)" was completed on April 26, 2021;
- "LTID Account Information Reporting Go-Live for Phases 2a, 2b and 2c (Large Industry Members)" was completed on April 26, 2021;
- "FCAT Plan Processor creates linkages of the lifecycle of order events based on the received data through Phase 2d Production Go-Live for Options 2d reporting requirements (Large Industry Members)" was completed on December 13, 2021;
- "Production Go-Live for Options 2d reporting requirements (Large Industry Members)" was completed on December 13, 2021;
- "Production Go-Live for Options 2b reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "Production Go-Live for Equities 2c reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "Production Go-Live for Options 2d reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "LTID Account Information Reporting Go-Live for Phases 2a, 2b, 2c and 2d (Small Industry Members)" was completed on December 13, 2021.¹¹⁶

The third prong of "Full Availability and Regulatory Utilization of Transactional Database Functionality" also imposes an Error Rate requirement of 5% or less. The Quarterly Progress Report for the fourth quarter of 2021 states the average overall error rate was

less than 5% as of December 31, 2021. The average overall error rate was calculated by dividing the compliance errors by processed records.

The fourth prong of "Full Availability and Regulatory Utilization of Transactional Database Functionality" requires that the data collected by the CAT at this stage be made available to regulators through an online targeted query tool and a user-defined direct query tool. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021, the query tool functionality incorporating the data from Phases 2a, 2b, 2c and 2d was available to the Participants and to the Commission as of December 31, 2021.¹¹⁷

The fifth prong requires the requirements of Section 6.10(a) of the CAT NMS Plan to have been met. Section 6.10(a) of the CAT NMS Plan requires the Participants to use the tools described in Appendix D to "develop and implement a surveillance system, or enhance existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository." The Exchange implemented a surveillance system, or enhanced existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository as of December 31, 2021 in accordance with Section 6.10(a) of the CAT NMS Plan.¹¹⁸

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.¹¹⁹

As discussed above, Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from January 1, 2021 through December 31, 2021. The total costs for this period, as discussed above, are \$144,415,268. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$48,138,422.70) and

¹¹⁷ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁸ See Q1 2021 Quarterly Progress Report (Apr. 30, 2021); Q2 2021 Quarterly Progress Report (July 27, 2021); Q3 2021 Quarterly Progress Report (Nov. 1, 2021); Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁹ Settlement Exemptive Order at 77129 n.13.

¹¹⁴ *Id.* at 23079–80.

¹¹⁵ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁶ See Q2 2021 Quarterly Progress Report (July 27, 2021); and Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹³ *Id.*

CEBSs paying one-third (\$48,138,422.70).

(D) Additional Considerations Related to the Financial Accountability Milestones

As discussed above, CAT LLC has satisfied the Financial Accountability Milestones (“FAMs”) for Periods 1 through 3.¹²⁰ As discussed below, none of the circumstances related to NIA Electronic RFQ Responses, the 2023 Verbal Quotes Exemption, the November 2023 Order, or Executing Broker reporting, affect the conclusion that the FAMs for Periods 1 through 3 were satisfied in a timely fashion.

(i) NIA Electronic RFQ Responses

CAT LLC does not believe that the exemptive relief relating to the reporting of electronic responses for quotes (“RFQs”) that are not immediately actionable (“NIA Electronic RFQ Responses”) affect the conclusion that FAMs 1 through 3 have been satisfied. The only reason CAT LLC pursued this relief is because certain Industry Members introduced concerns that NIA Electronic RFQ Responses could be considered “orders” reportable pursuant to Rule 613(j)(8) and some Industry Members were not prepared to report such orders to CAT. Thus, the relief was requested on behalf of Industry Members. CAT LLC itself has not taken any position on whether NIA Electronic RFQ Responses are “orders,” as the definition of “order” is an SEC rule and the trading processes for NIA Electronic RFQ Responses are the Industry Members’, not those of the Participants or CAT LLC. Accordingly, CAT LLC stated in its letter that “Industry Members must determine whether trading interest falls within the definition of an ‘order’ for CAT purposes. To the extent an NIA Electronic RFQ Response is not considered an ‘order’ as defined in Rule 613(j)(8) and the CAT NMS Plan, it would not be reportable to CAT.”¹²¹

Only “orders” as defined in SEC Rule 613(j)(8) are reportable to CAT. There is no agreement across the industry or among regulators as to whether NIA Electronic RFQ Responses are “orders”

reportable to CAT. Certain Industry Members have raised the question as to whether NIA Electronic RFQ Responses are orders, but others have argued that they are not orders under Rule 613(j)(8).¹²² Indeed, members of the Advisory Committee, which CAT LLC relies upon for guidance with regard to Industry Member issues, have not had a definitive view on whether NIA Electronic RFQ Responses are orders. As Rule 613(j)(8) is an SEC rule, CAT LLC believes that only the SEC can provide a definitive determination as to if, and under what circumstances, an NIA Electronic RFQ Response is considered an “order” reportable to CAT. The issue has persisted for some time. As a result, CAT LLC filed an exemptive request regarding NIA Electronic RFQ Responses for clarity on the interpretive issue. As recently as April 2024, Industry Members have re-raised this issue stating that the SEC agrees that it must provide additional guidance on this interpretive issue to resolve the CAT reporting issue for NIA Electronic RFQ Responses:

As further discussed in the prior FIF letters, even if the Commission had the legal authority to require the reporting of NIA RFQ responses to CAT without an amendment to Rule 613, the Commission has not provided guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT. In subsequent discussions with industry members, Commission representatives have agreed that, prior to NIA RFQ responses being reportable to CAT, it would be necessary for the Commission to provide further guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT.¹²³

On May 20, 2024, the Commission granted CAT LLC’s request for exemptive relief from certain CAT reporting requirements pertaining to NIA Electronic RFQ Responses to the extent such responses are considered “orders” reportable pursuant to Rule 613(j)(8).¹²⁴ The Commission, however, did not provide additional guidance regarding the conditions under which NIA Electronic RFQ Responses would be reportable to CAT. The Commission stated in its exemptive order that “[t]o the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for the Financial Accountability Milestones, provided

that any conditions of the exemption are satisfied.”¹²⁵

When the Commission proposed the FAMs, the Participants expressed concern that, “by conditioning the ability of CAT LLC and the Participants to collect Post-Amendment Industry Member Fees on factors dependent on the efforts of Industry Members, the Commission’s proposals inadvertently establish a perverse incentive for Industry Members to devote less than maximum efforts to comply with their obligations related to the CAT as they will pay less fees in such instances.”¹²⁶ The Participants further warned that “Industry Members may request or require unanticipated reporting delays to address Industry Member implementation issues or concerns,” but that, “[f]aced with financial penalties for missed deadlines, the Participants may not be able to fully address legitimate industry concerns or accommodate requests for delays with respect to future deadlines.”¹²⁷ CAT LLC has engaged in good faith to help address NIA Electronic RFQ Responses and other concerns relevant to the ability of Industry Members to meet their CAT reporting obligations. CAT LLC should not be penalized financially for seeking in good faith to resolve a difficult interpretive issue for the benefit of Industry Members.

(ii) 2023 Verbal Quotes Exemption

CAT LLC does not believe that the Commission’s May 19, 2023 order granting temporary exemptive relief relating to certain verbal floor activity and unstructured verbal and electronic upstairs activity (the “2023 Verbal Quotes Exemption”) affects the conclusion that FAMs 1 through 3 have been satisfied. The 2023 Verbal Quotes Exemption, which was issued on May 19, 2023, is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. The relevant exemption for this time period is the Commission’s November 12, 2020 order, which granted relief for the same activity through July 31, 2023 (the “2020 Verbal Quotes Order”).¹²⁸ The Commission has stated that, “to the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not

¹²⁰ In May 2020, the Commission adopted amendments to the CAT NMS Plan that establish four Financial Accountability Milestones and set target deadlines by which these milestones must be achieved. These amendments also reduce the amount of any fees, costs, and expenses that may be recovered from Industry Members if the Participants fail to meet the target deadlines. FAM Adopting Release.

¹²¹ See Letter from Brandon Becker, Chair, CAT NMS Plan Operating Committee to Vanessa Countryman, Secretary, Commission (Feb. 13, 2024) at 2.

¹²² See, e.g., Letter from Howard Meyerson, Managing Director, FIF, to Sai Rao, Counsel for Trading and Markets, Office of the Chair (Apr. 25, 2024).

¹²³ *Id.*

¹²⁴ Securities Exchange Act Rel. No. 100181 (May 20, 2024), 89 FR 45715 (May 23, 2024).

¹²⁵ *Id.* at n.11.

¹²⁶ See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission at 9 (Oct. 28, 2019).

¹²⁷ *Id.* at 10.

¹²⁸ Securities Exchange Act Rel. No. 90405, 85 FR 73544 (Nov. 18, 2020) (the “2020 Verbal Quotes Exemption”).

be included in the requirements for a Financial Accountability Milestone, provided that the conditions of the exemption are satisfied.”¹²⁹ Here, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3.¹³⁰

(iii) November 2023 Order

CAT LLC does not believe that the Commission’s November 2, 2023 order granting relief from certain CAT NMS Plan requirements (the “November 2023 Order”) affects the conclusion that FAMs 1 through 3 have been satisfied. The November 2023 Order is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. As described in the November 2023 Order, the relevant exemptive orders for this time period were issued on December 16, 2020, which also states that “the Commission has determined that the Participants have sufficiently complied with the conditions set forth in the prior Orders and with the technical requirements for Quarterly Progress Reports set forth in section 6.6(c) of the CAT NMS Plan, including for purposes of determining compliance with any applicable Financial Accountability Milestones.”¹³¹ The November 2023 Exemption Order is consistent with the Commission’s repeated statements in the FAM adopting release that it would have “authority to grant exemptive relief from any requirement associated with a particular Financial Accountability Milestone,” citing Section 36 of the Exchange Act and Rule 608.¹³² Similarly, the CAT NMS Plan

expressly contemplates the Commission’s ability to grant exemptive relief from any CAT NMS Plan requirement.¹³³

(iv) Executing Broker Reporting

CAT LLC also completed the requirements of FAM Period 2, including the required linkages, by December 31, 2020. Although Participant exchanges may report the Executing Broker to CAT differently in certain situations, these reporting differences are irrelevant for linkage purposes as the fields used for CAT Executing Broker are not used for linkage.

(10) Additional Support for Reasonableness of Historical CAT Costs

The CAT Funding Model approved by the Commission permits the recovery of reasonable costs in each of the categories of CAT costs sought to be recovered via Historical CAT Assessment 1.¹³⁴ As described in detail above and in further detail below, the CAT costs to be recovered for each category are reasonable. The following discusses in further details how each of the following costs are reasonable: (1) costs incurred prior to the effective date of the CAT NMS Plan; (2) cloud hosting services costs; (3) costs related to funding model filings; (4) costs related to litigation with the SEC regarding the CAT NMS Plan; (5) costs related to the Initial Plan Processor; (6) CAIS implementation costs; (7) public relations costs; (8) legal costs related to the limitation of liability provision in the CAT Reporter agreements; and (9) costs for the Chair of CAT Operating Committee. As discussed in detail below, each of these costs is reasonable and should be recoverable in

accordance with the CAT Funding Model.

(A) Costs Incurred Prior to the Effective Date of CAT NMS Plan

CAT LLC believes that it is reasonable to seek recovery of costs incurred prior to when the CAT NMS Plan became effective in November 2016, such as legal and consulting fees incurred to create the CAT NMS Plan. Rule 613 specifically mandates that the CAT be created, implemented and maintained, and further provides that the CAT NMS Plan include a proposed allocation of estimated costs to fund the creation, implementation and maintenance of the CAT among the Participants (referred to as “plan sponsors”), and between the Participants and Industry Members (referred to as “members of the plan sponsors”).¹³⁵ Consistent with Rule 613, the CAT NMS Plan, as approved by the Commission, specifically authorizes charging Industry Members fees for costs reasonably incurred prior to the date of the approval of the CAT NMS Plan by the Commission in November 2016, including legal and consulting costs. Section 11.1(c) of the CAT NMS Plan states that:

[i]n 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) reasonably incurred by Participants on behalf of the Company prior to the Effective Date in connection with the creation and implementation of the CAT.

Accordingly, the CAT NMS Plan specifically permits the recovery of costs, including legal and consulting costs, reasonably incurred prior to November 2016 in connection with the creation and implementation of the CAT.

Furthermore, the costs incurred to create and implement the CAT prior to the effective date of the CAT NMS Plan (“Pre-Formation Costs”) were reasonable both in scope and amount, in accordance with the requirements of Section 11.1(c) of the CAT NMS Plan. During the four-year period from 2012 to 2016, a total of \$13,842,881 in Pre-Formation Costs were incurred. This is an average of approximately \$3.5 million per year over this period. The Pre-Formation Costs fell into three categories: legal costs, consulting costs and public relations costs. This includes legal costs of \$3,196,434; consulting costs of \$10,589,273; and public relations costs of \$57,174. The legal, consulting and public relations services were performed by WilmerHale, Deloitte

¹²⁹ See, e.g., Securities Exchange Act Rel. No. 89051 (June 11, 2020), 85 FR 36631, 36633 (June 17, 2020). The straightforward reading of the Commission’s statement is that compliance with the conditions of an exemption will be measured as of the deadline for a particular FAM Period.

¹³⁰ As a condition to the 2020 Verbal Quotes Exemption, the Commission required that the Participants provide a written status update on the reporting of these quotes and orders by July 31, 2022, including the estimated costs of reporting these quotes and orders and an implementation plan for the reporting of these quotes and orders. As noted, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3. In any event, on June 3, 2022, the Participants provided the required written status update. See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (June 3, 2022).

¹³¹ *Id.* at 77129 n.12.

¹³² FAM Adopting Release at 31335 (May 22, 2020). Section 36 of the Exchange Act grants the Commission the authority to “conditionally or unconditionally exempt any person, security, or

transaction . . . from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.” 15 U.S.C. 78mm(a)(1). Under Rule 608(e) of Regulation NMS, the Commission may “exempt from [Rule 608], either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanism of, a national market system.” 17 CFR 242.608(e).

¹³³ Section 12.3 of the CAT NMS Plan (“[T]o the extent the SEC grants exemptive relief applicable to any provision of this Agreement, Participants and Industry Members shall be entitled to comply with such provision pursuant to the terms of the exemptive relief so granted at the time such relief is granted irrespective of whether this Agreement has been amended.”)

¹³⁴ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹³⁵ See, e.g., Rule 613(a)(1)(vii)(D) of the CAT NMS Plan.

and Peppercomm, respectively. The selection considerations and fees for these three firms are described in detail above and are described further below. The Pre-Formation Costs are direct costs of CAT, which have been funded entirely by the Participants through non-interest-bearing notes. The Pre-Formation Costs do not include the significant costs incurred by each of the individual Participants in responding to the adoption of Rule 613.

The Pre-Formation Costs are reasonable and appropriate as they reflect the extensive efforts that were necessary to create the CAT NMS Plan as mandated after the SEC's adoption of Rule 613. As described in more detail below, these efforts included, among other things, developing a plan for selecting the Plan Processor, soliciting and evaluating bids, engaging a diverse set of market participants and the SEC in the development of the Plan, interacting with the SEC in their oversight of the development of the Plan, and seeking appropriate exemptive relief to address areas of concern in Rule 613.¹³⁶

(i) Request for Proposal ("RFP")

The Participants determined to utilize an RFP to ensure that potential alternative solutions for creating the Plan could be presented and considered, and that a detailed and meaningful cost-benefit analysis could be performed. The SEC supported the use of an RFP, and approved its use as it is described in extensive detail in the CAT NMS Plan.¹³⁷

In the context of the SEC's adoption of Rule 613, commenters urged the Commission to utilize an RFP process to assist in the planning and design of the NMS plan.¹³⁸ Specifically, the Commission explained:

In this regard, several commenters suggested that the Commission undergo a RFP or request for information ("RFI") process to create and implement a consolidated audit trail. Specifically, FIF urged the Commission to perform a RFP

process "to determine the best technical solution for developing a consolidated audit trail." FIF suggested that the Commission "should outline a set of goals and guiding principles they are striving to achieve as part of the adopted CAT filing and leave the determination of data elements and other technical requirements to [an] industry working group." Similarly, Direct Edge suggested that Commission staff should form and engage in a working group to develop an RFP for publication by the Commission. DirectEdge explained that an RFP process would facilitate the identification of the costs and benefits of the audit trail, as well as the consideration of a wider range of technological solutions. Further, commenters, including Broadridge Financial Solutions, Inc., a technology provider, also requested more specific information about the audit trail system to better assess the Commission's initial cost estimates and to determine the best approach to the consolidated audit trail.¹³⁹

In response to these comments, the Commission modified Rule 613 to require the Participants to address certain important considerations regarding the features and details of the NMS plan and to extend the timeframe for submission of the CAT NMS Plan by the Participants from the 90 days as originally proposed to 270 days, in part, to accommodate a process that would address these considerations.¹⁴⁰ As the SEC noted, "[i]n light of the numerous specific requirements of Rule 613, the Participants concluded that publication of a request for proposal ('RFP') was necessary to ensure that potential alternative solutions to creating the consolidated audit trail can be presented and considered by the Participants and that a detailed and meaningful cost/benefit analysis can be performed, both of which are required considerations to be addressed in the CAT NMS Plan."¹⁴¹

The SEC specifically recognized that the Participants planned to use an RFP when it approved the Selection Plan, and stated that the RFP was a reasonable approach.¹⁴² As the SEC described in its approval order for the Selection Plan, "[t]he Participants filed the [Selection] Plan to govern how the SROs will proceed with formulating and submitting the CAT NMS Plan—and, as part of that process, how to review, evaluate, and narrow down the bids submitted in response to the RFP ('Bids')—and ultimately choosing the plan processor that will build, operate, and maintain the consolidated audit

trail ('Plan Processor')."¹⁴³ After evaluating the Selection Plan, including the use of an RFP process, the Commission stated that it "believes the [Selection] Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail."¹⁴⁴

On February 26, 2013, the Participants published an RFP soliciting bids from parties interested in serving as the plan processor for the CAT. Initially, 31 firms submitted intentions to bid. In the following months, the Participants engaged with potential bidders with respect to, among other things, the selection process, selection criteria, and potential bidders' questions and concerns. On March 21, 2014, the Participants received ten bids in response to the RFP.

(ii) Selection Plan

On September 4, 2013, the Participants filed with the Commission a national market system plan to govern the process for Participant review of the bids submitted in response to the RFP, the procedures for evaluating the bids, and, ultimately, selection of the plan processor (the "Selection Plan").¹⁴⁵ The Commission approved the Selection Plan as filed on February 21, 2014.¹⁴⁶ In approving the Selection Plan, the Commission concluded that "it is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor."¹⁴⁷

The Selection Plan divided the review and evaluation of bids, and the selection of the plan processor, into various stages. Specifically, pursuant to the Selection Plan, a selection committee reviewed all bids and determined which bids contained sufficient information to allow the Participants to meaningfully assess and evaluate the bids. The ten submitted bids were deemed "Qualified Bids," and so passed to the next stage, in which each bidder presented its bids to the Participants on a confidential basis. On July 1, 2014, after conducting careful analysis and comparison of the bids, the Selection Committee voted and selected a shortlist of six eligible bidders. The Selection Committee

¹³⁶ The Participants described in detail the process for drafting the CAT NMS Plan in its original filing of the CAT NMS Plan. See Letter from Mike Simon, on behalf of the Participants of the CAT NMS Plan, to Brent J. Fields, Secretary, Commission (Sept. 30, 2014). A non-exclusive list of filings and activities associated with CAT, including certain pre-2016 filings, are available on the SEC's website: <https://www.sec.gov/divisions/marketreg/rule613-info>.

¹³⁷ See detailed discussion of RFP questions in Appendix C of the CAT NMS Plan, and incorporation of RFP requirements in Appendix D at D-2.

¹³⁸ For example, in its comments on proposed Rule 613, FIF suggested "that the SROs should select the processor through a 'request for proposal.'" Rule 613 Adopting Release at 45785.

¹³⁹ Rule 613 Adopting Release at 45738-39.

¹⁴⁰ Rule 613 Adopting Release at 45739.

¹⁴¹ Securities Exchange Act Rel. No. 71596 (Feb. 21, 2014), 79 FR 11152, 11152 (Feb. 27, 2014) ("Selection Plan Approval Order").

¹⁴² *Id.*

¹⁴³ *Id.* at 11153

¹⁴⁴ *Id.* at 11159.

¹⁴⁵ See Securities Exchange Act Rel. No. 70892 (Nov. 15, 2013), 78 FR 69910 (Nov. 21, 2013).

¹⁴⁶ See Selection Plan Approval Order.

¹⁴⁷ Selection Plan Approval Order at 11160.

determined which shortlisted bidders would be provided the opportunity to revise their bids. After the Selection Committee assessed and evaluated the revised bids, the Selection Committee selected the plan processor via two rounds of voting by the Participants, as described in the Selection Plan.

The Selection Plan established an Operating Committee responsible for formulating, drafting, and filing with the Commission the CAT NMS Plan and for ensuring that the Participants' joint obligations under Rule 613 were met in a timely and efficient manner. In formulating the CAT NMS Plan, the Participants also engaged multiple persons across a wide range of roles and expertise, engaged the consulting firm Deloitte as project manager, and engaged the law firm WilmerHale to serve as legal counsel in drafting the Plan. Within this structure, the Participants focused on, among other things, comparative analyses of the proposed technologies and operating models, development of funding models to support the building and operation of the CAT, and detailed review of governance considerations. Given the complexity and scope of developing the CAT NMS Plan, these efforts were extensive.

When it approved the CAT NMS Plan in 2016, the Commission reiterated its belief that the Selection Plan remains a "reasonable approach," that "the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor," and that "the process set forth in the Selection Plan should be permitted to continue":

In approving the Selection Plan, the Commission stated that the Selection Plan is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor. The Commission also found that the Selection Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail. The Commission believes that the process set out in the Selection Plan for selecting a Plan Processor remains a reasonable approach, which will facilitate the selection of Plan Processor through a fair, transparent and competitive process and that no modifications to the Selection Plan are required to meet the approval standard. . . . In response to the comment that offered support for a specific Bidder, the Commission agrees with the Participants that the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor and thus

believes that the process set forth in the Selection Plan should be permitted to continue.¹⁴⁸

(iii) Engagement With Market Participants and SEC

During the process of developing the CAT NMS Plan, the Participants engaged in extensive and meaningful dialogue with market participants and the SEC. To this end, the Participants created a website to update the public on the progress of the CAT NMS Plan, published a request for comment on multiple issues related to the Plan, held multiple public events to inform the industry of the progress of the CAT and to address inquiries, and formed, and later expanded, a DAG to solicit more input from a representative industry group.¹⁴⁹

The DAG included representatives of Participants and Industry Members and conducted meetings to discuss, among other things, technical and operational aspects the Participants were considering for the Plan. The Participants issued press releases soliciting participants for the DAG, and a wide spectrum of firms was deliberately chosen to provide insight from various industry segments affected by CAT. The DAG meetings included discussions of topics such as option market maker quote reporting, requirements for capturing Customer IDs, timestamps and clock synchronization, reporting requirements for order handling scenarios, costs and funding, error handling and corrections, and potential elimination of systems made redundant by the CAT. From the inception of the DAG through September 2014, the DAG participated in 36 meetings, as well as a variety of DAG subcommittee meetings.

(iv) Request for Exemption From Certain Requirements Under Rule 613

Following multiple discussions between the Participants and both the DAG and the bidders, as well as among the Participants themselves, the Participants recognized that some provisions of Rule 613 would not permit certain solutions to be included in the Plan that the Participants, in coordination with the DAG, determined advisable to effectuate the most efficient and cost-effective CAT. Specifically, "the SROs reached the conclusion that additional flexibility in certain of the minimum requirements specified in Rule 613 would allow them to propose a more efficient and cost-effective approach without adversely affecting

the reliability or accuracy of CAT Data, or its security and confidentiality."¹⁵⁰ Consequently, the Participants submitted a request for exemptive relief from certain provisions of Rule 613 regarding: (1) options market maker quotes; (2) Customer-IDs; (3) CAT-Reporter-IDs; (4) CAT-Order-IDs on allocation reports; and (5) timestamp granularity.¹⁵¹ The Participants filed two supplements to the request for exemptive relief.¹⁵²

After reviewing the exemptive request, the Commission determined that it was appropriate in the public interest and consistent with the protection of investors to grant the requested exemptive relief.¹⁵³ In granting the exemptive relief, the Commission stated:

[T]he Commission is persuaded to provide flexibility in the discrete areas discussed in the Exemption Request so that the alternative approaches can be included in the CAT NMS Plan and subject to notice and comment. Doing so could allow for more efficient and cost-effective approaches than otherwise would be permitted. The Commission at this stage is not deciding whether the proposed approaches detailed below are more efficient or effective than those in Rule 613. However, the Commission believes the proposed approaches should be within the permissible range of alternatives available to the SROs.¹⁵⁴

The Commission further stated that the requested exemptive relief is consistent with the protection of investors. The Commission noted that:

Doing so will provide the public an opportunity to consider and comment on whether these proposed alternative approaches would indeed be more efficient and cost-effective than those otherwise required by Rule 613, and whether such approaches would adversely affect the reliability or accuracy of CAT Data or otherwise undermine the goals of Rule 613. Moreover, if—as the SROs represent—efficiency gains and cost savings would result from including the proposed approaches in the CAT NMS Plan without adverse effects, then the resultant benefits could potentially flow to investors (e.g., lower broker-dealer reporting costs resulting in fewer costs passed on to Customers).¹⁵⁵

The Participants incorporated the exemptive relief into the proposed CAT

¹⁵⁰ Securities Exchange Rel. No. 77265 (Mar. 1, 2016), 81 FR 11856 (Mar. 7, 2016) ("2016 Exemptive Order").

¹⁵¹ Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Jan. 30, 2015).

¹⁵² See Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Apr. 3, 2015); Letter from the SROs to Brent J. Fields, Secretary, Commission (Sept. 2, 2015).

¹⁵³ See 2016 Exemptive Order.

¹⁵⁴ *Id.* at 11857.

¹⁵⁵ *Id.*

¹⁴⁸ See CAT NMS Plan Approval Order at 84737.

¹⁴⁹ See Section D(11) of Appendix C of the CAT NMS Plan.

NMS Plan, which was noticed for comment, and the Commission ultimately approved the CAT NMS Plan with the more efficient and cost-effective alternative approaches described in the exemptive relief. Accordingly, the Participants believe that the costs incurred in developing the exemptive request were critical to the creation of a better CAT than was originally contemplated by Rule 613, and therefore should be recoverable as part of Historical CAT Assessment 1.

(v) Request for Extensions for Filing the CAT NMS Plan

Rule 613(a)(1) under Regulation NMS required the Participants to jointly file the CAT NMS Plan on or before April 28, 2013, less than a year after the adoption of Rule 613. In recognition of the complexity of the project to create the CAT NMS Plan as well as industry interest in limiting or eliminating certain requirements of Rule 613 (*e.g.*, addressing the reporting of options market maker quotes), the Participants requested two extensions of the deadline to file the CAT NMS Plan. The Participants described the need for additional time as follows:

The SROs stated in their Request Letter that they do not believe that the 270-day time period provided for in Rule 613(a)(1) provides sufficient time for the development of the RFP, formulation and submission of bids, and review and evaluation of such bids. The SROs also stated that they believe additional time beyond the 270 days provided for in Rule 613(a)(1) is necessary in order to provide sufficient time for effective consultation with and input from the industry and the public on the proposed solution chosen by the SROs for the creation of the consolidated audit trail at the conclusion of the RFP process and the NMS plan itself.¹⁵⁶

In recognition of the need for additional time to refine the technical description of and requirements for the CAT and to allow for additional evaluation of the proposed cost and funding considerations, the SEC granted two extensions of this deadline.¹⁵⁷ The SEC determined that both extensions were appropriate, in the public interest, and consistent with the protection of investors.¹⁵⁸ In reaching this conclusion, the Commission stated that “it understands that the creation of a consolidated audit trail is a significant

undertaking and that a proposed NMS plan must include detailed information and discussion about many things.”¹⁵⁹ The SEC also noted the following:

This additional time to complete the RFP process should allow the SROs to engage in a more thoughtful and comprehensive process for the development of an NMS plan. In this regard, the Commission notes that the additional time to solicit comment from the industry and the public at certain key points in the development of the NMS plan could identify issues that can be resolved earlier in the development of the consolidated audit trail and prior to filing the NMS plan with the Commission.¹⁶⁰

Given the Commission’s recognition of the reasonableness and value of the extension of the deadline to file the CAT NMS Plan, the Participants believe that the costs incurred in developing the extension request were important to the process of developing the CAT NMS Plan, and therefore should be recoverable as part of Historical CAT Assessment 1.

(vi) Submission and Approval of the CAT NMS Plan

After extensive analyses and discussions with the DAG, bidders, market participants and the SEC staff, the Participants finalized the draft of the CAT NMS Plan and filed the CAT NMS Plan with the SEC on September 30, 2014. Following additional discussions, the Participants filed several amendments to the CAT NMS Plan during 2015 and 2016. With these additional changes, the SEC published the CAT NMS Plan for notice and comment in May 2016.¹⁶¹ Following the comment period, the SEC approved the Plan in November 2016.¹⁶²

(vii) Legal Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include legal costs of \$3,196,434. The legal services were performed by WilmerHale. The selection considerations and fees for WilmerHale were described in detail above. Prior to the creation of CAT LLC, WilmerHale was engaged to represent the consortium of SROs, not the individual Participants. For administrative purposes, FINRA agreed to receive such legal bills, although such costs were shared among the Participants. Therefore, the legal costs incurred with respect to WilmerHale do not include legal costs incurred by the individual Participants. These pre-formation legal costs are described in

detail above and are further described below:

- Analyzed various legal matters associated with the Selection Plan and drafted an amendment to Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the DAG;
- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on the CAT NMS Plan;
- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (*e.g.*, Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG, and governance support during the transition to the new governance structure under the CAT NMS Plan;
- Drafted exemptive requests;
- Provided interpretations related to the CAT NMS Plan;
- Provided support with regard to discussions among the exchanges, FINRA and other third parties, such as Deloitte;
- Provided tax advice with regard to CAT’s status as a tax-exempt organization; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

(viii) Consulting Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include consulting costs of \$10,589,273. The consulting services were performed by Deloitte. The selection considerations and fees for Deloitte were described in detail above. Prior to the creation of CAT LLC, for administrative purposes, Deloitte was engaged by FINRA to provide consulting services related to CAT, but the costs were shared by the consortium of SROs per agreement. Therefore, the consulting costs incurred with respect to Deloitte do not include consulting costs incurred by the individual Participants. The pre-formation consulting costs include the following:

- Established and implemented program operations for the CAT project, including the program management office and workflow design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP

¹⁵⁶ Securities Exchange Act Rel. No. 69060 (Mar. 7, 2013), 78 FR 15771, 15772 (Mar. 12, 2013) (“March 2013 Exemptive Order”).

¹⁵⁷ See March 2013 Exemptive Order; Securities Exchange Act Rel. No. 71018 (Dec. 6, 2013), 78 FR 75669 (Dec. 12, 2013) (“December 2013 Exemptive Order”).

¹⁵⁸ March 2013 Exemptive Order at 15772; December 2013 Exemptive Order at 75670.

¹⁵⁹ March 2013 Exemptive Order at 15772.

¹⁶⁰ *Id.* at 15773.

¹⁶¹ See Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

¹⁶² See CAT NMS Plan Approval Order.

and the bidder evaluation process, and facilitation and consolidation of the Participants' independent reviews;

- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, reviewing technical requirements of other NMS plans, analyzing OATS and CAT requirements, and drafting appendices to the Plan;
- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Provided support for industry outreach sessions, including with regard to program design and agenda development, program support and logistics and coordination; and
- Provided support in fact finding, drafting content and meeting coordination for WilmerHale with regard to the CAT and the development of the CAT NMS Plan.

Such Pre-Formation Costs did not include costs related to the Chair of the CAT NMS Plan Operating Committee, as the CAT NMS Plan had not yet been adopted.

(ix) Public Relations Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include public relations costs of \$57,174. The public relations services were performed by Peppercomm. The selection considerations and fees for Peppercomm are described in detail above. The costs related to Peppercomm were shared among the SROs. Therefore, the public relations costs do not include public relations costs incurred by the individual Participants. The pre-formation public relations costs include services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT.

(B) Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is

appropriate to recover reasonable costs related to cloud hosting services as a part of Historical CAT Assessments. CAT LLC believes that the costs related to cloud hosting services described in detail above are reasonable and appropriate given the strict data processing timelines and storage requirements imposed by the Commission-approved CAT NMS Plan and should be recoverable as a part of Historical CAT Assessment 1.

(i) Reasonableness of AWS Costs Given the Requirements of the CAT NMS Plan

CAT LLC believes that the costs for the cloud hosting services are reasonable, both in terms of the level of the fees paid by CAT LLC for cloud hosting services provided by AWS and the scope of the services performed by AWS for CAT LLC. CAT LLC believes that both the scope and amount of the costs for cloud hosting services are reasonable given the current requirements of the CAT NMS Plan adopted pursuant to Rule 613, including the strict data processing timeline, storage and other technical requirements under the Commission-approved CAT NMS Plan.

CAT LLC believes that the level of fees for the cloud hosting services is reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.

CAT LLC also believes that the scope of services provided by AWS for the CAT are appropriate given the current requirements of the Commission-approved CAT NMS Plan. As described above, the cloud hosting services costs reflect a variety of factors including, among other things:

- *Breadth of Cloud Activities.* AWS was engaged by FCAT, the Plan Processor, to provide a broad range of services to the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS necessary to the CAT include storage services, databases, compute services, and other services (such as networking, management tools and development operations ("DevOps") tools). AWS also was engaged to provide the various environments for CAT, such as the development, performance testing, test and production environments, which are required by the CAT NMS Plan.

- *High Data Volume.* The cost for AWS services for the CAT is a function of the volume of CAT Data. While it is not linear, the greater the amount of CAT Data, the greater the cost of AWS services to the CAT. The data volume

handled by AWS now far exceeds the original volume estimates for the CAT.

- *Plan Requirements.* The cost for AWS services also reflects the technical requirements necessary to meet the stringent performance and other requirements for processing CAT Data. These Plan-dictated processing timelines, storage, testing, security and other technical requirements are significant drivers of AWS costs.

- *Cost Avoidance Efforts.* CAT LLC and FCAT have engaged in ongoing efforts to seek to avoid and minimize AWS costs where permissible under the Plan. Accordingly, these cost avoidance efforts have limited the extent of AWS costs.

In addition, various requirements of the CAT NMS Plan adopted pursuant to Rule 613 contribute to the significant cloud hosting services costs, and that various Plan requirements could be amended or removed without affecting the regulatory purpose of the CAT. Indeed, CAT LLC has repeatedly sought exemptive relief and filed amendments to the CAT NMS Plan, and has even filed suit against the Commission, to seek to revise or eliminate certain costly requirements related to the CAT. However, despite these efforts, absent the Commission granting exemptive relief or approving cost savings amendments to the CAT NMS Plan, CAT LLC, the Participants and Industry Members are all required to comply with such requirements.

(ii) Effect of CAT Design on CAT Costs

(a) Efficient CAT Design

CAT is reasonably designed to efficiently and effectively utilize cloud computing and storage services, given the requirements of the Commission-approved CAT NMS Plan, including requirements related to security, operational reliance and quality assurance, and maintainability.

The Plan Processor uses state-of-the-art software that meets the strict security standards of the CAT NMS Plan. CAT utilizes a big data processing framework that is extensively used by large data processing companies, such as Apple, Meta, Netflix, IBM and Google. As such, it has substantial commercial support and support in the open-source community. It is also well suited for use with regard to iterative types of algorithms and query functions and analytics that the CAT requires, and it provides the heightened security necessary for the CAT.

The development and implementation of the design of CAT is not and has not been static. CAT LLC and the Plan Processor are always evaluating new

innovations and service offerings from AWS and other providers to seek to maximize efficiency and cost avoidance while still satisfying the requirements of the CAT NMS Plan. These efforts have led to substantial savings to date. The cloud hosting costs for 2023 were less than the cloud hosting costs for 2022 by \$8 million despite processing seven trillion more events in 2023 due to the efficiency and cost avoidance efforts for cloud hosting services. For example, when AWS introduced new storage options, FCAT adopted the cost-efficient new storage option after establishing that the new offering would satisfy the security and other standards of the CAT NMS Plan. This change led to millions of dollars of savings in storage costs. Similarly, when AWS introduced a new compute processor, FCAT adopted this new compute processor, which led to millions of dollars in savings in compute costs. However, in other cases, new cloud technology developments could not be implemented in CAT because they would not satisfy the security or other requirements of the CAT NMS Plan.

When evaluating the design of the CAT, it must be kept in mind that the CAT is not a typical commercial technology project. The ability to make use of technology approaches that may lead to cost avoidance is also subject to the restrictive requirements of the CAT NMS Plan, such as processing timeframes, requirements for retention of data versions, query requirements, and security standards. Because such requirements are set forth in the CAT NMS Plan, any modification of such requirements are subject to the time-consuming process of amending the CAT NMS Plan or seeking an exemption from the relevant requirement. For example, CAT LLC recently has filed an amendment to address several of these expensive Plan requirements.¹⁶³

(b) CAT Was Designed To Minimize Industry Member Effort

The CAT System also was designed to minimize the extent to which Industry Members would need to alter their systems to report to CAT. During the design process, Industry Member groups argued that it would make more sense financially for the CAT to accommodate differences in industry systems, than for all Industry Members to change their systems. Moreover, such design choices

would facilitate consistency, uniformity and accuracy in reporting. Requiring the CAT to make such accommodations may increase CAT costs while accommodating CAT Reporters.

Based on the requirements in the CAT NMS Plan and/or in response to industry requests for functionality to be embedded with the Plan Processor to streamline or limit Industry Member system changes, the CAT has been designed to limit the effect on Industry Members. The following provides examples of such accommodations:

- *Industry Member Reporting.* In light of the complexity of Industry Member market activity, the CAT's order reporting and linkage scenarios document for Industry Members is over 800 pages in length, addressing nearly 200 scenarios.¹⁶⁴ The Industry Member Technical Specifications allow for dozens of specific event types, which drive complexity for the Plan Processor, but streamline reporting for Industry Members. Furthermore, the Plan Processor greatly expanded Industry Member linkage requirements to support, among other things, child events and supplemental events, allowing for "stateless as-you-go" and "batch end-of-day" reporting when all data is available. Accordingly, CAT takes on the significant cost and effort of providing the required linkages between CAT events; correspondingly, Industry Members are not required to perform this costly task.

- *File Submission Process.* The CAT was designed to accommodate the varying needs of CAT Reporters with regard to the file submission process. For example, in a 2018 letter, FIF stated that "[t]he SFTP-based submission process is cumbersome, exposes industry members to unnecessary complexity, and puts the burden of support on the CAT Reporter rather than imbedding more functionality into the Plan Processor."¹⁶⁵ Currently, FCAT provides two mechanisms for submitting files: SFTP via a private network, and the Web via Reporter Web Portal.

- *Error Corrections.* The industry also emphasized the need for the CAT to provide error correction tools and functionalities to identify, rectify and re-submit corrections within the required timeframe. For example, FIF stated in a 2018 letter the following:

To be clear, if OATS-like error correction tools are not made available on Day 1, hundreds of firms will be required to create

and test their own tools or obtain vendor alternatives prior to the CAT Go-Live Date. Proprietary tools will require additional system builds, access to and ingestion of CAT data to perform system validation, and testing which will further stress the limited number of subject matter experts ("SMEs") dedicated to the implementation of CAT reporting. Should this occur, inevitably firms (especially small firms who lack the necessary IT staff to write code and develop proprietary systems), may be put in the position of passing onto investors the cost required to build hundreds of redundant systems.¹⁶⁶

CAT provides various tools to help Industry Members identify and rectify errors.

- *Data Ingestion Format.* The industry also recommended that CAT adopt a flexible input format that provides an option for Industry Members to submit data in formats that are already in use to reduce costs and potential reporting errors. For example, FIF argued the following:

FIF CAT WG is not proposing a specific format; rather, we are proposing flexibility of input formats which includes support of existing formats (e.g., OATS, FIX) as well as a baseline specification where all fields are defined, and normalized. The input formats must be clearly and thoroughly defined in Technical Specifications, including FAQs.

Mandating a uniform format for reporting data to the CAT simplifies the task for the Central Repository of consolidating/storing data, but it puts the burden on each CAT Reporter to accurately translate their current (e.g., OATS) reporting information into a uniform CAT interface. However, that is likely to yield more errors because it is very dependent on accurate, complete and timely information (Technical Specifications, FAQs, meta-data, competent CAT help desk) available to CAT Reporters, availability of sophisticated CAT test tools to validate interface protocols, and the skill levels of the estimated 300+ unique CAT Reporters/Submitters during Phase 1 of CAT. Concentrating the responsibility of data conversions with the Central Repository is a reasonable trade-off that should yield fewer errors, and greater accuracy.¹⁶⁷

CAT provides such a flexible input format.

(c) Effect of Initial Plan Processor Design

The costs for cloud hosting services are appropriate and have not been adversely affected by the original design and approaches of the Initial Plan Processor. FCAT's design costs are the result of the requirements of the Commission-approved CAT NMS Plan.

¹⁶³ See, e.g., Securities Exchange Act Rel. No. 99938 (Apr. 10, 2024), 89 FR 26983 (Apr. 16, 2024); Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (Mar. 27, 2024) (proposing amendments to the CAT NMS Plan for \$23 million in annual savings).

¹⁶⁴ See CAT Industry Member Reporting Scenarios v.4.10 (Oct. 21, 2022).

¹⁶⁵ Letter from Janet Early, FIF, to Thesys CAT (Mar. 29, 2018).

¹⁶⁶ Letter from Christopher Bok, FIF, to Jay Clayton, Chair, Commission, at 4 (Dec. 11, 2018).

¹⁶⁷ Letter from Mary Lou Von Kaenel, Managing Director, FIF, to Brent Fields, Secretary, Commission at 92 (July 18, 2016), <https://www.sec.gov/comments/4-698/4698-13.pdf>.

When FCAT took over as the Plan Processor from Thesys, it utilized certain aspects of the technical specifications created by Thesys in its design. However, FCAT has not maintained aspects of the original design that would not be appropriate for the CAT. FCAT revised and enhanced the original technical specifications of the CAT System to increase its efficiency and efficacy, and to ensure its compliance with the CAT NMS Plan. For example, the Initial Plan Processor's approach utilized many more fields than FCAT's approach, which relies on additional linkages. With the additional linkages, the CAT System takes on more of the CAT-related burdens than the Industry Members. Such an approach serves to facilitate consistency, uniformity and accuracy in reporting.

Moreover, FCAT did not utilize the system built by the Initial Plan Processor; it rebuilt the CAT System based on revised technical specifications. For example, the Initial Plan Processor used an on-premises processing approach which was not geared toward the huge amounts of data stored in the CAT, while FCAT adopted a cloud-based solution in response to such data demands.

Furthermore, given the very short timeframe to develop the CAT System and the prior optimization of certain query tools (e.g., Diver) for regulatory use with significant amounts of data, FCAT determined to rely upon certain existing FINRA tools and adapt them for use with the CAT.

(iii) Consideration of AWS Alternatives

CAT LLC continues to support the selection of AWS as the cloud hosting services provider for CAT given the compliance, operational, and security requirements of the CAT. Independent analyses confirm these conclusions, noting that "AWS is an excellent choice for either strategic or tactical use and recommends considering AWS for almost all cloud IaaS or IaaS+PaaS scenarios."¹⁶⁸ AWS provides the following benefits to CAT, among others:

- *Broad Suitability.* AWS has a long track record of successfully serving cloud customers with mission-critical projects.
- *Proven Scalability.* AWS has demonstrated that it is capable of building and delivering services on a large scale.
- *Track Record of Innovation.* AWS continues to rapidly innovate, both in

terms of new domains of capability and at a fundamental level, thereby facilitating innovation for its customers.

- *Resiliency/Dependability.* Another benefit of AWS is its resiliency; it has a strong track record of stable services. As noted in a review of cloud service providers, "[c]ustomers like to have a broad set of options for resilience and for their cloud providers to have a strong track record of stable services (continuously available, without operational quirks). Only AWS fulfills both desires."¹⁶⁹

- *Technical and Customer Support.* AWS consistently provides high-quality technical and customer support and engagement. Given the size, scope and regulatory importance of CAT, customer support and engagement that CAT has with the highest levels of AWS are very important to the success of the CAT.

- *Scale.* AWS is capable of supporting large-scale solutions, which is critical given the size and magnitude of the CAT.

- *Security.* AWS provides the security features necessary for the CAT.

In addition, the nature of the CAT, including the amount of data it must process and the size of its data footprint, does not allow for a multi-cloud solution as this would be cost prohibitive and greatly increase the security boundary and associated risk profile of the CAT. For example, a multi-cloud hosting option would increase costs, complexity, and risk for operations with regard to, for example, DevOps, production support, and networking. Similarly, with regard to security, a multi-cloud solution would increase risk, including with regard to the need for data transfers between cloud providers and the expansion of the security boundary. With regard to labor, a multi-cloud solution would lose economies of scale due to the need to support unique cloud requirements. Accordingly, the use of single-cloud solution continues to provide advantages with regard to cost, complexity, and risk. Indeed, "[t]he best practice is to focus on a single primary strategic provider."¹⁷⁰

Furthermore, if another cloud service provider were determined to be a better match for the CAT at some future date, switching cloud service providers would be a very significant, expensive and time-consuming effort. Such an effort would likely be a 10-to-15-year commitment at a substantial expense. Such a move would require the replication or redesign of the underlying cloud environments (e.g., organizational

setup, identify management, accounts, environments, DevOps tooling likes release management/config management/network management), as the new provider likely would not have the same infrastructure and software. Once that process has been completed, an exabyte of CAT data would need to be securely migrated to the new platform.

(C) Funding Model Filings

CAT LLC believes that the recovery of costs related to the development of the funding model is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

Funding the CAT is a critical aspect of Rule 613 and the CAT NMS Plan. Article XI of the CAT NMS Plan describes in detail the requirements for funding the CAT, and the Participants are required to comply with and enforce compliance with the funding requirements of the CAT NMS Plan, just as with other aspects of the Plan. Accordingly, the development and implementation of a funding model for the CAT is as much a part of the requirements of the CAT NMS Plan as the development and operation of the CAT System. CAT LLC sees no reason to distinguish the efforts to develop a funding model from, for example, efforts to develop the CAT System, in seeking to recover reasonable CAT costs.

Moreover, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that "the reasonably budgeted CAT costs shall include . . . legal costs."¹⁷¹ In addition, the CAT NMS Plan also requires Participants to include in their fee filings "a brief description of the amount and type of the Historical CAT Costs, including . . . legal . . . costs."¹⁷² In keeping with these provisions, this filing provides a brief description of reasonably budgeted legal costs above. These legal costs include costs related to the development of the CAT Funding Model.

In addition, the legal costs incurred for the assistance in developing the CAT Funding Model are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the specialized services were performed by experienced counsel at negotiated rates for such services that reflect both the

¹⁶⁸ See, e.g., Lydia Leong and Adrian Wong, Solution Comparison for Strategic Cloud Integrated IaaS and PaaS Providers (July 28, 2023) ("Strategic Cloud Assessment Article").

¹⁶⁹ Strategic Cloud Assessment Article.

¹⁷⁰ *Id.*

¹⁷¹ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁷² Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

extent of the services and market rates. Moreover, the scope of the legal costs associated with the development of the funding model reflect the complexity of the task in satisfying the detailed requirements of the CAT NMS Plan, the standards of the Exchange Act, and the many perspectives of the different market constituents potentially affected by or interested in the funding model, including Industry Members, Participants and investors. The many and varied comments by market participants on CAT funding over the years demonstrate the complexity of the task.

(D) Costs Related to Litigation With the SEC

CAT LLC believes that the recovery of legal costs related to the litigation with the SEC regarding the CAT NMS Plan is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.¹⁷³ Moreover, CAT LLC initiated such litigation, and incurred the related legal costs, because it was critical to address the Commission's interpretations of the CAT NMS Plan. Among other things, such interpretations threatened to impose unnecessary costs on the CAT, which would be borne by the Participants and Industry Members. Indeed, in response to the litigation, the Commission provided exemptive relief that allowed alternative, more cost-effective approaches to the implementation of the CAT. Specifically, in the 2023 exemptive order, the Commission stated:

The conditional exemptive relief in this Order allows for the implementation of alternative regulatory solutions that continue to advance the regulatory goals that Rule 613 and the CAT NMS Plan were intended to promote, while reducing the implementation and operational costs, burdens, and/or difficulties that would otherwise be incurred by the Participants and Industry Members that must fund the CAT.¹⁷⁴

CAT LLC believes it is reasonable and appropriate to incur costs to limit the need to incur even greater costs due to certain interpretations of the Plan.

In addition, the legal costs incurred during the litigation are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the

specialized services were performed by experienced counsel at market rates for such services. As such, the legal costs related to this litigation incurred during the period covered by Historical CAT Assessment 1 were reasonable.

Finally, Industry Members will directly benefit from the result of the litigation because it has addressed CAT NMS Plan requirements that would have imposed significantly greater costs on the CAT. Accordingly, it is reasonable and appropriate that the costs of such litigation be included in the Historical CAT Costs 1.

(E) Costs Related to the Initial Plan Processor

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017, which was the date by which Participants were required to begin reporting to the CAT, due to the delay in the commencement of reporting to the CAT. As discussed above, the Participants determined to exclude all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Thesys costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Thesys costs incurred after November 15, 2018 are the \$19,628,791 in capitalized developed technology costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these \$19,628,791 in costs.

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. CAT LLC notes that the development and implementation of the CAT System, while unprecedented in scope and design, is like any other large and innovative technology project in that, inevitably, there were adjustments and refinements in the technical approach as the project developed, even with substantial planning efforts and oversight prior to the build. This is even more likely when the project faces a very tight implementation schedule, such as the one imposed by the Commission in Rule 613 and the CAT NMS Plan. However, an adjusted approach does not mean that the funds were not valid expenditures and should not be recovered.

The reasonableness of Thesys costs should be evaluated by the Commission as of the time they were incurred, not in hindsight. As detailed above, the Commission concluded in 2016 that "the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor," and that "the process set forth in the Selection Plan should be permitted to continue."¹⁷⁵ Following this process, the Participants notified the Commission of the selection of Thesys as the Initial Plan Processor on January 17, 2017.¹⁷⁶ At the time, neither the Commission nor the industry argued that the selection of the Initial Plan Processor was unreasonable or otherwise inconsistent with the CAT NMS Plan, nor did they predict the selection would result in unanticipated delays in the implementation of the CAT System. On the contrary, on April 4, 2017, the President of SIFMA wrote that "SIFMA looks forward to commencing work with the SROs and Thesys."¹⁷⁷

As noted in the CAT Funding Model Approval Order, "[i]n Rule 613, the Commission made the determination that the costs of the CAT should be shared by the Participants and Industry Members."¹⁷⁸ If the CAT Funding Model had existed on Day 1, the risk of any unanticipated costs or challenges associated with the Initial Plan Processor would have been fairly and reasonably shared among the Participants and Industry Members on an ongoing basis. Given that the Commission concluded in 2012 that the costs of the CAT would be shared by the Participants and Industry Members, it is not fair or reasonable to determine in hindsight that all of the risk involved in developing the CAT should be allocated entirely to the Participants.

(F) CAIS Implementation Costs

CAT LLC believes that the recovery of CAIS-related costs is appropriate, and that the amount and scope of such costs, as described above, are reasonable, and that the reasonableness of historical costs should be evaluated by the Commission as of the time they were incurred, not in hindsight.

¹⁷⁵ CAT NMS Plan Approval Order at 84737.

¹⁷⁶ Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf>.

¹⁷⁷ Letter from Kenneth E. Bentsen, Jr., SIFMA, to Participants re: Selection of Thesys as CAT Processor (Apr. 4, 2017), <https://www.sifma.org/wp-content/uploads/2017/05/SIFMA-Submits-Comment-Letter-to-SRO-on-the-selection-of-Thesys-as-the-CAT-Processor.pdf>.

¹⁷⁸ CAT Funding Model Approval Order at 62650.

¹⁷³ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁷⁴ Settlement Exemptive Order at 77129–30.

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable CAIS operating costs as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . CAIS operating fees.”¹⁷⁹ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . CAIS operating fees.”¹⁸⁰ In keeping with these provisions, this filing provides a brief description of reasonably budgeted CAIS operating fees.

In addition, CAT LLC determined that the CAIS operating fees described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. The “CAIS Operating Costs” for Historical CAT Assessment 1 total \$9,480,587, with Pre-FAM costs of \$2,072,908, FAM 1 costs of \$254,998, FAM 2 costs of \$1,590,298, and FAM 3 costs of \$5,562,383. As described above, the CAIS operating fees were incurred with regard to two categories of CAIS-related efforts: (1) the acceleration of the reporting of LTIDs; and (2) the development of the CAIS Technical Specifications and the building of CAIS. These two categories of costs are discussed in more detail below.

(i) LTID Reporting

During the period covered by Historical CAT Assessment 1, the CAIS operating costs included costs related to the acceleration of the reporting of LTIDs earlier than originally contemplated during this period at the request of the SEC and in accordance with exemptive relief granted by the SEC.¹⁸¹ As the SEC approved in this exemptive relief, the Participants proposed “to require the reporting of LTIDs to the CAT in Phases 2c and 2d, instead of with the rest of Customer Account Information in Phase 2e, which potentially could result in an earlier elimination of broker-dealer recordkeeping, reporting and monitoring requirements of the Large Trader Rule.”¹⁸² To implement the reporting of LTIDs to the CAT, the following steps were taken during the period covered by Historical CAT Assessment 1:

- After FCAT developed the LTID Technical Specifications, the LTID

Technical Specifications were published on January 31, 2020, with additional updates provided to the LTID Technical Specifications through April 2021.¹⁸³

- The LTID account information testing environment opened on August 24, 2020.
- The LTID account information reporting production environment opened on December 14, 2020.
- CAT Reporters were required to request their production readiness certification for account information related to LTIDs by the deadline of April 9, 2021.
- The LTID account information reporting for Phases 2a, 2b and 2c for Large Industry Members went live on April 26, 2021.
- The LTID account information reporting for Phases 2d for Large Industry Members went live on December 13, 2021.
- The LTID account information reporting for Phases 2a, 2b, 2c and 2d for Small Industry Members went live on April 26, 2021.

Throughout this project, FCAT and CAT LLC worked closely with the industry on LTID and CAIS reporting. Between December 2019 and December 2021, at least 57 checkpoint calls, webinars, and technical working group meetings with industry representatives were hosted to address issues and to educate CAT Reporters regarding LTID and CAIS reporting.¹⁸⁴

The LTID reporting project was successfully completed in a timely fashion, and the fees related to the project were reasonable. Accordingly, CAT LLC appropriately seeks to recover such costs via Historical CAT Assessment 1.

(ii) CAIS Reporting

During the period covered by Historical CAT Assessment 1, FCAT began the development of the full CAIS Technical Specifications and the building of CAIS. The CAIS Technical Specifications were developed during this period as follows:

- Iterative drafts of the CAIS Technical Specifications were published on June 30, 2020, December 1, 2020, and January 1, 2021.¹⁸⁵

¹⁸³ The LTID Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

¹⁸⁴ Such contact points with the industry are described in detail on the Events web page of the CAT website (<https://www.catnmsplan.com/events>).

¹⁸⁵ The CAIS Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

- The full, final CAIS Technical Specifications were published on January 29, 2021.

- Updated versions of the CAIS Technical Specifications were published throughout 2021.¹⁸⁶

As discussed above, FCAT and CAT LLC frequently engaged with the industry regarding the development of CAIS, hosting regular checkpoint calls, webinars, and technical working group meetings with industry representatives to address any issues, including addressing the interplay between Industry Members’ existing customer systems and CAIS, and to educate CAT Reporters regarding LTID and CAIS reporting. Such engagement was critical to the CAIS development process as the CAIS project was unprecedented in terms of its content, scope and complexity.

During this period, FCAT also commenced the building of the CAIS system in accordance with the CAIS Technical Specifications during the period covered by Historical CAT Assessment 1. The CAIS system was ready for industry testing shortly after the end of this period in January 2022.

The CAIS Technical Specifications and the CAIS system, as developed during this period, continue to be in use today. Industry Members have been required to report, and have continuously reported, required data to CAIS on a daily basis since November 7, 2022, consistent with interim reporting obligations. The CAIS system accepts and validates the CAIS data submitted by Industry Members and provides Industry Members with initial feedback on data errors. In light of the unprecedented nature of the CAIS system, certain changes to the system, such as changes related to error corrections and the CAIS regulatory portal, were necessary to finalize CAIS reporting. FCAT worked to address these remaining issues,¹⁸⁷ and, as of May 31, 2024, FCAT indicated that it had achieved the final CAIS reporting milestone. Accordingly, CAT LLC appropriately seeks to recover CAIS operating costs via Historical CAT Assessment 1.

(G) Public Relations Costs

CAT LLC believes that the recovery of public relations costs is appropriate and that the amount and scope of such costs, as described above, are reasonable.

¹⁸⁶ Six updated versions of the CAIS Technical Specifications were published during 2021, in March, May, June, August, October and December.

¹⁸⁷ See, e.g., CAT Q4 2023 Quarterly Progress Report (Jan. 30, 2024) (<https://www.catnmsplan.com/sites/default/files/2024-01/CAT-Q4-2023-QPR.pdf>).

¹⁷⁹ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁸⁰ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁸¹ See Phased Reporting Exemptive Relief Order at 23079–80.

¹⁸² *Id.* at 23078–79, n.70.

The Commission has long recognized that external public relations costs are reasonably associated with creating, implementing and maintaining the CAT. In the CAT NMS Plan Approval Order, the Commission estimated that the Participants had collectively spent approximately \$2,400,000 in preparation of the CAT NMS Plan on external public relations, legal, and consulting costs, and estimated that the Participants would continue to incur external public relations costs associated with maintaining the CAT upon approval of the CAT NMS Plan.¹⁸⁸

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for public relations services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . public relations costs.”¹⁸⁹ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . public relations costs.”¹⁹⁰ In keeping with these provisions, a brief description of reasonable public relations costs are described above.

In addition, CAT LLC determined that the public relations costs described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. The services performed by the public relations firms through 2021 were limited in scope to assist CAT LLC, which has no employees of its own, to be better positioned to understand and address CAT matters to the benefit of all market participants and to communicate on important CAT topics with the public. In addition, the costs for these services were appropriately limited. During the 10-year period covered by Historical CAT Assessment 1, the average cost per year for these services was approximately \$36,000.

(H) Legal Costs Related to the Limitation of Liability Provision in CAT Reporter Agreements

CAT LLC believes that the recovery of legal costs related to the limitation of liability provision, including costs related to the proceedings before the SEC and costs related to the proposed amendment to the Consolidated Audit Trail Reporter Agreement and the Consolidated Audit Trail Reporting

Agent Agreement (the “Reporting Agreements”) is appropriate and that the amount and scope of such costs as described above are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.¹⁹¹ In addition, CAT LLC determined that the legal costs incurred for the assistance with regard to the limitation of liability provisions are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1.

Moreover, it is critical that CAT LLC, which has no employees of its own, have the ability to fund a legal defense in litigation and other legal proceedings against it. In response to CAT LLC requiring Industry Members to agree to the limitation of liability provision to submit data to the CAT, SIFMA filed an application for review of actions taken by CAT LLC and the Participants pursuant to Sections 19(d) and 19(f) of the Exchange Act. Contemporaneously with the filing of this proceeding, SIFMA moved for a stay of the requirement that Industry Members sign a Reporter Agreement, or in the alternative, asked the Commission to further delay the launch of CAT reporting on June 22, 2020. CAT LLC must have the resources to defend itself from litigious actions by others, like these.

Although a limitation of liability provision ultimately was not adopted as proposed, it was a reasonable provision to propose for the CAT Reporter Agreements, given that such provisions are in accordance with industry norms. Limitations of liability are ubiquitous within the securities industry and have long governed the economic relationships between self-regulatory organizations and the entities that they regulate. For example, U.S. securities exchanges have adopted rules to limit their liability for losses that Industry Members incur through their use of exchange facilities.¹⁹² Similarly, FINRA’s former order audit trail, OATS, which has functioned as an integrated audit trail of order, quote, and trade data for equity securities, required FINRA members to acknowledge an agreement that includes a limitation of liability provision.¹⁹³ In addition, such a

provision was intended to ensure the financial stability of the CAT. Accordingly, it was reasonable for CAT LLC to propose the use of such a provision.¹⁹⁴

Furthermore, as described above, the specialized services were performed by experienced counsel at market rates for such services. Accordingly, the legal costs for the efforts related to the limitation of liability provision were reasonable.

(I) Costs for the Chair of CAT Operating Committee

CAT LLC believes that the recovery of consulting costs related to the Chair of the CAT Operating Committee is appropriate and that the amount and scope of such costs are reasonable.

As a preliminary matter, the selection of the Chair of the Operating Committee complies with the requirements of Section 4.2 of the CAT NMS Plan. The initial Chair that served during the period covered by Historical CAT Assessment was designated by a Participant as the Participant’s alternate voting member. Accordingly, the Chair is a representative of the Participants, as required by the CAT NMS Plan.

In addition, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for consulting as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . consulting . . .” costs.¹⁹⁵ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . consulting”¹⁹⁶ costs. In keeping with these provisions, a brief description of reasonable consulting costs is included in this filing, and such reasonable consulting costs include the costs related to the Chair position.

The Participants determined that the position of the Chair was a critical role for the implementation of the CAT, and an independent Chair would appropriately consider and address the views of each of the Participants. The Participants also determined that it was important to have a Chair with a strong

terms—including its limitation of liability provision—every time they access FINRA’s OATS system to report trade information (*i.e.*, repeatedly over the course of a trading day for many Industry Members).

¹⁹⁴ See Letter from Michael Simon, Chair, CAT Operating Committee, to Vanessa Countryman, Secretary, Commission (Dec. 18, 2020).

¹⁹⁵ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁹⁶ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁸⁸ CAT NMS Plan Approval Order at 84917–18.

¹⁸⁹ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁹⁰ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁹¹ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁹² See, e.g., NASDAQ Equities Rule 4626.

¹⁹³ FINRA Rule 1013(a)(1)(R) requires all applicants for FINRA Membership to acknowledge the FINRA Entitlement Program Agreement and Terms of Use, which applies to OATS. Industry Members click to indicate that they agree to its

background regarding issues related to the regulatory obligations of self-regulatory organizations, including their obligations under national market system plans. The compensation paid to the Chair is appropriate for a person with such background and skills. The average annual amount paid to the Chair from 2017 through the end of FAM 3 was \$292,733.30. Separate from the Chair, CAT LLC relies upon a Leadership Team of representatives of the SROs to oversee the day-to-day implementation of the CAT NMS Plan. CAT LLC does not compensate any member of the Leadership Team.

(11) Fee Implementation Assistance for Industry Members

(A) Reconciliation of CAT Invoices

(i) Reconciliation of CAT Invoices to Underlying Trades Provided by CAT

CAT LLC understands that there are three types of reconciliation processes related to the invoices:

- *Reconciliation of CAT Invoices to Underlying Trades:* Reconciling the CAT invoice amount to the underlying trades provided by CAT;
- *Matching Trades to Books and Records:* Providing the means to match the underlying trades provided by CAT with CAT invoices to other books and records independently maintained by individual CAT Reporters (e.g., exchange trade journals/acknowledgements) and data sources of self-regulatory organizations independent of CAT; and
- *Order Originator Identification:* Providing the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices, which would facilitate firms' ability to pass through CAT Fees to their customers.

As discussed further below, CAT LLC only considers the first type of process to be a "reconciliation" and the only type of process that is required under the CAT NMS Plan. CAT LLC provides the means to reconcile the CAT invoice amount to the underlying trades provided by CAT.

The CAT NMS Plan does not require CAT LLC to facilitate the second type of process: matching underlying trades for a CAT invoice with a firm's internal books and records. CAT LLC has access only to the underlying trades provided by CAT; it does not have access to a firm's internal books and records. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying

trades with their own books and records.

The CAT NMS Plan also does not require CAT LLC to provide the ability to identify the order originator for the underlying trades for the CAT invoices. Accordingly, the billing guidance and processes do not provide CAT Reporters with the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices. CAT LLC has been working closely with CAT Reporters to explain its billing approach and to address any outstanding billing questions. But, it should not be lost that CAT LLC provides information sufficient to allow CAT Reporters to reconcile CAT invoice amounts with the underlying trades provided by CAT LLC.

(ii) Match the Underlying Trades Provided by CAT With CAT Invoices to Firms' Internal Books and Records Independent of CAT

The CAT NMS Plan does not require CAT LLC to facilitate the matching of underlying trades for a CAT invoice with a firm's internal books and records, which may consist of trading data from various sources external to CAT. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying trades with their own books and records.

In this regard, it is important to recognize that CAT LLC has developed a billing approach that greatly improves upon existing billing practices for similar regulatory fees (e.g., fees related to Section 31). Accordingly, with the additional information voluntarily provided by CAT LLC, CAT Reporters generally will have sufficient information to match their underlying trades provided by CAT with their own internal books and records that are independent of CAT or to SRO data that is independent of CAT data. However, CAT LLC emphasizes that providing such additional information is not required by the CAT NMS Plan.

To facilitate the introduction of CAT fees, CAT LLC has worked with FCAT to develop an approach to CAT billing that is consistent with existing billing constructs used with regard to Section 31-related sales values fees, subject to certain enhancements. Under this billing approach, FCAT is providing additional linkage elements, not necessarily provided in the Section 31-sales value fee context, to facilitate CAT Reporters' ability to match the underlying trades provided by CAT

with their internal books and records and to reduce the complexity of that process. Specifically, FCAT is providing various key elements of the trade itself, such as the tradeID and branch sequence,¹⁹⁷ to CAT Reporters in the trade billing details provided with their CAT invoices ("Additional Trade Details"). As a result, CAT Reporters now have numerous alternative methods for matching a trade with their internal books and records where they previously did not have such matching methods in other fee contexts.

With the Additional Trade Details, CAT LLC and FCAT believe that the overwhelming majority of underlying trades provided by CAT bills can be matched with a CAT Reporter's internal books and records. CAT LLC recognizes that there may be certain cases in which such matching is more difficult given various firm-specific considerations, but believes that such instances are significantly more limited than with regard to the SRO fees charged in relation to Section 31.¹⁹⁸ By providing Additional Trade Details that are not available in other fee contexts, FCAT enhances the Industry Members' ability to match the underlying trades provided with CAT invoices with books and records and SRO data, both of which are independent of CAT data.

(iii) CAT LLC Is Not Required To Facilitate CAT Reporters' Ability To Pass Through Fees to Their Customers

Similar to other regulatory fees, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Accordingly, Historical CAT Assessment 1 does not address the process by which any CAT Reporters may pass through the fee to their

¹⁹⁷ See CAT Technical Specifications for Billing Trade Details; Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>); CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

¹⁹⁸ For years, broker-dealers have faced similar reconciliation issues with regard to SRO fees related to Section 31. Broker-dealers have responded to this issue in the Section 31 context by exercising their discretion as to whether and the manner and extent to which they pass on those fees (e.g., by rounding up its fees to the nearest cent, or decide to charge for, or not charge for, certain transactions, or assess a specific fee or incorporate the costs into other fee programs). See, e.g., Securities Exchange Act Rel. No. 49928 (June 28, 2004), 69 FR 41060, 41072 (July 7, 2004) (noting that broker-dealers may "over-collect" Section 31-related fees charged to their clients due to rounding practices, and double-counting with regard to certain transactions).

customers. Likewise, the CAT billing approach provided by the Plan Processor is designed to address the needs of CAT Reporters with regard to the reconciliation of CAT invoices with the underlying trades provided by CAT LLC with the invoices; they are not designed to address issues related to any pass-through fees. Accordingly, facilitating CAT Reporters' ability to pass through fees to their clients is outside the scope of this fee filing. Nevertheless, as described below, CAT LLC and the Plan Processor have expended significant efforts to provide technical assistance to Industry Members regarding the implementation of Historical CAT Assessment 1, including providing Additional Trade Details that provide significant details about each underlying trade.

(a) Originating Brokers Versus Executing Brokers

In its approval of the CAT Funding Model, the Commission approved charging CAT fees to the CAT Executing Broker, rather than the originating broker. This fee filing must comply with the requirements of the CAT Funding Model, and, therefore, charges the Historical CAT Assessment 1 to CAT Executing Brokers.

Moreover, charging originating brokers would introduce significant complexity to the billing process from the CAT's perspective, and would increase the costs of implementing CAT fees. Charging the CAT Executing Broker is simple and straightforward, and leverages a one-to-one relationship between billable events (trades) and billable parties, similar to other transaction-based fees. In contrast, for a single trade event, there may be many originating brokers, and each trade must be broken down on a pro-rata basis, to account for one or more layers of aggregation, disaggregation, and representation of the underlying orders. While CAT is indeed designed to capture and unwind complex aggregation scenarios, the data and linkages are structured to facilitate regulatory use, and not a billing mechanism that assesses fees on a distinct set of executed trades; it is not simply a matter of using existing CAT linkages. Furthermore, charging originating brokers would implicate issues related to lifecycle linkage rates, and issues related to corrections, cancellations and allocations, while charging CAT Executing Brokers would avoid such issues.

(b) Identification of Order Originator for Underlying Trades

As noted, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT Fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Nevertheless, the Additional Trade Details provided with regard to the underlying trades on CAT invoices may assist with this process. Like with Section 31-related sales value fees, however, it is not always possible to trace every fee on a transaction back to the originating party. Industry Members have faced these issues under Section 31-related sales value fees for many years.¹⁹⁹ However, with the Additional Trade Details provided under the CAT billing approach, in many cases, CAT Reporters will be able to identify the order originator for the underlying trades provided by CAT with CAT invoices. In some cases, CAT LLC believes that certain issues related to certain types of market activity may implicate CAT Reporters' ability to identify the order originator for a limited set of underlying trades for the CAT invoices. Although CAT LLC does not believe that it is required to address these issues, CAT LLC and FCAT have been carefully researching and analyzing these types of issues as they are identified, and have been working voluntarily to assist CAT Reporters with these issues as necessary and when possible. In addition, CAT LLC intends to continue to provide CAT Reporters with billing guidance through FAQs, CAT Alerts and Helpdesk responses to address outstanding billing questions.

(B) Significant Technical Assistance

CAT LLC has worked with FCAT to provide significant technical assistance to Industry Members to allow the Industry Members to understand how Historical CAT Assessment 1 will be implemented and billed, including webinars, CAT alerts, mock invoices, and responses to questions posed to the FCAT Help Desk.

• *Technical Specifications and Scenarios.* CAT LLC has provided

¹⁹⁹ "FINRA charges a Regulatory Transaction Fee ("RTF") to industry members to reimburse FINRA for the Section 31 fees that FINRA pays to the Commission. FINRA does not currently provide industry members with the data that industry members require for proper reconciliation of RTF fees. This has been a major problem for the industry for many years." Letter from Howard Meyerson, Managing Director, FIF, to Robert Cook, Chief Executive Officer, FINRA at 2 (Dec. 15, 2023) (<https://fif.com/index.php/working-groups/category/271-comment-letters?download=2820:fif-letter-to-finra-on-pass-through-of-finra-cat-fees&view=category>).

detailed technical documentation for CAT billing, including (1) technical specifications, which describe the CAT Billing Trade Details Files associated with monthly CAT invoices, including detailed information about data elements and file formats as well as access instructions, network and transport options;²⁰⁰ (2) trade details schemas;²⁰¹ and (3) CAT billing scenarios.²⁰²

• *Industry Webinars.* CAT LLC has hosted two industry webinars specifically dedicated to CAT billing. The first webinar, hosted on September 28, 2023, discussed the operational implementation of the CAT Reporter billing process.²⁰³ The second webinar, hosted on November 7, 2023, provided (1) a demonstration of the CAT Reporter Portal and how to access CAT billing documents, including CAT invoices; and (2) additional information on underlying trade details in relation to the CAT Reporter billing process and an overview of the CAT Contact Management System.²⁰⁴ 485 participants and 394 participants attended the two webinars, respectively.

• *CAT Alert.* CAT LLC has published a detailed CAT Alert that describes how FCAT, as the Plan Processor acting on behalf of CAT LLC, will calculate applicable fees, issue invoices to and collect payment from CAT Executing Brokers.²⁰⁵

• *Frequently Asked Questions (FAQs).* CAT LLC also has continued to engage with the industry on billing issues by making responses to billing FAQs available on the CAT website. The FAQs address a broad range of frequently asked questions, including, for example, which Industry Members will receive invoices, how fees are calculated, when and how fees are required to be paid, how to access invoices, and how to update the billing contact. To date, responses to 27 FAQs are available on the CAT website, and

²⁰⁰ CAT Technical Specifications for Billing Trade Details, Version 1.0 r1 (Dec. 8, 2023) (https://catnmsplan.com/sites/default/files/2023-12/12.07.2023-CAT-Technical-Specifications-for-Billing-Trade-Details-v1.0r1_CLEAN.pdf).

²⁰¹ Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>).

²⁰² CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

²⁰³ CAT Billing Webinar, Part 1 (Sept. 28, 2023) (<https://www.catnmsplan.com/events/part-1-cat-billing-webinar>).

²⁰⁴ CAT Billing Webinar, Part 2 (Nov. 7, 2023) (<https://www.catnmsplan.com/events/part-2-cat-billing-webinar>).

²⁰⁵ See CAT Alert 2023-02 (Oct. 12, 2023) (<https://www.catnmsplan.com/sites/default/files/2023-10/10.12.23-CAT-Alert-2023-02.pdf>).

CAT LLC will provide additional responses to FAQs as warranted.²⁰⁶

- *Mock Invoices.* To assist Industry Members with compliance with the commencement of Historical CAT Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices for Historical CAT Assessment 1 since December 2023 for billable activity occurring in November 2023. The mock invoices are in the same form as the actual, payable invoices, including both the relevant transaction data and the corresponding fee (as originally contemplated). However, no payments are required in response to such mock invoices; they are to be used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data provides CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended to facilitate the payment of Historical CAT Assessment 1. For the November, December, and January billing periods, FCAT has generated trade detail files for 569 distinct firms that are CAT Executing Brokers. As such, CAT Reporters have actively engaged in the billing process via the mock invoices.

- *Help Desk Assistance.* CAT LLC also provides detailed, individualized assistance to Industry Members regarding CAT fees and the billing process through the FCAT Help Desk.²⁰⁷ For example, the Help Desk has assisted with 406 cases related to the billing of CAT fees from July 2023 through March 2024.

By providing such detailed and sustained assistance to Industry Members regarding CAT fees and billing, CAT LLC has successfully addressed questions raised by Industry Members regarding the CAT fees and billing processes.

(C) Ample Preparation Time

CAT LLC has provided Industry Members with ample time to comply with the implementation of Historical CAT Assessment 1. CAT LLC originally proposed issuing the first invoices for Historical CAT Assessment 1 in

December 2023 based on transactions in Eligible Securities in November 2023. In consideration of the feedback about the need for additional time to implement the new fee, CAT LLC pushed back this timeline by four months, proposing to issue the first Historical CAT Assessment 1 in April 2024 based on transactions in March 2024.²⁰⁸ This filing pushes this timeline back even further for implementing Historical CAT Assessment 1, proposing to issue the first invoices for Historical CAT Assessment 1 in November 2024 based on transactions in Eligible Securities in October 2024. Moreover, as discussed above, during these additional months, FCAT has been working closely with Industry Members to provide guidance regarding their mock bills and reconciliation efforts related thereto.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of the Exchange Act. The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,²⁰⁹ which requires, among other things, that the Exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and not designed to permit unfair discrimination between customers, issuers, brokers and dealers. The Exchange also believes that the proposed rule change is consistent with the provisions of Section 6(b)(4) of the Act,²¹⁰ because it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(8) of the Act,²¹¹ which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. These provisions also require that the Exchange be "so organized and [have] the capacity to be able to carry out the purposes" of the Act and "to comply, and . . . to enforce compliance by its members and persons associated with its members," with the

provisions of the Exchange Act.²¹² Accordingly, a reasonable reading of the Act indicates that it intended that regulatory funding be sufficient to permit an exchange to fulfill its statutory responsibility under the Act, and contemplated that such funding would be achieved through equitable assessments on the members, issuers, and other users of an exchange's facilities.

The Exchange believes that this proposal is consistent with the Act because it implements provisions of the Plan and is designed to assist the Exchange in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan "is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act."²¹³ To the extent that this proposal implements the Plan and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

The Exchange believes that the proposed fees paid by the CEBBs and CEBs are reasonable, equitably allocated and not unfairly discriminatory. First, the Historical CAT Assessment 1 fees to be collected are directly associated with the costs of establishing and maintaining the CAT, where such costs include Plan Processor costs and costs related to technology, legal, consulting, insurance, professional and administration, and public relations costs. The Exchange has already incurred such development and implementation costs and the proposed Historical CAT Assessment 1 fees, therefore, would allow the Exchange to collect certain of such costs in a fair and reasonable manner from Industry Members, as contemplated by the CAT NMS Plan.

The proposed Historical CAT Assessment 1 fees would be charged to Industry Members in support of the maintenance of a consolidated audit trail for regulatory purposes. The proposed fees, therefore, are consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business operations. The proposed fees would not cover Exchange services unrelated to the CAT.

²⁰⁶ See CAT Billing FAQs, Section V of CAT FAQs (https://www.catnmsplan.com/faq?search_api_fulltext=&field_topics=271&sort_by=field_faq_number).

²⁰⁷ The CAT NMS Plan requires that the Plan Processor "staff a CAT help desk, as described in Appendix D, CAT Help Desk, to provide technical expertise." Section 6.10(c)(vi) of the CAT NMS Plan. See also Section 10.3 of Appendix D of the CAT NMS Plan for a description of the Plan requirements for the CAT Help Desk.

²⁰⁸ Securities Exchange Act Rel. No. 99367 (Jan. 17, 2024), 89 FR 10925 (Feb. 13, 2024) (SR-MIAX-2024-02).

²⁰⁹ 15 U.S.C. 78f(b)(6).

²¹⁰ 15 U.S.C. 78f(b)(4).

²¹¹ 15 U.S.C. 78f(b)(8).

²¹² See Section 6(b)(1) of the Exchange Act.

²¹³ CAT NMS Plan Approval Order at 84697.

In addition, any surplus would be used as a reserve to offset future fees. Given the direct relationship between CAT fees and CAT costs, the Exchange believes that the proposed fees are reasonable, equitable and not unfairly discriminatory.

As further discussed below, the SEC approved the CAT Funding Model, finding it was reasonable and that it equitably allocates fees among Participants and Industry Members. The Exchange believes that the proposed fees adopted pursuant to the CAT Funding Model approved by the SEC are reasonable, equitably allocated and not unfairly discriminatory.

(1) Implementation of CAT Funding Model in CAT NMS Plan

Section 11.1(b) of the CAT NMS Plan states that “[t]he Participants shall file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves.” Per Section 11.1(b) of the CAT NMS Plan, the Exchange has filed this fee filing to implement the Industry Member CAT fees included in the CAT Funding Model. The Exchange believes that this proposal is consistent with the Exchange Act because it is consistent with, and implements, the CAT Funding Model in the CAT NMS Plan, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the CAT NMS Plan. In approving the CAT NMS Plan, the SEC noted that the Plan “is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.”²¹⁴ Similarly, in approving the CAT Funding Model, the SEC concluded that the CAT Funding Model met this standard.²¹⁵ As this proposal implements the Plan and the CAT Funding Model described therein, and applies specific requirements to Industry Members in compliance with the Plan, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Exchange Act.

(2) Calculation of Fee Rate for Historical CAT Assessment 1 Is Reasonable

The SEC has determined that the CAT Funding Model is reasonable and satisfies the requirements of the Exchange Act. Specifically, the SEC has

concluded that the method for determining Historical CAT Assessments as set forth in Section 11.3 of the CAT NMS Plan, including the formula for calculating the Historical Fee Rate, the identification of the parties responsible for payment and the transactions subject to the fee rate for the Historical CAT Assessment, is reasonable and satisfies the Exchange Act.²¹⁶ In each respect, as discussed above, Historical CAT Assessment 1 is calculated, and would be applied, in accordance with the requirements applicable to Historical CAT Assessments as set forth in the CAT NMS Plan. Furthermore, as discussed below, the Exchange believes that each of the figures for the variables in the SEC-approved formula for calculating the fee rate for Historical CAT Assessment 1 is reasonable and consistent with the Exchange Act. Calculation of the Historical Fee Rate for Historical CAT Assessment 1 requires the figures for the Historical CAT Costs 1, the executed equivalent share volume for the prior twelve months, the determination of Historical Recovery Period 1, and the projection of the executed equivalent share volume for Historical Recovery Period 1. Each of these variables is reasonable and satisfies the Exchange Act, as discussed throughout this filing.

(A) Historical CAT Costs 1

The formula for calculating a Historical Fee Rate requires the amount of Historical CAT Costs to be recovered. Specifically, Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan requires a fee filing to provide:

a brief description of the amount and type of the Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs.

In accordance with this requirement, the Exchange has set forth the amount and type of Historical CAT Costs 1 for each of these categories of costs above.

Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan also requires that the fee filing provide “sufficient detail to demonstrate that the Historical CAT Costs are reasonable and appropriate.” As discussed below, the Exchange believes that the amounts set forth in this filing for each of these cost categories is “reasonable and appropriate.” Each of the costs included in Historical CAT Costs 1 are reasonable

and appropriate because the costs are consistent with standard industry practice, based on the need to comply with the requirements of the CAT NMS Plan, incurred subject to negotiations performed on an arm’s length basis, and/or are consistent with the needs of any legal entity, particularly one with no employees.

(i) Technology: Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover costs related to cloud hosting services as a part of Historical CAT Assessments.²¹⁷ CAT LLC determined that the costs related to cloud hosting services described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. As described above, the cloud hosting services costs reflect, among other things, the breadth of the CAT cloud activities, data volume far in excess of the original volume estimates, the need for specialized cloud services given the volume and unique nature of the CAT, the processing time requirements of the Plan, and regular efforts to seek to minimize costs where permissible under the Plan. CAT LLC determined that use of cloud hosting services is necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT, and that the fees for cloud hosting services negotiated by FCAT were reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.²¹⁸ Indeed, the actual costs of the CAT are far in excess of the original estimated costs of the CAT due to various factors, including the higher volumes and greater complexity of the CAT than anticipated when Rule 613 was originally adopted.

To comply with the requirements of the Plan, the breadth of the cloud activities related to the CAT is substantial. The cloud services not only include the production environment for the CAT, but they also include two industry testing environments, support environments for quality assurance and stress testing and disaster recovery capabilities. Moreover, the cloud storage costs are driven by the requirements of the Plan, which requires the storage of multiple versions of the data, from the original submitted version of the data

²¹⁷ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²¹⁸ For a discussion of the amount and type of cloud hosting services fees, see Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

²¹⁴ CAT NMS Plan Approval Order at 84696.

²¹⁵ CAT Funding Model Approval Order at 62686.

²¹⁶ *Id.* at 62662–63.

through various processing steps, to the final version of the data.

Data volume is a significant driver of costs for cloud hosting services. When the Commission adopted the CAT NMS Plan in 2016, it estimated that the CAT would need to receive 58 billion records per day²¹⁹ and that annual operating costs for the CAT would range from \$36.5 million to \$55 million.²²⁰ Through 2021, the actual data volumes have been five times that original estimate. The data volumes for each period are set forth in detail above.²²¹

In addition to the effect of the data volume on the cloud hosting costs, the processing timelines set forth in the Plan contribute to the cloud hosting costs. Although CAT LLC has proactively sought to manage cloud hosting costs while complying with the Plan, including through requests to the Commission for exemptive relief and an amendment to the CAT NMS Plan, stringent CAT NMS Plan requirements do not allow for any material flexibility in cloud architecture design choices, processing timelines (*e.g.*, the use of non-peak processing windows), or lower-cost storage tiers. As a result, the required CAT processing timelines contribute to the cloud hosting costs of the CAT.

The costs for cloud hosting services also reflect the need for specialized cloud hosting services given the data volume and unique processing needs of the CAT. The data volume as well as the data processing needs of the CAT necessitate the use of cloud hosting services. The equipment, power and services required for an on-premises data model, the alternative to cloud hosting services, would be cost prohibitive. Moreover, as CAT was being developed, there were limited cloud hosting providers that could satisfy all the necessary CAT requirements, including the operational and security criteria. Over time more providers offering cloud hosting services that would satisfy these criteria have entered the market. CAT LLC will continue to evaluate alternative cloud hosting services, recognizing that the time and cost to move to an alternative cloud provider would be substantial.

The reasonableness of the cloud hosting services costs is further supported by key cost discipline mechanisms for the CAT—a cost-based funding structure, cost transparency, cost management efforts (including regular efforts to lower compute and

storage costs where permitted by the Plan) and oversight. Together, these mechanisms help ensure the ongoing reasonableness of the CAT's costs and the level of fees assessed to support those costs.²²²

(ii) Technology: Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to operating fees as a part of Historical CAT Assessments.²²³ CAT LLC determined that the costs related to operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The operating fees include the negotiated fees paid by CAT LLC to the Plan Processor to operate and maintain the system for order-related information and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.*, management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the selection of FCAT as the Plan Processor was reasonable and appropriate given its expertise with securities regulatory reporting, after a process of considering other potential candidates.²²⁴ CAT LLC also determined that the fixed price contract, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, was reasonable and appropriate, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity.²²⁵ The services performed by FCAT for each period and the costs related to such services are described above.²²⁶

(iii) Technology: CAIS Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to CAIS operating fees as a part of Historical CAT Assessments.²²⁷ CAT LLC determined that the costs related to CAIS operating fees described in this filing are reasonable and should be included as a part of Historical CAT

Costs 1. The CAIS operating fees include the fees paid to the Plan Processor to operate and maintain CAIS and to perform the business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.*, management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the FCAT-negotiated fees for Kingland's CAIS-related services, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity, were reasonable and appropriate.²²⁸ The services performed by Kingland for each period and the costs for each period are described above.²²⁹

(iv) Technology: Change Request Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to change request fees as a part of Historical CAT Assessments.²³⁰ CAT LLC determined that the costs related to change request fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. It is common practice to utilize a change request process to address evolving needs in technology projects. This is particularly true for a project like CAT that is the first of its kind, both in substance and in scale. The substance and costs of each of the change requests are evaluated by the Operating Committee, and approved in accordance with the requirements for Operating Committee meetings. In each case, CAT LLC determined that the change requests were necessary to implement the CAT. As described above, the change requests cover various technology changes, including, for example, changes related to CAT reporting, data feeds and exchange functionality. CAT LLC also determined that the costs for each change request were appropriate for the relevant technology change. A description of the change requests for each FAM Period and their total costs are set described above.²³¹ As noted above, the total costs for change requests through FAM Period 3 represent a small percentage of

²²² See Securities Exchange Act Rel. No. 97151 (Mar. 15, 2023), 88 FR 17086, 17117 (Mar. 21, 2023) (describing key cost discipline mechanisms for the CAT).

²²³ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²⁴ See Section 3(a)(2)(B)(i)(b) above.

²²⁵ See Sections 3(a)(2)(B)(i)(b), 3(a)(2)(B)(ii)(b), 3(a)(2)(B)(iii)(b) and 3(a)(2)(B)(iv)(b) above.

²²⁶ *Id.*

²²⁷ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²⁸ See Sections 3(a)(2)(B)(i)(c), 3(a)(2)(B)(ii)(c), 3(a)(2)(B)(iii)(c) and 3(a)(2)(B)(iv)(c) above.

²²⁹ *Id.*

²³⁰ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²³¹ See Sections 3(a)(2)(B)(i)(d), 3(a)(2)(B)(ii)(d), 3(a)(2)(B)(iii)(d) and 3(a)(2)(B)(iv)(d) above.

²¹⁹ Appendix D–4 of the CAT NMS Plan at n.262.

²²⁰ CAT NMS Plan Approval Order at 84801.

²²¹ See Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

Historical CAT Costs 1—that is, 0.25% of Historical CAT Costs 1.

(v) Capitalized Developed Technology Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to capitalized developed technology costs as a part of Historical CAT Assessments.²³² Capitalized developed technology costs include costs related to certain development costs, costs related to certain modifications, upgrades and other changes to the CAT, CAIS implementation fees and license fees. The amount and type of costs for each period are described in more detail above.²³³ CAT LLC determined that these costs are reasonable and should be included as a part of Historical CAT Costs 1.

These costs involve the activity of both the Initial Plan Processor and FCAT, as the successor Plan Processor.²³⁴ With regard to the Initial Plan Processor, the Participants utilized an RFP to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan. CAT LLC entered into an agreement with the Initial Plan Processor in which CAT LLC would pay the Initial Plan Processor a negotiated, fixed price fee.²³⁵ In addition, as described above, CAT LLC determined that it was appropriate to enter into an agreement with FCAT as the successor Plan Processor.²³⁶

(vi) Legal

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to legal fees as a part of Historical CAT Assessments.²³⁷ CAT LLC determined that the legal costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Given the unique nature of the CAT, the number of parties involved with the CAT (including, for example, the SEC, Participants, Industry Members, and

vendors) and the many regulatory issues associated with the CAT, the scope of the necessary legal services are substantial. CAT LLC determined that the scope of the legal services is necessary to implement and maintain the CAT and that the legal rates reflect the specialized services necessary for such a project. When hiring each law firm for a CAT project, CAT LLC interviewed multiple firms, and determined to hire each firm based on a variety of factors, including the relevant expertise and fees. In each case, CAT LLC determined that the hourly fee rates were in line with market rates for the specialized legal expertise. In addition, CAT LLC determined that the total costs incurred for each CAT project were appropriate given the breadth of services provided. The services performed by each law firm for each period and the costs related to such services are described above.²³⁸

(vii) Consulting

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover consulting costs as a part of Historical CAT Assessments.²³⁹ CAT LLC determined that the consulting costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Because there are no CAT employees²⁴⁰ and because of the significant number of issues associated with the CAT, the consultants provided assistance in the management of various CAT matters and the processes related to such matters.²⁴¹ CAT LLC considered a variety of factors in choosing a consulting firm and determined to select Deloitte after an interview process.²⁴² CAT LLC also determined that the consulting services were provided at reasonable market rates, as the fees were negotiated annually and comparable to the rates charged by other consulting firms for similar work.²⁴³ Moreover, the total costs for such consulting services were appropriate in light of the breadth of services provided by Deloitte and the

costs related to such services are described above.²⁴⁴

(viii) Insurance

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover insurance costs as a part of Historical CAT Assessments.²⁴⁵ CAT LLC determined that the insurance costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that it is common practice to have directors' and officers' liability insurance, and errors and omissions liability insurance. CAT LLC further determined that it was important to have cyber security insurance given the nature of the CAT, and such a decision is consistent with the CAT NMS Plan, which states that the cyber incident response plan may include "[i]nsurance against security breaches."²⁴⁶ In selecting the insurance providers for these policies, CAT LLC engaged in an evaluation of alternative insurers, including a comparison of the pricing offered by the alternative insurers.²⁴⁷ Based on this analysis, CAT LLC determined that the selected insurance policies provided appropriate coverage at reasonable market rates.²⁴⁸

(ix) Professional and Administration

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover professional and administration costs as a part of Historical CAT Assessments.²⁴⁹ CAT LLC determined that the professional and administration costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Because there are no CAT employees, all required accounting, financial, tax, cash management and treasury functions for CAT LLC have been outsourced at market rates. In addition, the required annual financial statement audit of CAT LLC is included in professional and administration costs, which costs are also at market rates.

CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT

²³² Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²³³ See Sections 3(a)(2)(B)(i)(e), 3(a)(2)(B)(ii)(e), 3(a)(2)(B)(iii)(e) and 3(a)(2)(B)(iv)(e) above.

²³⁴ *Id.*

²³⁵ See Section 3(a)(2)(B)(i)(e) above.

²³⁶ See Section 3(a)(2)(B)(i)(b) above.

²³⁷ Section 11.3(b)(iii)(B)(II)(B)(2) of the CAT NMS Plan.

²³⁸ See Sections 3(a)(2)(B)(i)(f), 3(a)(2)(B)(ii)(f), 3(a)(2)(B)(iii)(f) and 3(a)(2)(B)(iv)(f) above.

²³⁹ Section 11.3(b)(iii)(B)(II)(B)(3) of the CAT NMS Plan.

²⁴⁰ As stated in the filing of the proposed CAT NMS Plan, "[i]t is the intent of the Participants that the Company have no employees." Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614, 30621 (May 17, 2016).

²⁴¹ CAT LLC uses certain third parties to perform tasks that may be performed by administrators for other NMS Plans. See, e.g., CTA Plan and CQ Plan.

²⁴² See Section 3(a)(2)(B)(i)(g) above.

²⁴³ See Sections 3(a)(2)(B)(i)(g), 3(a)(2)(B)(ii)(g), 3(a)(2)(B)(iii)(g) and 3(a)(2)(B)(iv)(g) above.

²⁴⁴ *Id.*

²⁴⁵ Section 11.3(b)(iii)(B)(II)(B)(4) of the CAT NMS Plan.

²⁴⁶ Section 4.1.5 of Appendix D of the CAT NMS Plan.

²⁴⁷ See Sections 3(a)(2)(B)(i)(h), 3(a)(2)(B)(ii)(h), 3(a)(2)(B)(iii)(h) and 3(a)(2)(B)(iv)(h) above.

²⁴⁸ *Id.*

²⁴⁹ Section 11.3(b)(iii)(B)(II)(B)(5) of the CAT NMS Plan.

project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees.²⁵⁰ The hourly fee rates for this firm were in line with market rates for the financial advisory services provided.²⁵¹ Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Anchin. The services performed by Anchin and the costs related to such services are described above.²⁵²

CAT LLC also determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the role given the balance of these considerations.²⁵³ Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services.²⁵⁴ Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Grant Thornton. The services performed by Grant Thornton and the costs related to such services are described above.²⁵⁵

The professional and administrative costs also include costs related to the receipt of certain market data from Exegy. After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy. Exegy provided the data elements required by the CAT NMS Plan, and the fees were reasonable and in line with market rates for the market data received.²⁵⁶

The professional and administrative costs also include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the

effective design, implementation and operation of the controls specified by NIST Special Publication 800–53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment.²⁵⁷

(x) Public Relations Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover public relations costs as a part of Historical CAT Assessments.²⁵⁸ CAT LLC determined that the public relations costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that the types of public relations services utilized were beneficial to the CAT and market participants more generally. Public relations services were important for various reasons, including monitoring comments made by market participants about CAT and understanding issues related to the CAT discussed on the public record.²⁵⁹ By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT issues to the benefit of all market participants.²⁶⁰ Moreover, CAT LLC determined that the rates charged for such services were in line with market rates.²⁶¹ As noted above, the total public relations costs through FAM Period 3 represent a small percentage of Historical CAT Costs 1—that is, 0.1% of Historical CAT Costs 1.

(B) Total Executed Equivalent Share Volume for the Prior 12 Months

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. CAT LLC determined the total executed equivalent share volume for the prior twelve months by counting executed equivalent shares in the same manner as it will count executed equivalent shares for CAT billing purposes.

(C) Historical Recovery Period 1

CAT LLC has determined to establish a Historical Recovery Period of 24 months for Historical CAT Assessment 1 and that such length is reasonable. CAT LLC determined that the length of Historical Recovery Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans notes to the Participants in a timely fashion. CAT LLC determined that 24 months for Historical Recovery Period 1 would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to Section 31.²⁶² In addition, in establishing a Historical Recovery Period of 24 months, CAT LLC recognized that the total costs for Historical CAT Assessment 1 was less than the total costs for 2022 and 2023, and therefore it would be appropriate to recover those costs in two years.

(D) Projected Executed Equivalent Share Volume for Historical Recovery Period 1

CAT LLC has determined to calculate the projected total executed equivalent share volume for the 24 months of Historical Recovery Period 1 by doubling the executed equivalent share volume for the prior 12 months. CAT LLC determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has remained relatively constant in recent years. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395, the executed equivalent share volume for 2022 was 4,039,821,841,560.31, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6. Accordingly, the projected total executed equivalent share volume for Historical Recovery Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.²⁶³

(E) Actual Fee Rate for Historical CAT Assessment 1

(i) Decimal Places

As noted in the Plan amendment for the CAT Funding Model, as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the

²⁵⁰ See Section 3(a)(2)(B)(i)(i) above.

²⁵¹ See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

²⁵² *Id.*

²⁵³ See Section 3(a)(2)(B)(i)(i) above.

²⁵⁴ See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

²⁵⁵ *Id.*

²⁵⁶ See Section 3(a)(2)(B)(i)(i) above.

²⁵⁷ *Id.*

²⁵⁸ Section 11.3(b)(iii)(B)(III)(B)(6) of the CAT NMS Plan.

²⁵⁹ See Section 3(a)(2)(B)(i)(j) above.

²⁶⁰ See Sections 3(a)(2)(B)(i)(j), 3(a)(2)(B)(ii)(j), 3(a)(2)(B)(iii)(j) and 3(a)(2)(B)(iv)(j) above.

²⁶¹ *Id.*

²⁶² As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model Approval Order at 62682.

²⁶³ This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee rate.²⁶⁴ Accordingly, proposed paragraph (a)(1)(B) of the fee schedule would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 by one-third, and rounding the result to 6 decimal places. CAT LLC determined that the use of six decimal places is reasonable as it balances the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

(ii) Reasonable Fee Level

The Exchange believes that imposing Historical CAT Assessment 1 with a fee rate of \$0.000013 per executed equivalent share is reasonable because it provides for a revenue stream for the Company that is aligned with Historical CAT Costs 1 and such costs would be spread out over an appropriate recovery period, as discussed above. Moreover, the Exchange believes that the level of the fee rate is reasonable, as it is comparable to other transaction-based fees. Indeed, Historical CAT Assessment 1 is significantly lower than fees assessed pursuant to Section 31 (e.g., \$0.0009 per share to 0.0004 per share),²⁶⁵ and, as a result, the magnitude of Historical CAT Assessment 1 is small, and therefore will mitigate any potential adverse economic effects or inefficiencies.²⁶⁶ Furthermore, the reasonable fee rate for Historical CAT Assessment 1 further supports CAT LLC's decision to seek to recover all Historical CAT Costs prior to 2022, rather than establishing separate Historical CAT Assessments for pre-FAM, FAM 1, FAM 2 and FAM 3 costs.

(3) Historical CAT Assessment 1 Provides for an Equitable Allocation of Fees

Historical CAT Assessment 1 provides for an equitable allocation of fees, as it equitably allocates CAT costs between and among the Participants and Industry Members. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act, including the formula for calculating Historical CAT Assessments as well as the Industry Members to be charged the Historical CAT Assessments.²⁶⁷ In approving the CAT

Funding Model, the SEC stated that “[t]he Participants have sufficiently demonstrated that the proposed allocation of fees is reasonable.”²⁶⁸ Accordingly, the CAT Funding Model sets forth the requirements for allocating fees related to Historical CAT Costs among Participants and Industry Members, and the fee filings for Historical CAT Assessments must comply with those requirements.

Historical CAT Assessment 1 provides for an equitable allocation of fees as it complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. For example, as described above, the calculation of Historical CAT Assessment 1 complies with the formula set forth in Section 11.3(b) of the CAT NMS Plan. In addition, Historical CAT Assessment 1 would be charged to CEBBs and CEBs in accordance with Section 11.3(b) of the CAT NMS Plan. Furthermore, the Participants would continue to remain responsible for their designated share of Past CAT Costs through the cancellation of loans made by the Participants to CAT LLC.

In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1—Historical CAT Costs 1 (including Excluded Costs), the count for the executed equivalent share volume for the prior 12 months, the length of the Historical Recovery Period, and the projected executed equivalent share volume for the Historical Recovery Period—are reasonable. Moreover, these inputs lead to a reasonable fee rate for Historical CAT Assessment 1 that is lower than other fee rates for transaction-based fees. A reasonable fee rate allocated in accordance with the requirements of the CAT Funding Model provides for an equitable allocation of fees.

(4) Historical CAT Assessment 1 is Not Unfairly Discriminatory

Historical CAT Assessment 1 is not an unfairly discriminatory fee. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act. In reaching this conclusion, the SEC analyzed the potential effect of Historical CAT Assessments calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members,

such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Historical CAT Assessment 1 complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1 and the resulting fee rate for Historical CAT Assessment 1 is reasonable. Therefore, Historical CAT Assessment 1 does not impose an unfairly discriminatory fee on Industry Members.

Finally, the Exchange believes the proposed fees established pursuant to the CAT Funding Model promote just and equitable principles of trade, and, in general, protect investors and the public interest, and are provided in a transparent manner and specificity in the fee schedule. The Exchange also believes that the proposed fees are reasonable because they would provide ease of calculation, ease of billing and other administrative functions, and predictability of a fee based on fixed rate per executed equivalent share. Such factors are crucial to estimating a reliable revenue stream for CAT LLC and for permitting Exchange members to reasonably predict their payment obligations for budgeting purposes.

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

Section 6(b)(8) of the Act²⁶⁹ requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that Historical CAT Assessment 1 implements provisions of the CAT NMS Plan that were approved by the Commission and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan.

In addition, all Participants (including exchanges and FINRA) are proposing to introduce Historical CAT Assessment 1 on behalf of CAT LLC to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive fee filing, and, therefore, it does not raise competition issues between and among the Participants.

Furthermore, in approving the CAT Funding Model, the SEC analyzed the

²⁶⁴ CAT Funding Model Approval Order at 62658, n.658.

²⁶⁵ CAT Funding Model Approval Order at 62663, 62682.

²⁶⁶ *Id.*

²⁶⁷ See Section 11.3(b) of the CAT NMS Plan.

²⁶⁸ CAT Funding Model Approval Order at 62629.

²⁶⁹ 15 U.S.C. 78f(b)(8).

potential competitive impact of the CAT Funding Model, including competitive issues related to market services, trading services and regulatory services, efficiency concerns, and capital formation.²⁷⁰ The SEC also analyzed the potential effect of CAT fees calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Based on this analysis, the SEC approved the CAT Funding Model as compliant with the Exchange Act. Historical CAT Assessment 1 is calculated and implemented in accordance with the CAT Funding Model as approved by the SEC.

As discussed above, each of the inputs into the calculation of Historical CAT Assessment 1 is reasonable and the resulting fee rate for Historical CAT Assessment 1 calculated in accordance with the CAT Funding Model is reasonable. Therefore, Historical CAT Assessment 1 would not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act²⁷¹ and Rule 19b-4(f)(2) thereunder,²⁷² because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-MIAX-2024-34 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-MIAX-2024-34. This file

number should be included on the subject line if email 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 (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-MIAX-2024-34 and should be submitted on or before October 3, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷³

Sherry R. Haywood,

Assistant Secretary.

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BILLING CODE 8011-01-P

²⁷⁰ CAT Funding Model Approval Order at 62676-86.

²⁷¹ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁷² 17 CFR 240.19b-4(f)(2).

²⁷³ 17 CFR 200.30-3(a)(12).



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Part VIII

Securities and Exchange Commission

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100950; File No. SR–NASDAQ–2024–049]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail

September 5, 2024.

Pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b–4 thereunder,² notice is hereby given that on August 23, 2024, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to establish fees for Industry Members³ related to certain historical costs of the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”) incurred prior to January 1, 2022.

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

On July 11, 2012, the Commission adopted Rule 613 of Regulation NMS, which required the self-regulatory organizations (“SROs”) to submit a national market system (“NMS”) plan to create, implement and maintain a consolidated audit trail that would capture customer and order event information for orders in NMS securities across all markets, from the time of order inception through routing, cancellation, modification or execution.⁴ On November 15, 2016, the Commission approved the CAT NMS Plan.⁵ Under the CAT NMS Plan, the Operating Committee has the discretion to establish funding for CAT LLC to operate the CAT, including establishing fees for Industry Members to be assessed by CAT LLC that would be implemented on behalf of CAT LLC by the Participants.⁶ The Operating Committee adopted a revised funding model to fund the CAT (“CAT Funding Model”). On September 6, 2023, the Commission approved the CAT Funding Model, after concluding that the model was reasonable and that it satisfied the requirements of Section 11A of the Exchange Act and Rule 608 thereunder.⁷

The CAT Funding Model provides a framework for the recovery of the costs to create, develop and maintain the CAT, including providing a method for allocating costs to fund the CAT among Participants and Industry Members. The CAT Funding Model establishes two categories of fees: (1) CAT fees assessed by CAT LLC and payable by certain Industry Members to recover a portion of historical CAT costs previously paid by the Participants (“Historical CAT Assessment” fees); and (2) CAT fees assessed by CAT LLC and payable by Participants and Industry Members to

fund prospective CAT costs (“Prospective CAT Costs” fees).⁸

Under the CAT Funding Model, “[t]he Operating Committee will establish one or more fees (each a ‘Historical CAT Assessment’) to be payable by Industry Members with regard to CAT costs previously paid by the Participants (‘Past CAT Costs’).”⁹ In establishing a Historical CAT Assessment, the Operating Committee will determine a “Historical Recovery Period” and calculate a “Historical Fee Rate” for that Historical Recovery Period. Then, for each month in which a Historical CAT Assessment is in effect, each CEBB and CEBS would be required to pay the fee—the Historical CAT Assessment—for each transaction in Eligible Securities executed by the CEBB or CEBS 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.¹⁰

Each Historical CAT Assessment to be paid by CEBBs and CEBSs is designed to contribute toward the recovery of two-thirds of the Historical CAT Costs. Because the Participants previously have paid Past CAT Costs via loans to the Company, the Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants’ one-third share of Historical CAT Costs will be paid by the cancellation of loans made by the Participants to the Company on a pro rata basis based on the outstanding loan amounts due under the loans, instead of through the payment of a CAT fee.¹¹ In addition, the Participants also will be 100% responsible for certain Excluded Costs (as discussed below).

CAT LLC proposes to charge CEBBs and CEBSs (as described in more detail

⁸ Under the CAT Funding Model, the Operating Committee may establish one or more Historical CAT Assessments. Section 11.3(b) of the CAT NMS Plan. This filing only establishes Historical CAT Assessment 1 related to certain Historical CAT Costs as described herein; it does not address any other potential Historical CAT Assessment related to other Historical CAT Costs. In addition, under the CAT Funding Model, the Operating Committee also may establish CAT Fees related to CAT costs going forward. Section 11.3(a) of the CAT NMS Plan. This filing does not address any potential CAT Fees related to CAT costs going forward. Any such other fee for any other Historical CAT Assessment or CAT Fee for Prospective CAT Costs will be subject to a separate fee filing.

⁹ Section 11.3(b) of the CAT NMS Plan.

¹⁰ In approving the CAT Funding Model, the Commission stated that, “[i]n the Commission’s view, the proposed recovery of the Past CAT Costs via the Historical CAT Assessment is reasonable.” CAT Funding Model Approval Order at 62662.

¹¹ Section 11.3(b)(ii) of the CAT NMS Plan.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ An “Industry Member” is defined as “a member of a national securities exchange or a member of a national securities association.” See Nasdaq Rule General 7(u); See also Section 1.1 of the CAT NMS Plan. Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the CAT NMS Plan and/or the CAT Compliance Rule. Nasdaq Rule General 7 (Consolidated Audit Trail Compliance).

⁴ Securities Exchange Act Rel. No. 67457 (July 18, 2012), 77 FR 45721 (Aug. 1, 2012) (“Rule 613 Adopting Release”).

⁵ Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (“CAT NMS Plan Approval Order”).

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

⁷ Securities Exchange Act Rel. No. 98290 (Sept. 6, 2023), 88 FR 62628 (Sept. 12, 2023) (“CAT Funding Model Approval Order”).

below) Historical CAT Assessment 1 to recover certain historical CAT costs incurred prior to January 1, 2022, in accordance with the CAT Funding Model. To implement this fee on behalf of CAT LLC, the CAT NMS Plan requires the Participants to “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.’”¹² The Plan further states that “Participants will be required to file with the SEC pursuant to Section 19(b) of the Exchange Act a filing for each Historical CAT Assessment.”¹³ Accordingly, the purpose of this filing is to implement a Historical CAT Assessment on behalf of CAT LLC for Industry Members, referred to as Historical CAT Assessment 1, in accordance with the CAT NMS Plan.¹⁴

The Exchange previously filed a fee filing to implement Historical CAT Assessment 1. On January 17, 2024, the SEC published this prior filing for

Historical CAT Assessment 1, temporarily suspended the fee filing, and instituted proceedings to determine whether to approve or disapprove the fee filing.¹⁵ The Exchange is withdrawing its original fee filing for Historical CAT Assessment 1. This Historical CAT Assessment 1 replaces the prior Historical CAT Assessment 1 that was previously filed with the Commission.

(1) CAT Executing Brokers

Historical CAT Assessment 1 will be charged to each CEBB and CEBS for each applicable transaction in Eligible Securities.¹⁶ The CAT NMS Plan defines a “CAT Executing Broker” to mean:

(a) with respect to a transaction in an Eligible Security that is executed on an exchange, the Industry Member identified as the Industry Member responsible for the order on the buy-side of the transaction and the Industry Member responsible for the sell-side of the transaction in the equity order trade event and option trade event in the CAT Data submitted to the CAT by the

relevant exchange pursuant to the Participant Technical Specifications; and (b) with respect to a transaction in an Eligible Security that is executed otherwise than on an exchange and required to be reported to an equity trade reporting facility of a registered national securities association, the Industry Member identified as the executing broker and the Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event in the CAT Data submitted to the CAT by FINRA pursuant to the Participant Technical Specifications; provided, however, in those circumstances where there is a non-Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event or no contra-side executing broker is identified in the TRF/ORF/ADF transaction data event, then the Industry Member identified as the executing broker in the TRF/ORF/ADF transaction data event would be treated as CAT Executing Broker for the Buyer and for the Seller.¹⁷

The following fields of the Participant Technical Specifications indicate the CAT Executing Brokers for the transactions executed on an exchange.

EQUITY ORDER TRADE (EOT)¹⁸

No.	Field name	Data type	Description	Include key
12.n.8/13.n.8	member	Member Alias	The identifier for the member firm that is responsible for the order on this side of the trade. Not required if there is no order for the side as indicated by the NOBUYID/NOSELLID instruction. This must be provided if orderID is provided.	C

OPTION TRADE (OT)¹⁹

No.	Field name	Data type	Description	Include key
16.n.13/17.n.13	member	Member Alias	The identifier for the member firm that is responsible for the order ..	R

In addition, the following fields of the Participant Technical Specifications would indicate the CAT Executing

Brokers for the transactions executed otherwise than on an exchange.

TRF/ORF/ADF TRANSACTION DATA EVENT (TRF)²⁰

No.	Field name	Data type	Description	Include key
26	reportingExecutingMpid	Member Alias	MPID of the executing party	R

¹² Section 11.1(b) of the CAT NMS Plan.

¹³ Section 11.3(b)(iii)(B)(I) of the CAT NMS Plan.

¹⁴ Note that there may be one or more Historical CAT Assessments depending on the timing of the completion of the Financial Accountability Milestones, among other things. Section 11.3(b) of the CAT NMS Plan.

¹⁵ Securities Exchange Act Rel. No. 34–99360 (January 17, 2024), 89 FR 10812 (February 13, 2024) (“SR–NASDAQ–2024–001”).

¹⁶ In its approval of the CAT Funding Model, the Commission determined that charging CAT fees to CAT Executing Brokers was reasonable. In reaching this conclusion the Commission noted that the use of CAT Executing Brokers is appropriate because

the CAT Funding Model is based upon the calculation of *executed* equivalent shares, and, therefore, charging CAT Executing Brokers would reflect their executing role in each transaction. Furthermore, the Commission noted that, because CAT Executing Brokers are already identified in transaction reports from the exchanges and FINRA’s equity trade reporting facilities recorded in CAT Data, charging CAT Executing Brokers could streamline the billing process. CAT Funding Model Approval Order at 62629.

¹⁷ Section 1.1 of the CAT NMS Plan. Note that CEBBs and CEBSs may, but are not required to, pass-through their CAT fees to their clients, who may, in turn, pass their fees to their clients until

they are imposed ultimately on the account that executed the transaction. See CAT Funding Model Approval Order at 62649.

¹⁸ See Table 23, Section 4.7 (Order Trade Event) of the CAT Reporting Technical Specifications for Plan Participants, Version 4.1.0-r21 (Apr. 15, 2024), https://www.catnmsplan.com/sites/default/files/2024-04/04.15.2024-CAT_Reporting_Technical_Specifications_for_Participants_4.1.0-r21.pdf (“CAT Reporting Technical Specifications for Plan Participants”).

¹⁹ See Table 51, Section 5.2.5.1 (Simple Option Trade Event) of the CAT Reporting Technical Specifications for Plan Participants.

TRF/ORF/ADF TRANSACTION DATA EVENT (TRF)²⁰—Continued

No.	Field name	Data type	Description	Include key
28	contraExecutingMpid	Member Alias	MPID of the contra-side executing party	C

(2) Calculation of Historical Fee Rate 1

The Operating Committee determined the Historical Fee Rate to be used in calculating Historical CAT Assessment 1 (“Historical Fee Rate 1”) by dividing the Historical CAT Costs for Historical CAT Assessment 1 (“Historical CAT Costs 1”) by the projected total executed share volume of all transactions in Eligible Securities for the Historical Recovery Period for Historical CAT Assessment 1 (“Historical Recovery Period 1”), as discussed in detail below. Based on this calculation, the Operating Committee has determined that Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. This rate is then divided by three and rounded to determine the fee rate of \$0.000013 per executed equivalent share that will be assessed to CEBBs and CEBSS, as also discussed in detail below.

(A) Executed Equivalent Shares for Transactions in Eligible Securities

Under the CAT NMS Plan, for purposes of calculating each Historical CAT Assessment, executed equivalent shares in a transaction in Eligible Securities will be reasonably counted as follows: (1) each executed share for a transaction in NMS Stocks will be counted as one executed equivalent share; (2) each executed contract for a transaction in Listed Options will be counted based on the multiplier applicable to the specific Listed Options (*i.e.*, 100 executed equivalent shares or such other applicable multiplier); and

(3) each executed share for a transaction in OTC Equity Securities shall be counted as 0.01 executed equivalent share.²¹

(B) Historical CAT Costs 1

The CAT NMS Plan states that “[t]he Operating Committee will reasonably determine the Historical CAT Costs sought to be recovered by each Historical CAT Assessment, where the Historical CAT Costs will be Past CAT Costs minus Past CAT Costs reasonably excluded from Historical CAT Costs by the Operating Committee. Each Historical CAT Assessment will seek to recover from CAT Executing Brokers two-thirds of Historical CAT Costs incurred during the period covered by the Historical CAT Assessment.”²² As described in detail below, Historical CAT Costs 1 would be \$318,059,819. This figure includes Past CAT Costs of \$401,312,909 minus certain Excluded Costs of \$83,253,090. Participants collectively will remain responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), plus the Excluded Costs of \$83,253,090. CEBBs collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), and CEBSS collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67).

The following describes in detail Historical CAT Costs 1 with regard to four separate historical time periods as well as Past CAT Costs excluded from Historical CAT Costs 1 (“Excluded Costs”). The following cost details are

provided in accordance with the requirement in the CAT NMS Plan to provide in the fee filing “a brief description of the amount and type of Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs.”²³ Each of the costs described below are reasonable, appropriate and necessary for the creation, implementation and maintenance of CAT.

(i) Historical CAT Costs Incurred Prior to June 22, 2020 (Pre-FAM Costs)

Historical CAT Costs 1 would include costs incurred by CAT prior to June 22, 2020 (“Pre-FAM Period”) and already funded by the Participants, excluding Excluded Costs (described further below). Historical CAT Costs 1 would include costs for the Pre-FAM Period of \$124,290,730. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$41,430,243.33), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$41,430,243.33) and CEBSS paying one-third (\$41,430,243.33). These costs do not include Excluded Costs, as discussed further below. The following table breaks down Historical CAT Costs 1 for the Pre-FAM Period into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs 1 for Pre-FAM Period (prior to June 22, 2020) *
Capitalized Developed Technology Costs **	\$51,847,150
<i>Technology Costs</i>	33,568,579
Cloud Hosting Services	10,268,840
Operating Fees	21,085,485
CAIS Operating Fees	2,072,908
Change Request Fees	141,346
Legal	19,674,463
Consulting	17,013,414
Insurance	880,419
Professional and administration	1,082,036

²⁰ See Table 61, Section 6.1 (TRF/ORF/ADF Transaction Data Event) of the CAT Reporting Technical Specifications for Plan Participants.

²¹ Section 11.3(a)(i)(B) and 11.3(b)(i)(B) of the CAT NMS Plan. In approving the CAT Funding

Model, the Commission concluded that “the use of executed equivalent share volume as the basis of the proposed cost allocation methodology is reasonable and consistent with the approach taken

by the funding principles of the CAT NMS Plan.” CAT Funding Model Approval Order at 62640.

²² Section 11.3(b)(i)(C) of the CAT NMS Plan.

²³ Section 11.3(b)(iii)(B)(II)(B) of the CAT NMS Plan.

Operating expense	Historical CAT costs 1 for Pre-FAM Period (prior to June 22, 2020) *
Public relations	224,669
Total Operating Expenses	124,290,730

*The costs described in this table of costs for the Pre-FAM Period were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website. In addition, in accordance with Section 6.6(a)(i) of the CAT NMS Plan, in 2018 CAT LLC provided the SEC with "an independent audit of fees, costs, and expenses incurred by the Participants on behalf of the Company prior to the Effective Date of the Plan that will be publicly available." The audit is available on the CAT website.

**The non-cash amortization of these capitalized developed technology costs of \$2,115,545 incurred during the period prior to June 22, 2020 have been appropriately excluded from the above table.²⁴

The Pre-FAM Period includes a broad range of CAT-related activity from 2012 through June 22, 2020, including the evaluation of the requirements of SEC Rule 613, the development of the CAT NMS Plan, the evaluation and selection of the initial and successor Plan Processors, the commencement of the creation and implementation of the CAT to comply with Rule 613 and the CAT NMS Plan, including technical specifications for transaction reporting and regulatory access, and related technology and the commencement of reporting to the CAT. The following describes the costs for each of the categories for the Pre-FAM Period.

(a) Technology Costs—Cloud Hosting Services

The \$10,268,840 in technology costs for cloud hosting services represent costs incurred for services provided by the cloud services provider for the CAT, Amazon Web Services, Inc. ("AWS"), during the Pre-FAM Period.

As part of its proposal for acting as the successor Plan Processor for the CAT, FCAT selected AWS as a subcontractor to provide cloud hosting services. In 2019, after reviewing the capabilities of other cloud services providers, FCAT determined that AWS was the only cloud services provider at that time sufficiently mature and capable of providing the full suite of necessary cloud services for the CAT, including, for example, the security, resiliency and complexity necessary for

the CAT computing requirements. The use of cloud hosting services is standard for this type of high-volume data activity and reasonable and necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT the fees incurred by the Plan Processor for cloud hosting services provided by AWS as FCAT's subcontractor [*sic*] on a monthly basis for the cloud hosting services, and FCAT, in turn, pays such fees to AWS. The fees for cloud hosting services were negotiated by FCAT on an arm's length basis with the goals of managing cost and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the expected volume of data, the breadth of services provided and market rates for similar services. The fees for cloud hosting services during the Pre-FAM Period were paid to FCAT by CAT NMS, LLC²⁵ and subsequently Consolidated Audit Trail, LLC (as previously noted, both entities are referred to generally as "CAT LLC"),²⁶ and FCAT, in turn, paid AWS. CAT LLC was funded via loan contributions by the Participants.²⁷

AWS was engaged by FCAT to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS include storage services, databases, compute services and other

services (such as networking, management tools and DevOps tools). AWS also was engaged to provide various environments for CAT, such as development, performance testing, test and production environments.

The cost for AWS services for the CAT is a function of the volume of CAT Data. The greater the amount of CAT Data, the greater the cost of AWS services to the CAT. During the Pre-FAM Period from the engagement of AWS in February 2019 through June 2020, AWS provided cloud hosting services for volumes of CAT Data far in excess of the volume predictions set forth in the CAT NMS Plan. The CAT NMS Plan states, when all CAT Reporters are submitting their data to the CAT, it "must be sized to receive[,] process and load more than 58 billion records per day,"²⁸ and that "[i]t is expected that the Central Repository will grow to more than 29 petabytes of raw, uncompressed data."²⁹ However, the volume of CAT Data for the Pre-FAM Period was far in excess of these predicted levels. By the end of this period, data submitted to the CAT included options and equities Participant Data,³⁰ Phase 2a and Phase 2b Industry Member Data³¹ (including certain linkages), as well as SIP Data,³² reference data and other types of Other Data.³³ The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during the Pre-FAM Period.³⁴

²⁴ With respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

²⁵ CAT NMS, LLC was formed by FINRA and the U.S. national securities exchanges to implement the requirements of SEC Rule 613 under the Exchange Act. SEC Rule 613 required the SROs to jointly submit to the SEC the CAT NMS Plan to create, implement and maintain the CAT. The SEC

approved the CAT NMS Plan on November 15, 2016. CAT NMS Plan Approval Order.

²⁶ On August 29, 2019, the Participants formed a new Delaware limited liability company named Consolidated Audit Trail, LLC for the purpose of conducting activities related to the CAT from and after the effectiveness of the proposed amendment of the CAT NMS Plan to replace CAT NMS, LLC. See Securities Exchange Act Rel. No. 87149 (Sept. 27, 2019), 84 FR 52905 (Oct. 3, 2019).

²⁷ For each of the costs paid by CAT NMS, LLC and Consolidated Audit Trail, LLC as discussed throughout this filing, CAT NMS, LLC and Consolidated Audit Trail, LLC paid these costs via loan contributions by the Participants to CAT NMS,

LLC and Consolidated Audit Trail, LLC, respectively.

²⁸ Appendix D-4 of the CAT NMS Plan at n.262.

²⁹ Appendix D-5 of the CAT NMS Plan.

³⁰ See Section 6.3(d) of the CAT NMS Plan.

³¹ See Securities Exchange Rel. No. 88702 (Apr. 20, 2020), 85 FR 23075 (Apr. 24, 2020) ("Phased Reporting Exemptive Relief Order") for a description of Phase 2a and Phase 2b Industry Member Data.

³² See Section 6.5(a)(ii) of the CAT NMS Plan.

³³ See Appendix C-108 of the CAT NMS Plan.

³⁴ Note that the volume data described in this table does not include CAIS data.

	Date range: 3/29/19 to 4/12/20 *	Date range: 4/13/20 to 6/21/20 **
Average Daily Volume in Billions:		
Participant—Equities	5	5
Participant—Options	80	981
Industry Member—Equities		3
Industry Member—Options		0.04
SIP—Options & Equities	64	70
Average Total Daily Volume	149	166
Cumulative Total Events for the Period	3,890	4,990
Total Compute Hours for the Period	*** N/A	5,663,247
Storage Footprint at End of Period (Petabytes)	30.57	47.96

* The Participant Equities in RSA format.

** Start of Industry Member reporting on 4/13/2020.

*** Note that, although there were compute hours during this period, data related to such compute hours are no longer available in current data.

(b) Technology Costs—Operating Fees

The \$21,085,485 in technology costs related to operating fees represent costs incurred with regard to activities of FCAT as the Plan Processor. Operating fees are those fees paid by CAT LLC to FCAT as the Plan Processor to operate and maintain the CAT and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.*, management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management as required by the CAT NMS Plan.

FCAT was selected to assume the role of the successor Plan Processor. Prior to this selection, the Participants engaged in discussions with two prior Bidders³⁵ for the successor Plan Processor role. The Operating Committee formed a Selection Subcommittee in accordance with Section 4.12 of the CAT NMS Plan to evaluate and review Bids and to make a recommendation to the Operating Committee with respect to the selection of the successor Plan Processor. In an April 9, 2019 letter to the Commission, the Participants described the reasons for its selection of the successor Plan Processor:

The Selection Subcommittee considered factors including, but not limited to, the following, in recommending FINRA to the Operating Committee as the successor Plan Processor:

- FINRA's specialized technical expertise and capabilities in the area of broker-dealer technology;
- The need to appoint a successor Plan Processor with specialized expertise to develop, implement, and maintain the CAT System in accordance with the CAT NMS Plan and SEC Rule 613;
- FINRA's detailed proposal in response to CATLLC's recent inquiries; and
- FINRA's data query and analytics systems demonstration to the Participants.

Based on these and other factors, the Selection Subcommittee determined that FINRA was the most appropriate Bidder to become the successor Plan Processor.³⁶

On February 26, 2019, the Operating Committee (with FINRA recusing itself) voted to select FINRA as the successor Plan Processor pursuant to Section 6.1(t) of the CAT NMS Plan.³⁷ On March 29, 2019, CAT LLC and FCAT (a wholly owned subsidiary of FINRA) entered into a Plan Processor Agreement pursuant to which FCAT would perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT a negotiated monthly fixed price for the operation of the CAT. This fixed price contract was negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity. The operating fees during the Pre-FAM Period were paid to FCAT by CAT LLC.

From March 29, 2019 (the commencement of the Plan Processor Agreement with FCAT) through June 22, 2020 (the end of the Pre-FAM Period), the Plan Processor's activities with respect to the CAT included the following:

- Commenced user acceptance testing with market data provided by Exegy Incorporated ("Exegy"), a market data provider;³⁸

³⁶ Letter from Michael J. Simon, Chair, CAT NMS, LLC Operating Committee, to Brent J. Fields, Secretary, SEC (Apr. 9, 2019), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection-040919.pdf>.

³⁷ *Id.*

³⁸ The use of Exegy to provide market data, including the costs and market data provided, is discussed below in Section 3(a)(2)(B)(i)(i).

- Published Technical Specifications and related reporting scenarios documents for Phase 2a, 2b and 2c reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;

- Facilitated testing for Phase 2a and 2b reporting for Industry Members;

- Began developing Technical Specifications and related reporting scenarios documents for Phase 2d reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;

- Published Central Repository Access Technical Specifications, and provided regulator access to test data from Industry Members;

- Facilitated Participant exchanges that support options market makers sending Quote Sent Time to the CAT;

- Facilitated the introduction of OPRA and Options NBBO Other Data to CAT;

- Addressed compliance items, including drafting CAT policies and procedures, and addressing requirements under Regulation SCI;

- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;

- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;

- Oversaw the security of the CAT;

- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;

- Provided support to subcontractors under the Plan Processor Agreement;

- Provided support in discussions with Participants, the SEC and its staff;

- Operated the FINRA CAT Helpdesk, which is the primary source for answers to questions about CAT, including questions regarding: clock synchronization, firm reporting

³⁵ The term "Bidder" is defined in Section 1.1 of the CAT NMS Plan.

responsibilities, interpretive questions, technical specifications for reporting to CAT and more;

- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content;³⁹ and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

The \$2,072,908 in technology costs related to CAIS operating fees represent the fees paid for FCAT's subcontractor charged with the development and operation of CAT's Customer and Account Information System ("CAIS"). The CAT is required under the CAT NMS Plan to capture and store Customer Identifying Information and Customer Account Information in a database separate from the transactional database and to create a CAT-Customer-ID for each Customer.

During the Pre-FAM Period, the CAIS-related services were provided by the Plan Processor through the Plan Processor's subcontractor, Kingland Systems Incorporation ("Kingland"). Kingland had experience operating in the securities regulatory technology space, and as a part of its proposal for acting as the Plan Processor for the CAT, FCAT selected Kingland as a subcontractor to provide certain CAIS-related services.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay to the Plan Processor the fees incurred by FCAT for CAIS-related services provided by FCAT through Kingland on a monthly basis. FCAT negotiated the fees for Kingland's CAIS-related services on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity. The fees for CAIS-related services during the Pre-FAM Period were paid by CAT LLC to FCAT. FCAT, in turn, paid Kingland.

During the Pre-FAM Period, Kingland began development of the CAIS Technical Specifications and the building of CAIS. In addition, Kingland also worked on the build related to the CCID Alternative, an alternative approach to customer information that

was not included in the CAT NMS Plan as originally adopted.⁴⁰ Furthermore, Kingland also worked on the acceleration of the reporting of large trader identifiers ("LTID") earlier than originally contemplated during this period, in accordance with exemptive relief granted by the SEC.⁴¹

(d) Technology Costs—Change Request Fees

The technology costs related to change request fees include costs related to certain modifications, upgrades or other changes to the CAT. Change requests are standard practice and necessary to reflect operational changes, including changes related to new market developments, such as new market participants. In general, if CAT LLC determines that a modification, upgrade or other change to the functionality or service is necessary and appropriate, CAT LLC will submit a request for such a change to the Plan Processor. The Plan Processor will then respond to the request with a proposal for implementing the change, including the cost (if any) of such a change. CAT LLC then determines whether to approve the proposed change. The change request costs were paid by CAT LLC to FCAT. During the Pre-FAM Period, CAT LLC incurred costs of \$141,346 related to change requests implemented by FCAT. Such change requests related to a development fee regarding the OPRA and SIP data feeds, and the reprocessing of certain exchange data.⁴²

(e) Technology Costs—Capitalized Developed Technology Costs

This category of costs includes capitalizable application development costs incurred in the development of the CAT. The capitalized developed technology costs for the Pre-FAM Period of \$51,847,150 relate to technology provided by the Initial Plan Processor and the successor Plan Processor.

Initial Plan Processor: Thesys CAT, LLC. The capitalized developed technology costs related to the Initial Plan Processor include costs incurred with regard to testing for Participant reporting, Participant reporting to the CAT, a security assessment of the CAT, and the development of the billing function for the CAT.

⁴⁰ For a discussion of the CCID Alternative, see Securities Exchange Act Rel. No. 88393 (Mar. 17, 2020), 85 FR 16152 (Mar. 20, 2020).

⁴¹ Phased Reporting Exemptive Relief Order at 23079–80.

⁴² Note that CAT LLC also has incurred costs related to specific Industry Members (e.g., reprocessing costs related to Industry Member reporting errors).

On January 17, 2017, the Selection Committee of the CAT NMS Plan selected the Initial Plan Processor, Thesys Technologies, LLC, for the CAT NMS Plan pursuant to Article V of the CAT NMS Plan.⁴³ The Participants utilized a request for proposal ("RFP") to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan, taking into consideration that the Initial Plan Processor had experience operating in the securities regulatory technology space, among other considerations. On April 6, 2017, CAT LLC entered into an agreement with Thesys CAT LLC ("Thesys CAT"), a Thesys affiliate, to perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT. Under the agreement, CAT LLC would pay Thesys CAT a negotiated, fixed price fee for its role as the Initial Plan Processor. Effective January 30, 2019, the Plan Processor Agreement with Thesys CAT was terminated, and FCAT was subsequently selected as the successor Plan Processor.

From January 17, 2017 through January 30, 2019, the time in which the Thesys CAT was engaged for the CAT, but excluding the period from November 15, 2017 through January 30, 2019, the Initial Plan Processor engaged in various activities with respect to the CAT, including preparing iterative drafts of Participant Technical Specifications, Industry Member Technical Specifications and the Central Repository Access Technical Specifications. In addition, Thesys CAT also developed CAT technology, addressed compliance items, including drafting CAT policies and procedures, addressing Regulation SCI requirements, establishing a CAT Compliance Officer and a Chief Information Security Officer, addressed security-related matters for the CAT, and worked towards the initiation of Participant reporting per the Participant Technical Specifications.

Successor Plan Processor: FCAT. The capitalized developed technology costs related to FCAT include: (1) development costs incurred during the

⁴³ Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf>.

³⁹ The CAT website is <https://www.catnmsplan.com>.

application development stage to meet various agreed-upon milestones regarding the CAT, including the completion of go-live functionality related to options ingestion and validation, equities regulatory services agreement query tool updates and unlinked options data query, options linkages release, Industry Member Phase 2a file submission and data integrity (including error corrections), and Industry Member testing, including reporting relationships, ATS order type management, basic reporting statistics, SFTP data integrity feedback and error correction; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including a one-time development fee for a secure analytics workspace, a one-time development fee of an Industry Member connectivity solution, and a one-time development fee for the acceleration of multi-factor authentication; (3) CAIS implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$19,674,463 represent the fees paid for legal services provided by two law firms, Wilmer Cutler Pickering Hale and Dorr LLP (“WilmerHale”) and Pillsbury Winthrop Shaw Pittman LLP (“Pillsbury”), during the Pre-FAM Period. The legal costs exclude those costs incurred from November 15, 2017 through November 15, 2018.

Law Firm: WilmerHale. Following the adoption of Rule 613, the Participants determined it was necessary to engage external legal counsel to advise the Participants with respect to corporate and regulatory legal matters related to the CAT, including drafting and developing the CAT NMS Plan. The Participants considered a variety of factors in their analysis of prospective law firms, including (1) the firm’s qualifications, resources and expertise; (2) the firm’s relevant experience and understanding of the regulatory matters raised by the CAT and in advising on matters of similar scope; (3) the composition of the legal team; and (4) professional fees. Following a series of interviews, the Participants acting as a consortium determined that WilmerHale was well qualified given the balance of these considerations and engaged WilmerHale in February 2013.

WilmerHale’s billing rates are negotiated on an annual basis and are determined with reference to the rates charged by other leading law firms for similar work. The Participants assess

WilmerHale’s performance and review prospective budgets and staffing plans submitted by WilmerHale on an annual basis. WilmerHale’s compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading law firms for similar work.

The legal costs for WilmerHale during the Pre-FAM Period included costs incurred from 2013 until June 22, 2020 to address corporate and regulatory legal matters related to the CAT. The legal fees for this law firm during the period from February 2013 until the formation of the CAT NMS, LLC on November 15, 2016 were paid directly by the exchanges and FINRA to WilmerHale. After the formation of CAT NMS LLC, the legal fees were paid by CAT LLC to WilmerHale.

After WilmerHale was engaged in 2013 through the end of the Pre-FAM Period on June 22, 2020 (excluding the legal costs from November 15, 2017 through November 15, 2018), WilmerHale provided legal assistance to the CAT on a variety of matters, including with regard to the following:

- Analyzed various legal matters associated with the Selection Plan, and drafted an amendment to the Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the Development Advisory Group (“DAG”);
- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on CAT NMS Plan;
- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan, and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;
- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan and related filings;
- Negotiated and drafted the plan processor agreements with the Initial

Plan Processor and the successor Plan Processor;

- Provided assistance with compliance with Regulation SCI;
- Assisted with clock synchronization study;
- Provided assistance with respect to the establishment of CAT security;
- Drafted exemptive requests from CAT NMS Plan requirements, including with regard to options market maker quotes, Customer IDs, CAT Reporter IDs, linking allocations to executions, CAT reporting timeline, FDIDs, customer and account information, timestamp granularity, small industry members, data facility reporting and linkage, allocation reports, SRO-assigned market participant identifiers and cancelled trade indicators, thereby seeking to implement changes that would be cost effective and benefit Industry Members and Participants;
- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Provided advice regarding CAT policies and procedures;
- Analyzed the SEC’s amendment of the CAT NMS Plan regarding financial accountability;
- Provided interpretations of and related to the CAT NMS Plan;
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues; and
- Assisted with third-party vendor agreements.

Law Firm: Pillsbury. The legal costs for CAT during the Pre-FAM Period include costs related to the legal services performed by Pillsbury. The Participants interviewed this law firm as well as other potential law firms to provide legal assistance regarding certain liability matters. After considering a variety of factors in its analysis, including the relevant expertise and fees of the firm, CAT LLC determined to hire Pillsbury in April 2019. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees were paid by CAT LLC to Pillsbury. The legal costs for Pillsbury during the Pre-FAM Period included costs incurred from April 2019 until June 22, 2020 to address legal matters regarding the agreements between CAT Reporters and CAT LLC concerning certain terms associated with CAT Reporting (the “Reporter Agreement”). During that period, Pillsbury advised CAT LLC regarding applicable legal matters, participated in negotiations between the Participants and Industry Members, participated in meetings with senior

SEC staff, the Chairman, and Commissioners, represented CAT LLC and the Participants in an SEC administrative proceeding, and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, litigation involving CAT LLC is an expense of operating the CAT, and, therefore, is appropriately an obligation of both Participants and Industry Members under the CAT Funding Model.

(g) Consulting Costs

The consulting costs of \$17,013,414 represent the fees paid to the consulting firm Deloitte & Touche LLP ("Deloitte") as project manager during the Pre-FAM Period, from October 2012 until June 22, 2020. These consulting costs include costs for advisory services related to the operation of the CAT, and meeting facilitation and communications coordination, vendor support and financial analyses.

To help facilitate project management given the unprecedented complexity and scope of the CAT project, the Participants determined it was necessary to engage a consulting firm to assist with the CAT project in 2012, following the adoption of Rule 613. A variety of factors were considered in the analysis of prospective consulting firms, including (1) the firm's qualifications, resources, and expertise; (2) the firm's relevant experience and understanding of the regulatory issues raised by the CAT and in coordinating matters of similar scope; (3) the composition of the consulting team; and (4) professional fees. Following a series of interviews, the exchanges and FINRA as a consortium determined that Deloitte was well qualified given the balance of these considerations and engaged Deloitte on October 1, 2012.

Deloitte's fee rates are negotiated on an annual basis and are in line with market rates for this type of specialized consulting work. CAT LLC assesses Deloitte's performance and reviews prospective budgets and staffing plans submitted by Deloitte on an annual basis. Deloitte's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading consulting firms for similar work.

The consulting costs for CAT during the period from 2012 until the formation of the CAT NMS, LLC were paid directly by the Participants to Deloitte.

After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC to Deloitte. CAT LLC reviewed the consulting fees each month and approved the invoices.

After Deloitte was hired in 2012 through the end of the Pre-FAM Period on June 22, 2020 (excluding the consulting costs from November 15, 2017 through November 15, 2018), Deloitte provided a variety of consulting services, including the following:

- Established and implemented program operations for the CAT project, including the program management [*sic*] office and workstream design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participant's independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, analyzing OATS and CAT requirements, and drafting appendices to the Plan;
- Assisted with cost and funding-related activities for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (*e.g.*, Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with industry outreach and communications regarding the CAT, including assistance with industry outreach events, the development of the CAT website, frequently asked questions, and coordinating with the CAT LLC's public relations firm;
- Provided support for updating the SEC on the progress of the development of the CAT;

- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress;

- Coordinated efforts regarding the selection of the successor Plan Processor;

- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor, including support for the Operating Committee and successor Plan Processor for the new role; and

- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$880,419 represent the cost incurred for insurance for CAT during the Pre-FAM Period. Commencing in 2020, CAT LLC performed an evaluation of various potential alternatives for CAT insurance policies, which included engaging in discussions with different insurance companies and conducting cost comparisons of various alternative approaches to insurance. Based on an analysis of a variety of factors, including coverage and premiums, CAT LLC determined to purchase cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance from USI Insurance Services LLC ("USI"). Such policies are standard for corporate entities, and cyber security liability insurance is important for the CAT System. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

In adopting the CAT NMS Plan, the Commission amended the Plan to add a requirement that CAT LLC's financial statements be prepared in compliance with GAAP, audited by an independent public accounting firm, and made publicly available.⁴⁴ The professional and administration costs include costs related to accounting and accounting advisory services to support the operating and financial functions of CAT, financial statement audit services by an independent accounting firm, preparation of tax returns, and various cash management and treasury functions. In addition, professional and administration costs for the Pre-FAM Period include costs related to the

⁴⁴ Section 9.2 of the CAT NMS Plan.

receipt of market data and a security assessment. The costs for these professional and administration services were \$1,082,036 for the Pre-FAM Period.

Financial Advisory Firm: Anchin Accountants & Advisors ("Anchin"). CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT in April 2018. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The hourly fee rates for this firm were in line with market rates for these financial advisory services. The fees for these services were paid by CAT LLC to Anchin.

After Anchin was hired in April 2018 through the end of the Pre-FAM Period on June 22, 2020 (excluding the period from April 2018 through November 15, 2018), Anchin provided a variety of services, including the following:

- Developed, updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Addressed accounting and financial reporting matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC, including supporting the dissolution of CAT NMS, LLC;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Accounting Firm: Grant Thornton LLP ("Grant Thornton"). In February 2020,

CAT LLC determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the proposed role given the balance of these considerations. Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services. The fees for these services were paid by CAT LLC to Grant Thornton.

Market Data Provider: Exegy. The professional and administrative costs for the Pre-FAM Period included costs related to the receipt of certain market data for the CAT pursuant to an agreement with the CAT LLC, and then with FCAT. Exegy provided SIP Data required by the CAT NMS Plan.

After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy from July 2018 through March 2019. CAT LLC determined that, unlike certain other vendors, Exegy provided market data that included all data elements required by the CAT NMS Plan.⁴⁵ In addition, the fees were reasonable and in line with market rates for the market data received. Accordingly, the professional and administrative costs for the Pre-FAM Period include the Exegy costs from November 2018 through March 2019. The cost of the market data was reasonable for the market data received. The fees for the market data were paid directly by CAT LLC to Exegy.

Upon the termination of the contract between CAT LLC and Exegy, FCAT entered into a contract with Exegy to purchase the required market data from Exegy in July 2019. All costs under the contract were treated as a direct pass through cost to CAT LLC. Therefore, the fees for the market data were paid by CAT LLC to FCAT, who, in turn, paid Exegy for the market data.

Security Assessment: RSM US LLP ("RSM"). The operating costs for the Pre-FAM Period include costs related to a third party security assessment of the

CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation, and operation of the controls specified by NIST Special Publication 800-53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment. RSM performed the assessment from October 2018 through December 2018. Accordingly, the costs for the Pre-FAM Period include the costs incurred in November and December 2018. The cost for the security assessment were paid directly to RSM by CAT LLC.

(j) Public Relations Costs

The public relations costs of \$224,669 represent the fees paid to public relations firms during the Pre-FAM Period for professional communications services to CAT, including media relations consulting, strategy and execution. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants. Specifically, the public relations firms provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). Public relations services were important for various reasons, including monitoring comments made by market participants about CAT and understanding issues related to the CAT discussed on the public record.

The services performed by each of the public relations firms were comparable. The fees for such services were reasonable and in line with market rates. Only one public relations firm was engaged at a time; the three firms were engaged sequentially as the primary public relations contact moved among the three firms during this time period.

Public Relations Firm: Peppercomm, Inc. ("Peppercomm"). The national securities exchanges and FINRA, acting

⁴⁵ See Section 6.5(a)(ii) of the CAT NMS Plan.

as a consortium, determined to hire the public relations firm Peppercomm in October 2014 and continued to engage this firm through September 2017. The exchanges and FINRA made this engagement decision after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fee rates for this public relations firm were negotiated on an arm's length basis and were in line with market rates for these types of services. The public relations costs during the period from October 2014 until the formation of the CAT NMS, LLC were paid directly by the exchanges and FINRA to the public relations firm. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC.

Public Relations Firm: Sloane & Company ("Sloane"). CAT LLC determined to hire a new public relations firm, Sloane, in March 2018,

based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Sloane. CAT LLC continued the engagement with Sloane until February 2020.

Public Relations Firm: Peak Strategies. CAT LLC determined to hire a new public relations firm, Peak Strategies, in March 2020, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Peak Strategies.

(ii) Historical CAT Costs Incurred in Financial Accountability Milestone Period 1

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 1 of the Financial Accountability Milestones ("FAM Period 1"),⁴⁶ which covers the period from June 22, 2020–July 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 1 of \$6,377,343. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$2,125,781), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBBs paying one-third (\$2,125,781). The following table breaks down Historical CAT Costs 1 for FAM Period 1 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 1 *
Capitalized Developed Technology Costs **	\$1,684,870
Technology Costs	3,996,800
Cloud Hosting Services	2,642,122
Operating Fees	1,099,680
CAIS Operating Fees	254,998
Change Request Fees	
Legal	481,687
Consulting	137,209
Insurance	
Professional and administration	69,077
Public relations	7,700
Total Operating Expenses	6,377,343

* The costs described in this table of costs for FAM Period 1 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$362,121 incurred during FAM Period 1 have been appropriately excluded from the above table.⁴⁷

By the completion of FAM Period 1, CAT LLC was required to implement the reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of equities transaction data and options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.⁴⁸ CAT LLC completed the requirements of FAM Period 1 by July 31, 2020. The following describes the costs for each of the categories for FAM Period 1.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 1 to provide a broad array of cloud hosting services for the CAT,

including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production environments, during the FAM 1 Period. Accordingly, the \$2,642,122 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 1. The fee arrangement for AWS described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor

Agreement. Moreover, CAT LLC continued to believe that AWS's maturity in the cloud services space as well as the significant cost and time necessary to move the CAT to a different cloud services provider supported the continued engagement of AWS.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the FAM 1 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well as SIP Data, reference data and other

⁴⁶ Section 11.6(a)(i)(A) of the CAT NMS Plan.

⁴⁷ As discussed above, with respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized

over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁴⁸ See definition of "Initial Industry Member Core Equity and Options Reporting" in Section 1.1 of the CAT NMS Plan.

types of Other Data. The following chart provides data regarding the average

daily volume, cumulative total events, total compute hours and storage

footprint of the CAT during FAM Period 1.⁴⁹

	Date range: 6/22/20–7/31/20
Average Daily Volume in Billions:	
Participant—Equities	6
Participant—Options	103
Industry Member—Equities	7
Industry Member—Options	0.31
SIP—Options & Equities	74
Average Total Daily Volume	185
Cumulative Total Events for the Period	5,190
Total Compute Hours for the Period	2,612,082
Storage Footprint at End of Period (Petabytes)	57.47

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 1. Accordingly, the \$1,099,680 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 1. The fee arrangement for FCAT described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, FCAT's activities with respect to the CAT included the following:

- Published iterative drafts of draft Technical Specifications for Phase 2d, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Published iterative drafts of CAIS Technical Specifications, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Facilitated Industry Member reporting of Quote Sent Time on Options Market Maker quotes;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;

- Provided support in discussions with Participants and the SEC and its staff;

- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;

- Administered the CAT website and all of its content; and

- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 1. Accordingly, the \$254,998 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 1. The fee arrangement for Kingland described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

CAT LLC did not incur costs related to change requests during FAM Period 1.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 1 of \$1,684,870 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include: (1) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including separate production and industry test entitlements, and reprocessing of exchange event timestamps; (2) implementation fees; and (3) license fees.

(f) Legal Costs

The legal costs of \$481,687 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 1.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 1 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to WilmerHale. During FAM Period 1, WilmerHale provided legal assistance to the CAT including with regard to the following:

- Assisted with the development of the CAT funding model and drafted related amendments and fee filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, verbal activity, options market maker quote sent time, TRF linkages, and allocations;
- Provided interpretations related to CAT NMS Plan requirements, including the Financial Accountability Milestone amendment;

⁴⁹ Note that the volume data described in this table does not include CAIS data.

- Assisted with compliance with Regulation SCI;
- Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the drafting of the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Assisted with communications and presentations for the industry regarding CAIS;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for Compliance Subcommittee, including with regard to response to OCIE examinations and the annual assessment;
- Provided guidance regarding CAT technical specifications;
- Assisted with third-party vendor agreements; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to Pillsbury. During FAM Period 1, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(g) Consulting Costs

The consulting costs of \$137,209 represent the fees paid to Deloitte as project manager during FAM Period 1. CAT LLC continued to employ Deloitte during FAM Period 1 based on, among other things, their expertise and cumulative experience with the CAT. The fee rates for Deloitte during FAM Period 1 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 1 were paid by CAT LLC to the consulting firm. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 1,

Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

Although insurance was in effect during FAM Period 1, CAT LLC did not incur costs related to insurance during FAM Period 1.

(i) Professional and Administration Costs

Financial Advisory Firm: Anchin. The professional and administration costs of \$69,077 represent the fees paid to Anchin during FAM Period 1. CAT LLC continued to employ Anchin during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these type of financial advisory services. The fees for these services during FAM Period 1 were paid by CAT LLC to Anchin. During FAM Period 1, Anchin provided a variety of services, including the following:

- Maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;

- Worked with and provided support to the Operating Committee and various CAT working groups; and
- Prepared monthly and quarterly financial statements.

(j) Public Relations Costs

The public relations costs of \$7,700 represent the fees paid to Peak Strategies during FAM Period 1. CAT LLC continued to employ Peak Strategies during FAM Period 1 based on, among other things, their expertise and history with the project. The fee rates for this firm were reasonable and in line with market rates for these types of services. The fees for these services during FAM Period 1 were paid by CAT LLC to Peak Strategies. During FAM Period 1, Peak Strategies continued to provide professional communications services to CAT LLC, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(iii) Historical CAT Costs Incurred in Financial Accountability Milestone Period 2

Historical CAT Costs 1 would include costs incurred by CAT LLC and already funded by Participants during Period 2 of the Financial Accountability Milestones ("FAM Period 2"),⁵⁰ which covers the period from August 1, 2020–December 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 2 of \$42,976,478. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$14,325,493), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third

⁵⁰ Section 11.6(a)(i)(B) of the CAT NMS Plan.

(\$14,325,493) and CEBSS paying one-third (\$14,325,493). The following table

breaks down Historical CAT Costs 1 for FAM Period 2 into the categories set

forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 2 *
Capitalized Developed Technology Costs **	\$6,761,094
<i>Technology Costs</i>	31,460,033
Cloud Hosting Services	20,709,212
Operating Fees	9,108,700
CAIS Operating Fees	1,590,298
Change Request Fees	51,823
Legal	2,766,644
Consulting	532,146
Insurance	976,098
Professional and administration	438,523
Public relations	41,940
Total Operating Expenses	42,976,478

* The costs described in this table of costs for FAM Period 2 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$1,892,505 incurred during FAM Period 2 have been appropriately excluded from the above table.⁵¹

By the completion of FAM Period 2, CAT LLC was required to implement the following with regard to the CAT:

(a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, CustomerID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1-8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission.⁵²

CAT LLC completed the requirements of FAM Period 2 by December 31, 2020. The following describes the costs for each of the categories for FAM Period 2.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 2 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production environments, during the FAM 2 Period. Accordingly, the \$20,709,212 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 2.

The fee arrangement for AWS described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the FAM 2 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well as SIP Data, and Other Data, including reference data. In addition, Industry Members began reporting LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 2.⁵³

	Date range: 8/1/20–12/31/20
Average Daily Volume in Billions:	
Participant—Equities	6
Participant—Options	116
Industry Member—Equities	11
Industry Member—Options	0.98
SIP—Options & Equities	80
Average Total Daily Volume	282
Cumulative Total Events for the Period	2,170
Total Compute Hours for the Period	15,660,392
Storage Footprint at End of Period (Petabytes)	114.59

⁵¹ As discussed above, with respect to certain costs that were “appropriately excluded,” such excluded costs relate to the amortization of capitalized technology costs, which are amortized over the life of the Plan Processor Agreement. As

such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁵² See definition of “Full Implementation of Core Equity Reporting Requirements” in Section 1.1 of the CAT NMS Plan.

⁵³ Note that the volume data described in this table does not include CAIS data.

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 2. Accordingly, the \$9,108,700 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 2. The fee arrangement for FCAT described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, FCAT's activities with respect to the CAT included publishing the Technical Specifications for Phase 2d and overseeing the reporting of firm to firm and intrafirm linkages by Industry Members. In addition, FCAT also continued to engage in the following activities during FAM Period 2:

- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the development and implementation of the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 2. Accordingly, the \$1,590,298 in technology costs for CAIS operating fees

represent costs incurred for services provided by Kingland during FAM Period 2. The fee arrangement for Kingland described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

During FAM Period 2, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 2, CAT incurred costs of \$51,823 related to a change request regarding the addition of functionality for exchange Participants to report rejected messages to the CAT.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 2 of \$6,761,094 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to separate production and industry test entitlements, market maker reference data, and back-processing of exchange exception logic; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$2,766,644 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 2.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 2 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM

Period 2 were paid by CAT LLC to WilmerHale. During FAM Period 2, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, allocations, exchange activity, OTQT, initial data validation, error corrections and recordkeeping;
- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs and technical specifications;
- Provided support for the Operating Committee, Compliance Subcommittees, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6 of the CAT NMS Plan;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for the Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
- Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
- Provided guidance regarding SRO rule filings for the retirement of systems;
- Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;
- Assisted with third-party vendor agreements (e.g., with regard to Anchin, Grant Thornton and insurance policies);
- Assisted with change requests; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to Pillsbury. During FAM Period 2, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted and filed a proposed amendment to the CAT NMS Plan regarding liability matters. As discussed above, liability issues related to the CAT are important matters that

needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(g) Consulting Costs

The consulting costs of \$532,146 represent the fees paid to Deloitte as project manager during FAM Period 2. CAT LLC continued to employ Deloitte during FAM Period 2 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 2 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 2 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 2, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$976,098 represent the fees paid for insurance during FAM Period 2. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$438,523 represent the fees paid to Anchin and Grant Thornton for

financial services provided during FAM Period 2.

Financial Advisory Firm: Anchin. CAT LLC continued to engage Anchin during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these types of financial advisory services. The fees for these services during FAM Period 2 were paid by CAT LLC to Anchin. During FAM Period 2, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated [*sic*] bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from the Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audit by an independent auditor; and
- Reviewed historical costs from inception.

Accounting Firm: Grant Thornton. CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 2 based on, among other things, its expertise and cumulative knowledge of CAT LLC. CAT LLC continued to believe that Grant Thornton was well qualified for its role and its fee rates were in line with market rates for these accounting services. The fees for these services during FAM Period 2 were paid by CAT LLC to Grant Thornton. During FAM Period 2, Grant Thornton performed a financial statement audit for CAT LLC as an independent accounting firm.

(j) Public Relations Costs

The public relations costs of \$41,940 represent the fees paid to Peak Strategies during FAM Period 2. CAT

LLC continued to employ Peak Strategies during FAM Period 2 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 2 were paid by CAT LLC to Peak Strategies. During FAM Period 2, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (*e.g.*, congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (*e.g.*, amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(iv) Historical CAT Costs Incurred in Financial Accountability Milestone Period 3

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 3 of the Financial Accountability Milestones ("FAM Period 3"),⁵⁴ which covers the period from January 1, 2021–December 31, 2021. Historical CAT Costs 1 would include costs for FAM Period 3 of \$144,415,268. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$48,138,423), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$48,138,423) and CEBBs paying one-third (\$48,138,423). The following table breaks down Historical CAT Costs 1 for FAM Period 3 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

⁵⁴ Section 11.6(a)(i)(C) of the CAT NMS Plan.

⁵⁵ As discussed above, with respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized over the life of the Plan Processor Agreement. As

Operating expense	Historical CAT costs for FAM Period 3 *
Capitalized Developed Technology Costs **	\$10,763,372
Technology Costs	123,639,402
Cloud Hosting Services	94,574,759
Operating Fees	23,106,091
CAIS Operating Fees	5,562,383
Change Request Fees	396,169
Legal	6,333,248
Consulting	1,408,209
Insurance	1,582,714
Professional and administration	595,923
Public relations	92,400
Total Operating Expenses	144,415,268

* The costs described in this table of costs for FAM Period 3 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$5,108,044 incurred during FAM Period 3 have been appropriately excluded from the above table.⁵⁵

By the completion of FAM Period 3, CAT LLC was required to implement the following requirements with regard the CAT:

(a) reporting to the Order Audit Trail System ("OATS") is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or

order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)–(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met.⁵⁶

CAT LLC completed the requirements of FAM Period 3 by December 31, 2021. The following describes the costs for each of the categories for FAM Period 3.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 3 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production

environments, during the FAM 3 Period. Accordingly, the \$94,574,759 in technology costs for cloud hosting services represents costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 3. The fee arrangement for AWS described above for the earlier periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During FAM Period 3, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a, Phase 2b, Phase 2c and Phase 2d Industry Member Data (including certain linkages), SIP Data, Other Data, including reference data, and LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 3.⁵⁷

	Date range: 1/1/21 to 4/25/21	Date range: 4/26/21 to 12/31/21 *
Average Daily Volume in Billions:		
Participant—Equities	9	9
Participant—Options	135	136
Industry Member—Equities	20	19
Industry Member—Options	2	2
SIP—Options & Equities	129	137
Average Total Daily Volume	297	304
Cumulative Total Events for the Period	7,480	5,310
Total Compute Hours for the Period	15,860,304	33,487,318
Storage Footprint at End of Period (Petabytes)	180.22	284.62

* Start of Participant Equities in CAT format and SIP Equities on 4/26/21.

such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁵⁶ See definition of "Full Availability and Regulatory Utilization of Transactional Database Functionality" in Section 1.1 of the CAT NMS Plan.

⁵⁷ Note that the volume data described in this table does not include CAIS data.

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 3. Accordingly, the \$23,106,091 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 3. The fee arrangement for FCAT described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, FCAT's activities with respect to the CAT included the following:

- Facilitated Phase 2c and Phase 2d testing for Industry Members;
- Oversaw creation of linkages of the lifecycle of order events based on the received data through Phase 2d;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement with FCAT discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 3. Accordingly, the \$5,562,383 in technology costs for CAIS operating fees represents costs incurred for services provided by Kingland during FAM Period 3. The fee arrangement for

Kingland described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs. The full CAIS Technical Specifications were published during FAM Period 3.

(d) Technology Costs—Change Request Fees

During FAM Period 3, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 3, CAT incurred costs of \$396,169 related to change requests, including the following: (1) the addition of functionality for exchange Participants to report rejected messages to the CAT; (2) the migration of MIRS query engine to AWS to reduce operational costs and increase resiliency; and (3) updating the Participant Technical Specifications to allow for two-sided Participant option quote reporting.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 3 of \$10,763,372 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor, including the transition from equity data received by FINRA pursuant to various regulatory services agreements between FINRA and Participant exchanges to the equity CAT Data, and the completion of the Industry Member Phase 2d options manual and complex orders go-live requirements; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to off-exchange volume concentration, Participant 24-hour trading and an external metastore; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$6,333,248 represent the fees paid for legal services

provided by three law firms, WilmerHale, Pillsbury and Covington & Burling LLP ("Covington") during FAM Period 3.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 3 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to WilmerHale. During FAM Period 3, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements, including, for example, verbal activity regarding Phase 2c cutover, error reports, error corrections, Phase 2d Reporting, unique Order-ID on internal route events, reporting addresses, recordkeeping, and unique CCID for foreign customers;
- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs, CAIS requirements, ADF, and technical specifications;
- Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6(c) of the CAT NMS Plan;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
- Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
- Provided guidance regarding SRO rule filings for the retirement of systems;
- Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;
- Provided assistance with change requests;
- Provided guidance and regulatory support for litigation regarding the response to the SEC's exemptive orders;
- Assisted with communications with the industry, including CAT Alerts and presentations;
- Provided guidance regarding the confidentiality of CAT Data, including third-party information requests;

- Assisted with cost management analysis and proposals; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to Pillsbury. During FAM Period 3, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During this period, Pillsbury advised CAT LLC regarding applicable legal matters, reviewed and responded to comment letters regarding the proposed Plan amendment, participated in meetings with senior SEC staff, responded to comments submitted following the SEC's April 6, 2021 order instituting proceedings,⁵⁸ and assessed legal matters regarding the SEC's October 29, 2021 order denying the proposed Plan amendment.⁵⁹

Law Firm: Covington. CAT LLC hired Covington for litigation with the SEC regarding certain exemptive orders related to the CAT, including orders issued in December 2020.⁶⁰ CAT LLC interviewed this law firm as well as other potential law firms, considering a variety of factors in its analysis for choosing legal assistance, including the relevant expertise and fees of the potential lawyers. CAT LLC approved the engagement of Covington in January 2021. The fee rates for this law firm, which were calculated based on hourly rates, were in line with market rates for specialized services. The legal fees for FAM Period 3 for this firm were paid by CAT LLC to Covington.

After Covington was hired in 2021 through the end of 2021, the firm provided legal assistance regarding the litigation with the SEC regarding the 2020 Orders. These services included researching, drafting, and filing motions to stay the 2020 orders and related materials in proceedings before the SEC, as well as researching, drafting, and filing petitions for judicial review of the 2020 Orders in proceedings before the U.S. Court of Appeals for the D.C. Circuit. Covington oversaw ongoing

litigation proceedings on these matters, and also supported WilmerHale with respect to settlement negotiations with the SEC staff regarding the 2020 Orders.

In addition to these services, CAT LLC engaged Covington in November 2021 to provide assistance with respect to the SEC's disapproval of CAT NMS Plan amendments concerning a proposed limitation on liability in the event of a data breach or similar event. Covington provided advice concerning CAT's response to the SEC's disapproval order. This work accounted for a minority of Covington's fees in 2021.⁶¹

(g) Consulting Costs

The consulting costs of \$1,408,209 represent the fees paid to Deloitte as project manager during FAM Period 3. CAT LLC continued to employ Deloitte during FAM Period 3 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 3 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 3 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 3, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$1,582,714 represent the fees paid for insurance during FAM Period 3. CAT LLC continued to maintain cyber security

liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$595,923 represent the fees paid to Anchin and Grant Thornton for financial services during FAM Period 3.

Financial Advisory Firm: Anchin. CAT LLC continued to employ Anchin during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these financial advisory services. The fees for these services during FAM Period 3 were paid by CAT LLC to Anchin. During FAM Period 3, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
 - Provided cash management and treasury functions;
 - Facilitated [sic] bill payments;
 - Provided monthly bookkeeping;
 - Reviewed vendor invoices and documentation in support of cash disbursements;
 - Provided accounting research and consultations on various accounting, financial reporting and tax matters;
 - Addressed not-for-profit tax and accounting considerations;
 - Prepared tax returns;
 - Addressed various accounting, financial reporting and operating inquiries from Participants;
 - Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
 - Supported compliance with the CAT NMS Plan;
 - Worked with and provided support to the Operating Committee and various CAT working groups;
 - Prepared monthly, quarterly and annual financial statements;
 - Supported the annual financial statement audits by an independent auditor;
 - Reviewed historical costs from inception; and
 - Provided accounting and financial information in support of SEC filings.
- Accounting Firm: Grant Thornton.* CAT LLC continued to employ the accounting firm Grant Thornton during

⁵⁸ Securities Exchange Act Rel. No. 91487 (Apr. 6, 2021), 86 FR 19054 (Apr. 12, 2021).

⁵⁹ Securities Exchange Act Rel. No. 93484 (Oct. 29, 2021), 86 FR 60933 (Nov. 4, 2021).

⁶⁰ See Securities Exchange Act Rel. No. 90688 (Dec. 16, 2020), 85 FR 83634 (Dec. 22, 2020); and Securities Exchange Act Rel. No. 90689 (Dec. 16, 2020), 85 FR 83667 (Dec. 22, 2020) (collectively, the "2020 Orders").

⁶¹ As discussed above with regard to Pillsbury's work on liability matters, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, such activity is a necessary part of the operation of the CAT.

FAM Period 3 based on, among other things, their expertise and cumulative knowledge of CAT LLC. CAT LLC determined that Grant Thornton was well qualified for its role and that its fixed fee rates were in line with market rates for these accountant services. The fees for these services during FAM Period 3 were paid by CAT LLC to Grant Thornton. During FAM Period 3, Grant Thornton provided audited financial statements for CAT LLC.

(j) Public Relations Costs

The public relations costs of \$92,400 represent the fees paid to Peak Strategies during FAM Period 3. CAT LLC continued to employ Peak Strategies during FAM Period 3 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 3 were paid by CAT LLC to Peak Strategies. During FAM Period 3, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting

such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(v) Excluded Costs

Historical CAT Costs 1 would not include three categories of CAT costs ("Excluded Costs"): (1) \$14,749,362 of costs related to the termination of the relationship with the Initial Plan Processor; (2) \$48,874,937, which are all CAT costs incurred from November 15, 2017 through November 15, 2018; and (3) \$19,628,791, which are costs paid to the Initial Plan Processor from November 16, 2018 through February 2019 when the relationship with the Initial Plan Processor was concluded. The Participants would remain responsible for 100% of these costs, which total \$83,253,090. CAT LLC determined to exclude these Excluded Costs from Historical CAT Costs 1 because these costs relate to the delay in

the start of reporting to the CAT and the conclusion of the relationship with the Initial Plan Processor.⁶²

(a) Costs Related to Conclusion of Relationship With Initial Plan Processor

First, Historical CAT Costs 1 would not include \$14,749,362 of costs related to the conclusion of the relationship with the Initial Plan Processor. Such costs include costs related to the American Arbitration Association, the legal assistance of Pillsbury with regard to the arbitration with the Initial Plan Processor, and the settlement costs related to the arbitration with the Initial Plan Processor. The Participants would remain responsible for 100% of these \$14,749,362 in costs.

(b) Costs Incurred From November 15, 2017 Through November 15, 2018

Second, Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018. CAT LLC determined to exclude all costs during this one-year period of \$48,874,937 from fees charged to Industry Members due to the delay in the start of reporting to the CAT. The Participants would remain responsible for 100% of these \$48,874,937 in costs. The following table breaks down these costs into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Excluded costs for November 15, 2017–November 15, 2018*
Capitalized Developed Technology Costs	\$37,852,083
Technology Costs	
Cloud Hosting Services	
Operating Fees	
CAIS Operating Fees	
Change Request Fees	
Legal	6,143,278
Consulting	4,452,106
Insurance	
Professional and administration	340,145
Public relations	87,325
Total Operating Expenses	48,874,937

* The costs described in this table of Excluded Costs were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

⁶² In approving the CAT Funding Model, the Commission states that the proposed exclusion of the first two categories of Excluded Costs "is reasonable in the Commission's view because it would not require all costs incurred by the Participants to be recovered from Industry Members

through the Historical CAT Assessment, specifically excluding those costs related to the delay in the start of reporting to the CAT and costs related to the conclusion of the relationship with the Initial Plan Processor." CAT Funding Model Approval Order at 62663. In addition to the first two

categories of Excluded Costs, CAT LLC is now proposing a third category of Excluded Costs that would exclude all costs paid to the Initial Plan Processor after November 15, 2018.

The following provides additional detail regarding the Excluded Costs.

(I) Technology Costs—Cloud Hosting Services, Operating Fees, CAIS Operating Fees and Change Request Fees

CAT LLC did not incur technology costs related to the categories of cloud hosting services, operating fees, CAIS operating fees or change requests during the period from November 15, 2017 through November 15, 2018.

(II) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for the period from November 15, 2017 through November 15, 2018 include capitalizable application development costs of \$37,852,083 incurred in the development of the CAT by the Initial Plan Processor. Such costs include development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Initial Plan Processor. Such costs include costs related to Industry Member technical specifications for orders and transactions, the system security plan, testing and production for Participant CAT reporting, third-party security assessment and response, query portal, onboarding of the Chief Information Security Officer, and ingestion of FINRA TRF data and FINRA data related to halts and corporate actions.

(III) Legal Costs

The legal costs of \$6,143,278 represent the fees paid to WilmerHale for legal services from November 15, 2017 through November 15, 2018. During this period, WilmerHale provided legal assistance to the CAT including with regard to the following:

- Provided legal support for the governance of the CAT, including governance support for the Operating Committee, Advisory Committee, Compliance Subcommittee, and CAT working groups;
- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan;
- Provided assistance related to CAT security;
- Drafted exemptive requests, including requests related to PII;
- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Provided interpretations of and related to the CAT NMS Plan;

- Provided advice with regard to regulator access to the CAT;
- Assisted with the Plan Processor transition;
- Provided assistance regarding communications with the industry regarding the CAT;
- Provided advice regarding Customer Account Information and PII;
- Provided support for litigation related to SEC exemptive orders; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretative and implementation issues.

(IV) Consulting Costs

The consulting costs of \$4,452,106 represent the fees paid to Deloitte for their role as project manager for the CAT from November 15, 2017 through November 15, 2018. During this period, Deloitte engaged in the following activities with respect to the CAT:

- Implemented program operations for the CAT project;
- Provided governance support to the Operating Committee, including support for Subcommittees and working groups of the Operating Committee (e.g., Compliance Subcommittee, Cost and Funding Working Group, Technical Working Group, Industry Outreach Working Group, Security Working Group and Steering Committee);
- Assisted with cost and funding issues for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress.

(V) Insurance

CAT LLC did not incur costs related to insurance during the period from November 15, 2017 through November 15, 2018.

(VI) Professional and Administration Costs

The professional and administration costs of \$340,145 represent the fees paid to Anchin, Exegy and RSM from November 15, 2017 through November 15, 2018.

Financial Advisory Firm: Anchin. From the commencement of its engagement [sic] in April 2018 through November 15, 2018, Anchin engaged in the following activities with respect to the CAT:

- Developed, updated and maintained internal controls;
 - Provided cash management and treasury functions;
 - Facilitated bill payments;
 - Provided monthly bookkeeping;
 - Reviewed vendor invoices and documentation in support of cash disbursements;
 - Provided accounting research and consultations on various accounting, financial reporting and tax matters;
 - Addressed not-for-profit tax and accounting considerations;
 - Prepared tax returns;
 - Addressed various accounting, financial reporting and operating inquiries from Participants;
 - Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
 - Addressed accounting and financial matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC, including supporting the dissolution of CAT NMS, LLC;
 - Supported compliance with the CAT NMS Plan;
 - Worked with and provided support to the Operating Committee and various CAT working groups;
 - Prepared monthly, quarterly and annual financial statements;
 - Supported the annual financial statement audits by an independent auditor;
 - Reviewed historical costs from inception; and
 - Provided accounting and financial information in support of SEC filings.
- Market Data Provider: Exegy.* From July 2018 through November 15, 2018, CAT LLC purchased market data from Exegy (as described in more detail above).

Security Assessment: RSM. From October 2018 through November 15, 2018, CAT LLC incurred costs for RSM's performance of a security assessment (as described in more detail above).

(VII) Public Relations Costs

The public relations costs of \$87,325 represent the fees paid to Sloane from November 15, 2017 through November 15, 2018. From the commencement of its engagement [sic] in March 2018 through November 15, 2018, Sloane provided professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, Sloane provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting

such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan).

(c) Costs Paid to Initial Plan Processor From November 16, 2018 Through February 2019

Third, Historical CAT Costs 1 would not include the \$19,628,791 in costs paid to the Initial Plan Processor from November 16, 2018 through February 2019 when CAT LLC's relationship with the Initial Plan Processor concluded. CAT LLC determined that Historical CAT Costs 1 would not include any fees paid to the Initial Plan Processor after November 15, 2017,⁶³ which was the date by which Participants were required to begin reporting to the CAT.⁶⁴ As discussed above, the Participants determined that Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Initial Plan Processor costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Initial Plan Processor costs incurred after November 15, 2018 are the \$19,628,791 in costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these \$19,628,791 in costs.

(C) Historical Recovery Period 1

Under the CAT NMS Plan, the Operating Committee is required to reasonably establish the length of the Historical Recovery Period used in calculating each Historical Fee Rate based upon the amount of the Historical CAT Costs to be recovered by the Historical CAT Assessment, and to describe the reasons for its length.⁶⁵ The Historical Recovery Period used in calculating the Historical Fee Rate may

not be less than 24 months or more than five years.⁶⁶ The Operating Committee has determined to establish a Historical Recovery Period 1 of 24 months for Historical CAT Assessment 1.

The Operating Committee determined that the length of Historical Recovery Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans to the Participants in a timely fashion. The Operating Committee determined that 24 months for Historical Recovery Period 1 would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to Section 31.⁶⁷ In addition, in establishing a Historical Recovery Period of 24 months, the Operating Committee recognized that the total costs for Historical CAT Assessment 1 were less than the total costs for 2022 and 2023,⁶⁸ and therefore it would be reasonable and appropriate to recover costs subject to this filing over an approximate two-year period.

The length of the Historical Recovery Period 1 and the reasons for its length are provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.⁶⁹

(D) Projected Total Executed Equivalent Share Volume

The calculation of Historical Fee Rate 1 also requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for Historical Recovery Period 1. Under the CAT NMS Plan, the Operating Committee is required to "reasonably determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each Historical Recovery Period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months."⁷⁰ The Operating Committee is

required to base its projection on the prior twelve months, but it may use its discretion to analyze the likely volume for the upcoming year. Such discretion would allow the Operating Committee to use its judgment when estimating projected total executed equivalent share volume if the volume over the prior twelve months was unusual or otherwise unfit to serve as the basis of a future volume estimate.⁷¹

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. The Operating Committee has determined to calculate the projected total executed equivalent share volume for the 24 months of Historical Recovery Period 1 by doubling the executed equivalent share volume for the prior 12 months. The Operating Committee determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has remained relatively constant. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395, the executed equivalent share volume for 2022 was 4,039,821,841,560.31, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6. Accordingly, the projected total executed equivalent share volume for Historical Recovery Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.⁷²

The projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1 and a description of the calculation of the projection is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.⁷³

(E) Historical Fee Rate 1

Historical Fee Rate 1 would be calculated by dividing Historical CAT Costs 1 by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1, as described in detail above.⁷⁴ Specifically,

⁶³ As discussed below, CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. See Section 3(a)(10)(E) below.

⁶⁴ The SEC approved the CAT NMS Plan on November 15, 2016, and Participant reporting was required to begin on the first anniversary of this date, November 15, 2017. See Section 6.3 of the CAT NMS Plan and CAT NMS Plan Approval Order.

⁶⁵ Section 11.3(b)(i)(D)(I) and Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

⁶⁶ Section 11.3(b)(i)(D)(I) of the CAT NMS Plan. In the CAT Funding Model Approval Order, the SEC stated that "[i]n the Commission's view, it is reasonable for the Operating Committee to establish the length of the Historical Recovery Period to be no less than 24 months and no more than five years." CAT Funding Model Approval Order at 62664.

⁶⁷ As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model at 62682.

⁶⁸ The total CAT costs for 2022 were approximately \$186 million and the total CAT costs for 2023 were approximately \$233 million.

⁶⁹ Section 11.3(b)(iii)(B)(II)(C) of the CAT NMS Plan.

⁷⁰ Section 11.3(b)(i)(E) of the CAT NMS Plan.

⁷¹ CAT Funding Model Approval Order at 62664.

⁷² This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

⁷³ Section 11.3(b)(iii)(B)(II)(D) of the CAT NMS Plan.

⁷⁴ In approving the CAT Funding Model, the Commission stated that "[t]he calculation of the Historical Fee Rate 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 is

Historical Fee Rate 1 would be calculated by dividing \$318,059,819 by 7,961,507,681,810.42. As a result, the Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. Historical Fee Rate 1 is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide the Historical Fee Rate in a fee filing for a Historical CAT Assessment.⁷⁵

(3) Past CAT Costs and Participants

Participants would not be required to pay any fees associated with Historical CAT Assessment 1 as the Participants previously have paid all Past CAT Costs. The CAT NMS Plan explains that:

Because Participants previously have paid Past CAT Costs via loans to the Company, Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs and such other additional Past CAT Costs as reasonably determined by the Operating Committee will be paid by the cancellation of loans made to the Company on a pro rata basis based on the outstanding loan amounts due under the loans.⁷⁶

The CAT NMS Plan further states that "Historical CAT Assessments are designed to recover two-thirds of the Historical CAT Costs."⁷⁷

(4) Monthly Fees

CEBBs and CEBSs would be required to pay fees for Historical CAT Assessment 1 on a monthly basis for the period in which Historical CAT Assessment 1 is in effect.⁷⁸ A CEBB or CEBS's fee for each month would be calculated based on the transactions in Eligible Securities executed by the CEBB or CEBS from the prior month.⁷⁹ Proposed paragraph (a)(1)(A) of the fee schedule would state that each CAT Executing Broker would receive its first invoice in November 2024, and "would receive an invoice each month thereafter in which Historical CAT Assessment 1 is in effect." Proposed paragraph (a)(1)(B) of the fee schedule would state

reasonable." CAT Funding Model Approval Order at 62664.

⁷⁵ Section 11.3(b)(iii)(B)(II)(A) of the CAT NMS Plan.

⁷⁶ Section 11.3(b)(ii) of the CAT NMS Plan.

⁷⁷ *Id.* In approving the CAT Funding Model, the Commission stated that "[t]he proposed allocation of the Historical CAT Assessment solely to CEBSs and CEBBs, and ultimately Industry Members, is reasonable. The Historical CAT Assessment will still be divided into thirds," as the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made to the Company. CAT Funding Model Approval Order at 62666.

⁷⁸ See Section 11.3(b)(iii)(A) of the CAT NMS Plan.

⁷⁹ See proposed paragraph (a)(1)(B) of the fee schedule.

that "Consolidated Audited Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis." In addition, proposed paragraph (b)(1) of the fee schedule states that each CEBB and CEBS is required to pay its CAT fees "each month."

(5) Actual Recovery Period for Historical CAT Assessment 1

The CAT NMS Plan states that, "[n]otwithstanding the length of the Historical Recovery Period used in calculating the Historical Fee Rate, each Historical CAT Assessment calculated using the Historical Fee Rate will remain in effect until all Historical CAT Costs for the Historical CAT Assessment are collected."⁸⁰ Accordingly, Historical CAT Assessment 1 will remain in effect until all Historical CAT Costs 1 have been collected. The actual recovery period for Historical CAT Assessment 1 may be shorter or longer than Historical Recovery Period 1 depending on the actual executed equivalent share volumes during the time that Historical CAT Assessment 1 is in effect.⁸¹

(6) Consolidated Audit Trail Funding Fees

To implement Historical CAT Assessment 1, a new section would be added to the Exchange's fee schedule for "Consolidated Audit Trail Funding Fees", and it would include the proposed paragraphs described below.

(A) Fee Schedule for Historical CAT Assessment 1

The CAT NMS Plan states that:

Each month in which a Historical CAT Assessment is in effect, each CEBB and each CEBS shall pay a fee for each transaction in Eligible Securities executed by the CEBB or CEBS 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 reasonably determined pursuant to paragraph (b)(i) of this Section 11.3.⁸²

Accordingly, based on the factors discussed above, the Exchange proposes to add paragraph (a)(1) to the Consolidated Audit Trail Funding Fees section of its fee schedule. Proposed

⁸⁰ Section 11.3(b)(i)(D)(II) of the CAT NMS Plan.

⁸¹ In approving the CAT Funding Model, the Commission stated that, "[i]n the Commission's view, it is reasonable for Industry Members to be charged a Historical CAT Assessment until all Historical CAT Costs for the Historical CAT Assessment are collected." CAT Funding Model Approval Order at 62665.

⁸² Section 11.3(b)(iii)(A) of the CAT NMS Plan.

paragraph (a)(1) would state the following:

(A) Each CAT Executing Broker shall receive its first invoice for Historical CAT Assessment 1 in November 2024, which shall set forth the Historical CAT Assessment 1 fees calculated based on transactions in October 2024, and shall receive an invoice for Historical CAT Assessment 1 for each month thereafter in which Historical CAT Assessment 1 is in effect.

(B) Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis. Each month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer ("CEBB") and/or the CAT Executing Broker for the Seller ("CEBS") (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of \$0.000013 per executed equivalent share.

(C) Historical CAT Assessment 1 will remain in effect until \$212,039,879.34 (two-thirds of Historical CAT Costs 1) are collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time. Consolidated Audit Trail, LLC will provide notice when Historical CAT Assessment 1 will no longer be in effect.

(D) Each CAT Executing Broker shall be required to pay each invoice for Historical CAT Assessment 1 in accordance with paragraph (b).

As noted in the Plan amendment for the CAT Funding Model, "as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee rate."⁸³ Accordingly, proposed paragraph (a)(1)(B) of the fee schedule would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 of \$0.00003994969693072937 by one-third, and rounding the result to 6 decimal places.⁸⁴ The Operating Committee determined to use six decimal places to balance the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

The proposed language in paragraph (a)(1)(A) of the fee schedule would

⁸³ CAT Funding Model Approval Order at 62658, n.658.

⁸⁴ Dividing \$0.00003994969693072937 by three equals \$0.00001331656564357646. Rounding \$0.00001331656564357646 to six decimal places equals \$0.000013.

describe when CAT Executing Brokers would receive their first monthly invoice for Historical CAT Assessment 1. Specifically, CAT Executing Brokers would receive their first monthly invoice for Historical CAT Assessment 1 in November 2024 and the fees set forth in that invoice would be calculated based on transactions executed in the prior month, that is, transactions executed in October 2024. The payment for the first invoice would be required within 30 days after the receipt of the first invoice (unless a longer period is indicated), as described in paragraph (b)(2) of the fee schedule.

Proposed paragraph (a)(1)(A) of the fee schedule also would describe the monthly cadence of the invoices for Historical CAT Assessment 1. Specifically, after the first invoices are provided to CAT Executing Brokers in November 2024, invoices will be sent to CAT Executing Brokers each month thereafter while Historical CAT Assessment 1 is in effect.

Proposed paragraph (a)(1)(B) of the fee schedule would describe the invoices for Historical CAT Assessment 1.

Proposed paragraph (a)(1)(B) of the fee schedule would state that “Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis.” Proposed paragraph (a)(1)(B) of the fee schedule also would describe the fees to be set forth in the invoices for Historical CAT Assessment 1. Specifically, it would state that “[e]ach month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer (“CEBB”) and/or the CAT Executing Broker for the Seller (“CEBS”) (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of \$0.000013 per executed equivalent share.”

Furthermore, proposed paragraph (a)(1)(C) of the fee schedule would describe how long Historical CAT Assessment 1 would remain in effect. It would state that “Historical CAT Assessment 1 will remain in effect until \$212,039,879.34 (two-thirds of Historical CAT Costs 1) are collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time.” This proposed paragraph would further state that “Consolidated Audit Trail, LLC will provide notice when Historical

CAT Assessment 1 will no longer be in effect.”

Historical CAT Assessment 1 will be assessed for all transactions executed in each month through the end of the month in which two-thirds of Historical CAT Costs 1 are assessed, and then CAT LLC will provide notice that Historical CAT Assessment 1 is no longer in effect. Since Historical CAT Assessment 1 is a monthly fee based on transaction volume from the prior month, Historical CAT Assessment 1 may collect more than two-thirds of Historical CAT Costs 1. To the extent that occurs, any excess money collected during the final month in which Historical CAT Assessment 1 is in effect will be used to offset future fees and/or to fund the reserve for the CAT.

Finally, proposed paragraph (a)(1)(D) of the fee schedule sets forth the requirement for the CAT Executing Brokers to pay the invoices for Historical CAT Assessment 1. It would state that “[e]ach CAT Executing Broker shall be required to pay each invoice for Historical CAT Assessment 1 in accordance with paragraph (b).”

(B) Manner of Payment

Paragraph (b)(1) to the “Consolidated Audit Trail Funding Fees” section of its fee schedule describes the manner of payment of Industry Member CAT fees. Paragraph (b)(1) states that “[e]ach CAT Executing Broker shall pay its CAT fees as required pursuant to paragraph (a) each month to the Consolidated Audit Trail, LLC in the manner prescribed by the Consolidated Audit Trail, LLC.” The CAT NMS Plan requires the Operating Committee to establish a system for the collection of CAT fees.⁸⁵ The Plan Processor has established a billing system for CAT fees.⁸⁶ Therefore, the Exchange proposes to require CAT Executing Brokers to pay Historical CAT Assessment 1 in accordance with such system.

(C) Failure To Pay CAT Fees

The CAT NMS Plan further states that:

Participants shall require each Industry Member to pay all applicable fees authorized under this Article XI within thirty (30) days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an

Industry Member fails to pay any such fee when due (as determined in accordance with the preceding sentence), such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (a) the Prime Rate plus 300 basis points; or (b) the maximum rate permitted by applicable law.⁸⁷

Accordingly, the Exchange previously has added this requirement to the Exchange’s fee schedule. Specifically, paragraph (b)(2) of the fee schedule states:

Each CAT Executing Broker shall pay the CAT fees required pursuant to paragraph (a) within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If a CAT Executing Broker fails to pay any such CAT fee when due, such CAT Executing Broker shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of (i) the Prime Rate plus 300 basis points, or (ii) the maximum rate permitted by applicable law.

The requirements of paragraph (b)(2) would apply to Historical CAT Assessment 1.

(7) Historical CAT Assessment Details

The CAT NMS Plan states that:

Details regarding the calculation of a CAT Executing Broker’s Historical CAT Assessment will be provided upon request to such CAT Executing Broker. At a minimum, such details would include each CAT Executing Broker’s executed equivalent share volume and corresponding fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.⁸⁸

Such information would provide CEBBs and CEBSSs with the ability to understand the details regarding the calculation of their Historical CAT Assessment.⁸⁹ CAT LLC will provide CAT Executing Brokers with these details regarding the calculation of their Historical CAT Assessments on their monthly invoice for the Historical CAT Assessment.

In addition, CAT LLC will make certain aggregate statistics regarding Historical CAT Assessments publicly available. Specifically, the CAT NMS Plan states that, “[f]or each Historical

⁸⁵ Section 11.4 of the CAT NMS Plan.

⁸⁶ The billing process and system are described in CAT Alert 2023–02 as well as the CAT FAQs related to the billing of CAT fees, the Industry Member CAT Reporter Portal User Guide, the FCAT Industry Member Onboarding Guide, the FCAT Connectivity Supplement for Industry Members and the CAT Billing Webinars (dated Sept. 28, 2023, and Nov. 7, 2023), each available on the CAT website.

⁸⁷ Section 11.4 of the CAT NMS Plan.

⁸⁸ Section 11.3(a)(iv)(A) of the CAT NMS Plan.

⁸⁹ In approving the CAT Funding Model, the Commission stated that, “[i]n the Commission’s view, providing CAT Execut[ing] Brokers information regarding the calculation of their CAT Fees will aid in transparency and permit CAT Execut[ing] Brokers to confirm the accuracy of their invoices for CAT Fees.” CAT Funding Model Approval Order at 62667.

CAT Assessment, at a minimum, CAT LLC will make publicly available the aggregate executed equivalent share volume and corresponding aggregate fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise on an exchange, and (3) by buy-side transactions and sell-side transactions.”⁹⁰ Such aggregate statistics will be available on the CAT website.

Furthermore, CAT LLC will make publicly available on the CAT website the total amount invoiced each month that Historical CAT Assessment 1 is in effect as well as the total amount invoiced for Historical CAT Assessment 1 for all months since its commencement. CAT LLC also will make publicly available on the CAT website the total costs to be collected from Industry Members for Historical CAT Assessment 1. By reviewing statistics regarding how much has been invoiced and how much remains to be invoiced for Historical CAT Assessment 1, Industry Members would have sufficient information to reasonably track how much longer Historical CAT Assessment 1 is likely to be in place.

(8) Implementation Assistance

To assist Industry Members with compliance with the commencement of Historical CAT Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices prior to the commencement of Historical CAT Assessment 1. Specifically, CAT Executing Brokers have received mock invoices based on transaction data each month since November 2023. The mock invoices are in the same form as the actual, payable invoices, including both the relevant transaction data and the corresponding fee. However, no payments have been required in response to such mock invoices; they have been used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data has provided CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended

to facilitate the payment of Historical CAT Assessment 1.

(9) Financial Accountability Milestones

The CAT NMS Plan states that “[n]o Participant will make a filing with the SEC pursuant to Section 19(b) of the Exchange Act regarding any Historical CAT Assessment until any applicable Financial Accountability Milestone described in Section 11.6 has been satisfied.”⁹¹ The CAT NMS Plan further states that “in all filings submitted by the Participants to the Commission under Section 19(b) of the Exchange Act, to establish or implement Post-Amendment Industry Member Fees pursuant to this Article, . . . the Participants shall clearly indicate whether such fees are related to Post-Amendment Expenses incurred during Period 1, Period 2, Period 3, or Period 4.”⁹² As discussed in detail below, all applicable Financial Accountability Milestones for Historical CAT Assessment 1—that is, Period 1, Period 2 and Period 3 of the Financial Accountability Milestones—have been satisfied. Furthermore, as discussed below, this filing clearly indicates that Historical CAT Assessment 1 relates to Post-Amendment Expenses incurred during Periods 1, 2 and 3 of the Financial Accountability Milestones.

(A) Period 1 of the Financial Accountability Milestones

In accordance with Section 11.6(b) of the CAT NMS Plan, Historical CAT Assessment 1 seeks to recover costs that are related to “all fees, costs, and expenses (including legal and consulting fees, costs, and expenses) incurred by or for the Company in connection with the development, implementation and operation of the CAT from the effective date of [Section 11.6 of the CAT NMS Plan] until such time as Full Implementation of CAT NMS Plan Requirements has been achieved”⁹³ (“Post-Amendment Expenses”) incurred during FAM Period 1. FAM Period 1 began on June 22, 2020, the effective date of Section 11.6 of the CAT NMS Plan, and concluded on July 31, 2020, the date of Initial Industry Member Core Equity and Options Reporting. Section 1.1 of the CAT NMS Plan defines “Initial Industry Member Core Equity and Options Reporting” as:

The reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of both: (a) equities

transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information; and (b) options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants’ Quarterly Progress Reports.⁹⁴ As indicated by the Participants’ Quarterly Progress Report for the third quarter of 2020,⁹⁵ Initial Industry Member Core Equity and Option Reporting was completed on schedule on July 22, 2020, which is prior to the July 31, 2020 deadline.

Under the FAM Period 1 requirement of Initial Industry Member Core Equity and Options Reporting, Industry Members—excluding Small Industry Members that are not OATS reporters—were required to report two categories of data to the CAT: equities transaction data and options transaction data (both excluding Customer Account Information, Customer-ID, and Customer Identifying Information) by July 31, 2020. Pursuant to exemptive relief provided by the Commission, the Commission authorized the Participants’ Compliance Rules to allow core equity reporting for Industry Members (Phase 2a) to begin on June 22, 2020 and core options reporting for Industry Members (Phase 2b) to begin on July 20, 2020.⁹⁶

In adopting the FAMs, the Commission stated that the equities transaction reporting required for FAM Period 1 “is consistent with the functionality that the Participants describe on the CAT NMS Plan website as ‘Production Go-Live for Equities 2a file submission and data integrity

⁹⁴ The Quarterly Progress Reports are available at <https://www.catnmsplan.com/implementation-plan>.

⁹⁵ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020) and Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021).

⁹⁶ See Phased Reporting Exemptive Relief Order. Under the CAT NMS Plan as adopted, the Participants were required, through their Compliance Rules, to require their Large Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2018, and to require their Small Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2019. Sections 6.7(a)(v) and (vi) of the CAT NMS Plan. The SEC granted exemptive relief from these provisions of the CAT NMS Plan to allow for the phased implementation of Industry Member reporting via five phases addressing the reporting requirements for Phase 2a Industry Member Data, Phase 2b Industry Member Data, Phase 2c Industry Member Data, Phase 2d Industry Member Data and Phase 2e Industry Member Data.

⁹⁰ Section 11.3(a)(iv)(B) of the CAT NMS Plan. In approving the CAT Funding Model, the Commission stated that “[t]he publication of the aggregate executed equivalent share volume and aggregate fee is appropriate because it would allow Participants and CAT Executing Brokers a high-level validation of executed volume and fees.” CAT Funding Model Approval Order at 62667.

⁹¹ Section 11.3(b)(iii)(B)(III) of the CAT NMS Plan.

⁹² Section 11.6(b) of the CAT NMS Plan.

⁹³ Section 11.6 of the CAT NMS Plan.

validations.’’⁹⁷ The Phase 2a Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order, and includes the following data related to Eligible Securities that are equities:

- All events and scenarios covered by OATS, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions;

- Reportable Events for: (1) proprietary orders, including market maker orders, for Eligible Securities that are equities; (2) electronic quotes in listed equity Eligible Securities (*i.e.*, NMS stocks) sent to a national securities exchange or FINRA’s Alternative Display Facility (“ADF”); (3) electronic quotes in unlisted Eligible Securities (*i.e.*, OTC Equity Securities) received by an Industry Member operating an interdealer quotation system (“IDQS”); and (4) electronic quotes in unlisted Eligible Securities sent to an IDQS or other quotation system not operated by a Participant or Industry Member;

- Firm Designated IDs (“FDIDs”), which Industry Members must report to the CAT as required by Sections 6.3(d)(i)(A) and 6.4(d)(ii)(C) of the CAT NMS Plan;

- Industry Members would be required to report all street side representative orders, including both agency and proprietary orders and mark such orders as representative orders, except in certain limited exceptions as described in the Industry Member Technical Specifications;

- The link between the street side representative order and the order being represented when: (1) the representative order was originated specifically to represent a single order received either from a customer or another broker-dealer; and (2) there is (a) an existing direct electronic link in the Industry Member’s system between the order being represented and the representative order and (b) any resulting executions are immediately and automatically applied to the represented order in the Industry Member’s system;

- Manual and Electronic Capture Time for Manual Order Events;

- Special handling instructions for the original receipt or origination of an order during Phase 2a; and

- When routing an order, whether the order was routed as an intermarket sweep order (“ISO”).

In Phase 2a, Industry Members were not required to report modifications of

a previously routed order in certain limited instances, nor were they required to report a cancellation of an order received from a Customer after the order has been executed.⁹⁸

The Quarterly Progress Report for the third quarter of 2020 states that “Interim Step: Production Go-Live for Equities 2a file submission and data integrity validation (Large Industry Members and Small OATS Reporters)” was completed on June 22, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of “equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information” was completed on June 22, 2020.

In adopting the FAMS, the Commission stated that the options transaction reporting required for FAM Period 1 is “consistent with the functionality that the Participants describe on the CAT NMS Plan website as ‘Production Go-Live for Options 2b file submission and data integrity validations.’”⁹⁹ The Phase 2b Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order, and includes the Industry Member Data related to Eligible Securities that are options and related to simple electronic option orders, excluding electronic paired option orders. A simple electronic option order is an order to buy or sell a single option that is not related to or dependent on any other transaction for pricing and timing of execution that is either received or routed electronically by an Industry Member. Electronic receipt of an order is defined as the initial receipt of an order by an Industry Member in electronic form in standard format directly into an order handling or execution system. Electronic routing of an order is the routing of an order via electronic medium in standard format from one Industry Member’s order handling or execution system to an exchange or another Industry Member. An electronic paired option order is an electronic option order that contains both the buy and sell side that is routed to another Industry Member or exchange for crossing and/or price improvement as a single transaction on an exchange. Responses to auctions of simple orders and paired simple orders would be reportable in Phase 2b. Furthermore, combined orders in options would be treated in Phase 2b in the same way as equity representative orders are treated

in Phase 2a. A combined order would mean, as permitted by SRO rules, a single, simple order in Listed Options created by combining individual, simple orders in Listed Options from a customer with the same exchange origin code before routing to an exchange. During Phase 2b, the single combined order sent to an exchange must be reported and marked as a combined order, but the linkage to the underlying orders is not required to be reported until Phase 2d.¹⁰⁰

The Quarterly Progress Report for the third quarter of 2020 states that “Interim Step: Production Go-Live for Options 2b file submission and data integrity validations” was completed on July 20, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of “options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information” was completed on July 20, 2020.

As discussed above, the Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from June 22, 2020 through July 31, 2020. The total costs for this period, as discussed above, are \$6,377,343. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBBs paying one-third (\$2,125,781).

(B) Period 2 of the Financial Accountability Milestones

Historical CAT Assessment 1 seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 2. FAM Period 2 began on August 1, 2020, and concluded on December 31, 2020, the date of the Full Implementation of Core Equity Reporting. Section 1.1 of the CAT NMS Plan defines “Full Implementation of Core Equity Reporting” as:

the point at which: (a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-

⁹⁷ Securities Exchange Act Rel. No. 88890 (May 15, 2020), 85 FR 31322, 31330 n.97 (May 22, 2020) (“FAM Adopting Release”).

⁹⁸ Phased Reporting Exemptive Relief Order at 23076–78.

⁹⁹ FAM Adopting Release at 31330, n.98.

¹⁰⁰ Phased Reporting Exemptive Relief Order at 23078.

firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants' Quarterly Progress Reports. As indicated by the Participants' Quarterly Progress Report for the fourth quarter of 2020,¹⁰¹ Full Implementation of Core Equity Reporting was completed on schedule by December 31, 2020.

Specifically, the Full Implementation of Core Equity Reporting requires the satisfaction of two prongs. The first prong requires Participants to have fully implemented the first phase of equities transaction reporting for Industry Members (excluding Small Industry Members that are not OATS reporters) at an Error Rate of less than 5%. In addition, equities transaction data produced by the CAT at this stage must also be sufficiently interlinked so as to permit full analysis of an order's lifecycle across the national market, excluding full linkage of representative orders. As CAT LLC reported on its Quarterly Progress Reports, Phase 2a was fully implemented as of October 26, 2020, including intra-firm, inter-firm, national securities exchange, and trade reporting facilities linkages.¹⁰² In addition to the reporting of Phase 2a Industry Member Data as described above with regard to FAM Period 1, the following linkage data was added to the CAT as described in the Quarterly Progress Reports for the third and fourth quarter of 2020:

- “Production Go-Live for Equities 2a Intrafirm Linkage validations” was completed on 7/27/2020;¹⁰³
- “Production Go-Live for Firm to Firm Linkage validations for Equities 2a (Large Industry Members and Small

OATS Reporters)” was completed on October 26, 2020; and

- “Production Go-Live for Equities 2a Exchange and TRF Linkage validations (Large Industry Members and Small OATS Reporters)” was completed on October 26, 2020.

Furthermore, as CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2020, the average overall error rate for Phase 2a Industry Member Data was less than 5% as of December 31, 2020. The average overall error rate was calculated by dividing the compliance errors by processed records.

The second prong of this FAM requires that the equities transaction data collected by the CAT at this stage be made available to regulators through two basic query tools required by the CAT NMS Plan—a targeted query tool that will enable regulators to retrieve data via an online query screen with a variety of predefined selection criteria, and a user-defined direct query tool that will provide regulators with the ability to query data using all available attributes and data sources.¹⁰⁴ As CAT LLC reported on its Quarterly Progress Reports, the query tool functionality incorporating the data from Phase 2a was available to the Participants and the Commission as of December 31, 2020.¹⁰⁵

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.¹⁰⁶

As discussed above, Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from August 1, 2020 through December 31, 2020. The total costs for this period, as discussed above, are \$42,976,478.

¹⁰⁴ Section 6.10(c)(i)(A) of the CAT NMS Plan requires the Plan Processor to “provide Participants and the SEC with access to all CAT Data stored in the Central Repository” via an “online targeted query tool.” Appendix D, Sections 8.1.1–8.1.3 of the CAT NMS Plan describes the required functionality associated with this regulatory tool. Appendix D, Section 8.2.1 describes the required functionality associated with a user-defined direct query tool that will “deliver large sets of data that can then be used in internal surveillance or market analysis applications.”

¹⁰⁵ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020); Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021); and Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰⁶ Securities Exchange Act Rel. No. 98848 (Nov. 2, 2023), 88 FR 77128, 77129 n.13 (Nov. 8, 2023) (“Settlement Exemptive Order”).

Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remain [*sic*] two-thirds, with CEBBs paying one-third (\$14,325,492.70) and CEBBs paying one-third (\$14,325,492.70).

(C) Period 3 of the Financial Accountability Milestones

Historical CAT Assessment 1 seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 3. FAM Period 3 began on January 1, 2021, and concluded on December 31, 2021, the date of the Full Availability and Regulatory Utilization of Transactional Database Functionality. Section 1.1 of the CAT NMS Plan defines “Full Availability and Regulatory Utilization of Transactional Database Functionality” as:

the point at which: (a) reporting to the Order Audit Trail System (“OATS”) is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)-(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants' Quarterly Progress Reports. As indicated by the Participants' Quarterly Progress

¹⁰¹ Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰² For a description of the requirements of Phases 2a, see Phased Reporting Exemptive Relief Order.

¹⁰³ Q3 2020 Quarterly Progress Report (Oct. 20, 2021).

Report for the fourth quarter of 2021,¹⁰⁷ Full Availability and Regulatory Utilization of Transactional Database Functionality was completed on schedule by December 31, 2021.

Specifically, the “Full Availability and Regulatory Utilization of Transactional Database Functionality” requires the satisfaction of five prongs. The first prong requires that reporting to the Order Audit Trail System (“OATS”) is no longer required for new orders. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021,¹⁰⁸ FINRA retired OATS effective September 1, 2021.¹⁰⁹ Accordingly, after the retirement of OATS, reporting to OATS was no longer required.

In addition to Phase 2a and Phase 2b Industry Member Data, the second and third prongs of “Full Availability and Regulatory Utilization of Transactional Database Functionality” require Industry Member reporting of Phase 2c Industry Member Data and Phase 2d Industry Member Data. The Phase 2c Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order. That Order states that “Phase 2c Industry Member Data” is Industry Member Data related to Eligible Securities that are equities other than Phase 2a Industry Member Data, Phase 2d Industry Member Data, or Phase 2e Industry Member Data. Specifically, the Phase 2c Industry Member Data includes Industry Member Data that is related to Eligible Securities that are equities and that is related to: (1) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (2) quotes in unlisted Eligible Securities sent to an IDQS operated by a CAT Reporter (reportable by the Industry Member sending the quotes) (except for quotes reportable in Phase 2d, as discussed below); (3) electronic quotes in listed equity Eligible Securities (*i.e.*, NMS stocks) that are not sent to a national securities exchange or FINRA’s Alternative Display Facility; (4) reporting changes to client instructions regarding modifications to algorithms; (5) marking as a representative order any order originated to work a customer order in price guarantee scenarios, such as a guaranteed VWAP; (6) flagging rejected external routes to indicate a route was not accepted by the receiving destination; (7) linkage of duplicate electronic messages related to a Manual

Order Event between the electronic event and the original manual route; (8) special handling instructions on order route reports (other than the ISO, which is required to be reported in Phase 2a); (9) quote identifier on trade events; (10) reporting of LTIDs (if applicable) for accounts with Reportable Events that are reportable to CAT as of and including Phase 2c; (11) reporting of date account opened or Account Effective Date (as applicable) for accounts and reporting of a flag indicating the Firm Designated ID type as account or relationship; (12) order effective time for orders that are received by an Industry Member and do not become effective until a later time; (13) the modification or cancellation of an internal route of an order; and (14) linkages to the customer orders(s) being represented for representative order scenarios, including agency average price trades, net trades, aggregated orders, and disconnected Order Management System (“OMS”)—Execution Management System (“EMS”) scenarios, as required in the Industry Member Technical Specifications.¹¹⁰

Phase 2c Industry Member Data also includes electronic quotes that are provided by or received in a CAT Reporter’s order/quote handling or execution systems in Eligible Securities that are equities and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: (1) an equity bid or offer is displayed publicly or has been communicated (a) for listed securities to the ADF operated by FINRA; or (b) for unlisted equity securities to an “interdealer quotation system,” as defined in FINRA Rule 6420(c); or (2) an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing; *i.e.*, no further manual or electronic action is required by the responder providing the quote in order to execute or cause a trade to be executed). With respect to OTC Equity Securities, OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter (other than such an IDQS that does not match and execute orders) are reportable by the Industry Member sending them in Phase 2c. Accordingly, any response to a request for quote or other form of solicitation response provided in a standard electronic format (*e.g.*, FIX) that meets this quote definition (*i.e.*, an equity bid or offer which is accessible

electronically by customers or other market participants and is immediately actionable for execution or routing) would be reportable in Phase 2c.¹¹¹

The Phase 2d Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order. “Phase 2d Industry Member Data” is Industry Member Data that is related to Eligible Securities that are options other than Phase 2b Industry Member Data, Industry Member Data that is related to Eligible Securities that are equities other than Phase 2a Industry Member Data or Phase 2c Industry Member Data, and Industry Member Data other than Phase 2e Industry Member Data. Phase 2d Industry Member Data includes with respect to the Eligible Securities that are options: (1) simple manual orders; (2) electronic and manual paired orders; (3) all complex orders with linkages to all CAT-reportable legs; (4) LTIDs (if applicable) for accounts with Reportable Events for Phase 2d; (5) date account opened or Account Effective Date (as applicable) for accounts with an LTID and flag indicating the Firm Designated ID type as account or relationship for such accounts; (6) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (7) the modification or cancellation of an internal route of an order; and (8) linkage between a combined order and the original customer orders. Phase 2d Industry Member Data also would include electronic quotes that are provided by or received in a CAT Reporter’s order/quote handling or execution systems in Eligible Securities that are options and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: a listed option bid or offer which is accessible electronically by customers or other market participants and is immediately actionable (*i.e.*, no further action is required by the responder providing the quote in order to execute or cause a trade to be executed). Accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (*e.g.*, FIX) that meets this definition is reportable in Phase 2d for options.¹¹²

Phase 2d Industry Member Data also includes with respect to Eligible Securities that are options or equities (1) receipt time of cancellation and modification instructions through Order Cancel Request and Order Modification

¹⁰⁷ Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹⁰⁸ *Id.*

¹⁰⁹ Securities Exchange Act Rel. No. 92239 (June 23, 2021), 86 FR 34293 (June 29, 2021).

¹¹⁰ Phase Reporting Exemptive Relief Order at 23078–79.

¹¹¹ *Id.* at 23079.

¹¹² *Id.*

Request events; (2) modifications of previously routed orders in certain instances; and (3) OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter that does not match and execute orders. In addition, subject to any exemptive or other relief, Phase 2d Industry Member Data will include verbal or manual quotes on an exchange floor or in the over-the-counter market, where verbal quotes and manual quotes are defined as bids or offers in Eligible Securities provided verbally or that are provided or received other than via a CAT Reporter's order handling and execution system (e.g., quotations provided via email or instant messaging).¹¹³

The Quarterly Progress Report for the fourth quarter of 2021 states that "Phase 2a was fully implemented as of October 26, 2020;" "Phase 2b was fully implemented as of January 4, 2021;" "Phase 2c was implemented as of April 26, 2021;" and "Phase 2d was fully implemented as of December 13, 2021."¹¹⁴ The Quarterly Progress Reports for 2021 provide additional detail regarding the implementation of these steps including the following:

- "Production Go-Live for Equities 2c reporting requirements (Large Industry Members)" was completed on April 26, 2021;
- "LTID Account Information Reporting Go-Live for Phases 2a, 2b and 2c (Large Industry Members)" was completed on April 26, 2021;
- "FCAT Plan Processor creates linkages of the lifecycle of order events based on the received data through Phase 2d Production Go-Live for Options 2d reporting requirements (Large Industry Members)" was completed on December 13, 2021;
- "Production Go-Live for Options 2d reporting requirements (Large Industry Members)" was completed on December 13, 2021;
- "Production Go-Live for Options 2b reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "Production Go-Live for Equities 2c reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "Production Go-Live for Options 2d reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;

- "LTID Account Information Reporting Go-Live for Phases 2d (Large Industry Members)" was completed on December 13, 2021; and

- "LTID Account Information Reporting Go-Live for Phases 2a, 2b, 2c and 2d (Small Industry Members)" was completed on December 13, 2021.¹¹⁵

The third prong of "Full Availability and Regulatory Utilization of Transactional Database Functionality" also imposes an Error Rate requirement of 5% or less. The Quarterly Progress Report for the fourth quarter of 2021 states the average overall error rate was less than 5% as of December 31, 2021. The average overall error rate was calculated by dividing the compliance errors by processed records.

The fourth prong of "Full Availability and Regulatory Utilization of Transactional Database Functionality" requires that the data collected by the CAT at this stage be made available to regulators through an online targeted query tool and a user-defined direct query tool. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021, the query tool functionality incorporating the data from Phases 2a, 2b, 2c and 2d was available to the Participants and to the Commission as of December 31, 2021.¹¹⁶

The fifth prong requires the requirements of Section 6.10(a) of the CAT NMS Plan to have been met. Section 6.10(a) of the CAT NMS Plan requires the Participants to use the tools described in Appendix D to "develop and implement a surveillance system, or enhance existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository." The Exchange implemented a surveillance system, or enhanced existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository as of December 31, 2021 in accordance with Section 6.10(a) of the CAT NMS Plan.¹¹⁷

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for

purposes of determining compliance with this FAM.¹¹⁸

As discussed above, Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from January 1, 2021 through December 31, 2021. The total costs for this period, as discussed above, are \$144,415,268. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remain [*sic*] two-thirds, with CEBBs paying one-third (\$48,138,422.70) and CEBBs paying one-third (\$48,138,422.70).

(D) Additional Considerations Related to the Financial Accountability Milestones

As discussed above, CAT LLC has satisfied the Financial Accountability Milestones ("FAMs") for Periods 1 through 3.¹¹⁹ As discussed below, none of the circumstances related to NIA Electronic RFQ Responses, the 2023 Verbal Quotes Exemption, the November 2023 Order, or Executing Broker reporting, affect the conclusion that the FAMs for Periods 1 through 3 were satisfied in a timely fashion.

(i) NIA Electronic RFQ Responses

CAT LLC does not believe that the exemptive relief relating to the reporting of electronic responses for quotes ("RFQs") that are not immediately actionable ("NIA Electronic RFQ Responses") affect the conclusion that FAMs 1 through 3 have been satisfied. The only reason CAT LLC pursued this relief is because certain Industry Members introduced concerns that NIA Electronic RFQ Responses could be considered "orders" reportable pursuant to Rule 613(j)(8) and some Industry Members were not prepared to report such orders to CAT. Thus, the relief was requested on behalf of Industry Members. CAT LLC itself has not taken any position on whether NIA Electronic RFQ Responses are "orders," as the definition of "order" is an SEC rule and the trading processes for NIA Electronic RFQ Responses are the Industry Members', not those of the Participants

¹¹⁵ See Q2 2021 Quarterly Progress Report (July 27, 2021); and Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁶ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁷ See Q1 2021 Quarterly Progress Report (Apr. 30, 2021); Q2 2021 Quarterly Progress Report (July 27, 2021); Q3 2021 Quarterly Progress Report (Nov. 1, 2021); Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁸ Settlement Exemptive Order at 77129 n.13.

¹¹⁹ In May 2020, the Commission adopted amendments to the CAT NMS Plan that establish four Financial Accountability Milestones and set target deadlines by which these milestones must be achieved. These amendments also reduce the amount of any fees, costs, and expenses that may be recovered from Industry Members if the Participants fail to meet the target deadlines. FAM Adopting Release.

¹¹³ *Id.* at 23079–80.

¹¹⁴ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

or CAT LLC. Accordingly, CAT LLC stated in its letter that “Industry Members must determine whether trading interest falls within the definition of an ‘order’ for CAT purposes. To the extent an NIA Electronic RFQ Response is not considered an ‘order’ as defined in Rule 613(j)(8) and the CAT NMS Plan, it would not be reportable to CAT.”¹²⁰

Only “orders” as defined in SEC Rule 613(j)(8) are reportable to CAT. There is no agreement across the industry or among regulators as to whether NIA Electronic RFQ Responses are “orders” reportable to CAT. Certain Industry Members have raised the question as to whether NIA Electronic RFQ Responses are orders, but others have argued that they are not orders under Rule 613(j)(8).¹²¹ Indeed, members of the Advisory Committee, which CAT LLC relies upon for guidance with regard to Industry Member issues, have not had a definitive view on whether NIA Electronic RFQ Responses are orders. As Rule 613(j)(8) is an SEC rule, CAT LLC believes that only the SEC can provide a definitive determination as to if, and under what circumstances, an NIA Electronic RFQ Response is considered an “order” reportable to CAT. The issue has persisted for some time. As a result, CAT LLC filed an exemptive request regarding NIA Electronic RFQ Responses for clarity on the interpretive issue. As recently as April 2024, Industry Members have re-raised this issue stating that the SEC agrees that it must provide additional guidance on this interpretive issue to resolve the CAT reporting issue for NIA Electronic RFQ Responses:

As further discussed in the prior FIF letters, even if the Commission had the legal authority to require the reporting of NIA RFQ responses to CAT without an amendment to Rule 613, the Commission has not provided guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT. In subsequent discussions with industry members, Commission representatives have agreed that, prior to NIA RFQ responses being reportable to CAT, it would be necessary for the Commission to provide further guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT.¹²²

On May 20, 2024, the Commission granted CAT LLC’s request for

exemptive relief from certain CAT reporting requirements pertaining to NIA Electronic RFQ Responses to the extent such responses are considered “orders” reportable pursuant to Rule 613(j)(8).¹²³ The Commission, however, did not provide additional guidance regarding the conditions under which NIA Electronic RFQ Responses would be reportable to CAT. The Commission stated in its exemptive order that “[t]o the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for the Financial Accountability Milestones, provided that any conditions of the exemption are satisfied.”¹²⁴

When the Commission proposed the FAMs, the Participants expressed concern that, “by conditioning the ability of CAT LLC and the Participants to collect Post-Amendment Industry Member Fees on factors dependent on the efforts of Industry Members, the Commission’s proposals inadvertently establish a perverse incentive for Industry Members to devote less than maximum efforts to comply with their obligations related to the CAT as they will pay less fees in such instances.”¹²⁵ The Participants further warned that “Industry Members may request or require unanticipated reporting delays to address Industry Member implementation issues or concerns,” but that, “[f]aced with financial penalties for missed deadlines, the Participants may not be able to fully address legitimate industry concerns or accommodate requests for delays with respect to future deadlines.”¹²⁶ CAT LLC has engaged in good faith to help address NIA Electronic RFQ Responses and other concerns relevant to the ability of Industry Members to meet their CAT reporting obligations. CAT LLC should not be penalized financially for seeking in good faith to resolve a difficult interpretive issue for the benefit of Industry Members.

(ii) 2023 Verbal Quotes Exemption

CAT LLC does not believe that the Commission’s May 19, 2023 order granting temporary exemptive relief relating to certain verbal floor activity and unstructured verbal and electronic upstairs activity (the “2023 Verbal Quotes Exemption”) affects the

conclusion that FAMs 1 through 3 have been satisfied. The 2023 Verbal Quotes Exemption, which was issued on May 19, 2023, is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. The relevant exemption for this time period is the Commission’s November 12, 2020 order, which granted relief for the same activity through July 31, 2023 (the “2020 Verbal Quotes Order”).¹²⁷ The Commission has stated that, “to the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for a Financial Accountability Milestone, provided that the conditions of the exemption are satisfied.”¹²⁸ Here, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3.¹²⁹

(iii) November 2023 Order

CAT LLC does not believe that the Commission’s November 2, 2023 order granting relief from certain CAT NMS Plan requirements (the “November 2023 Order”) affects the conclusion that FAMs 1 through 3 have been satisfied. The November 2023 Order is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. As described in the November 2023 Order, the relevant exemptive orders for this time period were issued on December 16, 2020, which also states that “the Commission has determined that the Participants have sufficiently complied with the conditions set forth in the prior Orders and with the technical requirements for Quarterly Progress

¹²⁷ Securities Exchange Act Rel. No. 90405, 85 FR 73544 (Nov. 18, 2020) (the “2020 Verbal Quotes Exemption”).

¹²⁸ See, e.g., Securities Exchange Act Rel. No. 89051 (June 11, 2020), 85 FR 36631, 36633 (June 17, 2020). The straightforward reading of the Commission’s statement is that compliance with the conditions of an exemption will be measured as of the deadline for a particular FAM Period.

¹²⁹ As a condition to the 2020 Verbal Quotes Exemption, the Commission required that the Participants provide a written status update on the reporting of these quotes and orders by July 31, 2022, including the estimated costs of reporting these quotes and orders and an implementation plan for the reporting of these quotes and orders. As noted, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3. In any event, on June 3, 2022, the Participants provided the required written status update. See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (June 3, 2022).

¹²⁰ See Letter from Brandon Becker, Chair, CAT NMS Plan Operating Committee to Vanessa Countryman, Secretary, Commission (Feb. 13, 2024) at 2.

¹²¹ See, e.g., Letter from Howard Meyerson, Managing Director, FIF, to Sai Rao, Counsel for Trading and Markets, Office of the Chair (Apr. 25, 2024).

¹²² *Id.*

¹²³ Securities Exchange Act Rel. No. 100181 (May 20, 2024), 89 FR 45715 (May 23, 2024).

¹²⁴ *Id.* at n.11.

¹²⁵ See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission at 9 (Oct. 28, 2019).

¹²⁶ *Id.* at 10.

Reports set forth in section 6.6(c) of the CAT NMS Plan, including for purposes of determining compliance with any applicable Financial Accountability Milestones.”¹³⁰ The November 2023 Exemption Order is consistent with the Commission’s repeated statements in the FAM adopting release that it would have “authority to grant exemptive relief from any requirement associated with a particular Financial Accountability Milestone,” citing Section 36 of the Exchange Act and Rule 608.¹³¹ Similarly, the CAT NMS Plan expressly contemplates the Commission’s ability to grant exemptive relief from any CAT NMS Plan requirement.¹³²

(iv) Executing Broker Reporting

CAT LLC also completed the requirements of FAM Period 2, including the required linkages, by December 31, 2020. Although Participant exchanges may report the Executing Broker to CAT differently in certain situations, these reporting differences are irrelevant for linkage purposes as the fields used for CAT Executing Broker are not used for linkage.

(10) Additional Support for Reasonableness of Historical CAT Costs

The CAT Funding Model approved by the Commission permits the recovery of reasonable costs in each of the categories of CAT costs sought to be recovered via Historical CAT Assessment 1.¹³³ As described in detail above and in further detail below, the CAT costs to be recovered for each category are reasonable. The following

discusses in further details how each of the following costs are reasonable: (1) costs incurred prior to the effective date of the CAT NMS Plan; (2) cloud hosting services costs; (3) costs related to funding model filings; (4) costs related to litigation with the SEC regarding the CAT NMS Plan; (5) costs related to the Initial Plan Processor; (6) CAIS implementation costs; (7) public relations costs; (8) legal costs related to the limitation of liability provision in the CAT Reporter agreements; and (9) costs for the Chair of CAT Operating Committee. As discussed in detail below, each of these costs is reasonable and should be recoverable in accordance with the CAT Funding Model.

(A) Costs Incurred Prior to the Effective Date of CAT NMS Plan

CAT LLC believes that it is reasonable to seek recovery of costs incurred prior to when the CAT NMS Plan became effective in November 2016, such as legal and consulting fees incurred to create the CAT NMS Plan. Rule 613 specifically mandates that the CAT be created, implemented and maintained, and further provides that the CAT NMS Plan include a proposed allocation of estimated costs to fund the creation, implementation and maintenance of the CAT among the Participants (referred to as “plan sponsors”), and between the Participants and Industry Members (referred to as “members of the plan sponsors”).¹³⁴ Consistent with Rule 613, the CAT NMS Plan, as approved by the Commission, specifically authorizes charging Industry Members fees for costs reasonably incurred prior to the date of the approval of the CAT NMS Plan by the Commission in November 2016, including legal and consulting costs. Section 11.1(c) of the CAT NMS Plan states that:

[i]n 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) reasonably incurred by Participants on behalf of the Company prior to the Effective Date in connection with the creation and implementation of the CAT.

Accordingly, the CAT NMS Plan specifically permits the recovery of costs, including legal and consulting costs, reasonably incurred prior to November 2016 in connection with the creation and implementation of the CAT.

Furthermore, the costs incurred to create and implement the CAT prior to the effective date of the CAT NMS Plan

(“Pre-Formation Costs”) were reasonable both in scope and amount, in accordance with the requirements of Section 11.1(c) of the CAT NMS Plan. During the four-year period from 2012 to 2016, a total of \$13,842,881 in Pre-Formation Costs were incurred. This is an average of approximately \$3.5 million per year over this period. The Pre-Formation Costs fell into three categories: legal costs, consulting costs and public relations costs. This includes legal costs of \$3,196,434; consulting costs of \$10,589,273; and public relations costs of \$57,174. The legal, consulting and public relations services were performed by WilmerHale, Deloitte and Peppercomm, respectively. The selection considerations and fees for these three firms are described in detail above and are described further below. The Pre-Formation Costs are direct costs of CAT, which have been funded entirely by the Participants through non-interest-bearing notes. The Pre-Formation Costs do not include the significant costs incurred by each of the individual Participants in responding to the adoption of Rule 613.

The Pre-Formation Costs are reasonable and appropriate as they reflect the extensive efforts that were necessary to create the CAT NMS Plan as mandated after the SEC’s adoption of Rule 613. As described in more detail below, these efforts included, among other things, developing a plan for selecting the Plan Processor, soliciting and evaluating bids, engaging a diverse set of market participants and the SEC in the development of the Plan, interacting with the SEC in their oversight of the development of the Plan, and seeking appropriate exemptive relief to address areas of concern in Rule 613.¹³⁵

(i) Request for Proposal (“RFP”)

The Participants determined to utilize an RFP to ensure that potential alternative solutions for creating the Plan could be presented and considered, and that a detailed and meaningful cost-benefit analysis could be performed. The SEC supported the use of an RFP, and approved its use as it is described

¹³⁰ *Id.* at 77129 n.12.

¹³¹ FAM Adopting Release at 31335 (May 22, 2020). Section 36 of the Exchange Act grants the Commission the authority to “conditionally or unconditionally exempt any person, security, or transaction . . . from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.” 15 U.S.C. 78mm(a)(1). Under Rule 608(e) of Regulation NMS, the Commission may “exempt from [Rule 608], either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanism of, a national market system.” 17 CFR 242.608(e).

¹³² Section 12.3 of the CAT NMS Plan (“[T]o the extent the SEC grants exemptive relief applicable to any provision of this Agreement, Participants and Industry Members shall be entitled to comply with such provision pursuant to the terms of the exemptive relief so granted at the time such relief is granted irrespective of whether this Agreement has been amended.”)

¹³³ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹³⁴ See, e.g., Rule 613(a)(1)(vii)(D) of the CAT NMS Plan.

¹³⁵ The Participants described in detail the process for drafting the CAT NMS Plan in its original filing of the CAT NMS Plan. See Letter from Mike Simon, on behalf of the Participants of the CAT NMS Plan, to Brent J. Fields, Secretary, Commission (Sept. 30, 2014). A non-exclusive list of filings and activities associated with CAT, including certain pre-2016 filings, are available on the SEC’s website: <https://www.sec.gov/divisions/marketreg/rule613-info>.

in extensive detail in the CAT NMS Plan.¹³⁶

In the context of the SEC's adoption of Rule 613, commenters urged the Commission to utilize an RFP process to assist in the planning and design of the NMS plan.¹³⁷ Specifically, the Commission explained:

In this regard, several commenters suggested that the Commission undergo a RFP or request for information ("RFI") process to create and implement a consolidated audit trail. Specifically, FIF urged the Commission to perform a RFP process "to determine the best technical solution for developing a consolidated audit trail." FIF suggested that the Commission "should outline a set of goals and guiding principles they are striving to achieve as part of the adopted CAT filing and leave the determination of data elements and other technical requirements to [an] industry working group." Similarly, Direct Edge suggested that Commission staff should form and engage in a working group to develop an RFP for publication by the Commission. DirectEdge explained that an RFP process would facilitate the identification of the costs and benefits of the audit trail, as well as the consideration of a wider range of technological solutions. Further, commenters, including Broadridge Financial Solutions, Inc., a technology provider, also requested more specific information about the audit trail system to better assess the Commission's initial cost estimates and to determine the best approach to the consolidated audit trail.¹³⁸

In response to these comments, the Commission modified Rule 613 to require the Participants to address certain important considerations regarding the features and details of the NMS plan and to extend the timeframe for submission of the CAT NMS Plan by the Participants from the 90 days as originally proposed to 270 days, in part, to accommodate a process that would address these considerations.¹³⁹ As the SEC noted, "[i]n light of the numerous specific requirements of Rule 613, the Participants concluded that publication of a request for proposal ('RFP') was necessary to ensure that potential alternative solutions to creating the consolidated audit trail can be presented and considered by the Participants and that a detailed and meaningful cost/benefit analysis can be performed, both of which are required

considerations to be addressed in the CAT NMS Plan."¹⁴⁰

The SEC specifically recognized that the Participants planned to use an RFP when it approved the Selection Plan, and stated that the RFP was a reasonable approach.¹⁴¹ As the SEC described in its approval order for the Selection Plan, "[t]he Participants filed the [Selection] Plan to govern how the SROs will proceed with formulating and submitting the CAT NMS Plan—and, as part of that process, how to review, evaluate, and narrow down the bids submitted in response to the RFP ('Bids')—and ultimately choosing the plan processor that will build, operate, and maintain the consolidated audit trail ('Plan Processor')."¹⁴² After evaluating the Selection Plan, including the use of an RFP process, the Commission stated that it "believes the [Selection] Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail."¹⁴³

On February 26, 2013, the Participants published an RFP soliciting bids from parties interested in serving as the plan processor for the CAT. Initially, 31 firms submitted intentions to bid. In the following months, the Participants engaged with potential bidders with respect to, among other things, the selection process, selection criteria, and potential bidders' questions and concerns. On March 21, 2014, the Participants received ten bids in response to the RFP.

(ii) Selection Plan

On September 4, 2013, the Participants filed with the Commission a national market system plan to govern the process for Participant review of the bids submitted in response to the RFP, the procedures for evaluating the bids, and, ultimately, selection of the plan processor (the "Selection Plan").¹⁴⁴ The Commission approved the Selection Plan as filed on February 21, 2014.¹⁴⁵ In approving the Selection Plan, the Commission concluded that "it is reasonably designed to achieve its objective of facilitating the development

of the CAT NMS Plan and the selection of the Plan Processor."¹⁴⁶

The Selection Plan divided the review and evaluation of bids, and the selection of the plan processor, into various stages. Specifically, pursuant to the Selection Plan, a selection committee reviewed all bids and determined which bids contained sufficient information to allow the Participants to meaningfully assess and evaluate the bids. The ten submitted bids were deemed "Qualified Bids," and so passed to the next stage, in which each bidder presented its bids to the Participants on a confidential basis. On July 1, 2014, after conducting careful analysis and comparison of the bids, the Selection Committee voted and selected a shortlist of six eligible bidders. The Selection Committee determined which shortlisted bidders would be provided the opportunity to revise their bids. After the Selection Committee assessed and evaluated the revised bids, the Selection Committee selected the plan processor via two rounds of voting by the Participants, as described in the Selection Plan.

The Selection Plan established an Operating Committee responsible for formulating, drafting, and filing with the Commission the CAT NMS Plan and for ensuring that the Participants' joint obligations under Rule 613 were met in a timely and efficient manner. In formulating the CAT NMS Plan, the Participants also engaged multiple persons across a wide range of roles and expertise, engaged the consulting firm Deloitte as project manager, and engaged the law firm WilmerHale to serve as legal counsel in drafting the Plan. Within this structure, the Participants focused on, among other things, comparative analyses of the proposed technologies and operating models, development of funding models to support the building and operation of the CAT, and detailed review of governance considerations. Given the complexity and scope of developing the CAT NMS Plan, these efforts were extensive.

When it approved the CAT NMS Plan in 2016, the Commission reiterated its belief that the Selection Plan remains a "reasonable approach," that "the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor," and that "the process set forth in the Selection Plan should be permitted to continue":

In approving the Selection Plan, the Commission stated that the Selection Plan is reasonably designed to achieve its objective of facilitating the development of the CAT

¹³⁶ See detailed discussion of RFP questions in Appendix C of the CAT NMS Plan, and incorporation of RFP requirements in Appendix D at D–2.

¹³⁷ For example, in its comments on proposed Rule 613, FIF suggested "that the SROs should select the processor through a 'request for proposal.'" Rule 613 Adopting Release at 45785.

¹³⁸ Rule 613 Adopting Release at 45738–39.

¹³⁹ Rule 613 Adopting Release at 45739.

¹⁴⁰ Securities Exchange Act Rel. No. 71596 (Feb. 21, 2014), 79 FR 11152, 11152 (Feb. 27, 2014) ("Selection Plan Approval Order").

¹⁴¹ *Id.*

¹⁴² *Id.* at 11153.

¹⁴³ *Id.* at 11159.

¹⁴⁴ See Securities Exchange Act Rel. No. 70892 (Nov. 15, 2013), 78 FR 69910 (Nov. 21, 2013).

¹⁴⁵ See Selection Plan Approval Order.

¹⁴⁶ Selection Plan Approval Order at 11160.

NMS Plan and the selection of the Plan Processor. The Commission also found that the Selection Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail. The Commission believes that the process set out in the Selection Plan for selecting a Plan Processor remains a reasonable approach, which will facilitate the selection of Plan Processor through a fair, transparent and competitive process and that no modifications to the Selection Plan are required to meet the approval standard. . . . In response to the comment that offered support for a specific Bidder, the Commission agrees with the Participants that the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor and thus believes that the process set forth in the Selection Plan should be permitted to continue.¹⁴⁷

(iii) Engagement With Market Participants and SEC

During the process of developing the CAT NMS Plan, the Participants engaged in extensive and meaningful dialogue with market participants and the SEC. To this end, the Participants created a website to update the public on the progress of the CAT NMS Plan, published a request for comment on multiple issues related to the Plan, held multiple public events to inform the industry of the progress of the CAT and to address inquiries, and formed, and later expanded, a DAG to solicit more input from a representative industry group.¹⁴⁸

The DAG included representatives of Participants and Industry Members and conducted meetings to discuss, among other things, technical and operational aspects the Participants were considering for the Plan. The Participants issued press releases soliciting participants for the DAG, and a wide spectrum of firms was deliberately chosen to provide insight from various industry segments affected by CAT. The DAG meetings included discussions of topics such as option market maker quote reporting, requirements for capturing Customer IDs, timestamps and clock synchronization, reporting requirements for order handling scenarios, costs and funding, error handling and corrections, and potential elimination of systems made redundant by the CAT. From the inception of the DAG through September 2014, the DAG participated

in 36 meetings, as well as a variety of DAG subcommittee meetings.

(iv) Request for Exemption From Certain Requirements Under Rule 613

Following multiple discussions between the Participants and both the DAG and the bidders, as well as among the Participants themselves, the Participants recognized that some provisions of Rule 613 would not permit certain solutions to be included in the Plan that the Participants, in coordination with the DAG, determined advisable to effectuate the most efficient and cost-effective CAT. Specifically, “the SROs reached the conclusion that additional flexibility in certain of the minimum requirements specified in Rule 613 would allow them to propose a more efficient and cost-effective approach without adversely affecting the reliability or accuracy of CAT Data, or its security and confidentiality.”¹⁴⁹ Consequently, the Participants submitted a request for exemptive relief from certain provisions of Rule 613 regarding: (1) options market maker quotes; (2) Customer-IDs; (3) CAT-Reporter-IDs; (4) CAT-Order-IDs on allocation reports; and (5) timestamp granularity.¹⁵⁰ The Participants filed two supplements to the request for exemptive relief.¹⁵¹

After reviewing the exemptive request, the Commission determined that it was appropriate in the public interest and consistent with the protection of investors to grant the requested exemptive relief.¹⁵² In granting the exemptive relief, the Commission stated:

[T]he Commission is persuaded to provide flexibility in the discrete areas discussed in the Exemption Request so that the alternative approaches can be included in the CAT NMS Plan and subject to notice and comment. Doing so could allow for more efficient and cost-effective approaches than otherwise would be permitted. The Commission at this stage is not deciding whether the proposed approaches detailed below are more efficient or effective than those in Rule 613. However, the Commission believes the proposed approaches should be within the permissible range of alternatives available to the SROs.¹⁵³

The Commission further stated that the requested exemptive relief is

¹⁴⁹ Securities Exchange Rel. No. 77265 (Mar. 1, 2016), 81 FR 11856 (Mar. 7, 2016) (“2016 Exemptive Order”).

¹⁵⁰ Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Jan. 30, 2015).

¹⁵¹ See Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Apr. 3, 2015); Letter from the SROs to Brent J. Fields, Secretary, Commission (Sept. 2, 2015).

¹⁵² See 2016 Exemptive Order.

¹⁵³ *Id.* at 11857.

consistent with the protection of investors. The Commission noted that:

Doing so will provide the public an opportunity to consider and comment on whether these proposed alternative approaches would indeed be more efficient and cost-effective than those otherwise required by Rule 613, and whether such approaches would adversely affect the reliability or accuracy of CAT Data or otherwise undermine the goals of Rule 613. Moreover, if—as the SROs represent—efficiency gains and cost savings would result from including the proposed approaches in the CAT NMS Plan without adverse effects, then the resultant benefits could potentially flow to investors (e.g., lower broker-dealer reporting costs resulting in fewer costs passed on to Customers).¹⁵⁴

The Participants incorporated the exemptive relief into the proposed CAT NMS Plan, which was noticed for comment, and the Commission ultimately approved the CAT NMS Plan with the more efficient and cost-effective alternative approaches described in the exemptive relief. Accordingly, the Participants believe that the costs incurred in developing the exemptive request were critical to the creation of a better CAT than was originally contemplated by Rule 613, and therefore should be recoverable as part of Historical CAT Assessment 1.

(v) Request for Extensions for Filing the CAT NMS Plan

Rule 613(a)(1) under Regulation NMS required the Participants to jointly file the CAT NMS Plan on or before April 28, 2013, less than a year after the adoption of Rule 613. In recognition of the complexity of the project to create the CAT NMS Plan as well as industry interest in limiting or eliminating certain requirements of Rule 613 (e.g., addressing the reporting of options market maker quotes), the Participants requested two extensions of the deadline to file the CAT NMS Plan. The Participants described the need for additional time as follows:

The SROs stated in their Request Letter that they do not believe that the 270-day time period provided for in Rule 613(a)(1) provides sufficient time for the development of the RFP, formulation and submission of bids, and review and evaluation of such bids. The SROs also stated that they believe additional time beyond the 270 days provided for in Rule 613(a)(1) is necessary in order to provide sufficient time for effective consultation with and input from the industry and the public on the proposed solution chosen by the SROs for the creation of the consolidated audit trail at the

¹⁵⁴ *Id.*

¹⁴⁷ See CAT NMS Plan Approval Order at 84737.

¹⁴⁸ See Section D(11) of Appendix C of the CAT NMS Plan.

conclusion of the RFP process and the NMS plan itself.¹⁵⁵

In recognition of the need for additional time to refine the technical description of and requirements for the CAT and to allow for additional evaluation of the proposed cost and funding considerations, the SEC granted two extensions of this deadline.¹⁵⁶ The SEC determined that both extensions were appropriate, in the public interest, and consistent with the protection of investors.¹⁵⁷ In reaching this conclusion, the Commission stated that “it understands that the creation of a consolidated audit trail is a significant undertaking and that a proposed NMS plan must include detailed information and discussion about many things.”¹⁵⁸ The SEC also noted the following:

This additional time to complete the RFP process should allow the SROs to engage in a more thoughtful and comprehensive process for the development of an NMS plan. In this regard, the Commission notes that the additional time to solicit comment from the industry and the public at certain key points in the development of the NMS plan could identify issues that can be resolved earlier in the development of the consolidated audit trail and prior to filing the NMS plan with the Commission.¹⁵⁹

Given the Commission’s recognition of the reasonableness and value of the extension of the deadline to file the CAT NMS Plan, the Participants believe that the costs incurred in developing the extension request were important to the process of developing the CAT NMS Plan, and therefore should be recoverable as part of Historical CAT Assessment 1.

(vi) Submission and Approval of the CAT NMS Plan

After extensive analyses and discussions with the DAG, bidders, market participants and the SEC staff, the Participants finalized the draft of the CAT NMS Plan and filed the CAT NMS Plan with the SEC on September 30, 2014. Following additional discussions, the Participants filed several amendments to the CAT NMS Plan during 2015 and 2016. With these additional changes, the SEC published the CAT NMS Plan for notice and

comment in May 2016.¹⁶⁰ Following the comment period, the SEC approved the Plan in November 2016.¹⁶¹

(vii) Legal Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include legal costs of \$3,196,434. The legal services were performed by WilmerHale. The selection considerations and fees for WilmerHale were described in detail above. Prior to the creation of CAT LLC, WilmerHale was engaged to represent the consortium of SROs, not the individual Participants. For administrative purposes, FINRA agreed to receive such legal bills, although such costs were shared among the Participants. Therefore, the legal costs incurred with respect to WilmerHale do not include legal costs incurred by the individual Participants. These pre-formation legal costs are described in detail above and are further described below:

- Analyzed various legal matters associated with the Selection Plan and drafted an amendment to Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the DAG;
- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on the CAT NMS Plan;
- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG, and governance support during the transition to the new governance structure under the CAT NMS Plan;
- Drafted exemptive requests;
- Provided interpretations related to the CAT NMS Plan;
- Provided support with regard to discussions among the exchanges, FINRA and other third parties, such as Deloitte;
- Provided tax advice with regard to CAT’s status as a tax-exempt organization; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

(viii) Consulting Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include consulting costs of \$10,589,273. The consulting services were performed by Deloitte. The selection considerations and fees for Deloitte were described in detail above. Prior to the creation of CAT LLC, for administrative purposes, Deloitte was engaged by FINRA to provide consulting services related to CAT, but the costs were shared by the consortium of SROs per agreement. Therefore, the consulting costs incurred with respect to Deloitte do not include consulting costs incurred by the individual Participants. The pre-formation consulting costs include the following:

- Established and implemented program operations for the CAT project, including the program management office and workstream design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participants’ independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, reviewing technical requirements of other NMS plans, analyzing OATS and CAT requirements, and drafting appendices to the Plan;
- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Provided support for industry outreach sessions, including with regard to program design and agenda development, program support and logistics and coordination; and
- Provided support in fact finding, drafting content and meeting coordination for WilmerHale with regard to the CAT and the development of the CAT NMS Plan.

Such Pre-Formation Costs did not include costs related to the Chair of the CAT NMS Plan Operating Committee, as the CAT NMS Plan had not yet been adopted.

¹⁵⁵ Securities Exchange Act Rel. No. 69060 (Mar. 7, 2013), 78 FR 15771, 15772 (Mar. 12, 2013) (“March 2013 Exemptive Order”).

¹⁵⁶ See March 2013 Exemptive Order; Securities Exchange Act Rel. No. 71018 (Dec. 6, 2013), 78 FR 75669 (Dec. 12, 2013) (“December 2013 Exemptive Order”).

¹⁵⁷ March 2013 Exemptive Order at 15772; December 2013 Exemptive Order at 75670.

¹⁵⁸ March 2013 Exemptive Order at 15772.

¹⁵⁹ *Id.* at 15773.

¹⁶⁰ See Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

¹⁶¹ See CAT NMS Plan Approval Order.

(ix) Public Relations Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include public relations costs of \$57,174. The public relations services were performed by Peppercomm. The selection considerations and fees for Peppercomm are described in detail above. The costs related to Peppercomm were shared among the SROs. Therefore, the public relations costs do not include public relations costs incurred by the individual Participants. The pre-formation public relations costs include services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT.

(B) Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs related to cloud hosting services as a part of Historical CAT Assessments. CAT LLC believes that the costs related to cloud hosting services described in detail above are reasonable and appropriate given the strict data processing timelines and storage requirements imposed by the Commission-approved CAT NMS Plan and should be recoverable as a part of Historical CAT Assessment 1.

(i) Reasonableness of AWS Costs Given the Requirements of the CAT NMS Plan

CAT LLC believes that the costs for the cloud hosting services are reasonable, both in terms of the level of the fees paid by CAT LLC for cloud hosting services provided by AWS and the scope of the services performed by AWS for CAT LLC. CAT LLC believes that both the scope and amount of the costs for cloud hosting services are reasonable given the current requirements of the CAT NMS Plan adopted pursuant to Rule 613, including the strict data processing timeline, storage and other technical requirements under the Commission-approved CAT NMS Plan.

CAT LLC believes that the level of fees for the cloud hosting services is reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.

CAT LLC also believes that the scope of services provided by AWS for the CAT are appropriate given the current requirements of the Commission-approved CAT NMS Plan. As described above, the cloud hosting services costs reflect a variety of factors including, among other things:

- *Breadth of Cloud Activities.* AWS was engaged by FCAT, the Plan Processor, to provide a broad range of services to the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS necessary to the CAT include storage services, databases, compute services, and other services (such as networking, management tools and development operations (“DevOps”) tools). AWS also was engaged to provide the various environments for CAT, such as the development, performance testing, test and production environments, which are required by the CAT NMS Plan.

- *High Data Volume.* The cost for AWS services for the CAT is a function of the volume of CAT Data. While it is not linear, the greater the amount of CAT Data, the greater the cost of AWS services to the CAT. The data volume handled by AWS now far exceeds the original volume estimates for the CAT.

- *Plan Requirements.* The cost for AWS services also reflects the technical requirements necessary to meet the stringent performance and other requirements for processing CAT Data. These Plan-dictated processing timelines, storage, testing, security and other technical requirements are significant drivers of AWS costs.

- *Cost Avoidance Efforts.* CAT LLC and FCAT have engaged in ongoing efforts to seek to avoid and minimize AWS costs where permissible under the Plan. Accordingly, these cost avoidance efforts have limited the extent of AWS costs.

In addition, various requirements of the CAT NMS Plan adopted pursuant to Rule 613 contribute to the significant cloud hosting services costs, and that various Plan requirements could be amended or removed without affecting the regulatory purpose of the CAT. Indeed, CAT LLC has repeatedly sought exemptive relief and filed amendments to the CAT NMS Plan, and has even filed suit against the Commission, to seek to revise or eliminate certain costly requirements related to the CAT. However, despite these efforts, absent the Commission granting exemptive relief or approving cost savings amendments to the CAT NMS Plan, CAT LLC, the Participants and Industry Members are all required to comply with such requirements.

(ii) Effect of CAT Design on CAT Costs

(a) Efficient CAT Design

CAT is reasonably designed to efficiently and effectively utilize cloud computing and storage services, given the requirements of the Commission-approved CAT NMS Plan, including requirements related to security, operational reliance and quality assurance, and maintainability.

The Plan Processor uses state-of-the-art software that meets the strict security standards of the CAT NMS Plan. CAT utilizes a big data processing framework that is extensively used by large data processing companies, such as Apple, Meta, Netflix, IBM and Google. As such, it has substantial commercial support and support in the open-source community. It is also well suited for use with regard to iterative types of algorithms and query functions and analytics that the CAT requires, and it provides the heightened security necessary for the CAT.

The development and implementation of the design of CAT is not and has not been static. CAT LLC and the Plan Processor are always evaluating new innovations and service offerings from AWS and other providers to seek to maximize efficiency and cost avoidance while still satisfying the requirements of the CAT NMS Plan. These efforts have led to substantial savings to date. The cloud hosting costs for 2023 were less than the cloud hosting costs for 2022 by \$8 million despite processing seven trillion more events in 2023 due to the efficiency and cost avoidance efforts for cloud hosting services. For example, when AWS introduced new storage options, FCAT adopted the cost-efficient new storage option after establishing that the new offering would satisfy the security and other standards of the CAT NMS Plan. This change led to millions of dollars of savings in storage costs. Similarly, when AWS introduced a new compute processor, FCAT adopted this new compute processor, which led to millions of dollars in savings in compute costs. However, in other cases, new cloud technology developments could not be implemented in CAT because they would not satisfy the security or other requirements of the CAT NMS Plan.

When evaluating the design of the CAT, it must be kept in mind that the CAT is not a typical commercial technology project. The ability to make use of technology approaches that may lead to cost avoidance is also subject to the restrictive requirements of the CAT NMS Plan, such as processing timeframes, requirements for retention of data versions, query requirements,

and security standards. Because such requirements are set forth in the CAT NMS Plan, any modification of such requirements are subject to the time-consuming process of amending the CAT NMS Plan or seeking an exemption from the relevant requirement. For example, CAT LLC recently has filed an amendment to address several of these expensive Plan requirements.¹⁶²

(b) CAT Was Designed To Minimize Industry Member Effort

The CAT System also was designed to minimize the extent to which Industry Members would need to alter their systems to report to CAT. During the design process, Industry Member groups argued that it would make more sense financially for the CAT to accommodate differences in industry systems, than for all Industry Members to change their systems. Moreover, such design choices would facilitate consistency, uniformity and accuracy in reporting. Requiring the CAT to make such accommodations may increase CAT costs while accommodating CAT Reporters.

Based on the requirements in the CAT NMS Plan and/or in response to industry requests for functionality to be embedded with the Plan Processor to streamline or limit Industry Member system changes, the CAT has been designed to limit the effect on Industry Members. The following provides examples of such accommodations:

- *Industry Member Reporting.* In light of the complexity of Industry Member market activity, the CAT's order reporting and linkage scenarios document for Industry Members is over 800 pages in length, addressing nearly 200 scenarios.¹⁶³ The Industry Member Technical Specifications allow for dozens of specific event types, which drive complexity for the Plan Processor, but streamline reporting for Industry Members. Furthermore, the Plan Processor greatly expanded Industry Member linkage requirements to support, among other things, child events and supplemental events, allowing for "stateless as-you-go" and "batch end-of-day" reporting when all data is available. Accordingly, CAT takes on the significant cost and effort of providing the required linkages between CAT events; correspondingly,

Industry Members are not required to perform this costly task.

- *File Submission Process.* The CAT was designed to accommodate the varying needs of CAT Reporters with regard to the file submission process. For example, in a 2018 letter, FIF stated that "[t]he SFTP-based submission process is cumbersome, exposes industry members to unnecessary complexity, and puts the burden of support on the CAT Reporter rather than imbedding more functionality into the Plan Processor."¹⁶⁴ Currently, FCAT provides two mechanisms for submitting files: SFTP via a private network, and the Web via Reporter Web Portal.

- *Error Corrections.* The industry also emphasized the need for the CAT to provide error correction tools and functionalities to identify, rectify and re-submit corrections within the required timeframe. For example, FIF stated in a 2018 letter the following:

To be clear, if OATS-like error correction tools are not made available on Day 1, hundreds of firms will be required to create and test their own tools or obtain vendor alternatives prior to the CAT Go-Live Date. Proprietary tools will require additional system builds, access to and ingestion of CAT data to perform system validation, and testing which will further stress the limited number of subject matter experts ("SMEs") dedicated to the implementation of CAT reporting. Should this occur, inevitably firms (especially small firms who lack the necessary IT staff to write code and develop proprietary systems), may be put in the position of passing onto investors the cost required to build hundreds of redundant systems.¹⁶⁵

CAT provides various tools to help Industry Members identify and rectify errors.

- *Data Ingestion Format.* The industry also recommended that CAT adopt a flexible input format that provides an option for Industry Members to submit data in formats that are already in use to reduce costs and potential reporting errors. For example, FIF argued the following:

FIF CAT WG is not proposing a specific format; rather, we are proposing flexibility of input formats which includes support of existing formats (e.g., OATS, FIX) as well as a baseline specification where all fields are defined, and normalized. The input formats must be clearly and thoroughly defined in Technical Specifications, including FAQs.

Mandating a uniform format for reporting data to the CAT simplifies the task for the Central Repository of consolidating/storing data, but it puts the burden on each CAT

Reporter to accurately translate their current (e.g., OATS) reporting information into a uniform CAT interface. However, that is likely to yield more errors because it is very dependent on accurate, complete and timely information (Technical Specifications, FAQs, meta-data, competent CAT help desk) available to CAT Reporters, availability of sophisticated CAT test tools to validate interface protocols, and the skill levels of the estimated 300+ unique CAT Reporters/Submitters during Phase 1 of CAT. Concentrating the responsibility of data conversions with the Central Repository is a reasonable trade-off that should yield fewer errors, and greater accuracy.¹⁶⁶

CAT provides such a flexible input format.

(c) Effect of Initial Plan Processor Design

The costs for cloud hosting services are appropriate and have not been adversely affected by the original design and approaches of the Initial Plan Processor. FCAT's design costs are the result of the requirements of the Commission-approved CAT NMS Plan.

When FCAT took over as the Plan Processor from Thesys, it utilized certain aspects of the technical specifications created by Thesys in its design. However, FCAT has not maintained aspects of the original design that would not be appropriate for the CAT. FCAT revised and enhanced the original technical specifications of the CAT System to increase its efficiency and efficacy, and to ensure its compliance with the CAT NMS Plan. For example, the Initial Plan Processor's approach utilized many more fields than FCAT's approach, which relies on additional linkages. With the additional linkages, the CAT System takes on more of the CAT-related burdens than the Industry Members. Such an approach serves to facilitate consistency, uniformity and accuracy in reporting.

Moreover, FCAT did not utilize the system built by the Initial Plan Processor; it rebuilt the CAT System based on revised technical specifications. For example, the Initial Plan Processor used an on-premises processing approach which was not geared toward the huge amounts of data stored in the CAT, while FCAT adopted a cloud-based solution in response to such data demands.

Furthermore, given the very short timeframe to develop the CAT System and the prior optimization of certain query tools (e.g., Diver) for regulatory use with significant amounts of data, FCAT determined to rely upon certain

¹⁶² See, e.g., Securities Exchange Act Rel. No. 99938 (Apr. 10, 2024), 89 FR 26983 (Apr. 16, 2024); Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (Mar. 27, 2024) (proposing amendments to the CAT NMS Plan for \$23 million in annual savings).

¹⁶³ See CAT Industry Member Reporting Scenarios v.4.10 (Oct. 21, 2022).

¹⁶⁴ Letter from Janet Early, FIF, to Thesys CAT (Mar. 29, 2018).

¹⁶⁵ Letter from Christopher Bok, FIF, to Jay Clayton, Chair, Commission, at 4 (Dec. 11, 2018).

¹⁶⁶ Letter from Mary Lou Von Kaenel, Managing Director, FIF, to Brent Fields, Secretary, Commission at 92 (July 18, 2016), <https://www.sec.gov/comments/4-698/4698-13.pdf>.

existing FINRA tools and adapt them for use with the CAT.

(iii) Consideration of AWS Alternatives

CAT LLC continues to support the selection of AWS as the cloud hosting services provider for CAT given the compliance, operational, and security requirements of the CAT. Independent analyses confirm these conclusions, noting that “AWS is an excellent choice for either strategic or tactical use and recommends considering AWS for almost all cloud IaaS or IaaS+PaaS scenarios.”¹⁶⁷ AWS provides the following benefits to CAT, among others:

- *Broad Suitability.* AWS has a long track record of successfully serving cloud customers with mission-critical projects.

- *Proven Scalability.* AWS has demonstrated that it is capable of building and delivering services on a large scale.

- *Track Record of Innovation.* AWS continues to rapidly innovate, both in terms of new domains of capability and at a fundamental level, thereby facilitating innovation for its customers.

- *Resiliency/Dependability.* Another benefit of AWS is its resiliency; it has a strong track record of stable services. As noted in a review of cloud service providers, “[c]ustomers like to have a broad set of options for resilience and for their cloud providers to have a strong track record of stable services (continuously available, without operational quirks). Only AWS fulfills both desires.”¹⁶⁸

- *Technical and Customer Support.* AWS consistently provides high-quality technical and customer support and engagement. Given the size, scope and regulatory importance of CAT, customer support and engagement that CAT has with the highest levels of AWS are very important to the success of the CAT.

- *Scale.* AWS is capable of supporting large-scale solutions, which is critical given the size and magnitude of the CAT.

- *Security.* AWS provides the security features necessary for the CAT.

In addition, the nature of the CAT, including the amount of data it must process and the size of its data footprint, does not allow for a multi-cloud solution as this would be cost prohibitive and greatly increase the security boundary and associated risk profile of the CAT. For example, a multi-cloud hosting option would

increase costs, complexity, and risk for operations with regard to, for example, DevOps, production support, and networking. Similarly, with regard to security, a multi-cloud solution would increase risk, including with regard to the need for data transfers between cloud providers and the expansion of the security boundary. With regard to labor, a multi-cloud solution would lose economies of scale due to the need to support unique cloud requirements. Accordingly, the use of single-cloud solution continues to provide advantages with regard to cost, complexity, and risk. Indeed, “[t]he best practice is to focus on a single primary strategic provider.”¹⁶⁹

Furthermore, if another cloud service provider were determined to be a better match for the CAT at some future date, switching cloud service providers would be a very significant, expensive and time-consuming effort. Such an effort would likely be a 10-to-15-year commitment at a substantial expense. Such a move would require the replication or redesign of the underlying cloud environments (e.g., organizational setup, identify management, accounts, environments, DevOps tooling like release management/config management/network management), as the new provider likely would not have the same infrastructure and software. Once that process has been completed, an exabyte of CAT data would need to be securely migrated to the new platform.

(C) Funding Model Filings

CAT LLC believes that the recovery of costs related to the development of the funding model is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

Funding the CAT is a critical aspect of Rule 613 and the CAT NMS Plan. Article XI of the CAT NMS Plan describes in detail the requirements for funding the CAT, and the Participants are required to comply with and enforce compliance with the funding requirements of the CAT NMS Plan, just as with other aspects of the Plan. Accordingly, the development and implementation of a funding model for the CAT is as much a part of the requirements of the CAT NMS Plan as the development and operation of the CAT System. CAT LLC sees no reason to distinguish the efforts to develop a funding model from, for example, efforts to develop the CAT System, in seeking to recover reasonable CAT costs.

Moreover, in approving the CAT Funding Model, the Commission

recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . legal costs.”¹⁷⁰ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . legal . . . costs.”¹⁷¹ In keeping with these provisions, this filing provides a brief description of reasonably budgeted legal costs above. These legal costs include costs related to the development of the CAT Funding Model.

In addition, the legal costs incurred for the assistance in developing the CAT Funding Model are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the specialized services were performed by experienced counsel at negotiated rates for such services that reflect both the extent of the services and market rates. Moreover, the scope of the legal costs associated with the development of the funding model reflect the complexity of the task in satisfying the detailed requirements of the CAT NMS Plan, the standards of the Exchange Act, and the many perspectives of the different market constituents potentially affected by or interested in the funding model, including Industry Members, Participants and investors. The many and varied comments by market participants on CAT funding over the years demonstrate the complexity of the task.

(D) Costs Related to Litigation With the SEC

CAT LLC believes that the recovery of legal costs related to the litigation with the SEC regarding the CAT NMS Plan is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.¹⁷² Moreover, CAT LLC initiated such litigation, and incurred the related legal costs, because it was critical to address the Commission’s interpretations of the CAT NMS Plan. Among other things, such interpretations threatened to

¹⁶⁷ See, e.g., Lydia Leong and Adrian Wong, Solution Comparison for Strategic Cloud Integrated IaaS and PaaS Providers (July 28, 2023) (“Strategic Cloud Assessment Article”).

¹⁶⁸ Strategic Cloud Assessment Article.

¹⁶⁹ *Id.*

¹⁷⁰ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁷¹ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁷² See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

impose unnecessary costs on the CAT, which would be borne by the Participants and Industry Members. Indeed, in response to the litigation, the Commission provided exemptive relief that allowed alternative, more cost-effective approaches to the implementation of the CAT. Specifically, in the 2023 exemptive order, the Commission stated:

The conditional exemptive relief in this Order allows for the implementation of alternative regulatory solutions that continue to advance the regulatory goals that Rule 613 and the CAT NMS Plan were intended to promote, while reducing the implementation and operational costs, burdens, and/or difficulties that would otherwise be incurred by the Participants and Industry Members that must fund the CAT.¹⁷³

CAT LLC believes it is reasonable and appropriate to incur costs to limit the need to incur even greater costs due to certain interpretations of the Plan.

In addition, the legal costs incurred during the litigation are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the specialized services were performed by experienced counsel at market rates for such services. As such, the legal costs related to this litigation incurred during the period covered by Historical CAT Assessment 1 were reasonable.

Finally, Industry Members will directly benefit from the result of the litigation because it has addressed CAT NMS Plan requirements that would have imposed significantly greater costs on the CAT. Accordingly, it is reasonable and appropriate that the costs of such litigation be included in the Historical CAT Costs 1.

(E) Costs Related to the Initial Plan Processor

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017, which was the date by which Participants were required to begin reporting to the CAT, due to the delay in the commencement of reporting to the CAT. As discussed above, the Participants determined to exclude all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Thesys costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Thesys costs incurred after November 15, 2018 are the \$19,628,791 in capitalized developed technology costs for the period from November 16,

2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these \$19,628,791 in costs.

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. CAT LLC notes that the development and implementation of the CAT System, while unprecedented in scope and design, is like any other large and innovative technology project in that, inevitably, there were adjustments and refinements in the technical approach as the project developed, even with substantial planning efforts and oversight prior to the build. This is even more likely when the project faces a very tight implementation schedule, such as the one imposed by the Commission in Rule 613 and the CAT NMS Plan. However, an adjusted approach does not mean that the funds were not valid expenditures and should not be recovered.

The reasonableness of Thesys costs should be evaluated by the Commission as of the time they were incurred, not in hindsight. As detailed above, the Commission concluded in 2016 that “the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor,” and that “the process set forth in the Selection Plan should be permitted to continue.”¹⁷⁴ Following this process, the Participants notified the Commission of the selection of Thesys as the Initial Plan Processor on January 17, 2017.¹⁷⁵ At the time, neither the Commission nor the industry argued that the selection of the Initial Plan Processor was unreasonable or otherwise inconsistent with the CAT NMS Plan, nor did they predict the selection would result in unanticipated delays in the implementation of the CAT System. On the contrary, on April 4, 2017, the President of SIFMA wrote that “SIFMA looks forward to commencing work with the SROs and Thesys.”¹⁷⁶

As noted in the CAT Funding Model Approval Order, “[i]n Rule 613, the

Commission made the determination that the costs of the CAT should be shared by the Participants and Industry Members.”¹⁷⁷ If the CAT Funding Model had existed on Day 1, the risk of any unanticipated costs or challenges associated with the Initial Plan Processor would have been fairly and reasonably shared among the Participants and Industry Members on an ongoing basis. Given that the Commission concluded in 2012 that the costs of the CAT would be shared by the Participants and Industry Members, it is not fair or reasonable to determine in hindsight that all of the risk involved in developing the CAT should be allocated entirely to the Participants.

(F) CAIS Implementation Costs

CAT LLC believes that the recovery of CAIS-related costs is appropriate, and that the amount and scope of such costs, as described above, are reasonable, and that the reasonableness of historical costs should be evaluated by the Commission as of the time they were incurred, not in hindsight.

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable CAIS operating costs as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . CAIS operating fees.”¹⁷⁸ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . CAIS operating fees.”¹⁷⁹ In keeping with these provisions, this filing provides a brief description of reasonably budgeted CAIS operating fees.

In addition, CAT LLC determined that the CAIS operating fees described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. The “CAIS Operating Costs” for Historical CAT Assessment 1 total \$9,480,587, with Pre-FAM costs of \$2,072,908, FAM 1 costs of \$254,998, FAM 2 costs of \$1,590,298, and FAM 3 costs of \$5,562,383. As described above, the CAIS operating fees were incurred with regard to two categories of CAIS-related efforts: (1) the acceleration of the reporting of LTIDs; and (2) the development of the CAIS Technical Specifications and the building of CAIS. These two categories of costs are discussed in more detail below.

¹⁷⁴ CAT NMS Plan Approval Order at 84737.

¹⁷⁵ Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf>.

¹⁷⁶ Letter from Kenneth E. Bentsen, Jr., SIFMA, to Participants re: Selection of Thesys as CAT Processor (Apr. 4, 2017), <https://www.sifma.org/wp-content/uploads/2017/05/SIFMA-Submits-Comment-Letter-to-SRO-on-the-selection-of-Thesys-as-the-CAT-Processor.pdf>.

¹⁷⁷ CAT Funding Model Approval Order at 62650.

¹⁷⁸ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁷⁹ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁷³ Settlement Exemptive Order at 77129–30.

(i) LTID Reporting

During the period covered by Historical CAT Assessment 1, the CAIS operating costs included costs related to the acceleration of the reporting of LTIDs earlier than originally contemplated during this period at the request of the SEC and in accordance with exemptive relief granted by the SEC.¹⁸⁰ As the SEC approved in this exemptive relief, the Participants proposed “to require the reporting of LTIDs to the CAT in Phases 2c and 2d, instead of with the rest of Customer Account Information in Phase 2e, which potentially could result in an earlier elimination of broker-dealer recordkeeping, reporting and monitoring requirements of the Large Trader Rule.”¹⁸¹ To implement the reporting of LTIDs to the CAT, the following steps were taken during the period covered by Historical CAT Assessment 1:

- After FCAT developed the LTID Technical Specifications, the LTID Technical Specifications were published on January 31, 2020, with additional updates provided to the LTID Technical Specifications through April 2021.¹⁸²
- The LTID account information testing environment opened on August 24, 2020.
- The LTID account information reporting production environment opened on December 14, 2020.
- CAT Reporters were required to request their production readiness certification for account information related to LTIDs by the deadline of April 9, 2021.
- The LTID account information reporting for Phases 2a, 2b and 2c for Large Industry Members went live on April 26, 2021.
- The LTID account information reporting for Phases 2d for Large Industry Members went live on December 13, 2021.
- The LTID account information reporting for Phases 2a, 2b, 2c and 2d for Small Industry Members went live on April 26, 2021.

Throughout this project, FCAT and CAT LLC worked closely with the industry on LTID and CAIS reporting. Between December 2019 and December 2021, at least 57 checkpoint calls, webinars, and technical working group meetings with industry representatives

were hosted to address issues and to educate CAT Reporters regarding LTID and CAIS reporting.¹⁸³

The LTID reporting project was successfully completed in a timely fashion, and the fees related to the project were reasonable. Accordingly, CAT LLC appropriately seeks to recover such costs via Historical CAT Assessment 1.

(ii) CAIS Reporting

During the period covered by Historical CAT Assessment 1, FCAT began the development of the full CAIS Technical Specifications and the building of CAIS. The CAIS Technical Specifications were developed during this period as follows:

- Iterative drafts of the CAIS Technical Specifications were published on June 30, 2020, December 1, 2020, and January 1, 2021.¹⁸⁴
- The full, final CAIS Technical Specifications were published on January 29, 2021.
- Updated versions of the CAIS Technical Specifications were published throughout 2021.¹⁸⁵

As discussed above, FCAT and CAT LLC frequently engaged with the industry regarding the development of CAIS, hosting regular checkpoint calls, webinars, and technical working group meetings with industry representatives to address any issues, including addressing the interplay between Industry Members’ existing customer systems and CAIS, and to educate CAT Reporters regarding LTID and CAIS reporting. Such engagement was critical to the CAIS development process as the CAIS project was unprecedented in terms of its content, scope and complexity.

During this period, FCAT also commenced the building of the CAIS system in accordance with the CAIS Technical Specifications during the period covered by Historical CAT Assessment 1. The CAIS system was ready for industry testing shortly after the end of this period in January 2022.

The CAIS Technical Specifications and the CAIS system, as developed during this period, continue to be in use today. Industry Members have been required to report, and have continuously reported, required data to

CAIS on a daily basis since November 7, 2022, consistent with interim reporting obligations. The CAIS system accepts and validates the CAIS data submitted by Industry Members and provides Industry Members with initial feedback on data errors. In light of the unprecedented nature of the CAIS system, certain changes to the system, such as changes related to error corrections and the CAIS regulatory portal, were necessary to finalize CAIS reporting. FCAT worked to address these remaining issues,¹⁸⁶ and, as of May 31, 2024, FCAT indicated that it had achieved the final CAIS reporting milestone. Accordingly, CAT LLC appropriately seeks to recover CAIS operating costs via Historical CAT Assessment 1.

(G) Public Relations Costs

CAT LLC believes that the recovery of public relations costs is appropriate and that the amount and scope of such costs, as described above, are reasonable.

The Commission has long recognized that external public relations costs are reasonably associated with creating, implementing and maintaining the CAT. In the CAT NMS Plan Approval Order, the Commission estimated that the Participants had collectively spent approximately \$2,400,000 in preparation of the CAT NMS Plan on external public relations, legal, and consulting costs, and estimated that the Participants would continue to incur external public relations costs associated with maintaining the CAT upon approval of the CAT NMS Plan.¹⁸⁷

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for public relations services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . public relations costs.”¹⁸⁸ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . public relations costs.”¹⁸⁹ In keeping with these provisions, a brief description of reasonable public relations costs are described above.

In addition, CAT LLC determined that the public relations costs described

¹⁸⁰ See Phased Reporting Exemptive Relief Order at 23079–80.

¹⁸¹ *Id.* at 23078–79, n.70.

¹⁸² The LTID Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

¹⁸³ Such contact points with the industry are described in detail on the Events web page of the CAT website (<https://www.catnmsplan.com/events>).

¹⁸⁴ The CAIS Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

¹⁸⁵ Six updated versions of the CAIS Technical Specifications were published during 2021, in March, May, June, August, October and December.

¹⁸⁶ See, e.g., CAT Q4 2023 Quarterly Progress Report (Jan. 30, 2024) (<https://www.catnmsplan.com/sites/default/files/2024-01/CAT-Q4-2023-QPR.pdf>).

¹⁸⁷ CAT NMS Plan Approval Order at 84917–18.

¹⁸⁸ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁸⁹ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. The services performed by the public relations firms through 2021 were limited in scope to assist CAT LLC, which has no employees of its own, to be better positioned to understand and address CAT matters to the benefit of all market participants and to communicate on important CAT topics with the public. In addition, the costs for these services were appropriately limited. During the 10-year period covered by Historical CAT Assessment 1, the average cost per year for these services was approximately \$36,000.

(H) Legal Costs Related to the Limitation of Liability Provision in CAT Reporter Agreements

CAT LLC believes that the recovery of legal costs related to the limitation of liability provision, including costs related to the proceedings before the SEC and costs related to the proposed amendment to the Consolidated Audit Trail Reporter Agreement and the Consolidated Audit Trail Reporting Agent Agreement (the "Reporting Agreements") is appropriate and that the amount and scope of such costs as described above are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.¹⁹⁰ In addition, CAT LLC determined that the legal costs incurred for the assistance with regard to the limitation of liability provisions are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1.

Moreover, it is critical that CAT LLC, which has no employees of its own, have the ability to fund a legal defense in litigation and other legal proceedings against it. In response to CAT LLC requiring Industry Members to agree to the limitation of liability provision to submit data to the CAT, SIFMA filed an application for review of actions taken by CAT LLC and the Participants pursuant to Sections 19(d) and 19(f) of the Exchange Act. Contemporaneously with the filing of this proceeding, SIFMA moved for a stay of the requirement that Industry Members sign a Reporter Agreement, or in the alternative, asked the Commission to further delay the launch of CAT reporting on June 22, 2020. CAT LLC must have the resources to defend itself

from litigious actions by others, like these.

Although a limitation of liability provision ultimately was not adopted as proposed, it was a reasonable provision to propose for the CAT Reporter Agreements, given that such provisions are in accordance with industry norms. Limitations of liability are ubiquitous within the securities industry and have long governed the economic relationships between self-regulatory organizations and the entities that they regulate. For example, U.S. securities exchanges have adopted rules to limit their liability for losses that Industry Members incur through their use of exchange facilities.¹⁹¹ Similarly, FINRA's former order audit trail, OATS, which has functioned as an integrated audit trail of order, quote, and trade data for equity securities, required FINRA members to acknowledge an agreement that includes a limitation of liability provision.¹⁹² In addition, such a provision was intended to ensure the financial stability of the CAT. Accordingly, it was reasonable for CAT LLC to propose the use of such a provision.¹⁹³

Furthermore, as described above, the specialized services were performed by experienced counsel at market rates for such services. Accordingly, the legal costs for the efforts related to the limitation of liability provision were reasonable.

(I) Costs for the Chair of CAT Operating Committee

CAT LLC believes that the recovery of consulting costs related to the Chair of the CAT Operating Committee is appropriate and that the amount and scope of such costs are reasonable.

As a preliminary matter, the selection of the Chair of the Operating Committee complies with the requirements of Section 4.2 of the CAT NMS Plan. The initial Chair that served during the period covered by Historical CAT Assessment was designated by a Participant as the Participant's alternate voting member. Accordingly, the Chair is a representative of the Participants, as required by the CAT NMS Plan.

¹⁹¹ See, e.g., NASDAQ Equities Rule 4626.

¹⁹² FINRA Rule 1013(a)(1)(R) requires all applicants for FINRA Membership to acknowledge the FINRA Entitlement Program Agreement and Terms of Use, which applies to OATS. Industry Members click to indicate that they agree to its terms—including its limitation of liability provision—every time they access FINRA's OATS system to report trade information (i.e., repeatedly over the course of a trading day for many Industry Members).

¹⁹³ See Letter from Michael Simon, Chair, CAT Operating Committee, to Vanessa Countryman, Secretary, Commission (Dec. 18, 2020).

In addition, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for consulting as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that "the reasonably budgeted CAT costs shall include . . . consulting . . ." costs.¹⁹⁴ In addition, the CAT NMS Plan also requires Participants to include in their fee filings "a brief description of the amount and type of the Historical CAT Costs, including . . . consulting"¹⁹⁵ costs. In keeping with these provisions, a brief description of reasonable consulting costs is included in this filing, and such reasonable consulting costs include the costs related to the Chair position.

The Participants determined that the position of the Chair was a critical role for the implementation of the CAT, and an independent Chair would appropriately consider and address the views of each of the Participants. The Participants also determined that it was important to have a Chair with a strong background regarding issues related to the regulatory obligations of self-regulatory organizations, including their obligations under national market system plans. The compensation paid to the Chair is appropriate for a person with such background and skills. The average annual amount paid to the Chair from 2017 through the end of FAM 3 was \$292,733.30. Separate from the Chair, CAT LLC relies upon a Leadership Team of representatives of the SROs to oversee the day-to-day implementation of the CAT NMS Plan. CAT LLC does not compensate any member of the Leadership Team.

(11) Fee Implementation Assistance for Industry Members

(A) Reconciliation of CAT Invoices

(i) Reconciliation of CAT Invoices to Underlying Trades Provided by CAT

CAT LLC understands that there are three types of reconciliation processes related to the invoices:

- *Reconciliation of CAT Invoices to Underlying Trades*: Reconciling the CAT invoice amount to the underlying trades provided by CAT;
- *Matching Trades to Books and Records*: Providing the means to match the underlying trades provided by CAT with CAT invoices to other books and records independently maintained by individual CAT Reporters (e.g., exchange trade journals/

¹⁹⁴ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁹⁵ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁹⁰ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

acknowledgements) and data sources of self-regulatory organizations independent of CAT; and

- *Order Originator Identification:* Providing the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices, which would facilitate firms' ability to pass through CAT Fees to their customers.

As discussed further below, CAT LLC only considers the first type of process to be a "reconciliation" and the only type of process that is required under the CAT NMS Plan. CAT LLC provides the means to reconcile the CAT invoice amount to the underlying trades provided by CAT.

The CAT NMS Plan does not require CAT LLC to facilitate the second type of process: matching underlying trades for a CAT invoice with a firm's internal books and records. CAT LLC has access only to the underlying trades provided by CAT; it does not have access to a firm's internal books and records. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying trades with their own books and records.

The CAT NMS Plan also does not require CAT LLC to provide the ability to identify the order originator for the underlying trades for the CAT invoices. Accordingly, the billing guidance and processes do not provide CAT Reporters with the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices. CAT LLC has been working closely with CAT Reporters to explain its billing approach and to address any outstanding billing questions. But, it should not be lost that CAT LLC provides information sufficient to allow CAT Reporters to reconcile CAT invoice amounts with the underlying trades provided by CAT LLC.

(ii) Match the Underlying Trades Provided by CAT With CAT Invoices to Firms' Internal Books and Records Independent of CAT

The CAT NMS Plan does not require CAT LLC to facilitate the matching of underlying trades for a CAT invoice with a firm's internal books and records, which may consist of trading data from various sources external to CAT. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying

trades with their own books and records.

In this regard, it is important to recognize that CAT LLC has developed a billing approach that greatly improves upon existing billing practices for similar regulatory fees (e.g., fees related to Section 31). Accordingly, with the additional information voluntarily provided by CAT LLC, CAT Reporters generally will have sufficient information to match their underlying trades provided by CAT with their own internal books and records that are independent of CAT or to SRO data that is independent of CAT data. However, CAT LLC emphasizes that providing such additional information is not required by the CAT NMS Plan.

To facilitate the introduction of CAT fees, CAT LLC has worked with FCAT to develop an approach to CAT billing that is consistent with existing billing constructs used with regard to Section 31-related sales values fees, subject to certain enhancements. Under this billing approach, FCAT is providing additional linkage elements, not necessarily provided in the Section 31-sales value fee context, to facilitate CAT Reporters' ability to match the underlying trades provided by CAT with their internal books and records and to reduce the complexity of that process. Specifically, FCAT is providing various key elements of the trade itself, such as the tradeID and branch sequence,¹⁹⁶ to CAT Reporters in the trade billing details provided with their CAT invoices ("Additional Trade Details"). As a result, CAT Reporters now have numerous alternative methods for matching a trade with their internal books and records where they previously did not have such matching methods in other fee contexts.

With the Additional Trade Details, CAT LLC and FCAT believe that the overwhelming majority of underlying trades provided by CAT bills can be matched with a CAT Reporter's internal books and records. CAT LLC recognizes that there may be certain cases in which such matching is more difficult given various firm-specific considerations, but believes that such instances are significantly more limited than with regard to the SRO fees charged in relation to Section 31.¹⁹⁷ By providing

¹⁹⁶ See CAT Technical Specifications for Billing Trade Details; Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>); CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

¹⁹⁷ For years, broker-dealers have faced similar reconciliation issues with regard to SRO fees related

Additional Trade Details that are not available in other fee contexts, FCAT enhances the Industry Members' ability to match the underlying trades provided with CAT invoices with books and records and SRO data, both of which are independent of CAT data.

(iii) CAT LLC Is Not Required To Facilitate CAT Reporters' Ability To Pass Through Fees to Their Customers

Similar to other regulatory fees, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Accordingly, Historical CAT Assessment 1 does not address the process by which any CAT Reporters may pass through the fee to their customers. Likewise, the CAT billing approach provided by the Plan Processor is designed to address the needs of CAT Reporters with regard to the reconciliation of CAT invoices with the underlying trades provided by CAT LLC with the invoices; they are not designed to address issues related to any pass-through fees. Accordingly, facilitating CAT Reporters' ability to pass through fees to their clients is outside the scope of this fee filing. Nevertheless, as described below, CAT LLC and the Plan Processor have expended significant efforts to provide technical assistance to Industry Members regarding the implementation of Historical CAT Assessment 1, including providing Additional Trade Details that provide significant details about each underlying trade.

(a) Originating Brokers Versus Executing Brokers

In its approval of the CAT Funding Model, the Commission approved charging CAT fees to the CAT Executing Broker, rather than the originating broker. This fee filing must comply with the requirements of the CAT Funding Model, and, therefore, charges the Historical CAT Assessment 1 to CAT Executing Brokers.

Moreover, charging originating brokers would introduce significant

to Section 31. Broker-dealers have responded to this issue in the Section 31 context by exercising their discretion as to whether and the manner and extent to which they pass on those fees (e.g., by rounding up its fees to the nearest cent, or decide to charge for, or not charge for, certain transactions, or assess a specific fee or incorporate the costs into other fee programs). See, e.g., Securities Exchange Act Rel. No. 49928 (June 28, 2004), 69 FR 41060, 41072 (July 7, 2004) (noting that broker-dealers may "over-collect" Section 31-related fees charged to their clients due to rounding practices, and double-counting with regard to certain transactions).

complexity to the billing process from the CAT's perspective, and would increase the costs of implementing CAT fees. Charging the CAT Executing Broker is simple and straightforward, and leverages a one-to-one relationship between billable events (trades) and billable parties, similar to other transaction-based fees. In contrast, for a single trade event, there may be many originating brokers, and each trade must be broken down on a pro-rata basis, to account for one or more layers of aggregation, disaggregation, and representation of the underlying orders. While CAT is indeed designed to capture and unwind complex aggregation scenarios, the data and linkages are structured to facilitate regulatory use, and not a billing mechanism that assesses fees on a distinct set of executed trades; it is not simply a matter of using existing CAT linkages. Furthermore, charging originating brokers would implicate issues related to lifecycle linkage rates, and issues related to corrections, cancellations and allocations, while charging CAT Executing Brokers would avoid such issues.

(b) Identification of Order Originator for Underlying Trades

As noted, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT Fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Nevertheless, the Additional Trade Details provided with regard to the underlying trades on CAT invoices may assist with this process. Like with Section 31-related sales value fees, however, it is not always possible to trace every fee on a transaction back to the originating party. Industry Members have faced these issues under Section 31-related sales values fees for many years.¹⁹⁸ However, with the Additional Trade Details provided under the CAT billing approach, in many cases, CAT Reporters will be able to identify the order originator for the underlying trades provided by CAT with CAT invoices. In some cases, CAT

LLC believes that certain issues related to certain types of market activity may implicate CAT Reporters' ability to identify the order originator for a limited set of underlying trades for the CAT invoices. Although CAT LLC does not believe that it is required to address these issues, CAT LLC and FCAT have been carefully researching and analyzing these types of issues as they are identified, and have been working voluntarily to assist CAT Reporters with these issues as necessary and when possible. In addition, CAT LLC intends to continue to provide CAT Reporters with billing guidance through FAQs, CAT Alerts and Helpdesk responses to address outstanding billing questions.

(B) Significant Technical Assistance

CAT LLC has worked with FCAT to provide significant technical assistance to Industry Members to allow the Industry Members to understand how Historical CAT Assessment 1 will be implemented and billed, including webinars, CAT alerts, mock invoices, and responses to questions posed to the FCAT Help Desk.

- *Technical Specifications and Scenarios.* CAT LLC has provided detailed technical documentation for CAT billing, including (1) technical specifications, which describe the CAT Billing Trade Details Files associated with monthly CAT invoices, including detailed information about data elements and file formats as well as access instructions, network and transport options;¹⁹⁹ (2) trade details schemas;²⁰⁰ and (3) CAT billing scenarios.²⁰¹

- *Industry Webinars.* CAT LLC has hosted two industry webinars specifically dedicated to CAT billing. The first webinar, hosted on September 28, 2023, discussed the operational implementation of the CAT Reporter billing process.²⁰² The second webinar, hosted on November 7, 2023, provided (1) a demonstration of the CAT Reporter Portal and how to access CAT billing documents, including CAT invoices; and (2) additional information on underlying trade details in relation to

the CAT Reporter billing process and an overview of the CAT Contact Management System.²⁰³ 485 participants and 394 participants attended the two webinars, respectively.

- *CAT Alert.* CAT LLC has published a detailed CAT Alert that describes how FCAT, as the Plan Processor acting on behalf of CAT LLC, will calculate applicable fees, issue invoices to and collect payment from CAT Executing Brokers.²⁰⁴

- *Frequently Asked Questions (FAQs).* CAT LLC also has continued to engage with the industry on billing issues by making responses to billing FAQs available on the CAT website. The FAQs address a broad range of frequently asked questions, including, for example, which Industry Members will receive invoices, how fees are calculated, when and how fees are required to be paid, how to access invoices, and how to update the billing contact. To date, responses to 27 FAQs are available on the CAT website, and CAT LLC will provide additional responses to FAQs as warranted.²⁰⁵

- *Mock Invoices.* To assist Industry Members with compliance with the commencement of Historical CAT Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices for Historical CAT Assessment 1 since December 2023 for billable activity occurring in November 2023. The mock invoices are in the same form as the actual, payable invoices, including both the relevant transaction data and the corresponding fee (as originally contemplated). However, no payments are required in response to such mock invoices; they are to be used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data provides CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended to facilitate the payment of Historical CAT Assessment 1. For the November, December, and January billing periods, FCAT has generated trade detail files for 569 distinct firms that are CAT Executing Brokers. As such, CAT

¹⁹⁸ "FINRA charges a Regulatory Transaction Fee ("RTF") to industry members to reimburse FINRA for the Section 31 fees that FINRA pays to the Commission. FINRA does not currently provide industry members with the data that industry members require for proper reconciliation of RTF fees. This has been a major problem for the industry for many years." Letter from Howard Meyerson, Managing Director, FIF, to Robert Cook, Chief Executive Officer, FINRA at 2 (Dec. 15, 2023) (<https://fif.com/index.php/working-groups/category/271-comment-letters?download=2820:fif-letter-to-finra-on-pass-through-of-finra-cat-fees&view=category>).

¹⁹⁹ CAT Technical Specifications for Billing Trade Details, Version 1.0 r1 (Dec. 8, 2023) (https://catnmsplan.com/sites/default/files/2023-12/12.07.2023-CAT-Technical-Specifications-for-Billing-Trade-Details-v1.0r1_CLEAN.pdf).

²⁰⁰ Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>).

²⁰¹ CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

²⁰² CAT Billing Webinar, Part 1 (Sept. 28, 2023) (<https://www.catnmsplan.com/events/part-1-cat-billing-webinar>).

²⁰³ CAT Billing Webinar, Part 2 (Nov. 7, 2023) (<https://www.catnmsplan.com/events/part-2-cat-billing-webinar>).

²⁰⁴ See CAT Alert 2023-02 (Oct. 12, 2023) (<https://www.catnmsplan.com/sites/default/files/2023-10/10.12.23-CAT-Alert-2023-02.pdf>).

²⁰⁵ See CAT Billing FAQs, Section V of CAT FAQs (https://www.catnmsplan.com/faq?search_api_fulltext=&field_topics=271&sort_by=field_faq_number).

Reporters have actively engaged in the billing process via the mock invoices.

- *Help Desk Assistance.* CAT LLC also provides detailed, individualized assistance to Industry Members regarding CAT fees and the billing process through the FCAT Help Desk.²⁰⁶ For example, the Help Desk has assisted with 406 cases related to the billing of CAT fees from July 2023 through March 2024.

By providing such detailed and sustained assistance to Industry Members regarding CAT fees and billing, CAT LLC has successfully addressed questions raised by Industry Members regarding the CAT fees and billing processes.

(C) Ample Preparation Time

CAT LLC has provided Industry Members with ample time to comply with the implementation of Historical CAT Assessment 1. CAT LLC originally proposed issuing the first invoices for Historical CAT Assessment 1 in December 2023 based on transactions in Eligible Securities in November 2023. In consideration of the feedback about the need for additional time to implement the new fee, CAT LLC pushed back this timeline by four months, proposing to issue the first Historical CAT Assessment 1 in April 2024 based on transactions in March 2024.²⁰⁷ This filing pushes this timeline back even further for implementing Historical CAT Assessment 1, proposing to issue the first invoices for Historical CAT Assessment 1 in November 2024 based on transactions in Eligible Securities in October 2024. Moreover, as discussed above, during these additional months, FCAT has been working closely with Industry Members to provide guidance regarding their mock bills and reconciliation efforts related thereto.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of the Exchange Act. The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,²⁰⁸ which requires, among other things, that the Exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable

principles of trade, and, in general, to protect investors and the public interest, and not designed to permit unfair discrimination between customers, issuers, brokers and dealers. The Exchange also believes that the proposed rule change is consistent with the provisions of Section 6(b)(4) of the Act,²⁰⁹ because it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange further believes that the proposed rule change is consistent with Section 15A(b)(9) of the Act,²¹⁰ which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. These provisions also require that the Exchange be "so organized and [have] the capacity to be able to carry out the purposes" of the Act and "to comply, and . . . to enforce compliance by its members and persons associated with its members," with the provisions of the Exchange Act.²¹¹ Accordingly, a reasonable reading of the Act indicates that it intended that regulatory funding be sufficient to permit an exchange to fulfill its statutory responsibility under the Act, and contemplated that such funding would be achieved through equitable assessments on the members, issuers, and other users of an exchange's facilities.

The Exchange believes that this proposal is consistent with the Act because it implements provisions of the Plan and is designed to assist the Exchange in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan "is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act."²¹² To the extent that this proposal implements the Plan and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

The Exchange believes that the proposed fees paid by the CEBBs and

CEBSs are reasonable, equitably allocated and not unfairly discriminatory. First, the Historical CAT Assessment 1 fees to be collected are directly associated with the costs of establishing and maintaining the CAT, where such costs include Plan Processor costs and costs related to technology, legal, consulting, insurance, professional and administration, and public relations costs. The Exchange has already incurred such development and implementation costs and the proposed Historical CAT Assessment 1 fees, therefore, would allow the Exchange to collect certain of such costs in a fair and reasonable manner from Industry Members, as contemplated by the CAT NMS Plan.

The proposed Historical CAT Assessment 1 fees would be charged to Industry Members in support of the maintenance of a consolidated audit trail for regulatory purposes. The proposed fees, therefore, are consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business operations. The proposed fees would not cover Exchange services unrelated to the CAT. In addition, any surplus would be used as a reserve to offset future fees. Given the direct relationship between CAT fees and CAT costs, the Exchange believes that the proposed fees are reasonable, equitable and not unfairly discriminatory.

As further discussed below, the SEC approved the CAT Funding Model, finding it was reasonable and that it equitably allocates fees among Participants and Industry Members. The Exchange believes that the proposed fees adopted pursuant to the CAT Funding Model approved by the SEC are reasonable, equitably allocated and not unfairly discriminatory.

(1) Implementation of CAT Funding Model in CAT NMS Plan

Section 11.1(b) of the CAT NMS Plan states that "[t]he Participants shall file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves." Per Section 11.1(b) of the CAT NMS Plan, the Exchange has filed this fee filing to implement the Industry Member CAT fees included in the CAT Funding Model. The Exchange believes that this proposal is consistent with the Exchange Act because it is consistent with, and implements, the CAT Funding Model in the CAT NMS Plan, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the CAT NMS Plan. In approving the CAT NMS Plan,

²⁰⁶ The CAT NMS Plan requires that the Plan Processor "staff a CAT help desk, as described in Appendix D, CAT Help Desk, to provide technical expertise." Section 6.10(c)(vi) of the CAT NMS Plan. See also Section 10.3 of Appendix D of the CAT NMS Plan for a description of the Plan requirements for the CAT Help Desk.

²⁰⁷ Securities Exchange Act Rel. No. 34–99360 (January 17, 2024), 89 FR 10812 (February 13, 2024) ("SR–NASDAQ–2024–001").

²⁰⁸ 15 U.S.C. 78f(b)(6).

²⁰⁹ 15 U.S.C. 78f(b)(4).

²¹⁰ 15 U.S.C. 78o–3(b)(9).

²¹¹ See Section 6(b)(1) of the Exchange Act.

²¹² CAT NMS Plan Approval Order at 84697.

the SEC noted that the Plan “is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.”²¹³ Similarly, in approving the CAT Funding Model, the SEC concluded that the CAT Funding Model met this standard.²¹⁴ As this proposal implements the Plan and the CAT Funding Model described therein, and applies specific requirements to Industry Members in compliance with the Plan, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Exchange Act.

(2) Calculation of Fee Rate for Historical CAT Assessment 1 Is Reasonable

The SEC has determined that the CAT Funding Model is reasonable and satisfies the requirements of the Exchange Act. Specifically, the SEC has concluded that the method for determining Historical CAT Assessments as set forth in Section 11.3 of the CAT NMS Plan, including the formula for calculating the Historical Fee Rate, the identification of the parties responsible for payment and the transactions subject to the fee rate for the Historical CAT Assessment, is reasonable and satisfies the Exchange Act.²¹⁵ In each respect, as discussed above, Historical CAT Assessment 1 is calculated, and would be applied, in accordance with the requirements applicable to Historical CAT Assessments as set forth in the CAT NMS Plan. Furthermore, as discussed below, the Exchange believes that each of the figures for the variables in the SEC-approved formula for calculating the fee rate for Historical CAT Assessment 1 is reasonable and consistent with the Exchange Act. Calculation of the Historical Fee Rate for Historical CAT Assessment 1 requires the figures for the Historical CAT Costs 1, the executed equivalent share volume for the prior twelve months, the determination of Historical Recovery Period 1, and the projection of the executed equivalent share volume for Historical Recovery Period 1. Each of these variables is reasonable and satisfies the Exchange Act, as discussed throughout this filing.

(A) Historical CAT Costs 1

The formula for calculating a Historical Fee Rate requires the amount of Historical CAT Costs to be recovered. Specifically, Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan requires a fee filing to provide:

a brief description of the amount and type of the Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs.

In accordance with this requirement, the Exchange has set forth the amount and type of Historical CAT Costs 1 for each of these categories of costs above.

Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan also requires that the fee filing provide “sufficient detail to demonstrate that the Historical CAT Costs are reasonable and appropriate.” As discussed below, the Exchange believes that the amounts set forth in this filing for each of these cost categories is “reasonable and appropriate.” Each of the costs included in Historical CAT Costs 1 are reasonable and appropriate because the costs are consistent with standard industry practice, based on the need to comply with the requirements of the CAT NMS Plan, incurred subject to negotiations performed on an arm’s length basis, and/or are consistent with the needs of any legal entity, particularly one with no employees.

(i) Technology: Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover costs related to cloud hosting services as a part of Historical CAT Assessments.²¹⁶ CAT LLC determined that the costs related to cloud hosting services described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. As described above, the cloud hosting services costs reflect, among other things, the breadth of the CAT cloud activities, data volume far in excess of the original volume estimates, the need for specialized cloud services given the volume and unique nature of the CAT, the processing time requirements of the Plan, and regular efforts to seek to minimize costs where permissible under the Plan. CAT LLC determined that use of cloud hosting services is necessary for implementation of the CAT, particularly given the substantial data volumes associated

with the CAT, and that the fees for cloud hosting services negotiated by FCAT were reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.²¹⁷ Indeed, the actual costs of the CAT are far in excess of the original estimated costs of the CAT due to various factors, including the higher volumes and greater complexity of the CAT than anticipated when Rule 613 was originally adopted.

To comply with the requirements of the Plan, the breadth of the cloud activities related to the CAT is substantial. The cloud services not only include the production environment for the CAT, but they also include two industry testing environments, support environments for quality assurance and stress testing and disaster recovery capabilities. Moreover, the cloud storage costs are driven by the requirements of the Plan, which requires the storage of multiple versions of the data, from the original submitted version of the data through various processing steps, to the final version of the data.

Data volume is a significant driver of costs for cloud hosting services. When the Commission adopted the CAT NMS Plan in 2016, it estimated that the CAT would need to receive 58 billion records per day²¹⁸ and that annual operating costs for the CAT would range from \$36.5 million to \$55 million.²¹⁹ Through 2021, the actual data volumes have been five times that original estimate. The data volumes for each period are set forth in detail above.²²⁰

In addition to the effect of the data volume on the cloud hosting costs, the processing timelines set forth in the Plan contribute to the cloud hosting costs. Although CAT LLC has proactively sought to manage cloud hosting costs while complying with the Plan, including through requests to the Commission for exemptive relief and an amendment to the CAT NMS Plan, stringent CAT NMS Plan requirements do not allow for any material flexibility in cloud architecture design choices, processing timelines (e.g., the use of non-peak processing windows), or lower-cost storage tiers. As a result, the required CAT processing timelines contribute to the cloud hosting costs of the CAT.

²¹⁷ For a discussion of the amount and type of cloud hosting services fees, see Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

²¹⁸ Appendix D–4 of the CAT NMS Plan at n.262.

²¹⁹ CAT NMS Plan Approval Order at 84801.

²²⁰ See Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

²¹³ CAT NMS Plan Approval Order at 84696.

²¹⁴ CAT Funding Model Approval Order at 62686.

²¹⁵ *Id.* at 62662–63.

²¹⁶ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

The costs for cloud hosting services also reflect the need for specialized cloud hosting services given the data volume and unique processing needs of the CAT. The data volume as well as the data processing needs of the CAT necessitate the use of cloud hosting services. The equipment, power and services required for an on-premises data model, the alternative to cloud hosting services, would be cost prohibitive. Moreover, as CAT was being developed, there were limited cloud hosting providers that could satisfy all the necessary CAT requirements, including the operational and security criteria. Over time more providers offering cloud hosting services that would satisfy these criteria have entered the market. CAT LLC will continue to evaluate alternative cloud hosting services, recognizing that the time and cost to move to an alternative cloud provider would be substantial.

The reasonableness of the cloud hosting services costs is further supported by key cost discipline mechanisms for the CAT—a cost-based funding structure, cost transparency, cost management efforts (including regular efforts to lower compute and storage costs where permitted by the Plan) and oversight. Together, these mechanisms help ensure the ongoing reasonableness of the CAT's costs and the level of fees assessed to support those costs.²²¹

(ii) Technology: Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to operating fees as a part of Historical CAT Assessments.²²² CAT LLC determined that the costs related to operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The operating fees include the negotiated fees paid by CAT LLC to the Plan Processor to operate and maintain the system for order-related information and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.*, management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the selection of FCAT as the Plan Processor was reasonable and appropriate given its expertise with securities regulatory reporting, after a

process of considering other potential candidates.²²³ CAT LLC also determined that the fixed price contract, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, was reasonable and appropriate, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity.²²⁴ The services performed by FCAT for each period and the costs related to such services are described above.²²⁵

(iii) Technology: CAIS Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to CAIS operating fees as a part of Historical CAT Assessments.²²⁶ CAT LLC determined that the costs related to CAIS operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The CAIS operating fees include the fees paid to the Plan Processor to operate and maintain CAIS and to perform the business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.*, management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the FCAT-negotiated fees for Kingland's CAIS-related services, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity, were reasonable and appropriate.²²⁷ The services performed by Kingland for each period and the costs for each period are described above.²²⁸

(iv) Technology: Change Request Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to change request fees as a part of Historical CAT Assessments.²²⁹ CAT LLC determined that the costs related to change request

fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. It is common practice to utilize a change request process to address evolving needs in technology projects. This is particularly true for a project like CAT that is the first of its kind, both in substance and in scale. The substance and costs of each of the change requests are evaluated by the Operating Committee, and approved in accordance with the requirements for Operating Committee meetings. In each case, CAT LLC determined that the change requests were necessary to implement the CAT. As described above, the change requests cover various technology changes, including, for example, changes related to CAT reporting, data feeds and exchange functionality. CAT LLC also determined that the costs for each change request were appropriate for the relevant technology change. A description of the change requests for each FAM Period and their total costs are set described above.²³⁰ As noted above, the total costs for change requests through FAM Period 3 represent a small percentage of Historical CAT Costs 1—that is, 0.25% of Historical CAT Costs 1.

(v) Capitalized Developed Technology Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to capitalized developed technology costs as a part of Historical CAT Assessments.²³¹ Capitalized developed technology costs include costs related to certain development costs, costs related to certain modifications, upgrades and other changes to the CAT, CAIS implementation fees and license fees. The amount and type of costs for each period are described in more detail above.²³² CAT LLC determined that these costs are reasonable and should be included as a part of Historical CAT Costs 1.

These costs involve the activity of both the Initial Plan Processor and FCAT, as the successor Plan Processor.²³³ With regard to the Initial Plan Processor, the Participants utilized an RFP to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals,

²²³ See Section 3(a)(2)(B)(i)(b) above.

²²⁴ See Sections 3(a)(2)(B)(i)(b), 3(a)(2)(B)(ii)(b), 3(a)(2)(B)(iii)(b) and 3(a)(2)(B)(iv)(b) above.

²²⁵ *Id.*

²²⁶ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²⁷ See Sections 3(a)(2)(B)(i)(c), 3(a)(2)(B)(ii)(c), 3(a)(2)(B)(iii)(c) and 3(a)(2)(B)(iv)(c) above.

²²⁸ *Id.*

²²⁹ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²³⁰ See Sections 3(a)(2)(B)(i)(d), 3(a)(2)(B)(ii)(d), 3(a)(2)(B)(iii)(d) and 3(a)(2)(B)(iv)(d) above.

²³¹ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²³² See Sections 3(a)(2)(B)(i)(e), 3(a)(2)(B)(ii)(e), 3(a)(2)(B)(iii)(e) and 3(a)(2)(B)(iv)(e) above.

²³³ *Id.*

²²¹ See Securities Exchange Act Rel. No. 97151 (Mar. 15, 2023), 88 FR 17086, 17117 (Mar. 21, 2023) (describing key cost discipline mechanisms for the CAT).

²²² Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan. CAT LLC entered into an agreement with the Initial Plan Processor in which CAT LLC would pay the Initial Plan Processor a negotiated, fixed price fee.²³⁴ In addition, as described above, CAT LLC determined that it is appropriate to enter into an agreement with FCAT as the successor Plan Processor.²³⁵

(vi) Legal

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to legal fees as a part of Historical CAT Assessments.²³⁶ CAT LLC determined that the legal costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Given the unique nature of the CAT, the number of parties involved with the CAT (including, for example, the SEC, Participants, Industry Members, and vendors) and the many regulatory issues associated with the CAT, the scope of the necessary legal services are substantial. CAT LLC determined that the scope of the legal services is necessary to implement and maintain the CAT and that the legal rates reflect the specialized services necessary for such a project. When hiring each law firm for a CAT project, CAT LLC interviewed multiple firms, and determined to hire each firm based on a variety of factors, including the relevant expertise and fees. In each case, CAT LLC determined that the hourly fee rates were in line with market rates for the specialized legal expertise. In addition, CAT LLC determined that the total costs incurred for each CAT project were appropriate given the breadth of services provided. The services performed by each law firm for each period and the costs related to such services are described above.²³⁷

(vii) Consulting

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover consulting costs as a part of Historical CAT Assessments.²³⁸ CAT LLC determined that the consulting costs described in this filing are reasonable and should be included as a

part of Historical CAT Costs 1. Because there are no CAT employees²³⁹ and because of the significant number of issues associated with the CAT, the consultants provided assistance in the management of various CAT matters and the processes related to such matters.²⁴⁰ CAT LLC considered a variety of factors in choosing a consulting firm and determined to select Deloitte after an interview process.²⁴¹ CAT LLC also determined that the consulting services were provided at reasonable market rates, as the fees were negotiated annually and comparable to the rates charged by other consulting firms for similar work.²⁴² Moreover, the total costs for such consulting services were appropriate in light of the breadth of services provided by Deloitte. The services performed by Deloitte and the costs related to such services are described above.²⁴³

(viii) Insurance

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover insurance costs as a part of Historical CAT Assessments.²⁴⁴ CAT LLC determined that the insurance costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that it is common practice to have directors' and officers' liability insurance, and errors and omissions liability insurance. CAT LLC further determined that it was important to have cyber security insurance given the nature of the CAT, and such a decision is consistent with the CAT NMS Plan, which states that the cyber incident response plan may include "[i]nsurance against security breaches."²⁴⁵ In selecting the insurance providers for these policies, CAT LLC engaged in an evaluation of alternative insurers, including a comparison of the pricing offered by the alternative insurers.²⁴⁶ Based on this analysis, CAT LLC determined that the selected insurance

policies provided appropriate coverage at reasonable market rates.²⁴⁷

(ix) Professional and Administration

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover professional and administration costs as a part of Historical CAT Assessments.²⁴⁸ CAT LLC determined that the professional and administration costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Because there are no CAT employees, all required accounting, financial, tax, cash management and treasury functions for CAT LLC have been outsourced at market rates. In addition, the required annual financial statement audit of CAT LLC is included in professional and administration costs, which costs are also at market rates.

CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees.²⁴⁹ The hourly fee rates for this firm were in line with market rates for the financial advisory services provided.²⁵⁰ Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Anchin. The services performed by Anchin and the costs related to such services are described above.²⁵¹

CAT LLC also determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the role given the balance of these considerations.²⁵² Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these

²³⁴ See Section 3(a)(2)(B)(i)(e) above.

²³⁵ See Section 3(a)(2)(B)(i)(b) above.

²³⁶ Section 11.3(b)(iii)(B)(II)(B)(2) of the CAT NMS Plan.

²³⁷ See Sections 3(a)(2)(B)(i)(f), 3(a)(2)(B)(ii)(f), 3(a)(2)(B)(iii)(f) and 3(a)(2)(B)(iv)(f) above.

²³⁸ Section 11.3(b)(iii)(B)(II)(B)(3) of the CAT NMS Plan.

²³⁹ As stated in the filing of the proposed CAT NMS Plan, "[i]t is the intent of the Participants that the Company have no employees." Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614, 30621 (May 17, 2016).

²⁴⁰ CAT LLC uses certain third parties to perform tasks that may be performed by administrators for other NMS Plans. See, e.g., CTA Plan and CQ Plan.

²⁴¹ See Section 3(a)(2)(B)(i)(g) above.

²⁴² See Sections 3(a)(2)(B)(i)(g), 3(a)(2)(B)(ii)(g), 3(a)(2)(B)(iii)(g) and 3(a)(2)(B)(iv)(g) above.

²⁴³ *Id.*

²⁴⁴ Section 11.3(b)(iii)(B)(II)(B)(4) of the CAT NMS Plan.

²⁴⁵ Section 4.1.5 of Appendix D of the CAT NMS Plan.

²⁴⁶ See Sections 3(a)(2)(B)(i)(h), 3(a)(2)(B)(ii)(h), 3(a)(2)(B)(iii)(h) and 3(a)(2)(B)(iv)(h) above.

²⁴⁷ *Id.*

²⁴⁸ Section 11.3(b)(iii)(B)(II)(B)(5) of the CAT NMS Plan.

²⁴⁹ See Section 3(a)(2)(B)(i)(i) above.

²⁵⁰ See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

²⁵¹ *Id.*

²⁵² See Section 3(a)(2)(B)(i)(i) above.

types of accounting services.²⁵³ Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Grant Thornton. The services performed by Grant Thornton and the costs related to such services are described above.²⁵⁴

The professional and administrative costs also include costs related to the receipt of certain market data from Exegy. After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy. Exegy provided the data elements required by the CAT NMS Plan, and the fees were reasonable and in line with market rates for the market data received.²⁵⁵

The professional and administrative costs also include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation and operation of the controls specified by NIST Special Publication 800–53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment.²⁵⁶

(x) Public Relations Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover public relations costs as a part of Historical CAT Assessments.²⁵⁷ CAT LLC determined that the public relations costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that the types of public relations services utilized were beneficial to the CAT and market participants more generally. Public relations services were important for various reasons, including monitoring comments made by market participants about CAT and understanding issues related to the CAT discussed on the

public record.²⁵⁸ By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT issues to the benefit of all market participants.²⁵⁹ Moreover, CAT LLC determined that the rates charged for such services were in line with market rates.²⁶⁰ As noted above, the total public relations costs through FAM Period 3 represent a small percentage of Historical CAT Costs 1—that is, 0.1% of Historical CAT Costs 1.

(B) Total Executed Equivalent Share Volume for the Prior 12 Months

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. CAT LLC determined the total executed equivalent share volume for the prior twelve months by counting executed equivalent shares in the same manner as it will count executed equivalent shares for CAT billing purposes.

(C) Historical Recovery Period 1

CAT LLC has determined to establish a Historical Recovery Period of 24 months for Historical CAT Assessment 1 and that such length is reasonable. CAT LLC determined that the length of Historical Recovery Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans notes to the Participants in a timely fashion. CAT LLC determined that 24 months for Historical Recovery Period 1 would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to Section 31.²⁶¹ In addition, in establishing a Historical Recovery Period of 24 months, CAT LLC recognized that the total costs for Historical CAT Assessment 1 was less than the total costs for 2022 and 2023, and therefore it would be appropriate to recover those costs in two years.

(D) Projected Executed Equivalent Share Volume for Historical Recovery Period 1

CAT LLC has determined to calculate the projected total executed equivalent share volume for the 24 months of Historical Recovery Period 1 by doubling the executed equivalent share

volume for the prior 12 months. CAT LLC determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has remained relatively constant in recent years. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395, the executed equivalent share volume for 2022 was 4,039,821,841,560.31, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6. Accordingly, the projected total executed equivalent share volume for Historical Recovery Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.²⁶²

(E) Actual Fee Rate for Historical CAT Assessment 1

(i) Decimal Places

As noted in the Plan amendment for the CAT Funding Model, as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee rate.²⁶³ Accordingly, proposed paragraph (a)(1)(B) of the fee schedule would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 by one-third, and rounding the result to 6 decimal places. CAT LLC determined that the use of six decimal places is reasonable as it balances the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

(ii) Reasonable Fee Level

The Exchange believes that imposing Historical CAT Assessment 1 with a fee rate of \$0.000013 per executed equivalent share is reasonable because it provides for a revenue stream for the Company that is aligned with Historical CAT Costs 1 and such costs would be spread out over an appropriate recovery period, as discussed above. Moreover, the Exchange believes that the level of the fee rate is reasonable, as it is comparable to other transaction-based fees. Indeed, Historical CAT Assessment 1 is significantly lower than fees assessed pursuant to Section 31 (e.g., \$0.0009 per share to 0.0004 per

²⁵³ See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

²⁵⁴ *Id.*

²⁵⁵ See Section 3(a)(2)(B)(i)(i) above.

²⁵⁶ *Id.*

²⁵⁷ Section 11.3(b)(iii)(B)(II)(B)(6) of the CAT NMS Plan.

²⁵⁸ See Section 3(a)(2)(B)(i)(j) above.

²⁵⁹ See Sections 3(a)(2)(B)(i)(j), 3(a)(2)(B)(ii)(j), 3(a)(2)(B)(iii)(j) and 3(a)(2)(B)(iv)(j) above.

²⁶⁰ *Id.*

²⁶¹ As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model Approval Order at 62682.

²⁶² This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

²⁶³ CAT Funding Model Approval Order at 62658, n.658.

share),²⁶⁴ and, as a result, the magnitude of Historical CAT Assessment 1 is small, and therefore will mitigate any potential adverse economic effects or inefficiencies.²⁶⁵ Furthermore, the reasonable fee rate for Historical CAT Assessment 1 further supports CAT LLC's decision to seek to recover all Historical CAT Costs prior to 2022, rather than establishing separate Historical CAT Assessments for pre-FAM, FAM 1, FAM 2 and FAM 3 costs.

(3) Historical CAT Assessment 1 Provides for an Equitable Allocation of Fees

Historical CAT Assessment 1 provides for an equitable allocation of fees, as it equitably allocates CAT costs between and among the Participants and Industry Members. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act, including the formula for calculating Historical CAT Assessments as well as the Industry Members to be charged the Historical CAT Assessments.²⁶⁶ In approving the CAT Funding Model, the SEC stated that "[t]he Participants have sufficiently demonstrated that the proposed allocation of fees is reasonable."²⁶⁷ Accordingly, the CAT Funding Model sets forth the requirements for allocating fees related to Historical CAT Costs among Participants and Industry Members, and the fee filings for Historical CAT Assessments must comply with those requirements.

Historical CAT Assessment 1 provides for an equitable allocation of fees as it complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. For example, as described above, the calculation of Historical CAT Assessment 1 complies with the formula set forth in Section 11.3(b) of the CAT NMS Plan. In addition, Historical CAT Assessment 1 would be charged to CEBBs and CEBBs in accordance with Section 11.3(b) of the CAT NMS Plan. Furthermore, the Participants would continue to remain responsible for their designated share of Past CAT Costs through the cancellation of loans made by the Participants to CAT LLC.

In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1—Historical CAT Costs 1 (including

Excluded Costs), the count for the executed equivalent share volume for the prior 12 months, the length of the Historical Recovery Period, and the projected executed equivalent share volume for the Historical Recovery Period—are reasonable. Moreover, these inputs lead to a reasonable fee rate for Historical CAT Assessment 1 that is lower than other fee rates for transaction-based fees. A reasonable fee rate allocated in accordance with the requirements of the CAT Funding Model provides for an equitable allocation of fees.

(4) Historical CAT Assessment 1 Is Not Unfairly Discriminatory

Historical CAT Assessment 1 is not an unfairly discriminatory fee. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act. In reaching this conclusion, the SEC analyzed the potential effect of Historical CAT Assessments calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Historical CAT Assessment 1 complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1 and the resulting fee rate for Historical CAT Assessment 1 is reasonable. Therefore, Historical CAT Assessment 1 does not impose an unfairly discriminatory fee on Industry Members.

Finally, the Exchange believes the proposed fees established pursuant to the CAT Funding Model promote just and equitable principles of trade, and, in general, protect investors and the public interest, and are provided in a transparent manner and specificity in the fee schedule. The Exchange also believes that the proposed fees are reasonable because they would provide ease of calculation, ease of billing and other administrative functions, and predictability of a fee based on fixed rate per executed equivalent share. Such factors are crucial to estimating a reliable revenue stream for CAT LLC and for permitting Exchange members to reasonably predict their payment obligations for budgeting purposes.

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

Section 6(b)(8) of the Act²⁶⁸ requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that Historical CAT Assessment 1 implements provisions of the CAT NMS Plan that were approved by the Commission and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan.

In addition, all Participants (including exchanges and FINRA) are proposing to introduce Historical CAT Assessment 1 on behalf of CAT LLC to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive fee filing, and, therefore, it does not raise competition issues between and among the Participants.

Furthermore, in approving the CAT Funding Model, the SEC analyzed the potential competitive impact of the CAT Funding Model, including competitive issues related to market services, trading services and regulatory services, efficiency concerns, and capital formation.²⁶⁹ The SEC also analyzed the potential effect of CAT fees calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Based on this analysis, the SEC approved the CAT Funding Model as compliant with the Exchange Act. Historical CAT Assessment 1 is calculated and implemented in accordance with the CAT Funding Model as approved by the SEC.

As discussed above, each of the inputs into the calculation of Historical CAT Assessment 1 is reasonable and the resulting fee rate for Historical CAT Assessment 1 calculated in accordance with the CAT Funding Model is reasonable. Therefore, Historical CAT Assessment 1 would not impose any burden on competition that is not

²⁶⁴ CAT Funding Model Approval Order at 62663, 62682.

²⁶⁵ *Id.*

²⁶⁶ See Section 11.3(b) of the CAT NMS Plan.

²⁶⁷ CAT Funding Model Approval Order at 62629.

²⁶⁸ 15 U.S.C. 78f(b)(8).

²⁶⁹ CAT Funding Model Approval Order at 62676–86.

necessary or appropriate in furtherance of the purpose of the Exchange Act.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act²⁷⁰ and Rule 19b-4(f)(2) thereunder,²⁷¹ because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

²⁷⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁷¹ 17 CFR 240.19b-4(f)(2).

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2024-049 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-NASDAQ-2024-049. This file number should be included on the subject line if email 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 (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2024-049 and should be submitted on or before October 3, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷²

Sherry R. Haywood,

Assistant Secretary.

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²⁷² 17 CFR 200.30-3(a)(12).



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Part IX

Securities and Exchange Commission

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100951; File No. SR-ISE-2024-42]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail

September 5, 2024.

Pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 23, 2024, Nasdaq ISE, LLC (“ISE” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to establish fees for Industry Members³ related to certain historical costs of the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”) incurred prior to January 1, 2022.

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

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

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

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

1. Purpose

On July 11, 2012, the Commission adopted Rule 613 of Regulation NMS, which required the self-regulatory organizations (“SROs”) to submit a national market system (“NMS”) plan to create, implement and maintain a consolidated audit trail that would capture customer and order event information for orders in NMS securities across all markets, from the time of order inception through routing, cancellation, modification or execution.⁴ On November 15, 2016, the Commission approved the CAT NMS Plan.⁵ Under the CAT NMS Plan, the Operating Committee has the discretion to establish funding for CAT LLC to operate the CAT, including establishing fees for Industry Members to be assessed by CAT LLC that would be implemented on behalf of CAT LLC by the Participants.⁶ The Operating Committee adopted a revised funding model to fund the CAT (“CAT Funding Model”). On September 6, 2023, the Commission approved the CAT Funding Model, after concluding that the model was reasonable and that it satisfied the requirements of Section 11A of the Exchange Act and Rule 608 thereunder.⁷

The CAT Funding Model provides a framework for the recovery of the costs to create, develop and maintain the CAT, including providing a method for allocating costs to fund the CAT among Participants and Industry Members. The CAT Funding Model establishes two categories of fees: (1) CAT fees assessed by CAT LLC and payable by certain Industry Members to recover a portion of historical CAT costs previously paid by the Participants (“Historical CAT Assessment” fees); and (2) CAT fees assessed by CAT LLC and payable by Participants and Industry Members to fund prospective CAT costs (“Prospective CAT Costs” fees).⁸

Under the CAT Funding Model, “[t]he Operating Committee will establish one or more fees (each a ‘Historical CAT Assessment’) to be payable by Industry Members with regard to CAT costs previously paid by the Participants (‘Past CAT Costs’).”⁹ In establishing a Historical CAT Assessment, the Operating Committee will determine a “Historical Recovery Period” and calculate a “Historical Fee Rate” for that Historical Recovery Period. Then, for each month in which a Historical CAT Assessment is in effect, each CEBB and CEBS would be required to pay the fee—the Historical CAT Assessment—for each transaction in Eligible Securities executed by the CEBB or CEBS 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.¹⁰

⁸ Under the CAT Funding Model, the Operating Committee may establish one or more Historical CAT Assessments. Section 11.3(b) of the CAT NMS Plan. This filing only establishes Historical CAT Assessment 1 related to certain Historical CAT Costs as described herein; it does not address any other potential Historical CAT Assessment related to other Historical CAT Costs. In addition, under the CAT Funding Model, the Operating Committee also may establish CAT Fees related to CAT costs going forward. Section 11.3(a) of the CAT NMS Plan. This filing does not address any potential CAT Fees related to CAT costs going forward. Any such other fee for any other Historical CAT Assessment or CAT Fee for Prospective CAT Costs will be subject to a separate fee filing.

⁹ Section 11.3(b) of the CAT NMS Plan.

¹⁰ In approving the CAT Funding Model, the Commission stated that, “[i]n the Commission’s view, the proposed recovery of the Past CAT Costs via the Historical CAT Assessment is reasonable.” CAT Funding Model Approval Order at 62662.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ An “Industry Member” is defined as “a member of a national securities exchange or a member of a national securities association.” See Nasdaq Rule General 7(u) (ISE General 7 incorporates The Nasdaq Stock Market LLC Rule General 7 by reference); See also Section 1.1 of the CAT NMS Plan. Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the CAT NMS Plan and/or the CAT Compliance Rule. Nasdaq Rule General 7 (Consolidated Audit Trail Compliance).

⁴ Securities Exchange Act Rel. No. 67457 (July 18, 2012), 77 FR 45721 (Aug. 1, 2012) (“Rule 613 Adopting Release”).

⁵ Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (“CAT NMS Plan Approval Order”).

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

⁷ Securities Exchange Act Rel. No. 98290 (Sept. 6, 2023), 88 FR 62628 (Sept. 12, 2023) (“CAT Funding Model Approval Order”).

Each Historical CAT Assessment to be paid by CEBBs and CEBs is designed to contribute toward the recovery of two-thirds of the Historical CAT Costs. Because the Participants previously have paid Past CAT Costs via loans to the Company, the Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made by the Participants to the Company on a pro rata basis based on the outstanding loan amounts due under the loans, instead of through the payment of a CAT fee.¹¹ In addition, the Participants also will be 100% responsible for certain Excluded Costs (as discussed below).

CAT LLC proposes to charge CEBBs and CEBs (as described in more detail below) Historical CAT Assessment 1 to recover certain historical CAT costs incurred prior to January 1, 2022, in accordance with the CAT Funding Model. To implement this fee on behalf of CAT LLC, the CAT NMS Plan requires the Participants to "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.'" ¹² The Plan further states that "Participants will be required to file with the SEC pursuant to Section 19(b) of the Exchange Act a filing for each Historical CAT Assessment."¹³ Accordingly, the purpose of this filing is to implement a Historical CAT Assessment on behalf of CAT LLC for Industry Members, referred to as Historical CAT Assessment 1, in accordance with the CAT NMS Plan.¹⁴

The Exchange previously filed a fee filing to implement Historical CAT Assessment 1. On January 17, 2024, the SEC published this prior filing for Historical CAT Assessment 1, temporarily suspended the fee filing, and instituted proceedings to determine whether to approve or disapprove the fee filing.¹⁵ The Exchange is withdrawing its original fee filing for Historical CAT Assessment 1. This Historical CAT Assessment 1 replaces the prior Historical CAT Assessment 1 that was previously filed with the Commission.

(1) CAT Executing Brokers

Historical CAT Assessment 1 will be charged to each CEBB and CEBs for each applicable transaction in Eligible Securities.¹⁶ The CAT NMS Plan defines a "CAT Executing Broker" to mean:

(a) with respect to a transaction in an Eligible Security that is executed on an exchange, the Industry Member identified as the Industry Member responsible for the order on the buy-side of the transaction and the Industry Member responsible for the sell-side of the transaction in the equity order trade event and option trade event in the CAT Data submitted to the CAT by the relevant exchange pursuant to the Participant Technical Specifications; and (b) with respect to a transaction in an Eligible Security that is executed otherwise than on an exchange and required to be reported to an equity trade reporting facility of a registered national securities association, the Industry Member identified as the executing broker and the Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event in the CAT Data submitted to the CAT by FINRA pursuant to the Participant Technical Specifications; provided, however, in those circumstances where there is a non-Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event or no contra-side executing broker is identified in the TRF/ORF/ADF transaction data event, then the Industry Member identified as the executing broker in the TRF/ORF/ADF transaction data event would be treated as CAT Executing Broker for the Buyer and for the Seller.¹⁷

The following fields of the Participant Technical Specifications indicate the CAT Executing Brokers for the transactions executed on an exchange.

EQUITY ORDER TRADE (EOT) ¹⁸

No.	Field name	Data type	Description	Include key
12.n.8/13.n.8	member	Member Alias	The identifier for the member firm that is responsible for the order on this side of the trade. Not required if there is no order for the side as indicated by the NOBUYID/NOSELLID instruction. This must be provided if orderID is provided.	C

OPTION TRADE (OT) ¹⁹

No.	Field name	Data type	Description	Include key
16.n.13/17.n.13	member	Member Alias	The identifier for the member firm that is responsible for the order	R

¹¹ Section 11.3(b)(ii) of the CAT NMS Plan.

¹² Section 11.1(b) of the CAT NMS Plan.

¹³ Section 11.3(b)(iii)(B)(I) of the CAT NMS Plan.

¹⁴ Note that there may be one or more Historical CAT Assessments depending on the timing of the completion of the Financial Accountability Milestones, among other things. Section 11.3(b) of the CAT NMS Plan.

¹⁵ Securities Exchange Act Rel. No. 34–99366 (January 17, 2024), 89 FR 10239 (February 13, 2024) ("SR–ISE–2024–02").

¹⁶ In its approval of the CAT Funding Model, the Commission determined that charging CAT fees to CAT Executing Brokers was reasonable. In reaching this conclusion the Commission noted that the use

of CAT Executing Brokers is appropriate because the CAT Funding Model is based upon the calculation of *executed* equivalent shares, and, therefore, charging CAT Executing Brokers would reflect their executing role in each transaction. Furthermore, the Commission noted that, because CAT Executing Brokers are already identified in transaction reports from the exchanges and FINRA's equity trade reporting facilities recorded in CAT Data, charging CAT Executing Brokers could streamline the billing process. CAT Funding Model Approval Order at 62629.

¹⁷ Section 1.1 of the CAT NMS Plan. Note that CEBBs and CEBs may, but are not required to, pass-through their CAT fees to their clients, who may, in turn, pass their fees to their clients until

they are imposed ultimately on the account that executed the transaction. See CAT Funding Model Approval Order at 62649.

¹⁸ See Table 23, Section 4.7 (Order Trade Event) of the CAT Reporting Technical Specifications for Plan Participants, Version 4.1.0-r21 (Apr. 15, 2024), https://www.catnmsplan.com/sites/default/files/2024-04/04.15.2024-CAT_Reporting_Technical_Specifications_for_Participants_4.1.0-r21.pdf ("CAT Reporting Technical Specifications for Plan Participants").

¹⁹ See Table 51, Section 5.2.5.1 (Simple Option Trade Event) of the CAT Reporting Technical Specifications for Plan Participants.

In addition, the following fields of the Participant Technical Specifications would indicate the CAT Executing Brokers for the transactions executed otherwise than on an exchange.

TRF/ORF/ADF TRANSACTION DATA EVENT (TRF)²⁰

No.	Field name	Data type	Description	Include key
26	reportingExecutingMpid	Member Alias	MPID of the executing party	R
28	contraExecutingMpid	Member Alias	MPID of the contra-side executing party	C

(2) Calculation of Historical Fee Rate 1

The Operating Committee determined the Historical Fee Rate to be used in calculating Historical CAT Assessment 1 (“Historical Fee Rate 1”) by dividing the Historical CAT Costs for Historical CAT Assessment 1 (“Historical CAT Costs 1”) by the projected total executed share volume of all transactions in Eligible Securities for the Historical Recovery Period for Historical CAT Assessment 1 (“Historical Recovery Period 1”), as discussed in detail below. Based on this calculation, the Operating Committee has determined that Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. This rate is then divided by three and rounded to determine the fee rate of \$0.000013 per executed equivalent share that will be assessed to CEBBs and CEBBs, as also discussed in detail below.

(A) Executed Equivalent Shares for Transactions in Eligible Securities

Under the CAT NMS Plan, for purposes of calculating each Historical CAT Assessment, executed equivalent shares in a transaction in Eligible Securities will be reasonably counted as follows: (1) each executed share for a transaction in NMS Stocks will be counted as one executed equivalent share; (2) each executed contract for a transaction in Listed Options will be counted based on the multiplier applicable to the specific Listed Options (*i.e.*, 100 executed equivalent shares or such other applicable multiplier); and

(3) each executed share for a transaction in OTC Equity Securities shall be counted as 0.01 executed equivalent share.²¹

(B) Historical CAT Costs 1

The CAT NMS Plan states that “[t]he Operating Committee will reasonably determine the Historical CAT Costs sought to be recovered by each Historical CAT Assessment, where the Historical CAT Costs will be Past CAT Costs minus Past CAT Costs reasonably excluded from Historical CAT Costs by the Operating Committee. Each Historical CAT Assessment will seek to recover from CAT Executing Brokers two-thirds of Historical CAT Costs incurred during the period covered by the Historical CAT Assessment.”²² As described in detail below, Historical CAT Costs 1 would be \$318,059,819. This figure includes Past CAT Costs of \$401,312,909 minus certain Excluded Costs of \$83,253,090. Participants collectively will remain responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), plus the Excluded Costs of \$83,253,090. CEBBs collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), and CEBBs collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67).

The following describes in detail Historical CAT Costs 1 with regard to four separate historical time periods as well as Past CAT Costs excluded from Historical CAT Costs 1 (“Excluded Costs”). The following cost details are

provided in accordance with the requirement in the CAT NMS Plan to provide in the fee filing “a brief description of the amount and type of Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs.”²³ Each of the costs described below are reasonable, appropriate and necessary for the creation, implementation and maintenance of CAT.

(i) Historical CAT Costs Incurred Prior to June 22, 2020 (Pre-FAM Costs)

Historical CAT Costs 1 would include costs incurred by CAT prior to June 22, 2020 (“Pre-FAM Period”) and already funded by the Participants, excluding Excluded Costs (described further below). Historical CAT Costs 1 would include costs for the Pre-FAM Period of \$124,290,730. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$41,430,243.33), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$41,430,243.33) and CEBBs paying one-third (\$41,430,243.33). These costs do not include Excluded Costs, as discussed further below. The following table breaks down Historical CAT Costs 1 for the Pre-FAM Period into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs 1 for Pre-FAM period (prior to June 22, 2020) *
Capitalized Developed Technology Costs **	\$51,847,150
Technology Costs:	33,568,579
Cloud Hosting Services	10,268,840
Operating Fees	21,085,485
CAIS Operating Fees	2,072,908
Change Request Fees	141,346

²⁰ See Table 61, Section 6.1 (TRF/ORF/ADF Transaction Data Event) of the CAT Reporting Technical Specifications for Plan Participants.

²¹ Section 11.3(a)(i)(B) and 11.3(b)(i)(B) of the CAT NMS Plan. In approving the CAT Funding

Model, the Commission concluded that “the use of executed equivalent share volume as the basis of the proposed cost allocation methodology is reasonable and consistent with the approach taken

by the funding principles of the CAT NMS Plan.” CAT Funding Model Approval Order at 62640.

²² Section 11.3(b)(i)(C) of the CAT NMS Plan.

²³ Section 11.3(b)(iii)(B)(II)(B) of the CAT NMS Plan.

Operating expense	Historical CAT costs 1 for Pre-FAM period (prior to June 22, 2020) *
Legal	19,674,463
Consulting	17,013,414
Insurance	880,419
Professional and administration	1,082,036
Public relations	224,669
Total Operating Expenses	124,290,730

* The costs described in this table of costs for the Pre-FAM Period were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website. In addition, in accordance with Section 6.6(a)(i) of the CAT NMS Plan, in 2018 CAT LLC provided the SEC with "an independent audit of fees, costs, and expenses incurred by the Participants on behalf of the Company prior to the Effective Date of the Plan that will be publicly available." The audit is available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$2,115,545 incurred during the period prior to June 22, 2020 have been appropriately excluded from the above table.²⁴

The Pre-FAM Period includes a broad range of CAT-related activity from 2012 through June 22, 2020, including the evaluation of the requirements of SEC Rule 613, the development of the CAT NMS Plan, the evaluation and selection of the initial and successor Plan Processors, the commencement of the creation and implementation of the CAT to comply with Rule 613 and the CAT NMS Plan, including technical specifications for transaction reporting and regulatory access, and related technology and the commencement of reporting to the CAT. The following describes the costs for each of the categories for the Pre-FAM Period.

(a) Technology Costs—Cloud Hosting Services

The \$10,268,840 in technology costs for cloud hosting services represent costs incurred for services provided by the cloud services provider for the CAT, Amazon Web Services, Inc. ("AWS"), during the Pre-FAM Period.

As part of its proposal for acting as the successor Plan Processor for the CAT, FCAT selected AWS as a subcontractor to provide cloud hosting services. In 2019, after reviewing the capabilities of other cloud services providers, FCAT determined that AWS was the only cloud services provider at that time sufficiently mature and capable of providing the full suite of necessary cloud services for the CAT, including, for example, the security, resiliency and complexity necessary for the CAT computing requirements. The use of cloud hosting services is standard

for this type of high-volume data activity and reasonable and necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT the fees incurred by the Plan Processor for cloud hosting services provided by AWS as FCAT's subcontractor [sic] on a monthly basis for the cloud hosting services, and FCAT, in turn, pays such fees to AWS. The fees for cloud hosting services were negotiated by FCAT on an arm's length basis with the goals of managing cost and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the expected volume of data, the breadth of services provided and market rates for similar services. The fees for cloud hosting services during the Pre-FAM Period were paid to FCAT by CAT NMS, LLC²⁵ and subsequently Consolidated Audit Trail, LLC (as previously noted, both entities are referred to generally as "CAT LLC"),²⁶ and FCAT, in turn, paid AWS. CAT LLC was funded via loan contributions by the Participants.²⁷

²⁵ CAT NMS, LLC was formed by FINRA and the U.S. national securities exchanges to implement the requirements of SEC Rule 613 under the Exchange Act. SEC Rule 613 required the SROs to jointly submit to the SEC the CAT NMS Plan to create, implement and maintain the CAT. The SEC approved the CAT NMS Plan on November 15, 2016. CAT NMS Plan Approval Order.

²⁶ On August 29, 2019, the Participants formed a new Delaware limited liability company named Consolidated Audit Trail, LLC for the purpose of conducting activities related to the CAT from and after the effectiveness of the proposed amendment of the CAT NMS Plan to replace CAT NMS, LLC. See Securities Exchange Act Rel. No. 87149 (Sept. 27, 2019), 84 FR 52905 (Oct. 3, 2019).

²⁷ For each of the costs paid by CAT NMS, LLC and Consolidated Audit Trail, LLC as discussed throughout this filing, CAT NMS, LLC and Consolidated Audit Trail, LLC paid these costs via loan contributions by the Participants to CAT NMS, LLC and Consolidated Audit Trail, LLC, respectively.

AWS was engaged by FCAT to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS include storage services, databases, compute services and other services (such as networking, management tools and DevOps tools). AWS also was engaged to provide various environments for CAT, such as development, performance testing, test and production environments.

The cost for AWS services for the CAT is a function of the volume of CAT Data. The greater the amount of CAT Data, the greater the cost of AWS services to the CAT. During the Pre-FAM Period from the engagement of AWS in February 2019 through June 2020, AWS provided cloud hosting services for volumes of CAT Data far in excess of the volume predictions set forth in the CAT NMS Plan. The CAT NMS Plan states, when all CAT Reporters are submitting their data to the CAT, it "must be sized to receive[,] process and load more than 58 billion records per day,"²⁸ and that "[i]t is expected that the Central Repository will grow to more than 29 petabytes of raw, uncompressed data."²⁹ However, the volume of CAT Data for the Pre-FAM Period was far in excess of these predicted levels. By the end of this period, data submitted to the CAT included options and equities Participant Data,³⁰ Phase 2a and Phase 2b Industry Member Data³¹ (including certain linkages), as well as SIP Data,³² reference data and other types of Other

²⁸ Appendix D-4 of the CAT NMS Plan at n.262.

²⁹ Appendix D-5 of the CAT NMS Plan.

³⁰ See Section 6.3(d) of the CAT NMS Plan.

³¹ See Securities Exchange Rel. No. 88702 (Apr. 20, 2020), 85 FR 23075 (Apr. 24, 2020) ("Phased Reporting Exemptive Relief Order") for a description of Phase 2a and Phase 2b Industry Member Data.

³² See Section 6.5(a)(ii) of the CAT NMS Plan.

²⁴ With respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

Data.³³ The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during the Pre-FAM Period.³⁴

	Date range: 3/29/19 to 4/12/20 *	Date range: 4/13/20 to 6/21/20 **
Average Daily Volume in Billions:		
Participant—Equities	5	5
Participant—Options	80	981
Industry Member—Equities		3
Industry Member—Options		0.04
SIP—Options & Equities	64	70
Average Total Daily Volume	149	166
Cumulative Total Events for the Period	3,890	4,990
Total Compute Hours for the Period	*** N/A	5,663,247
Storage Footprint at End of Period (Petabytes)	30.57	47.96

* The Participant Equities in RSA format.

** Start of Industry Member reporting on 4/13/2020.

*** Note that, although there were compute hours during this period, data related to such compute hours are no longer available in current data.

(b) Technology Costs—Operating Fees

The \$21,085,485 in technology costs related to operating fees represent costs incurred with regard to activities of FCAT as the Plan Processor. Operating fees are those fees paid by CAT LLC to FCAT as the Plan Processor to operate and maintain the CAT and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (e.g., management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management as required by the CAT NMS Plan.

FCAT was selected to assume the role of the successor Plan Processor. Prior to this selection, the Participants engaged in discussions with two prior Bidders³⁵ for the successor Plan Processor role. The Operating Committee formed a Selection Subcommittee in accordance with Section 4.12 of the CAT NMS Plan to evaluate and review Bids and to make a recommendation to the Operating Committee with respect to the selection of the successor Plan Processor. In an April 9, 2019 letter to the Commission, the Participants described the reasons for its selection of the successor Plan Processor:

The Selection Subcommittee considered factors including, but not limited to, the following, in recommending FINRA to the Operating Committee as the successor Plan Processor:

a. FINRA's specialized technical expertise and capabilities in the area of broker-dealer technology;

b. The need to appoint a successor Plan Processor with specialized expertise to

develop, implement, and maintain the CAT System in accordance with the CAT NMS Plan and SEC Rule 613;

c. FINRA's detailed proposal in response to CATLLC's recent inquiries; and

d. FINRA's data query and analytics systems demonstration to the Participants.

Based on these and other factors, the Selection Subcommittee determined that FINRA was the most appropriate Bidder to become the successor Plan Processor.³⁶

On February 26, 2019, the Operating Committee (with FINRA recusing itself) voted to select FINRA as the successor Plan Processor pursuant to Section 6.1(t) of the CAT NMS Plan.³⁷ On March 29, 2019, CAT LLC and FCAT (a wholly owned subsidiary of FINRA) entered into a Plan Processor Agreement pursuant to which FCAT would perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT a negotiated monthly fixed price for the operation of the CAT. This fixed price contract was negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity. The operating fees during the Pre-FAM Period were paid to FCAT by CAT LLC.

From March 29, 2019 (the commencement of the Plan Processor Agreement with FCAT) through June 22, 2020 (the end of the Pre-FAM Period),

the Plan Processor's activities with respect to the CAT included the following:

- Commenced user acceptance testing with market data provided by Exegy Incorporated ("Exegy"), a market data provider;³⁸

- Published Technical Specifications and related reporting scenarios documents for Phase 2a, 2b and 2c reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;

- Facilitated testing for Phase 2a and 2b reporting for Industry Members;

- Began developing Technical Specifications and related reporting scenarios documents for Phase 2d reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;

- Published Central Repository Access Technical Specifications, and provided regulator access to test data from Industry Members;

- Facilitated Participant exchanges that support options market makers sending Quote Sent Time to the CAT;

- Facilitated the introduction of OPRA and Options NBBO Other Data to CAT;

- Addressed compliance items, including drafting CAT policies and procedures, and addressing requirements under Regulation SCI;

- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;

³³ See Appendix C–108 of the CAT NMS Plan.

³⁴ Note that the volume data described in this table does not include CAIS data.

³⁵ The term "Bidder" is defined in Section 1.1 of the CAT NMS Plan.

³⁶ Letter from Michael J. Simon, Chair, CAT NMS, LLC Operating Committee, to Brent J. Fields, Secretary, SEC (Apr. 9, 2019), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection-040919.pdf>.

³⁷ *Id.*

³⁸ The use of Exegy to provide market data, including the costs and market data provided, is discussed below in Section 3(a)(2)(B)(i)(i).

- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with Participants, the SEC and its staff;
- Operated the FINRA CAT Helpdesk, which is the primary source for answers to questions about CAT, including questions regarding: clock synchronization, firm reporting responsibilities, interpretive questions, technical specifications for reporting to CAT and more;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content;³⁹ and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

The \$2,072,908 in technology costs related to CAIS operating fees represent the fees paid for FCAT's subcontractor charged with the development and operation of CAT's Customer and Account Information System ("CAIS"). The CAT is required under the CAT NMS Plan to capture and store Customer Identifying Information and Customer Account Information in a database separate from the transactional database and to create a CAT-Customer-ID for each Customer.

During the Pre-FAM Period, the CAIS-related services were provided by the Plan Processor through the Plan Processor's subcontractor, Kingland Systems Incorporation ("Kingland"). Kingland had experience operating in the securities regulatory technology space, and as a part of its proposal for acting as the Plan Processor for the CAT, FCAT selected Kingland as a subcontractor to provide certain CAIS-related services.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay to the Plan Processor the fees incurred by FCAT for CAIS-related services provided by FCAT through Kingland on a monthly basis. FCAT negotiated the fees for Kingland's CAIS-related services

on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity. The fees for CAIS-related services during the Pre-FAM Period were paid by CAT LLC to FCAT. FCAT, in turn, paid Kingland.

During the Pre-FAM Period, Kingland began development of the CAIS Technical Specifications and the building of CAIS. In addition, Kingland also worked on the build related to the CCID Alternative, an alternative approach to customer information that was not included in the CAT NMS Plan as originally adopted.⁴⁰ Furthermore, Kingland also worked on the acceleration of the reporting of large trader identifiers ("LTID") earlier than originally contemplated during this period, in accordance with exemptive relief granted by the SEC.⁴¹

(d) Technology Costs—Change Request Fees

The technology costs related to change request fees include costs related to certain modifications, upgrades or other changes to the CAT. Change requests are standard practice and necessary to reflect operational changes, including changes related to new market developments, such as new market participants. In general, if CAT LLC determines that a modification, upgrade or other change to the functionality or service is necessary and appropriate, CAT LLC will submit a request for such a change to the Plan Processor. The Plan Processor will then respond to the request with a proposal for implementing the change, including the cost (if any) of such a change. CAT LLC then determines whether to approve the proposed change. The change request costs were paid by CAT LLC to FCAT. During the Pre-FAM Period, CAT LLC incurred costs of \$141,346 related to change requests implemented by FCAT. Such change requests related to a development fee regarding the OPRA and SIP data feeds, and the reprocessing of certain exchange data.⁴²

⁴⁰ For a discussion of the CCID Alternative, see Securities Exchange Act Rel. No. 88393 (Mar. 17, 2020), 85 FR 16152 (Mar. 20, 2020).

⁴¹ Phased Reporting Exemptive Relief Order at 23079–80.

⁴² Note that CAT LLC also has incurred costs related to specific Industry Members (e.g., reprocessing costs related to Industry Member reporting errors).

(e) Technology Costs—Capitalized Developed Technology Costs

This category of costs includes capitalizable application development costs incurred in the development of the CAT. The capitalized developed technology costs for the Pre-FAM Period of \$51,847,150 relate to technology provided by the Initial Plan Processor and the successor Plan Processor.

Initial Plan Processor: Thesys CAT, LLC. The capitalized developed technology costs related to the Initial Plan Processor include costs incurred with regard to testing for Participant reporting, Participant reporting to the CAT, a security assessment of the CAT, and the development of the billing function for the CAT.

On January 17, 2017, the Selection Committee of the CAT NMS Plan selected the Initial Plan Processor, Thesys Technologies, LLC, for the CAT NMS Plan pursuant to Article V of the CAT NMS Plan.⁴³ The Participants utilized a request for proposal ("RFP") to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan, taking into consideration that the Initial Plan Processor had experience operating in the securities regulatory technology space, among other considerations. On April 6, 2017, CAT LLC entered into an agreement with Thesys CAT LLC ("Thesys CAT"), a Thesys affiliate, to perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT. Under the agreement, CAT LLC would pay Thesys CAT a negotiated, fixed price fee for its role as the Initial Plan Processor. Effective January 30, 2019, the Plan Processor Agreement with Thesys CAT was terminated, and FCAT was subsequently selected as the successor Plan Processor.

From January 17, 2017 through January 30, 2019, the time in which the Thesys CAT was engaged for the CAT, but excluding the period from November 15, 2017 through January 30, 2019, the Initial Plan Processor engaged in various activities with respect to the CAT, including preparing iterative drafts of Participant Technical

⁴³ Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf>.

³⁹ The CAT website is <https://www.catnmsplan.com>.

Specifications, Industry Member Technical Specifications and the Central Repository Access Technical Specifications. In addition, Thesys CAT also developed CAT technology, addressed compliance items, including drafting CAT policies and procedures, addressing Regulation SCI requirements, establishing a CAT Compliance Officer and a Chief Information Security Officer, addressed security-related matters for the CAT, and worked towards the initiation of Participant reporting per the Participant Technical Specifications.

Successor Plan Processor: FCAT. The capitalized developed technology costs related to FCAT include: (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, including the completion of go-live functionality related to options ingestion and validation, equities regulatory services agreement query tool updates and unlinked options data query, options linkages release, Industry Member Phase 2a file submission and data integrity (including error corrections), and Industry Member testing, including reporting relationships, ATS order type management, basic reporting statistics, SFTP data integrity feedback and error correction; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including a one-time development fee for a secure analytics workspace, a one-time development fee of an Industry Member connectivity solution, and a one-time development fee for the acceleration of multi-factor authentication; (3) CAIS implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$19,674,463 represent the fees paid for legal services provided by two law firms, Wilmer Cutler Pickering Hale and Dorr LLP ("WilmerHale") and Pillsbury Winthrop Shaw Pittman LLP ("Pillsbury"), during the Pre-FAM Period. The legal costs exclude those costs incurred from November 15, 2017 through November 15, 2018.

Law Firm: WilmerHale. Following the adoption of Rule 613, the Participants determined it was necessary to engage external legal counsel to advise the Participants with respect to corporate and regulatory legal matters related to the CAT, including drafting and developing the CAT NMS Plan. The Participants considered a variety of

factors in their analysis of prospective law firms, including (1) the firm's qualifications, resources and expertise; (2) the firm's relevant experience and understanding of the regulatory matters raised by the CAT and in advising on matters of similar scope; (3) the composition of the legal team; and (4) professional fees. Following a series of interviews, the Participants acting as a consortium determined that WilmerHale was well qualified given the balance of these considerations and engaged WilmerHale in February 2013.

WilmerHale's billing rates are negotiated on an annual basis and are determined with reference to the rates charged by other leading law firms for similar work. The Participants assess WilmerHale's performance and review prospective budgets and staffing plans submitted by WilmerHale on an annual basis. WilmerHale's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading law firms for similar work.

The legal costs for WilmerHale during the Pre-FAM Period included costs incurred from 2013 until June 22, 2020 to address corporate and regulatory legal matters related to the CAT. The legal fees for this law firm during the period from February 2013 until the formation of the CAT NMS, LLC on November 15, 2016 were paid directly by the exchanges and FINRA to WilmerHale. After the formation of CAT NMS LLC, the legal fees were paid by CAT LLC to WilmerHale.

After WilmerHale was engaged in 2013 through the end of the Pre-FAM Period on June 22, 2020 (excluding the legal costs from November 15, 2017 through November 15, 2018), WilmerHale provided legal assistance to the CAT on a variety of matters, including with regard to the following:

- Analyzed various legal matters associated with the Selection Plan, and drafted an amendment to the Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the Development Advisory Group ("DAG");
- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on CAT NMS Plan;
- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint

Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan, and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;

- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan and related filings;
- Negotiated and drafted the plan processor agreements with the Initial Plan Processor and the successor Plan Processor;
- Provided assistance with compliance with Regulation SCI;
- Assisted with clock synchronization study;
- Provided assistance with respect to the establishment of CAT security;
- Drafted exemptive requests from CAT NMS Plan requirements, including with regard to options market maker quotes, Customer IDs, CAT Reporter IDs, linking allocations to executions, CAT reporting timeline, FDIDs, customer and account information, timestamp granularity, small industry members, data facility reporting and linkage, allocation reports, SRO-assigned market participant identifiers and cancelled trade indicators, thereby seeking to implement changes that would be cost effective and benefit Industry Members and Participants;
- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Provided advice regarding CAT policies and procedures;
- Analyzed the SEC's amendment of the CAT NMS Plan regarding financial accountability;
- Provided interpretations of and related to the CAT NMS Plan;
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues; and
- Assisted with third-party vendor agreements.

Law Firm: Pillsbury. The legal costs for CAT during the Pre-FAM Period include costs related to the legal services performed by Pillsbury. The Participants interviewed this law firm as well as other potential law firms to provide legal assistance regarding certain liability matters. After considering a variety of factors in its analysis, including the relevant expertise and fees of the firm, CAT LLC

determined to hire Pillsbury in April 2019. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees were paid by CAT LLC to Pillsbury. The legal costs for Pillsbury during the Pre-FAM Period included costs incurred from April 2019 until June 22, 2020 to address legal matters regarding the agreements between CAT Reporters and CAT LLC concerning certain terms associated with CAT Reporting (the "Reporter Agreement"). During that period, Pillsbury advised CAT LLC regarding applicable legal matters, participated in negotiations between the Participants and Industry Members, participated in meetings with senior SEC staff, the Chairman, and Commissioners, represented CAT LLC and the Participants in an SEC administrative proceeding, and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, litigation involving CAT LLC is an expense of operating the CAT, and, therefore, is appropriately an obligation of both Participants and Industry Members under the CAT Funding Model.

(g) Consulting Costs

The consulting costs of \$17,013,414 represent the fees paid to the consulting firm Deloitte & Touche LLP ("Deloitte") as project manager during the Pre-FAM Period, from October 2012 until June 22, 2020. These consulting costs include costs for advisory services related to the operation of the CAT, and meeting facilitation and communications coordination, vendor support and financial analyses.

To help facilitate project management given the unprecedented complexity and scope of the CAT project, the Participants determined it was necessary to engage a consulting firm to assist with the CAT project in 2012, following the adoption of Rule 613. A variety of factors were considered in the analysis of prospective consulting firms, including (1) the firm's qualifications, resources, and expertise; (2) the firm's relevant experience and understanding of the regulatory issues raised by the CAT and in coordinating matters of similar scope; (3) the composition of the consulting team; and (4) professional fees. Following a series of interviews, the exchanges and FINRA as a consortium determined that Deloitte was well qualified given the balance of

these considerations and engaged Deloitte on October 1, 2012.

Deloitte's fee rates are negotiated on an annual basis and are in line with market rates for this type of specialized consulting work. CAT LLC assesses Deloitte's performance and reviews prospective budgets and staffing plans submitted by Deloitte on an annual basis. Deloitte's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading consulting firms for similar work.

The consulting costs for CAT during the period from 2012 until the formation of the CAT NMS, LLC were paid directly by the Participants to Deloitte. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC to Deloitte. CAT LLC reviewed the consulting fees each month and approved the invoices.

After Deloitte was hired in 2012 through the end of the Pre-FAM Period on June 22, 2020 (excluding the consulting costs from November 15, 2017 through November 15, 2018), Deloitte provided a variety of consulting services, including the following:

- Established and implemented program operations for the CAT project, including the program management [*sic*] office and workstream design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participant's independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, analyzing OATS and CAT requirements, and drafting appendices to the Plan;
- Assisted with cost and funding-related activities for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (*e.g.*, Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;

- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;

- Assisted with industry outreach and communications regarding the CAT, including assistance with industry outreach events, the development of the CAT website, frequently asked questions, and coordinating with the CAT LLC's public relations firm;

- Provided support for updating the SEC on the progress of the development of the CAT;

- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress;

- Coordinated efforts regarding the selection of the successor Plan Processor;

- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor, including support for the Operating Committee and successor Plan Processor for the new role; and

- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$880,419 represent the cost incurred for insurance for CAT during the Pre-FAM Period. Commencing in 2020, CAT LLC performed an evaluation of various potential alternatives for CAT insurance policies, which included engaging in discussions with different insurance companies and conducting cost comparisons of various alternative approaches to insurance. Based on an analysis of a variety of factors, including coverage and premiums, CAT LLC determined to purchase cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance from USI Insurance Services LLC ("USI"). Such policies are standard for corporate entities, and cyber security liability insurance is important for the CAT System. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

In adopting the CAT NMS Plan, the Commission amended the Plan to add a requirement that CAT LLC's financial

statements be prepared in compliance with GAAP, audited by an independent public accounting firm, and made publicly available.⁴⁴ The professional and administration costs include costs related to accounting and accounting advisory services to support the operating and financial functions of CAT, financial statement audit services by an independent accounting firm, preparation of tax returns, and various cash management and treasury functions. In addition, professional and administration costs for the Pre-FAM Period include costs related to the receipt of market data and a security assessment. The costs for these professional and administration services were \$1,082,036 for the Pre-FAM Period.

Financial Advisory Firm: Anchin Accountants & Advisors ("Anchin"). CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT in April 2018. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The hourly fee rates for this firm were in line with market rates for these financial advisory services. The fees for these services were paid by CAT LLC to Anchin.

After Anchin was hired in April 2018 through the end of the Pre-FAM Period on June 22, 2020 (excluding the period from April 2018 through November 15, 2018), Anchin provided a variety of services, including the following:

- Developed, updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Addressed accounting and financial reporting matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC,

including supporting the dissolution of CAT NMS, LLC;

- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Accounting Firm: Grant Thornton LLP ("Grant Thornton"). In February 2020, CAT LLC determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the proposed role given the balance of these considerations. Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services. The fees for these services were paid by CAT LLC to Grant Thornton.

Market Data Provider: Exegy. The professional and administrative costs for the Pre-FAM Period included costs related to the receipt of certain market data for the CAT pursuant to an agreement with the CAT LLC, and then with FCAT. Exegy provided SIP Data required by the CAT NMS Plan.

After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy from July 2018 through March 2019. CAT LLC determined that, unlike certain other vendors, Exegy provided market data that included all data elements required by the CAT NMS Plan.⁴⁵ In addition, the fees were reasonable and in line with market rates for the market data received. Accordingly, the professional and administrative costs for the Pre-FAM Period include the Exegy costs from November 2018 through March

2019. The cost of the market data was reasonable for the market data received. The fees for the market data were paid directly by CAT LLC to Exegy.

Upon the termination of the contract between CAT LLC and Exegy, FCAT entered into a contract with Exegy to purchase the required market data from Exegy in July 2019. All costs under the contract were treated as a direct pass through cost to CAT LLC. Therefore, the fees for the market data were paid by CAT LLC to FCAT, who, in turn, paid Exegy for the market data.

Security Assessment: RSM US LLP ("RSM"). The operating costs for the Pre-FAM Period include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation, and operation of the controls specified by NIST Special Publication 800–53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment. RSM performed the assessment from October 2018 through December 2018. Accordingly, the costs for the Pre-FAM Period include the costs incurred in November and December 2018. The cost for the security assessment were paid directly to RSM by CAT LLC.

(j) Public Relations Costs

The public relations costs of \$224,669 represent the fees paid to public relations firms during the Pre-FAM Period for professional communications services to CAT, including media relations consulting, strategy and execution. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants. Specifically, the public relations firms provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). Public relations services were

⁴⁴ Section 9.2 of the CAT NMS Plan.

⁴⁵ See Section 6.5(a)(ii) of the CAT NMS Plan.

important for various reasons, including monitoring comments made by market participants about CAT and understanding issues related to the CAT discussed on the public record.

The services performed by each of the public relations firms were comparable. The fees for such services were reasonable and in line with market rates. Only one public relations firm was engaged at a time; the three firms were engaged sequentially as the primary public relations contact moved among the three firms during this time period.

Public Relations Firm: Peppercomm, Inc. ("Peppercomm"). The national securities exchanges and FINRA, acting as a consortium, determined to hire the public relations firm Peppercomm in October 2014 and continued to engage this firm through September 2017. The exchanges and FINRA made this engagement decision after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fee rates for this public relations firm were negotiated on an arm's length basis and were in line with

market rates for these types of services. The public relations costs during the period from October 2014 until the formation of the CAT NMS, LLC were paid directly by the exchanges and FINRA to the public relations firm. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC.

Public Relations Firm: Sloane & Company ("Sloane"). CAT LLC determined to hire a new public relations firm, Sloane, in March 2018, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Sloane. CAT LLC continued the engagement with Sloane until February 2020.

Public Relations Firm: Peak Strategies. CAT LLC determined to hire a new public relations firm, Peak Strategies, in March 2020, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market

rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Peak Strategies.

(ii) Historical CAT Costs Incurred in Financial Accountability Milestone Period 1

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 1 of the Financial Accountability Milestones ("FAM Period 1"),⁴⁶ which covers the period from June 22, 2020–July 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 1 of \$6,377,343. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$2,125,781), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBBs paying one-third (\$2,125,781). The following table breaks down Historical CAT Costs 1 for FAM Period 1 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 1 *
Capitalized Developed Technology Costs **	\$1,684,870
<i>Technology Costs</i>	3,996,800
Cloud Hosting Services	2,642,122
Operating Fees	1,099,680
CAIS Operating Fees	254,998
Change Request Fees	
Legal	481,687
Consulting	137,209
Insurance	
Professional and administration	69,077
Public relations	7,700
Total Operating Expenses	6,377,343

* The costs described in this table of costs for FAM Period 1 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$362,121 incurred during FAM Period 1 have been appropriately excluded from the above table.⁴⁷

By the completion of FAM Period 1, CAT LLC was required to implement the reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of equities transaction data and options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.⁴⁸ CAT LLC completed the requirements of FAM Period 1 by July 31, 2020. The following describes the costs for each of the categories for FAM Period 1.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 1 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance

testing, test, and production environments, during the FAM 1 Period. Accordingly, the \$2,642,122 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 1. The fee arrangement for AWS described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. Moreover, CAT LLC continued to believe that AWS's

⁴⁶ Section 11.6(a)(i)(A) of the CAT NMS Plan.

⁴⁷ As discussed above, with respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized

over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁴⁸ See definition of "Initial Industry Member Core Equity and Options Reporting" in Section 1.1 of the CAT NMS Plan.

maturity in the cloud services space as well as the significant cost and time necessary to move the CAT to a different cloud services provider supported the continued engagement of AWS.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the

FAM 1 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well

as SIP Data, reference data and other types of Other Data. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 1.⁴⁹

	Date range: 6/22/20–7/31/20
Average Daily Volume in Billions:	
Participant—Equities	6
Participant—Options	103
Industry Member—Equities	7
Industry Member—Options	0.31
SIP—Options & Equities	74
Average Total Daily Volume	185
Cumulative Total Events for the Period	5,190
Total Compute Hours for the Period	2,612,082
Storage Footprint at End of Period (Petabytes)	57.47

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 1. Accordingly, the \$1,099,680 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 1. The fee arrangement for FCAT described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, FCAT's activities with respect to the CAT included the following:

- Published iterative drafts of draft Technical Specifications for Phase 2d, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Published iterative drafts of CAIS Technical Specifications, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Facilitated Industry Member reporting of Quote Sent Time on Options Market Maker quotes;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;

• Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;

- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 1. Accordingly, the \$254,998 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 1. The fee arrangement for Kingland described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications

and build related to CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

CAT LLC did not incur costs related to change requests during FAM Period 1.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 1 of \$1,684,870 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include: (1) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including separate production and industry test entitlements, and reprocessing of exchange event timestamps; (2) implementation fees; and (3) license fees.

(f) Legal Costs

The legal costs of \$481,687 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 1.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 1 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to WilmerHale. During FAM Period 1,

⁴⁹ Note that the volume data described in this table does not include CAIS data.

WilmerHale provided legal assistance to the CAT including with regard to the following:

- Assisted with the development of the CAT funding model and drafted related amendments and fee filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, verbal activity, options market maker quote sent time, TRF linkages, and allocations;
- Provided interpretations related to CAT NMS Plan requirements, including the Financial Accountability Milestone amendment;
- Assisted with compliance with Regulation SCI;
- Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the drafting of the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Assisted with communications and presentations for the industry regarding CAIS;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for Compliance Subcommittee, including with regard to response to OCIE examinations and the annual assessment;
- Provided guidance regarding CAT technical specifications;
- Assisted with third-party vendor agreements; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to Pillsbury. During FAM Period 1, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(g) Consulting Costs

The consulting costs of \$137,209 represent the fees paid to Deloitte as

project manager during FAM Period 1. CAT LLC continued to employ Deloitte during FAM Period 1 based on, among other things, their expertise and cumulative experience with the CAT. The fee rates for Deloitte during FAM Period 1 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 1 were paid by CAT LLC to the consulting firm. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 1, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

Although insurance was in effect during FAM Period 1, CAT LLC did not incur costs related to insurance during FAM Period 1.

(i) Professional and Administration Costs

Financial Advisory Firm: Anchin. The professional and administration costs of \$69,077 represent the fees paid to Anchin during FAM Period 1. CAT LLC continued to employ Anchin during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these type of financial advisory services. The fees for these services during FAM Period 1 were paid by CAT LLC to Anchin. During FAM Period 1, Anchin provided a variety of services, including the following:

- Maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;

• Reviewed vendor invoices and documentation in support of cash disbursements;

- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups; and
- Prepared monthly and quarterly financial statements.

(j) Public Relations Costs

The public relations costs of \$7,700 represent the fees paid to Peak Strategies during FAM Period 1. CAT LLC continued to employ Peak Strategies during FAM Period 1 based on, among other things, their expertise and history with the project. The fee rates for this firm were reasonable and in line with market rates for these types of services. The fees for these services during FAM Period 1 were paid by CAT LLC to Peak Strategies. During FAM Period 1, Peak Strategies continued to provide professional communications services to CAT LLC, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(iii) Historical CAT Costs Incurred in Financial Accountability Milestone Period 2

Historical CAT Costs 1 would include costs incurred by CAT LLC and already

funded by Participants during Period 2 of the Financial Accountability Milestones ("FAM Period 2"),⁵⁰ which covers the period from August 1, 2020–December 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 2 of \$42,976,478. The

Participants would remain responsible for one-third of this cost (which they have previously paid) (\$14,325,493), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$14,325,493) and CEBBs paying one-

third (\$14,325,493). The following table breaks down Historical CAT Costs 1 for FAM Period 2 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 2 *
Capitalized Developed Technology Costs **	\$6,761,094
<i>Technology Costs</i>	31,460,033
Cloud Hosting Services	20,709,212
Operating Fees	9,108,700
CAIS Operating Fees	1,590,298
Change Request Fees	51,823
Legal	2,766,644
Consulting	532,146
Insurance	976,098
Professional and administration	438,523
Public relations	41,940
Total Operating Expenses	42,976,478

* The costs described in this table of costs for FAM Period 2 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$1,892,505 incurred during FAM Period 2 have been appropriately excluded from the above table.⁵¹

By the completion of FAM Period 2, CAT LLC was required to implement the following with regard to the CAT:

(a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, CustomerID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission.⁵²

CAT LLC completed the requirements of FAM Period 2 by December 31, 2020. The following describes the costs for each of the categories for FAM Period 2.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 2 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production environments, during the FAM 2 Period. Accordingly, the \$20,709,212 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 2.

The fee arrangement for AWS described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the FAM 2 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well as SIP Data, and Other Data, including reference data. In addition, Industry Members began reporting LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 2.⁵³

	Date range: 8/1/20–12/31/20
Average Daily Volume in Billions:	
Participant—Equities	6
Participant—Options	116
Industry Member—Equities	11
Industry Member—Options	0.98
SIP—Options & Equities	80
Average Total Daily Volume	282

⁵⁰ Section 11.6(a)(i)(B) of the CAT NMS Plan.

⁵¹ As discussed above, with respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized

over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁵² See definition of "Full Implementation of Core Equity Reporting Requirements" in Section 1.1 of the CAT NMS Plan.

⁵³ Note that the volume data described in this table does not include CAIS data.

	Date range: 8/1/20–12/31/20
Cumulative Total Events for the Period	2,170
Total Compute Hours for the Period	15,660,392
Storage Footprint at End of Period (Petabytes)	114.59

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 2. Accordingly, the \$9,108,700 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 2. The fee arrangement for FCAT described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, FCAT's activities with respect to the CAT included publishing the Technical Specifications for Phase 2d and overseeing the reporting of firm to firm and intrafirm linkages by Industry Members. In addition, FCAT also continued to engage in the following activities during FAM Period 2:

- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the development and implementation of the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 2. Accordingly, the \$1,590,298 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 2. The fee arrangement for Kingland described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

During FAM Period 2, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 2, CAT incurred costs of \$51,823 related to a change request regarding the addition of functionality for exchange Participants to report rejected messages to the CAT.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 2 of \$6,761,094 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to separate production and industry test

entitlements, market maker reference data, and back-processing of exchange exception logic; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$2,766,644 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 2.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 2 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to WilmerHale. During FAM Period 2, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, allocations, exchange activity, OTQT, initial data validation, error corrections and recordkeeping;
- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs and technical specifications;
- Provided support for the Operating Committee, Compliance Subcommittees, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6 of the CAT NMS Plan;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for the Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
- Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
- Provided guidance regarding SRO rule filings for the retirement of systems;
- Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;

- Assisted with third-party vendor agreements (e.g., with regard to Anchin, Grant Thornton and insurance policies);
- Assisted with change requests; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to Pillsbury. During FAM Period 2, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted and filed a proposed amendment to the CAT NMS Plan regarding liability matters. As discussed above, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(g) Consulting Costs

The consulting costs of \$532,146 represent the fees paid to Deloitte as project manager during FAM Period 2. CAT LLC continued to employ Deloitte during FAM Period 2 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 2 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 2 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 2, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT,

Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$976,098 represent the fees paid for insurance during FAM Period 2. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$438,523 represent the fees paid to Anchin and Grant Thornton for financial services provided during FAM Period 2.

Financial Advisory Firm: Anchin. CAT LLC continued to engage Anchin during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these types of financial advisory services. The fees for these services during FAM Period 2 were paid by CAT LLC to Anchin. During FAM Period 2, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated [sic] bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from the Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;

- Supported the annual financial statement audit by an independent auditor; and

- Reviewed historical costs from inception.

Accounting Firm: Grant Thornton. CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 2 based on, among other things, its expertise and cumulative knowledge of CAT LLC. CAT LLC continued to believe that Grant Thornton was well qualified for its role and its fee rates were in line with market rates for these accounting services. The fees for these services during FAM Period 2 were paid by CAT LLC to Grant Thornton. During FAM Period 2, Grant Thornton performed a financial statement audit for CAT LLC as an independent accounting firm.

(j) Public Relations Costs

The public relations costs of \$41,940 represent the fees paid to Peak Strategies during FAM Period 2. CAT LLC continued to employ Peak Strategies during FAM Period 2 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 2 were paid by CAT LLC to Peak Strategies. During FAM Period 2, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(iv) Historical CAT Costs Incurred in Financial Accountability Milestone Period 3

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 3 of the Financial Accountability Milestones (“FAM Period 3”),⁵⁴ which

covers the period from January 1, 2021–December 31, 2021. Historical CAT Costs 1 would include costs for FAM Period 3 of \$144,415,268. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$48,138,423), and Industry Members would be

responsible for the remaining two-thirds, with CEBBs paying one-third (\$48,138,423) and CEBBs paying one-third (\$48,138,423). The following table breaks down Historical CAT Costs 1 for FAM Period 3 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 3 *
Capitalized Developed Technology Costs **	\$10,763,372
Technology Costs	123,639,402
Cloud Hosting Services	94,574,759
Operating Fees	23,106,091
CAIS Operating Fees	5,562,383
Change Request Fees	396,169
Legal	6,333,248
Consulting	1,408,209
Insurance	1,582,714
Professional and administration	595,923
Public relations	92,400
Total Operating Expenses	144,415,268

* The costs described in this table of costs for FAM Period 3 were calculated based upon CAT LLC’s review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$5,108,044 incurred during FAM Period 3 have been appropriately excluded from the above table.⁵⁵

By the completion of FAM Period 3, CAT LLC was required to implement the following requirements with regard the CAT:

(a) reporting to the Order Audit Trail System (“OATS”) is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or

order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)-(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met.⁵⁶

CAT LLC completed the requirements of FAM Period 3 by December 31, 2021. The following describes the costs for each of the categories for FAM Period 3.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 3 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production

environments, during the FAM 3 Period. Accordingly, the \$94,574,759 in technology costs for cloud hosting services represents costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 3. The fee arrangement for AWS described above for the earlier periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During FAM Period 3, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a, Phase 2b, Phase 2c and Phase 2d Industry Member Data (including certain linkages), SIP Data, Other Data, including reference data, and LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 3.⁵⁷

⁵⁴ Section 11.6(a)(i)(C) of the CAT NMS Plan.

⁵⁵ As discussed above, with respect to certain costs that were “appropriately excluded,” such excluded costs relate to the amortization of capitalized technology costs, which are amortized

over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁵⁶ See definition of “Full Availability and Regulatory Utilization of Transactional Database Functionality” in Section 1.1 of the CAT NMS Plan.

⁵⁷ Note that the volume data described in this table does not include CAIS data.

	Date range: 1/1/21 to 4/25/21	Date range: 4/26/21 to 12/31/21 *
Average Daily Volume in Billions:		
Participant—Equities	9	9
Participant—Options	135	136
Industry Member—Equities	20	19
Industry Member—Options	2	2
SIP—Options & Equities	129	137
Average Total Daily Volume	297	304
Cumulative Total Events for the Period	7,480	5,310
Total Compute Hours for the Period	15,860,304	33,487,318
Storage Footprint at End of Period (Petabytes)	180.22	284.62

* Start of Participant Equities in CAT format and SIP Equities on 4/26/21.

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 3. Accordingly, the \$23,106,091 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 3. The fee arrangement for FCAT described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, FCAT's activities with respect to the CAT included the following:

- Facilitated Phase 2c and Phase 2d testing for Industry Members;
- Oversaw creation of linkages of the lifecycle of order events based on the received data through Phase 2d;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the

use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement with FCAT discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 3. Accordingly, the \$5,562,383 in technology costs for CAIS operating fees represents costs incurred for services provided by Kingland during FAM Period 3. The fee arrangement for Kingland described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs. The full CAIS Technical Specifications were published during FAM Period 3.

(d) Technology Costs—Change Request Fees

During FAM Period 3, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 3, CAT incurred costs of \$396,169 related to change requests, including the following: (1) the addition of functionality for exchange Participants to report rejected messages to the CAT; (2) the migration of MIRS query engine to AWS to reduce operational costs and increase resiliency; and (3) updating the Participant Technical Specifications to allow for two-sided Participant option quote reporting.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 3 of \$10,763,372

include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor, including the transition from equity data received by FINRA pursuant to various regulatory services agreements between FINRA and Participant exchanges to the equity CAT Data, and the completion of the Industry Member Phase 2d options manual and complex orders go-live requirements; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to off-exchange volume concentration, Participant 24-hour trading and an external metastore; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$6,333,248 represent the fees paid for legal services provided by three law firms, WilmerHale, Pillsbury & Covington & Burling LLP ("Covington") during FAM Period 3.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 3 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to WilmerHale. During FAM Period 3, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements, including, for example, verbal activity regarding Phase 2c cutover, error reports, error

corrections, Phase 2d Reporting, unique Order-ID on internal route events, reporting addresses, recordkeeping, and unique CCID for foreign customers;

- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs, CAIS requirements, ADF, and technical specifications;
 - Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
 - Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6(c) of the CAT NMS Plan;
 - Drafted SRO rule filings related to the CAT Compliance Rule;
 - Provided support for Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
 - Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
 - Provided guidance regarding SRO rule filings for the retirement of systems;
 - Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;
 - Provided assistance with change requests;
 - Provided guidance and regulatory support for litigation regarding the response to the SEC's exemptive orders;
 - Assisted with communications with the industry, including CAT Alerts and presentations;
 - Provided guidance regarding the confidentiality of CAT Data, including third-party information requests;
 - Assisted with cost management analysis and proposals; and
 - Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.
- Law Firm: Pillsbury.* CAT LLC continued to employ Pillsbury during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to Pillsbury. During FAM Period 3, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During this period, Pillsbury advised CAT LLC regarding applicable legal matters, reviewed and responded to comment letters regarding the proposed Plan amendment, participated in meetings with senior SEC staff, responded to comments

submitted following the SEC's April 6, 2021 order instituting proceedings,⁵⁸ and assessed legal matters regarding the SEC's October 29, 2021 order denying the proposed Plan amendment.⁵⁹

Law Firm: Covington. CAT LLC hired Covington for litigation with the SEC regarding certain exemptive orders related to the CAT, including orders issued in December 2020.⁶⁰ CAT LLC interviewed this law firm as well as other potential law firms, considering a variety of factors in its analysis for choosing legal assistance, including the relevant expertise and fees of the potential lawyers. CAT LLC approved the engagement of Covington in January 2021. The fee rates for this law firm, which were calculated based on hourly rates, were in line with market rates for specialized services. The legal fees for FAM Period 3 for this firm were paid by CAT LLC to Covington.

After Covington was hired in 2021 through the end of 2021, the firm provided legal assistance regarding the litigation with the SEC regarding the 2020 Orders. These services included researching, drafting, and filing motions to stay the 2020 orders and related materials in proceedings before the SEC, as well as researching, drafting, and filing petitions for judicial review of the 2020 Orders in proceedings before the U.S. Court of Appeals for the D.C. Circuit. Covington oversaw ongoing litigation proceedings on these matters, and also supported WilmerHale with respect to settlement negotiations with the SEC staff regarding the 2020 Orders.

In addition to these services, CAT LLC engaged Covington in November 2021 to provide assistance with respect to the SEC's disapproval of CAT NMS Plan amendments concerning a proposed limitation on liability in the event of a data breach or similar event. Covington provided advice concerning CAT's response to the SEC's disapproval order. This work accounted for a minority of Covington's fees in 2021.⁶¹

⁵⁸ Securities Exchange Act Rel. No. 91487 (Apr. 6, 2021), 86 FR 19054 (Apr. 12, 2021).

⁵⁹ Securities Exchange Act Rel. No. 93484 (Oct. 29, 2021), 86 FR 60933 (Nov. 4, 2021).

⁶⁰ See Securities Exchange Act Rel. No. 90688 (Dec. 16, 2020), 85 FR 83634 (Dec. 22, 2020); and Securities Exchange Act Rel. No. 90689 (Dec. 16, 2020), 85 FR 83667 (Dec. 22, 2020) (collectively, the "2020 Orders").

⁶¹ As discussed above with regard to Pillsbury's work on liability matters, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, such activity is a necessary part of the operation of the CAT.

(g) Consulting Costs

The consulting costs of \$1,408,209 represent the fees paid to Deloitte as project manager during FAM Period 3. CAT LLC continued to employ Deloitte during FAM Period 3 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 3 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 3 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 3, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$1,582,714 represent the fees paid for insurance during FAM Period 3. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$595,923 represent the fees paid to Anchin and Grant Thornton for financial services during FAM Period 3.

Financial Advisory Firm: Anchin. CAT LLC continued to employ Anchin during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for

this firm were in line with market rates for these financial advisory services. The fees for these services during FAM Period 3 were paid by CAT LLC to Anchin. During FAM Period 3, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated *[sic]* bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Accounting Firm: Grant Thornton. CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 3 based on, among other things, their expertise and cumulative knowledge of CAT LLC. CAT LLC determined that Grant Thornton was well qualified for its role and that its fixed fee rates were in line with market rates for these accountant services. The

fees for these services during FAM Period 3 were paid by CAT LLC to Grant Thornton. During FAM Period 3, Grant Thornton provided audited financial statements for CAT LLC.

(j) Public Relations Costs

The public relations costs of \$92,400 represent the fees paid to Peak Strategies during FAM Period 3. CAT LLC continued to employ Peak Strategies during FAM Period 3 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 3 were paid by CAT LLC to Peak Strategies. During FAM Period 3, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (*e.g.*, congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (*e.g.*, amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(v) Excluded Costs

Historical CAT Costs 1 would not include three categories of CAT costs (“Excluded Costs”): (1) \$14,749,362 of

costs related to the termination of the relationship with the Initial Plan Processor; (2) \$48,874,937, which are all CAT costs incurred from November 15, 2017 through November 15, 2018; and (3) \$19,628,791, which are costs paid to the the Initial Plan Processor from November 16, 2018 through February 2019 when the relationship with the Initial Plan Processor was concluded. The Participants would remain responsible for 100% of these costs, which total \$83,253,090. CAT LLC determined to exclude these Excluded Costs from Historical CAT Costs 1 because these costs relate to the delay in the start of reporting to the CAT and the conclusion of the relationship with the Initial Plan Processor.⁶²

(a) Costs Related to Conclusion of Relationship With Initial Plan Processor

First, Historical CAT Costs 1 would not include \$14,749,362 of costs related to the conclusion of the relationship with the Initial Plan Processor. Such costs include costs related to the American Arbitration Association, the legal assistance of Pillsbury with regard to the arbitration with the Initial Plan Processor, and the settlement costs related to the arbitration with the Initial Plan Processor. The Participants would remain responsible for 100% of these \$14,749,362 in costs.

(b) Costs Incurred From November 15, 2017 Through November 15, 2018

Second, Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018. CAT LLC determined to exclude all costs during this one-year period of \$48,874,937 from fees charged to Industry Members due to the delay in the start of reporting to the CAT. The Participants would remain responsible for 100% of these \$48,874,937 in costs. The following table breaks down these costs into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Excluded costs for November 15, 2017–November 15, 2018 *
Capitalized Developed Technology Costs	\$37,852,083
Technology Costs	
Cloud Hosting Services	
Operating Fees	
CAIS Operating Fees	
Change Request Fees	

⁶² In approving the CAT Funding Model, the Commission states that the proposed exclusion of the first two categories of Excluded Costs “is reasonable in the Commission’s view because it would not require all costs incurred by the Participants to be recovered from Industry Members

through the Historical CAT Assessment, specifically excluding those costs related to the delay in the start of reporting to the CAT and costs related to the conclusion of the relationship with the Initial Plan Processor.” CAT Funding Model Approval Order at 62663. In addition to the first two

categories of Excluded Costs, CAT LLC is now proposing a third category of Excluded Costs that would exclude all costs paid to the Initial Plan Processor after November 15, 2018.

Operating expense	Excluded costs for November 15, 2017– November 15, 2018 *
Legal	6,143,278
Consulting	4,452,106
Insurance	
Professional and administration	340,145
Public relations	87,325
Total Operating Expenses	48,874,937

* The costs described in this table of Excluded Costs were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

The following provides additional detail regarding the Excluded Costs.

(I) Technology Costs—Cloud Hosting Services, Operating Fees, CAIS Operating Fees and Change Request Fees

CAT LLC did not incur technology costs related to the categories of cloud hosting services, operating fees, CAIS operating fees or change requests during the period from November 15, 2017 through November 15, 2018.

(II) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for the period from November 15, 2017 through November 15, 2018 include capitalizable application development costs of \$37,852,083 incurred in the development of the CAT by the Initial Plan Processor. Such costs include development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Initial Plan Processor. Such costs include costs related to Industry Member technical specifications for orders and transactions, the system security plan, testing and production for Participant CAT reporting, third-party security assessment and response, query portal, onboarding of the Chief Information Security Officer, and ingestion of FINRA TRF data and FINRA data related to halts and corporate actions.

(III) Legal Costs

The legal costs of \$6,143,278 represent the fees paid to WilmerHale for legal services from November 15, 2017 through November 15, 2018. During this period, WilmerHale provided legal assistance to the CAT including with regard to the following:

- Provided legal support for the governance of the CAT, including governance support for the Operating Committee, Advisory Committee, Compliance Subcommittee, and CAT working groups;

- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan;
- Provided assistance related to CAT security;
- Drafted exemptive requests, including requests related to PII;
- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Provided interpretations of and related to the CAT NMS Plan;
- Provided advice with regard to regulator access to the CAT;
- Assisted with the Plan Processor transition;
- Provided assistance regarding communications with the industry regarding the CAT;
- Provided advice regarding Customer Account Information and PII;
- Provided support for litigation related to SEC exemptive orders; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretative and implementation issues.

(IV) Consulting Costs

The consulting costs of \$4,452,106 represent the fees paid to Deloitte for their role as project manager for the CAT from November 15, 2017 through November 15, 2018. During this period, Deloitte engaged in the following activities with respect to the CAT:

- Implemented program operations for the CAT project;
- Provided governance support to the Operating Committee, including support for Subcommittees and working groups of the Operating Committee (e.g., Compliance Subcommittee, Cost and Funding Working Group, Technical Working Group, Industry Outreach Working Group, Security Working Group and Steering Committee);
- Assisted with cost and funding issues for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;

- Provided support for updating the SEC on the progress of the development of the CAT; and

- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress.

(V) Insurance

CAT LLC did not incur costs related to insurance during the period from November 15, 2017 through November 15, 2018.

(VI) Professional and Administration Costs

The professional and administration costs of \$340,145 represent the fees paid to Anchin, Exegy and RSM from November 15, 2017 through November 15, 2018.

Financial Advisory Firm: Anchin. From the commencement of its engagement [sic] in April 2018 through November 15, 2018, Anchin engaged in the following activities with respect to the CAT:

- Developed, updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Addressed accounting and financial matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC, including supporting the dissolution of CAT NMS, LLC;

- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Market Data Provider: Exegy. From July 2018 through November 15, 2018, CAT LLC purchased market data from Exegy (as described in more detail above).

Security Assessment: RSM. From October 2018 through November 15, 2018, CAT LLC incurred costs for RSM's performance of a security assessment (as described in more detail above).

(VII) Public Relations Costs

The public relations costs of \$87,325 represent the fees paid to Sloane from November 15, 2017 through November 15, 2018. From the commencement of its engagement [*sic*] in March 2018 through November 15, 2018, Sloane provided professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, Sloane provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (*e.g.*, congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (*e.g.*, amendments to the CAT NMS Plan).

(c) Costs Paid to Initial Plan Processor From November 16, 2018 Through February 2019

Third, Historical CAT Costs 1 would not include the \$19,628,791 in costs paid to the Initial Plan Processor from November 16, 2018 through February 2019 when CAT LLC's relationship with the Initial Plan Processor concluded. CAT LLC determined that Historical CAT Costs 1 would not include any fees paid to the Initial Plan Processor after November 15, 2017,⁶³ which was the date by which Participants were

required to begin reporting to the CAT.⁶⁴ As discussed above, the Participants determined that Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Initial Plan Processor costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Initial Plan Processor costs incurred after November 15, 2018 are the \$19,628,791 in costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these \$19,628,791 in costs.

(C) Historical Recovery Period 1

Under the CAT NMS Plan, the Operating Committee is required to reasonably establish the length of the Historical Recovery Period used in calculating each Historical Fee Rate based upon the amount of the Historical CAT Costs to be recovered by the Historical CAT Assessment, and to describe the reasons for its length.⁶⁵ The Historical Recovery Period used in calculating the Historical Fee Rate may not be less than 24 months or more than five years.⁶⁶ The Operating Committee has determined to establish a Historical Recovery Period 1 of 24 months for Historical CAT Assessment 1.

The Operating Committee determined that the length of Historical Recovery Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans to the Participants in a timely fashion. The Operating Committee determined that 24 months for Historical Recovery Period 1 would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to

Section 31.⁶⁷ In addition, in establishing a Historical Recovery Period of 24 months, the Operating Committee recognized that the total costs for Historical CAT Assessment 1 were less than the total costs for 2022 and 2023,⁶⁸ and therefore it would be reasonable and appropriate to recover costs subject to this filing over an approximate two-year period.

The length of the Historical Recovery Period 1 and the reasons for its length are provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.⁶⁹

(D) Projected Total Executed Equivalent Share Volume

The calculation of Historical Fee Rate 1 also requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for Historical Recovery Period 1. Under the CAT NMS Plan, the Operating Committee is required to "reasonably determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each Historical Recovery Period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months."⁷⁰ The Operating Committee is required to base its projection on the prior twelve months, but it may use its discretion to analyze the likely volume for the upcoming year. Such discretion would allow the Operating Committee to use its judgment when estimating projected total executed equivalent share volume if the volume over the prior twelve months was unusual or otherwise unfit to serve as the basis of a future volume estimate.⁷¹

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. The Operating Committee has determined to calculate the projected total executed equivalent share volume for the 24 months of Historical Recovery Period 1 by doubling the executed equivalent share volume for the prior 12 months. The

⁶⁴ The SEC approved the CAT NMS Plan on November 15, 2016, and Participant reporting was required to begin on the first anniversary of this date, November 15, 2017. See Section 6.3 of the CAT NMS Plan and CAT NMS Plan Approval Order.

⁶⁵ Section 11.3(b)(i)(D)(I) and Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

⁶⁶ Section 11.3(b)(i)(D)(I) of the CAT NMS Plan. In the CAT Funding Model Approval Order, the SEC stated that "[i]n the Commission's view, it is reasonable for the Operating Committee to establish the length of the Historical Recovery Period to be no less than 24 months and no more than five years." CAT Funding Model Approval Order at 62664.

⁶³ As discussed below, CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. See Section 3(a)(10)(E) below.

⁶⁷ As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model at 62682.

⁶⁸ The total CAT costs for 2022 were approximately \$186 million and the total CAT costs for 2023 were approximately \$233 million.

⁶⁹ Section 11.3(b)(iii)(B)(II)(C) of the CAT NMS Plan.

⁷⁰ Section 11.3(b)(i)(E) of the CAT NMS Plan.

⁷¹ CAT Funding Model Approval Order at 62664.

Operating Committee determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has remained relatively constant. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395, the executed equivalent share volume for 2022 was 4,039,821,841,560.31, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6. Accordingly, the projected total executed equivalent share volume for Historical Recovery Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.⁷²

The projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1 and a description of the calculation of the projection is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.⁷³

(E) Historical Fee Rate 1

Historical Fee Rate 1 would be calculated by dividing Historical CAT Costs 1 by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1, as described in detail above.⁷⁴ Specifically, Historical Fee Rate 1 would be calculated by dividing \$318,059,819 by 7,961,507,681,810.42. As a result, the Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. Historical Fee Rate 1 is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide the Historical Fee Rate in a fee filing for a Historical CAT Assessment.⁷⁵

(3) Past CAT Costs and Participants

Participants would not be required to pay any fees associated with Historical CAT Assessment 1 as the Participants previously have paid all Past CAT Costs. The CAT NMS Plan explains that:

Because Participants previously have paid Past CAT Costs via loans to the Company,

Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs and such other additional Past CAT Costs as reasonably determined by the Operating Committee will be paid by the cancellation of loans made to the Company on a pro rata basis based on the outstanding loan amounts due under the loans.⁷⁶

The CAT NMS Plan further states that "Historical CAT Assessments are designed to recover two-thirds of the Historical CAT Costs."⁷⁷

(4) Monthly Fees

CEBBs and CEBs would be required to pay fees for Historical CAT Assessment 1 on a monthly basis for the period in which Historical CAT Assessment 1 is in effect.⁷⁸ A CEBB or CEBs's fee for each month would be calculated based on the transactions in Eligible Securities executed by the CEBB or CEBs from the prior month.⁷⁹ Proposed paragraph (a)(1)(A) of the fee schedule would state that each CAT Executing Broker would receive its first invoice in November 2024, and "would receive an invoice each month thereafter in which Historical CAT Assessment 1 is in effect." Proposed paragraph (a)(1)(B) of the fee schedule would state that "Consolidated Audited Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis." In addition, proposed paragraph (b)(1) of the fee schedule states that each CEBB and CEBs is required to pay its CAT fees "each month."

(5) Actual Recovery Period for Historical CAT Assessment 1

The CAT NMS Plan states that, "[n]otwithstanding the length of the Historical Recovery Period used in calculating the Historical Fee Rate, each Historical CAT Assessment calculated using the Historical Fee Rate will remain in effect until all Historical CAT Costs for the Historical CAT Assessment are collected."⁸⁰ Accordingly, Historical CAT Assessment 1 will remain in effect until all Historical CAT Costs 1 have been collected. The actual

recovery period for Historical CAT Assessment 1 may be shorter or longer than Historical Recovery Period 1 depending on the actual executed equivalent share volumes during the time that Historical CAT Assessment 1 is in effect.⁸¹

(6) Consolidated Audit Trail Funding Fees

To implement Historical CAT Assessment 1, a new section would be added to the Exchange's fee schedule for "Consolidated Audit Trail Funding Fees", and it would include the proposed paragraphs described below.

(A) Fee Schedule for Historical CAT Assessment 1

The CAT NMS Plan states that:

Each month in which a Historical CAT Assessment is in effect, each CEBB and each CEBs shall pay a fee for each transaction in Eligible Securities executed by the CEBB or CEBs 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 reasonably determined pursuant to paragraph (b)(i) of this Section 11.3.⁸²

Accordingly, based on the factors discussed above, the Exchange proposes to add paragraph (a)(1) to the Consolidated Audit Trail Funding Fees section of its fee schedule. Proposed paragraph (a)(1) would state the following:

(A) Each CAT Executing Broker shall receive its first invoice for Historical CAT Assessment 1 in November 2024, which shall set forth the Historical CAT Assessment 1 fees calculated based on transactions in October 2024, and shall receive an invoice for Historical CAT Assessment 1 for each month thereafter in which Historical CAT Assessment 1 is in effect.

(B) Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis. Each month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer ("CEBB") and/or the CAT Executing Broker for the Seller ("CEBs") (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of \$0.000013 per executed equivalent share.

⁸¹ In approving the CAT Funding Model, the Commission stated that, "[i]n the Commission's view, it is reasonable for Industry Members to be charged a Historical CAT Assessment until all Historical CAT Costs for the Historical CAT Assessment are collected." CAT Funding Model Approval Order at 62665.

⁸² Section 11.3(b)(iii)(A) of the CAT NMS Plan.

⁷² This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

⁷³ Section 11.3(b)(iii)(B)(II)(D) of the CAT NMS Plan.

⁷⁴ In approving the CAT Funding Model, the Commission stated that "[t]he calculation of the Historical Fee Rate 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 is reasonable." CAT Funding Model Approval Order at 62664.

⁷⁵ Section 11.3(b)(iii)(B)(II)(A) of the CAT NMS Plan.

⁷⁶ Section 11.3(b)(ii) of the CAT NMS Plan.

⁷⁷ *Id.* In approving the CAT Funding Model, the Commission stated that "[t]he proposed allocation of the Historical CAT Assessment solely to CEBs and CEBBs, and ultimately Industry Members, is reasonable. The Historical CAT Assessment will still be divided into thirds," as the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made to the Company. CAT Funding Model Approval Order at 62666.

⁷⁸ See Section 11.3(b)(iii)(A) of the CAT NMS Plan.

⁷⁹ See proposed paragraph (a)(1)(B) of the fee schedule.

⁸⁰ Section 11.3(b)(i)(D)(II) of the CAT NMS Plan.

(C) Historical CAT Assessment 1 will remain in effect until \$212,039,879.34 (two-thirds of Historical CAT Costs 1) are collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time. Consolidated Audit Trail, LLC will provide notice when Historical CAT Assessment 1 will no longer be in effect.

(D) Each CAT Executing Broker shall be required to pay each invoice for Historical CAT Assessment 1 in accordance with paragraph (b).

As noted in the Plan amendment for the CAT Funding Model, “as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee rate.”⁸³ Accordingly, proposed paragraph (a)(1)(B) of the fee schedule would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 of \$0.00003994969693072937 by one-third, and rounding the result to 6 decimal places.⁸⁴ The Operating Committee determined to use six decimal places to balance the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

The proposed language in paragraph (a)(1)(A) of the fee schedule would describe when CAT Executing Brokers would receive their first monthly invoice for Historical CAT Assessment 1. Specifically, CAT Executing Brokers would receive their first monthly invoice for Historical CAT Assessment 1 in November 2024 and the fees set forth in that invoice would be calculated based on transactions executed in the prior month, that is, transactions executed in October 2024. The payment for the first invoice would be required within 30 days after the receipt of the first invoice (unless a longer period is indicated), as described in paragraph (b)(2) of the fee schedule.

Proposed paragraph (a)(1)(A) of the fee schedule also would describe the monthly cadence of the invoices for Historical CAT Assessment 1. Specifically, after the first invoices are provided to CAT Executing Brokers in November 2024, invoices will be sent to CAT Executing Brokers each month

thereafter while Historical CAT Assessment 1 is in effect.

Proposed paragraph (a)(1)(B) of the fee schedule would describe the invoices for Historical CAT Assessment 1.

Proposed paragraph (a)(1)(B) of the fee schedule would state that “Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis.” Proposed paragraph (a)(1)(B) of the fee schedule also would describe the fees to be set forth in the invoices for Historical CAT Assessment 1. Specifically, it would state that “[e]ach month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer (“CEBB”) and/or the CAT Executing Broker for the Seller (“CEBS”) (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of \$0.000013 per executed equivalent share.”

Furthermore, proposed paragraph (a)(1)(C) of the fee schedule would describe how long Historical CAT Assessment 1 would remain in effect. It would state that “Historical CAT Assessment 1 will remain in effect until \$212,039,879.34 (two-thirds of Historical CAT Costs 1) are collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time.” This proposed paragraph would further state that “Consolidated Audit Trail, LLC will provide notice when Historical CAT Assessment 1 will no longer be in effect.”

Historical CAT Assessment 1 will be assessed for all transactions executed in each month through the end of the month in which two-thirds of Historical CAT Costs 1 are assessed, and then CAT LLC will provide notice that Historical CAT Assessment 1 is no longer in effect. Since Historical CAT Assessment 1 is a monthly fee based on transaction volume from the prior month, Historical CAT Assessment 1 may collect more than two-thirds of Historical CAT Costs 1. To the extent that occurs, any excess money collected during the final month in which Historical CAT Assessment 1 is in effect will be used to offset future fees and/or to fund the reserve for the CAT.

Finally, proposed paragraph (a)(1)(D) of the fee schedule sets forth the requirement for the CAT Executing Brokers to pay the invoices for Historical CAT Assessment 1. It would

state that “[e]ach CAT Executing Broker shall be required to pay each invoice for Historical CAT Assessment 1 in accordance with paragraph (b).”

(B) Manner of Payment

Paragraph (b)(1) to the “Consolidated Audit Trail Funding Fees” section of its fee schedule describes the manner of payment of Industry Member CAT fees. Paragraph (b)(1) states that “[e]ach CAT Executing Broker shall pay its CAT fees as required pursuant to paragraph (a) each month to the Consolidated Audit Trail, LLC in the manner prescribed by the Consolidated Audit Trail, LLC.” The CAT NMS Plan requires the Operating Committee to establish a system for the collection of CAT fees.⁸⁵ The Plan Processor has established a billing system for CAT fees.⁸⁶ Therefore, the Exchange proposes to require CAT Executing Brokers to pay Historical CAT Assessment 1 in accordance with such system.

(C) Failure to Pay CAT Fees

The CAT NMS Plan further states that:

Participants shall require each Industry Member to pay all applicable fees authorized under this Article XI within thirty (30) days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due (as determined in accordance with the preceding sentence), such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (a) the Prime Rate plus 300 basis points; or (b) the maximum rate permitted by applicable law.⁸⁷

Accordingly, the Exchange previously has added this requirement to the Exchange’s fee schedule. Specifically, paragraph (b)(2) of the fee schedule states:

Each CAT Executing Broker shall pay the CAT fees required pursuant to paragraph (a) within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If a CAT Executing Broker fails to pay any such CAT fee when due, such CAT Executing Broker shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of (i) the Prime Rate plus 300

⁸⁵ Section 11.4 of the CAT NMS Plan.

⁸⁶ The billing process and system are described in CAT Alert 2023-02 as well as the CAT FAQs related to the billing of CAT fees, the Industry Member CAT Reporter Portal User Guide, the FCAT Industry Member Onboarding Guide, the FCAT Connectivity Supplement for Industry Members and the CAT Billing Webinars (dated Sept. 28, 2023, and Nov. 7, 2023), each available on the CAT website.

⁸⁷ Section 11.4 of the CAT NMS Plan.

⁸³ CAT Funding Model Approval Order at 62658, n.658.

⁸⁴ Dividing \$0.00003994969693072937 by three equals \$0.00001331656564357646. Rounding \$0.00001331656564357646 to six decimal places equals \$0.000013.

basis points, or (ii) the maximum rate permitted by applicable law.

The requirements of paragraph (b)(2) would apply to Historical CAT Assessment 1.

(7) Historical CAT Assessment Details

The CAT NMS Plan states that:

Details regarding the calculation of a CAT Executing Broker's Historical CAT Assessment will be provided upon request to such CAT Executing Broker. At a minimum, such details would include each CAT Executing Broker's executed equivalent share volume and corresponding fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.⁸⁸

Such information would provide CEBBs and CEBs with the ability to understand the details regarding the calculation of their Historical CAT Assessment.⁸⁹ CAT LLC will provide CAT Executing Brokers with these details regarding the calculation of their Historical CAT Assessments on their monthly invoice for the Historical CAT Assessment.

In addition, CAT LLC will make certain aggregate statistics regarding Historical CAT Assessments publicly available. Specifically, the CAT NMS Plan states that, “[f]or each Historical CAT Assessment, at a minimum, CAT LLC will make publicly available the aggregate executed equivalent share volume and corresponding aggregate fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise on an exchange, and (3) by buy-side transactions and sell-side transactions.”⁹⁰ Such aggregate statistics will be available on the CAT website.

Furthermore, CAT LLC will make publicly available on the CAT website the total amount invoiced each month that Historical CAT Assessment 1 is in effect as well as the total amount

invoiced for Historical CAT Assessment 1 for all months since its commencement. CAT LLC also will make publicly available on the CAT website the total costs to be collected from Industry Members for Historical CAT Assessment 1. By reviewing statistics regarding how much has been invoiced and how much remains to be invoiced for Historical CAT Assessment 1, Industry Members would have sufficient information to reasonably track how much longer Historical CAT Assessment 1 is likely to be in place.

(8) Implementation Assistance

To assist Industry Members with compliance with the commencement of Historical CAT Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices prior to the commencement of Historical CAT Assessment 1. Specifically, CAT Executing Brokers have received mock invoices based on transaction data each month since November 2023. The mock invoices are in the same form as the actual, payable invoices, including both the relevant transaction data and the corresponding fee. However, no payments have been required in response to such mock invoices; they have been used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data has provided CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended to facilitate the payment of Historical CAT Assessment 1.

(9) Financial Accountability Milestones

The CAT NMS Plan states that “[n]o Participant will make a filing with the SEC pursuant to Section 19(b) of the Exchange Act regarding any Historical CAT Assessment until any applicable Financial Accountability Milestone described in Section 11.6 has been satisfied.”⁹¹ The CAT NMS Plan further states that “in all filings submitted by the Participants to the Commission under Section 19(b) of the Exchange Act, to establish or implement Post-Amendment Industry Member Fees pursuant to this Article, . . . the Participants shall clearly indicate whether such fees are related to Post-Amendment Expenses incurred during Period 1, Period 2, Period 3, or Period 4.”⁹² As discussed in detail below, all

applicable Financial Accountability Milestones for Historical CAT Assessment 1—that is, Period 1, Period 2 and Period 3 of the Financial Accountability Milestones—have been satisfied. Furthermore, as discussed below, this filing clearly indicates that Historical CAT Assessment 1 relates to Post-Amendment Expenses incurred during Periods 1, 2 and 3 of the Financial Accountability Milestones.

(A) Period 1 of the Financial Accountability Milestones

In accordance with Section 11.6(b) of the CAT NMS Plan, Historical CAT Assessment 1 seeks to recover costs that are related to “all fees, costs, and expenses (including legal and consulting fees, costs, and expenses) incurred by or for the Company in connection with the development, implementation and operation of the CAT from the effective date of [Section 11.6 of the CAT NMS Plan] until such time as Full Implementation of CAT NMS Plan Requirements has been achieved.”⁹³ (“Post-Amendment Expenses”) incurred during FAM Period 1. FAM Period 1 began on June 22, 2020, the effective date of Section 11.6 of the CAT NMS Plan, and concluded on July 31, 2020, the date of Initial Industry Member Core Equity and Options Reporting. Section 1.1 of the CAT NMS Plan defines “Initial Industry Member Core Equity and Options Reporting” as:

The reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of both: (a) equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information; and (b) options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants' Quarterly Progress Reports.⁹⁴ As indicated by the Participants' Quarterly Progress Report for the third quarter of 2020,⁹⁵ Initial Industry Member Core Equity and Option Reporting was completed on schedule on July 22, 2020, which is prior to the July 31, 2020 deadline.

Under the FAM Period 1 requirement of Initial Industry Member Core Equity and Options Reporting, Industry Members—excluding Small Industry

⁸⁸ Section 11.3(a)(iv)(A) of the CAT NMS Plan.

⁸⁹ In approving the CAT Funding Model, the Commission stated that, “[i]n the Commission's view, providing CAT Execut[ing] Brokers information regarding the calculation of their CAT Fees will aid in transparency and permit CAT Execut[ing] Brokers to confirm the accuracy of their invoices for CAT Fees.” CAT Funding Model Approval Order at 62667.

⁹⁰ Section 11.3(a)(iv)(B) of the CAT NMS Plan. In approving the CAT Funding Model, the Commission stated that “[t]he publication of the aggregate executed equivalent share volume and aggregate fee is appropriate because it would allow Participants and CAT Executing Brokers a high-level validation of executed volume and fees.” CAT Funding Model Approval Order at 62667.

⁹¹ Section 11.3(b)(iii)(B)(III) of the CAT NMS Plan.

⁹² Section 11.6(b) of the CAT NMS Plan.

⁹³ Section 11.6 of the CAT NMS Plan.

⁹⁴ The Quarterly Progress Reports are available at <https://www.catnmsplan.com/implementation-plan>.

⁹⁵ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020) and Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021).

Members that are not OATS reporters—were required to report two categories of data to the CAT: equities transaction data and options transaction data (both excluding Customer Account Information, Customer-ID, and Customer Identifying Information) by July 31, 2020. Pursuant to exemptive relief provided by the Commission, the Commission authorized the Participants' Compliance Rules to allow core equity reporting for Industry Members (Phase 2a) to begin on June 22, 2020 and core options reporting for Industry Members (Phase 2b) to begin on July 20, 2020.⁹⁶

In adopting the FAMs, the Commission stated that the equities transaction reporting required for FAM Period 1 “is consistent with the functionality that the Participants describe on the CAT NMS Plan website as ‘Production Go-Live for Equities 2a file submission and data integrity validations.’”⁹⁷ The Phase 2a Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order, and includes the following data related to Eligible Securities that are equities:

- All events and scenarios covered by OATS, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions;

- Reportable Events for: (1) proprietary orders, including market maker orders, for Eligible Securities that are equities; (2) electronic quotes in listed equity Eligible Securities (*i.e.*, NMS stocks) sent to a national securities exchange or FINRA’s Alternative Display Facility (“ADF”); (3) electronic quotes in unlisted Eligible Securities (*i.e.*, OTC Equity Securities) received by an Industry Member operating an interdealer quotation system (“IDQS”); and (4) electronic quotes in unlisted Eligible Securities sent to an IDQS or

other quotation system not operated by a Participant or Industry Member;

- Firm Designated IDs (“FDIDs”), which Industry Members must report to the CAT as required by Sections 6.3(d)(i)(A) and 6.4(d)(ii)(C) of the CAT NMS Plan;

- Industry Members would be required to report all street side representative orders, including both agency and proprietary orders and mark such orders as representative orders, except in certain limited exceptions as described in the Industry Member Technical Specifications;

- The link between the street side representative order and the order being represented when: (1) the representative order was originated specifically to represent a single order received either from a customer or another broker-dealer; and (2) there is (a) an existing direct electronic link in the Industry Member’s system between the order being represented and the representative order and (b) any resulting executions are immediately and automatically applied to the represented order in the Industry Member’s system;

- Manual and Electronic Capture Time for Manual Order Events;

- Special handling instructions for the original receipt or origination of an order during Phase 2a; and

- When routing an order, whether the order was routed as an intermarket sweep order (“ISO”).

In Phase 2a, Industry Members were not required to report modifications of a previously routed order in certain limited instances, nor were they required to report a cancellation of an order received from a Customer after the order has been executed.⁹⁸

The Quarterly Progress Report for the third quarter of 2020 states that “Interim Step: Production Go-Live for Equities 2a file submission and data integrity validation (Large Industry Members and Small OATS Reporters)” was completed on June 22, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of “equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information” was completed on June 22, 2020.

In adopting the FAMs, the Commission stated that the options transaction reporting required for FAM Period 1 is “consistent with the functionality that the Participants describe on the CAT NMS Plan website as ‘Production Go-Live for Options 2b

file submission and data integrity validations.’”⁹⁹ The Phase 2b Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order, and includes the Industry Member Data related to Eligible Securities that are options and related to simple electronic option orders, excluding electronic paired option orders. A simple electronic option order is an order to buy or sell a single option that is not related to or dependent on any other transaction for pricing and timing of execution that is either received or routed electronically by an Industry Member. Electronic receipt of an order is defined as the initial receipt of an order by an Industry Member in electronic form in standard format directly into an order handling or execution system. Electronic routing of an order is the routing of an order via electronic medium in standard format from one Industry Member’s order handling or execution system to an exchange or another Industry Member. An electronic paired option order is an electronic option order that contains both the buy and sell side that is routed to another Industry Member or exchange for crossing and/or price improvement as a single transaction on an exchange. Responses to auctions of simple orders and paired simple orders would be reportable in Phase 2b. Furthermore, combined orders in options would be treated in Phase 2b in the same way as equity representative orders are treated in Phase 2a. A combined order would mean, as permitted by SRO rules, a single, simple order in Listed Options created by combining individual, simple orders in Listed Options from a customer with the same exchange origin code before routing to an exchange. During Phase 2b, the single combined order sent to an exchange must be reported and marked as a combined order, but the linkage to the underlying orders is not required to be reported until Phase 2d.¹⁰⁰

The Quarterly Progress Report for the third quarter of 2020 states that “Interim Step: Production Go-Live for Options 2b file submission and data integrity validations” was completed on July 20, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of “options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information” was completed on July 20, 2020.

⁹⁹ FAM Adopting Release at 31330, n.98.

¹⁰⁰ Phased Reporting Exemptive Relief Order at 23078.

⁹⁶ See Phased Reporting Exemptive Relief Order. Under the CAT NMS Plan as adopted, the Participants were required, through their Compliance Rules, to require their Large Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2018, and to require their Small Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2019. Sections 6.7(a)(v) and (vi) of the CAT NMS Plan. The SEC granted exemptive relief from these provisions of the CAT NMS Plan to allow for the phased implementation of Industry Member reporting via five phases addressing the reporting requirements for Phase 2a Industry Member Data, Phase 2b Industry Member Data, Phase 2c Industry Member Data, Phase 2d Industry Member Data and Phase 2e Industry Member Data.

⁹⁷ Securities Exchange Act Rel. No. 88890 (May 15, 2020), 85 FR 31322, 31330 n.97 (May 22, 2020) (“FAM Adopting Release”).

⁹⁸ Phased Reporting Exemptive Relief Order at 23076–78.

As discussed above, the Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from June 22, 2020 through July 31, 2020. The total costs for this period, as discussed above, are \$6,377,343. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBBs paying one-third (\$2,125,781).

(B) Period 2 of the Financial Accountability Milestones

Historical CAT Assessment 1 seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 2. FAM Period 2 began on August 1, 2020, and concluded on December 31, 2020, the date of the Full Implementation of Core Equity Reporting. Section 1.1 of the CAT NMS Plan defines “Full Implementation of Core Equity Reporting” as:

the point at which: (a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants’ Quarterly Progress Reports. As indicated by the Participants’ Quarterly Progress Report for the fourth quarter of 2020,¹⁰¹ Full Implementation of Core Equity

Reporting was completed on schedule by December 31, 2020.

Specifically, the Full Implementation of Core Equity Reporting requires the satisfaction of two prongs. The first prong requires Participants to have fully implemented the first phase of equities transaction reporting for Industry Members (excluding Small Industry Members that are not OATS reporters) at an Error Rate of less than 5%. In addition, equities transaction data produced by the CAT at this stage must also be sufficiently interlinked so as to permit full analysis of an order’s lifecycle across the national market, excluding full linkage of representative orders. As CAT LLC reported on its Quarterly Progress Reports, Phase 2a was fully implemented as of October 26, 2020, including intra-firm, inter-firm, national securities exchange, and trade reporting facilities linkages.¹⁰² In addition to the reporting of Phase 2a Industry Member Data as described above with regard to FAM Period 1, the following linkage data was added to the CAT as described in the Quarterly Progress Reports for the third and fourth quarter of 2020:

- “Production Go-Live for Equities 2a Intrafirm Linkage validations” was completed on 7/27/2020;¹⁰³
- “Production Go-Live for Firm to Firm Linkage validations for Equities 2a (Large Industry Members and Small OATS Reporters)” was completed on October 26, 2020; and
- “Production Go-Live for Equities 2a Exchange and TRF Linkage validations (Large Industry Members and Small OATS Reporters)” was completed on October 26, 2020.

Furthermore, as CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2020, the average overall error rate for Phase 2a Industry Member Data was less than 5% as of December 31, 2020. The average overall error rate was calculated by dividing the compliance errors by processed records.

The second prong of this FAM requires that the equities transaction data collected by the CAT at this stage be made available to regulators through two basic query tools required by the CAT NMS Plan—a targeted query tool that will enable regulators to retrieve data via an online query screen with a variety of predefined selection criteria, and a user-defined direct query tool that will provide regulators with the ability to query data using all available

attributes and data sources.¹⁰⁴ As CAT LLC reported on its Quarterly Progress Reports, the query tool functionality incorporating the data from Phase 2a was available to the Participants and the Commission as of December 31, 2020.¹⁰⁵

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.¹⁰⁶

As discussed above, Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from August 1, 2020 through December 31, 2020. The total costs for this period, as discussed above, are \$42,976,478. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remain [*sic*] two-thirds, with CEBBs paying one-third (\$14,325,492.70) and CEBBs paying one-third (\$14,325,492.70).

(C) Period 3 of the Financial Accountability Milestones

Historical CAT Assessment 1 seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 3. FAM Period 3 began on January 1, 2021, and concluded on December 31, 2021, the date of the Full Availability and Regulatory Utilization of Transactional Database Functionality. Section 1.1 of the CAT NMS Plan defines “Full Availability and Regulatory Utilization of Transactional Database Functionality” as:

the point at which: (a) reporting to the Order Audit Trail System (“OATS”) is no longer required for new orders; (b) Industry Member reporting for equities transactions

¹⁰⁴ Section 6.10(c)(i)(A) of the CAT NMS Plan requires the Plan Processor to “provide Participants and the SEC with access to all CAT Data stored in the Central Repository” via an “online targeted query tool.” Appendix D, Sections 8.1.1–8.1.3 of the CAT NMS Plan describes the required functionality associated with this regulatory tool. Appendix D, Section 8.2.1 describes the required functionality associated with a user-defined direct query tool that will “deliver large sets of data that can then be used in internal surveillance or market analysis applications.”

¹⁰⁵ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020); Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021); and Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰⁶ Securities Exchange Act Rel. No. 98848 (Nov. 2, 2023), 88 FR 77128, 77129 n.13 (Nov. 8, 2023) (“Settlement Exemptive Order”).

¹⁰¹ Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰² For a description of the requirements of Phases 2a, see Phased Reporting Exemptive Relief Order.

¹⁰³ Q3 2020 Quarterly Progress Report (Oct. 20, 2021).

and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)-(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants' Quarterly Progress Reports. As indicated by the Participants' Quarterly Progress Report for the fourth quarter of 2021,¹⁰⁷ Full Availability and Regulatory Utilization of Transactional Database Functionality was completed on schedule by December 31, 2021.

Specifically, the "Full Availability and Regulatory Utilization of Transactional Database Functionality" requires the satisfaction of five prongs. The first prong requires that reporting to the Order Audit Trail System ("OATS") is no longer required for new orders. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021,¹⁰⁸ FINRA retired OATS effective September 1, 2021.¹⁰⁹ Accordingly, after the retirement of OATS, reporting to OATS was no longer required.

In addition to Phase 2a and Phase 2b Industry Member Data, the second and third prongs of "Full Availability and Regulatory Utilization of Transactional

Database Functionality" require Industry Member reporting of Phase 2c Industry Member Data and Phase 2d Industry Member Data. The Phase 2c Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order. That Order states that "Phase 2c Industry Member Data" is Industry Member Data related to Eligible Securities that are equities other than Phase 2a Industry Member Data, Phase 2d Industry Member Data, or Phase 2e Industry Member Data. Specifically, the Phase 2c Industry Member Data includes Industry Member Data that is related to Eligible Securities that are equities and that is related to: (1) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (2) quotes in unlisted Eligible Securities sent to an IDQS operated by a CAT Reporter (reportable by the Industry Member sending the quotes) (except for quotes reportable in Phase 2d, as discussed below); (3) electronic quotes in listed equity Eligible Securities (*i.e.*, NMS stocks) that are not sent to a national securities exchange or FINRA's Alternative Display Facility; (4) reporting changes to client instructions regarding modifications to algorithms; (5) marking as a representative order any order originated to work a customer order in price guarantee scenarios, such as a guaranteed VWAP; (6) flagging rejected external routes to indicate a route was not accepted by the receiving destination; (7) linkage of duplicate electronic messages related to a Manual Order Event between the electronic event and the original manual route; (8) special handling instructions on order route reports (other than the ISO, which is required to be reported in Phase 2a); (9) quote identifier on trade events; (10) reporting of LTIDs (if applicable) for accounts with Reportable Events that are reportable to CAT as of and including Phase 2c; (11) reporting of date account opened or Account Effective Date (as applicable) for accounts and reporting of a flag indicating the Firm Designated ID type as account or relationship; (12) order effective time for orders that are received by an Industry Member and do not become effective until a later time; (13) the modification or cancellation of an internal route of an order; and (14) linkages to the customer orders(s) being represented for representative order scenarios, including agency average price trades, net trades, aggregated orders, and disconnected Order Management System ("OMS")—Execution Management System ("EMS")

scenarios, as required in the Industry Member Technical Specifications.¹¹⁰

Phase 2c Industry Member Data also includes electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are equities and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: (1) an equity bid or offer is displayed publicly or has been communicated (a) for listed securities to the ADF operated by FINRA; or (b) for unlisted equity securities to an "interdealer quotation system," as defined in FINRA Rule 6420(c); or (2) an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing; *i.e.*, no further manual or electronic action is required by the responder providing the quote in order to execute or cause a trade to be executed). With respect to OTC Equity Securities, OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter (other than such an IDQS that does not match and execute orders) are reportable by the Industry Member sending them in Phase 2c. Accordingly, any response to a request for quote or other form of solicitation response provided in a standard electronic format (*e.g.*, FIX) that meets this quote definition (*i.e.*, an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing) would be reportable in Phase 2c.¹¹¹

The Phase 2d Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order. "Phase 2d Industry Member Data" is Industry Member Data that is related to Eligible Securities that are options other than Phase 2b Industry Member Data, Industry Member Data that is related to Eligible Securities that are equities other than Phase 2a Industry Member Data or Phase 2c Industry Member Data, and Industry Member Data other than Phase 2e Industry Member Data. Phase 2d Industry Member Data includes with respect to the Eligible Securities that are options: (1) simple manual orders; (2) electronic and manual paired orders; (3) all complex orders with linkages to all CAT-reportable legs; (4) LTIDs (if applicable) for accounts with Reportable Events for Phase 2d; (5) date account

¹⁰⁷ Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹⁰⁸ *Id.*

¹⁰⁹ Securities Exchange Act Rel. No. 92239 (June 23, 2021), 86 FR 34293 (June 29, 2021).

¹¹⁰ Phase Reporting Exemptive Relief Order at 23078–79.

¹¹¹ *Id.* at 23079.

opened or Account Effective Date (as applicable) for accounts with an LTID and flag indicating the Firm Designated ID type as account or relationship for such accounts; (6) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (7) the modification or cancellation of an internal route of an order; and (8) linkage between a combined order and the original customer orders. Phase 2d Industry Member Data also would include electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are options and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: a listed option bid or offer which is accessible electronically by customers or other market participants and is immediately actionable (*i.e.*, no further action is required by the responder providing the quote in order to execute or cause a trade to be executed). Accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (*e.g.*, FIX) that meets this definition is reportable in Phase 2d for options.¹¹²

Phase 2d Industry Member Data also includes with respect to Eligible Securities that are options or equities (1) receipt time of cancellation and modification instructions through Order Cancel Request and Order Modification Request events; (2) modifications of previously routed orders in certain instances; and (3) OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter that does not match and execute orders. In addition, subject to any exemptive or other relief, Phase 2d Industry Member Data will include verbal or manual quotes on an exchange floor or in the over-the-counter market, where verbal quotes and manual quotes are defined as bids or offers in Eligible Securities provided verbally or that are provided or received other than via a CAT Reporter's order handling and execution system (*e.g.*, quotations provided via email or instant messaging).¹¹³

The Quarterly Progress Report for the fourth quarter of 2021 states that "Phase 2a was fully implemented as of October 26, 2020;" "Phase 2b was fully implemented as of January 4, 2021;" "Phase 2c was implemented as of April 26, 2021;" and "Phase 2d was fully

implemented as of December 13, 2021."¹¹⁴ The Quarterly Progress Reports for 2021 provide additional detail regarding the implementation of these steps including the following:

- "Production Go-Live for Equities 2c reporting requirements (Large Industry Members)" was completed on April 26, 2021;
- "LTID Account Information Reporting Go-Live for Phases 2a, 2b and 2c (Large Industry Members)" was completed on April 26, 2021;
- "FCAT Plan Processor creates linkages of the lifecycle of order events based on the received data through Phase 2d Production Go-Live for Options 2d reporting requirements (Large Industry Members)" was completed on December 13, 2021;
- "Production Go-Live for Options 2d reporting requirements (Large Industry Members)" was completed on December 13, 2021;
- "Production Go-Live for Options 2b reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "Production Go-Live for Equities 2c reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "Production Go-Live for Options 2d reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "LTID Account Information Reporting Go-Live for Phases 2d (Large Industry Members)" was completed on December 13, 2021; and
- "LTID Account Information Reporting Go-Live for Phases 2a, 2b, 2c and 2d (Small Industry Members)" was completed on December 13, 2021.¹¹⁵

The third prong of "Full Availability and Regulatory Utilization of Transactional Database Functionality" also imposes an Error Rate requirement of 5% or less. The Quarterly Progress Report for the fourth quarter of 2021 states the average overall error rate was less than 5% as of December 31, 2021. The average overall error rate was calculated by dividing the compliance errors by processed records.

The fourth prong of "Full Availability and Regulatory Utilization of Transactional Database Functionality" requires that the data collected by the CAT at this stage be made available to

regulators through an online targeted query tool and a user-defined direct query tool. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021, the query tool functionality incorporating the data from Phases 2a, 2b, 2c and 2d was available to the Participants and to the Commission as of December 31, 2021.¹¹⁶

The fifth prong requires the requirements of Section 6.10(a) of the CAT NMS Plan to have been met. Section 6.10(a) of the CAT NMS Plan requires the Participants to use the tools described in Appendix D to "develop and implement a surveillance system, or enhance existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository." The Exchange implemented a surveillance system, or enhanced existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository as of December 31, 2021 in accordance with Section 6.10(a) of the CAT NMS Plan.¹¹⁷

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.¹¹⁸

As discussed above, Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from January 1, 2021 through December 31, 2021. The total costs for this period, as discussed above, are \$144,415,268. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remain [*sic*] two-thirds, with CEBBs paying one-third (\$48,138,422.70) and CEBBs paying one-third (\$48,138,422.70).

(D) Additional Considerations Related to the Financial Accountability Milestones

As discussed above, CAT LLC has satisfied the Financial Accountability Milestones ("FAMs") for Periods 1

¹¹⁶ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁷ See Q1 2021 Quarterly Progress Report (Apr. 30, 2021); Q2 2021 Quarterly Progress Report (July 27, 2021); Q3 2021 Quarterly Progress Report (Nov. 1, 2021); Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁸ Settlement Exemptive Order at 77129 n.13.

¹¹² *Id.*

¹¹³ *Id.* at 23079–80.

¹¹⁴ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁵ See Q2 2021 Quarterly Progress Report (July 27, 2021); and Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

through 3.¹¹⁹ As discussed below, none of the circumstances related to NIA Electronic RFQ Responses, the 2023 Verbal Quotes Exemption, the November 2023 Order, or Executing Broker reporting, affect the conclusion that the FAMs for Periods 1 through 3 were satisfied in a timely fashion.

(i) NIA Electronic RFQ Responses

CAT LLC does not believe that the exemptive relief relating to the reporting of electronic responses for quotes (“RFQs”) that are not immediately actionable (“NIA Electronic RFQ Responses”) affect the conclusion that FAMs 1 through 3 have been satisfied. The only reason CAT LLC pursued this relief is because certain Industry Members introduced concerns that NIA Electronic RFQ Responses could be considered “orders” reportable pursuant to Rule 613(j)(8) and some Industry Members were not prepared to report such orders to CAT. Thus, the relief was requested on behalf of Industry Members. CAT LLC itself has not taken any position on whether NIA Electronic RFQ Responses are “orders,” as the definition of “order” is an SEC rule and the trading processes for NIA Electronic RFQ Responses are the Industry Members’, not those of the Participants or CAT LLC. Accordingly, CAT LLC stated in its letter that “Industry Members must determine whether trading interest falls within the definition of an ‘order’ for CAT purposes. To the extent an NIA Electronic RFQ Response is not considered an ‘order’ as defined in Rule 613(j)(8) and the CAT NMS Plan, it would not be reportable to CAT.”¹²⁰

Only “orders” as defined in SEC Rule 613(j)(8) are reportable to CAT. There is no agreement across the industry or among regulators as to whether NIA Electronic RFQ Responses are “orders” reportable to CAT. Certain Industry Members have raised the question as to whether NIA Electronic RFQ Responses are orders, but others have argued that they are not orders under Rule 613(j)(8).¹²¹ Indeed, members of the

Advisory Committee, which CAT LLC relies upon for guidance with regard to Industry Member issues, have not had a definitive view on whether NIA Electronic RFQ Responses are orders. As Rule 613(j)(8) is an SEC rule, CAT LLC believes that only the SEC can provide a definitive determination as to if, and under what circumstances, an NIA Electronic RFQ Response is considered an “order” reportable to CAT. The issue has persisted for some time. As a result, CAT LLC filed an exemptive request regarding NIA Electronic RFQ Responses for clarity on the interpretive issue. As recently as April 2024, Industry Members have re-raised this issue stating that the SEC agrees that it must provide additional guidance on this interpretive issue to resolve the CAT reporting issue for NIA Electronic RFQ Responses:

As further discussed in the prior FIF letters, even if the Commission had the legal authority to require the reporting of NIA RFQ responses to CAT without an amendment to Rule 613, the Commission has not provided guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT. In subsequent discussions with industry members, Commission representatives have agreed that, prior to NIA RFQ responses being reportable to CAT, it would be necessary for the Commission to provide further guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT.¹²²

On May 20, 2024, the Commission granted CAT LLC’s request for exemptive relief from certain CAT reporting requirements pertaining to NIA Electronic RFQ Responses to the extent such responses are considered “orders” reportable pursuant to Rule 613(j)(8).¹²³ The Commission, however, did not provide additional guidance regarding the conditions under which NIA Electronic RFQ Responses would be reportable to CAT. The Commission stated in its exemptive order that “[t]o the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for the Financial Accountability Milestones, provided that any conditions of the exemption are satisfied.”¹²⁴

When the Commission proposed the FAMs, the Participants expressed concern that, “by conditioning the ability of CAT LLC and the Participants to collect Post-Amendment Industry Member Fees on factors dependent on

the efforts of Industry Members, the Commission’s proposals inadvertently establish a perverse incentive for Industry Members to devote less than maximum efforts to comply with their obligations related to the CAT as they will pay less fees in such instances.”¹²⁵ The Participants further warned that “Industry Members may request or require unanticipated reporting delays to address Industry Member implementation issues or concerns,” but that, “[f]aced with financial penalties for missed deadlines, the Participants may not be able to fully address legitimate industry concerns or accommodate requests for delays with respect to future deadlines.”¹²⁶ CAT LLC has engaged in good faith to help address NIA Electronic RFQ Responses and other concerns relevant to the ability of Industry Members to meet their CAT reporting obligations. CAT LLC should not be penalized financially for seeking in good faith to resolve a difficult interpretive issue for the benefit of Industry Members.

(ii) 2023 Verbal Quotes Exemption

CAT LLC does not believe that the Commission’s May 19, 2023 order granting temporary exemptive relief relating to certain verbal floor activity and unstructured verbal and electronic upstairs activity (the “2023 Verbal Quotes Exemption”) affects the conclusion that FAMs 1 through 3 have been satisfied. The 2023 Verbal Quotes Exemption, which was issued on May 19, 2023, is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. The relevant exemption for this time period is the Commission’s November 12, 2020 order, which granted relief for the same activity through July 31, 2023 (the “2020 Verbal Quotes Order”).¹²⁷ The Commission has stated that, “to the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for a Financial Accountability Milestone, provided that the conditions of the exemption are satisfied.”¹²⁸ Here, the

¹¹⁹ In May 2020, the Commission adopted amendments to the CAT NMS Plan that establish four Financial Accountability Milestones and set target deadlines by which these milestones must be achieved. These amendments also reduce the amount of any fees, costs, and expenses that may be recovered from Industry Members if the Participants fail to meet the target deadlines. FAM Adopting Release.

¹²⁰ See Letter from Brandon Becker, Chair, CAT NMS Plan Operating Committee to Vanessa Countryman, Secretary, Commission (Feb. 13, 2024) at 2.

¹²¹ See, e.g., Letter from Howard Meyerson, Managing Director, FIF, to Sai Rao, Counsel for Trading and Markets, Office of the Chair (Apr. 25, 2024).

¹²² *Id.*

¹²³ Securities Exchange Act Rel. No. 100181 (May 20, 2024), 89 FR 45715 (May 23, 2024).

¹²⁴ *Id.* at n.11.

¹²⁵ See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission at 9 (Oct. 28, 2019).

¹²⁶ *Id.* at 10.

¹²⁷ Securities Exchange Act Rel. No. 90405, 85 FR 73544 (Nov. 18, 2020) (the “2020 Verbal Quotes Exemption”).

¹²⁸ See, e.g., Securities Exchange Act Rel. No. 89051 (June 11, 2020), 85 FR 36631, 36633 (June 17, 2020). The straightforward reading of the Commission’s statement is that compliance with the conditions of an exemption will be measured as of the deadline for a particular FAM Period.

2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3.¹²⁹

(iii) November 2023 Order

CAT LLC does not believe that the Commission's November 2, 2023 order granting relief from certain CAT NMS Plan requirements (the "November 2023 Order") affects the conclusion that FAMs 1 through 3 have been satisfied. The November 2023 Order is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. As described in the November 2023 Order, the relevant exemptive orders for this time period were issued on December 16, 2020, which also states that "the Commission has determined that the Participants have sufficiently complied with the conditions set forth in the prior Orders and with the technical requirements for Quarterly Progress Reports set forth in section 6.6(c) of the CAT NMS Plan, including for purposes of determining compliance with any applicable Financial Accountability Milestones."¹³⁰ The November 2023 Exemption Order is consistent with the Commission's repeated statements in the FAM adopting release that it would have "authority to grant exemptive relief from any requirement associated with a particular Financial Accountability Milestone," citing Section 36 of the Exchange Act and Rule 608.¹³¹ Similarly, the CAT NMS Plan

expressly contemplates the Commission's ability to grant exemptive relief from any CAT NMS Plan requirement.¹³²

(iv) Executing Broker Reporting

CAT LLC also completed the requirements of FAM Period 2, including the required linkages, by December 31, 2020. Although Participant exchanges may report the Executing Broker to CAT differently in certain situations, these reporting differences are irrelevant for linkage purposes as the fields used for CAT Executing Broker are not used for linkage.

(10) Additional Support for Reasonableness of Historical CAT Costs

The CAT Funding Model approved by the Commission permits the recovery of reasonable costs in each of the categories of CAT costs sought to be recovered via Historical CAT Assessment 1.¹³³ As described in detail above and in further detail below, the CAT costs to be recovered for each category are reasonable. The following discusses in further details how each of the following costs are reasonable: (1) costs incurred prior to the effective date of the CAT NMS Plan; (2) cloud hosting services costs; (3) costs related to funding model filings; (4) costs related to litigation with the SEC regarding the CAT NMS Plan; (5) costs related to the Initial Plan Processor; (6) CAIS implementation costs; (7) public relations costs; (8) legal costs related to the limitation of liability provision in the CAT Reporter agreements; and (9) costs for the Chair of CAT Operating Committee. As discussed in detail below, each of these costs is reasonable and should be recoverable in accordance with the CAT Funding Model.

(A) Costs Incurred Prior to the Effective Date of CAT NMS Plan

CAT LLC believes that it is reasonable to seek recovery of costs incurred prior to when the CAT NMS Plan became effective in November 2016, such as legal and consulting fees incurred to

create the CAT NMS Plan. Rule 613 specifically mandates that the CAT be created, implemented and maintained, and further provides that the CAT NMS Plan include a proposed allocation of estimated costs to fund the creation, implementation and maintenance of the CAT among the Participants (referred to as "plan sponsors"), and between the Participants and Industry Members (referred to as "members of the plan sponsors").¹³⁴ Consistent with Rule 613, the CAT NMS Plan, as approved by the Commission, specifically authorizes charging Industry Members fees for costs reasonably incurred prior to the date of the approval of the CAT NMS Plan by the Commission in November 2016, including legal and consulting costs. Section 11.1(c) of the CAT NMS Plan states that:

[i]n 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) reasonably incurred by Participants on behalf of the Company prior to the Effective Date in connection with the creation and implementation of the CAT.

Accordingly, the CAT NMS Plan specifically permits the recovery of costs, including legal and consulting costs, reasonably incurred prior to November 2016 in connection with the creation and implementation of the CAT.

Furthermore, the costs incurred to create and implement the CAT prior to the effective date of the CAT NMS Plan ("Pre-Formation Costs") were reasonable both in scope and amount, in accordance with the requirements of Section 11.1(c) of the CAT NMS Plan. During the four-year period from 2012 to 2016, a total of \$13,842,881 in Pre-Formation Costs were incurred. This is an average of approximately \$3.5 million per year over this period. The Pre-Formation Costs fell into three categories: legal costs, consulting costs and public relations costs. This includes legal costs of \$3,196,434; consulting costs of \$10,589,273; and public relations costs of \$57,174. The legal, consulting and public relations services were performed by WilmerHale, Deloitte and Peppercomm, respectively. The selection considerations and fees for these three firms are described in detail above and are described further below. The Pre-Formation Costs are direct costs of CAT, which have been funded entirely by the Participants through non-interest-bearing notes. The Pre-Formation Costs do not include the significant costs incurred by each of the

¹²⁹ As a condition to the 2020 Verbal Quotes Exemption, the Commission required that the Participants provide a written status update on the reporting of these quotes and orders by July 31, 2022, including the estimated costs of reporting these quotes and orders and an implementation plan for the reporting of these quotes and orders. As noted, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3. In any event, on June 3, 2022, the Participants provided the required written status update. See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (June 3, 2022).

¹³⁰ *Id.* at 77129 n.12.

¹³¹ FAM Adopting Release at 31335 (May 22, 2020). Section 36 of the Exchange Act grants the Commission the authority to "conditionally or unconditionally exempt any person, security, or transaction . . . from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors." 15 U.S.C. 78mm(a)(1). Under Rule 608(e) of Regulation NMS, the Commission may "exempt from [Rule 608], either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is

consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanism of, a national market system." 17 CFR 242.608(e).

¹³² Section 12.3 of the CAT NMS Plan ("[T]o the extent the SEC grants exemptive relief applicable to any provision of this Agreement, Participants and Industry Members shall be entitled to comply with such provision pursuant to the terms of the exemptive relief so granted at the time such relief is granted irrespective of whether this Agreement has been amended.")

¹³³ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹³⁴ See, e.g., Rule 613(a)(1)(vii)(D) of the CAT NMS Plan.

individual Participants in responding to the adoption of Rule 613.

The Pre-Formation Costs are reasonable and appropriate as they reflect the extensive efforts that were necessary to create the CAT NMS Plan as mandated after the SEC's adoption of Rule 613. As described in more detail below, these efforts included, among other things, developing a plan for selecting the Plan Processor, soliciting and evaluating bids, engaging a diverse set of market participants and the SEC in the development of the Plan, interacting with the SEC in their oversight of the development of the Plan, and seeking appropriate exemptive relief to address areas of concern in Rule 613.¹³⁵

(i) Request for Proposal ("RFP")

The Participants determined to utilize an RFP to ensure that potential alternative solutions for creating the Plan could be presented and considered, and that a detailed and meaningful cost-benefit analysis could be performed. The SEC supported the use of an RFP, and approved its use as it is described in extensive detail in the CAT NMS Plan.¹³⁶

In the context of the SEC's adoption of Rule 613, commenters urged the Commission to utilize an RFP process to assist in the planning and design of the NMS plan.¹³⁷ Specifically, the Commission explained:

In this regard, several commenters suggested that the Commission undergo a RFP or request for information ("RFI") process to create and implement a consolidated audit trail. Specifically, FIF urged the Commission to perform a RFP process "to determine the best technical solution for developing a consolidated audit trail." FIF suggested that the Commission "should outline a set of goals and guiding principles they are striving to achieve as part of the adopted CAT filing and leave the determination of data elements and other technical requirements to [an] industry working group." Similarly, Direct Edge suggested that Commission staff should form and engage in a working group to develop an RFP for publication by the Commission.

¹³⁵ The Participants described in detail the process for drafting the CAT NMS Plan in its original filing of the CAT NMS Plan. See Letter from Mike Simon, on behalf of the Participants of the CAT NMS Plan, to Brent J. Fields, Secretary, Commission (Sept. 30, 2014). A non-exclusive list of filings and activities associated with CAT, including certain pre-2016 filings, are available on the SEC's website: <https://www.sec.gov/divisions/marketreg/rule613-info>.

¹³⁶ See detailed discussion of RFP questions in Appendix C of the CAT NMS Plan, and incorporation of RFP requirements in Appendix D at D-2.

¹³⁷ For example, in its comments on proposed Rule 613, FIF suggested "that the SROs should select the processor through a 'request for proposal.'" Rule 613 Adopting Release at 45785.

DirectEdge explained that an RFP process would facilitate the identification of the costs and benefits of the audit trail, as well as the consideration of a wider range of technological solutions. Further, commenters, including Broadridge Financial Solutions, Inc., a technology provider, also requested more specific information about the audit trail system to better assess the Commission's initial cost estimates and to determine the best approach to the consolidated audit trail.¹³⁸

In response to these comments, the Commission modified Rule 613 to require the Participants to address certain important considerations regarding the features and details of the NMS plan and to extend the timeframe for submission of the CAT NMS Plan by the Participants from the 90 days as originally proposed to 270 days, in part, to accommodate a process that would address these considerations.¹³⁹ As the SEC noted, "[i]n light of the numerous specific requirements of Rule 613, the Participants concluded that publication of a request for proposal ('RFP') was necessary to ensure that potential alternative solutions to creating the consolidated audit trail can be presented and considered by the Participants and that a detailed and meaningful cost/benefit analysis can be performed, both of which are required considerations to be addressed in the CAT NMS Plan."¹⁴⁰

The SEC specifically recognized that the Participants planned to use an RFP when it approved the Selection Plan, and stated that the RFP was a reasonable approach.¹⁴¹ As the SEC described in its approval order for the Selection Plan, "[t]he Participants filed the [Selection] Plan to govern how the SROs will proceed with formulating and submitting the CAT NMS Plan—and, as part of that process, how to review, evaluate, and narrow down the bids submitted in response to the RFP ('Bids')—and ultimately choosing the plan processor that will build, operate, and maintain the consolidated audit trail ('Plan Processor')." ¹⁴² After evaluating the Selection Plan, including the use of an RFP process, the Commission stated that it "believes the [Selection] Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately

choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail."¹⁴³

On February 26, 2013, the Participants published an RFP soliciting bids from parties interested in serving as the plan processor for the CAT. Initially, 31 firms submitted intentions to bid. In the following months, the Participants engaged with potential bidders with respect to, among other things, the selection process, selection criteria, and potential bidders' questions and concerns. On March 21, 2014, the Participants received ten bids in response to the RFP.

(ii) Selection Plan

On September 4, 2013, the Participants filed with the Commission a national market system plan to govern the process for Participant review of the bids submitted in response to the RFP, the procedures for evaluating the bids, and, ultimately, selection of the plan processor (the "Selection Plan").¹⁴⁴ The Commission approved the Selection Plan as filed on February 21, 2014.¹⁴⁵ In approving the Selection Plan, the Commission concluded that "it is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor."¹⁴⁶

The Selection Plan divided the review and evaluation of bids, and the selection of the plan processor, into various stages. Specifically, pursuant to the Selection Plan, a selection committee reviewed all bids and determined which bids contained sufficient information to allow the Participants to meaningfully assess and evaluate the bids. The ten submitted bids were deemed "Qualified Bids," and so passed to the next stage, in which each bidder presented its bids to the Participants on a confidential basis. On July 1, 2014, after conducting careful analysis and comparison of the bids, the Selection Committee voted and selected a shortlist of six eligible bidders. The Selection Committee determined which shortlisted bidders would be provided the opportunity to revise their bids. After the Selection Committee assessed and evaluated the revised bids, the Selection Committee selected the plan processor via two rounds of voting by the Participants, as described in the Selection Plan.

The Selection Plan established an Operating Committee responsible for formulating, drafting, and filing with the

¹³⁸ Rule 613 Adopting Release at 45738–39.

¹³⁹ Rule 613 Adopting Release at 45739.

¹⁴⁰ Securities Exchange Act Rel. No. 71596 (Feb. 21, 2014), 79 FR 11152, 11152 (Feb. 27, 2014) ("Selection Plan Approval Order").

¹⁴¹ *Id.*

¹⁴² *Id.* at 11153.

¹⁴³ *Id.* at 11159.

¹⁴⁴ See Securities Exchange Act Rel. No. 70892 (Nov. 15, 2013), 78 FR 69910 (Nov. 21, 2013).

¹⁴⁵ See Selection Plan Approval Order.

¹⁴⁶ Selection Plan Approval Order at 11160.

Commission the CAT NMS Plan and for ensuring that the Participants' joint obligations under Rule 613 were met in a timely and efficient manner. In formulating the CAT NMS Plan, the Participants also engaged multiple persons across a wide range of roles and expertise, engaged the consulting firm Deloitte as project manager, and engaged the law firm WilmerHale to serve as legal counsel in drafting the Plan. Within this structure, the Participants focused on, among other things, comparative analyses of the proposed technologies and operating models, development of funding models to support the building and operation of the CAT, and detailed review of governance considerations. Given the complexity and scope of developing the CAT NMS Plan, these efforts were extensive.

When it approved the CAT NMS Plan in 2016, the Commission reiterated its belief that the Selection Plan remains a "reasonable approach," that "the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor," and that "the process set forth in the Selection Plan should be permitted to continue":

In approving the Selection Plan, the Commission stated that the Selection Plan is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor. The Commission also found that the Selection Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail. The Commission believes that the process set out in the Selection Plan for selecting a Plan Processor remains a reasonable approach, which will facilitate the selection of Plan Processor through a fair, transparent and competitive process and that no modifications to the Selection Plan are required to meet the approval standard. . . . In response to the comment that offered support for a specific Bidder, the Commission agrees with the Participants that the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor and thus believes that the process set forth in the Selection Plan should be permitted to continue.¹⁴⁷

(iii) Engagement With Market Participants and SEC

During the process of developing the CAT NMS Plan, the Participants engaged in extensive and meaningful

dialogue with market participants and the SEC. To this end, the Participants created a website to update the public on the progress of the CAT NMS Plan, published a request for comment on multiple issues related to the Plan, held multiple public events to inform the industry of the progress of the CAT and to address inquiries, and formed, and later expanded, a DAG to solicit more input from a representative industry group.¹⁴⁸

The DAG included representatives of Participants and Industry Members and conducted meetings to discuss, among other things, technical and operational aspects the Participants were considering for the Plan. The Participants issued press releases soliciting participants for the DAG, and a wide spectrum of firms was deliberately chosen to provide insight from various industry segments affected by CAT. The DAG meetings included discussions of topics such as option market maker quote reporting, requirements for capturing Customer IDs, timestamps and clock synchronization, reporting requirements for order handling scenarios, costs and funding, error handling and corrections, and potential elimination of systems made redundant by the CAT. From the inception of the DAG through September 2014, the DAG participated in 36 meetings, as well as a variety of DAG subcommittee meetings.

(iv) Request for Exemption From Certain Requirements Under Rule 613

Following multiple discussions between the Participants and both the DAG and the bidders, as well as among the Participants themselves, the Participants recognized that some provisions of Rule 613 would not permit certain solutions to be included in the Plan that the Participants, in coordination with the DAG, determined advisable to effectuate the most efficient and cost-effective CAT. Specifically, "the SROs reached the conclusion that additional flexibility in certain of the minimum requirements specified in Rule 613 would allow them to propose a more efficient and cost-effective approach without adversely affecting the reliability or accuracy of CAT Data, or its security and confidentiality."¹⁴⁹ Consequently, the Participants submitted a request for exemptive relief from certain provisions of Rule 613 regarding: (1) options market maker quotes; (2) Customer-IDs; (3) CAT-

Reporter-IDs; (4) CAT-Order-IDs on allocation reports; and (5) timestamp granularity.¹⁵⁰ The Participants filed two supplements to the request for exemptive relief.¹⁵¹

After reviewing the exemptive request, the Commission determined that it was appropriate in the public interest and consistent with the protection of investors to grant the requested exemptive relief.¹⁵² In granting the exemptive relief, the Commission stated:

[T]he Commission is persuaded to provide flexibility in the discrete areas discussed in the Exemption Request so that the alternative approaches can be included in the CAT NMS Plan and subject to notice and comment. Doing so could allow for more efficient and cost-effective approaches than otherwise would be permitted. The Commission at this stage is not deciding whether the proposed approaches detailed below are more efficient or effective than those in Rule 613. However, the Commission believes the proposed approaches should be within the permissible range of alternatives available to the SROs.¹⁵³

The Commission further stated that the requested exemptive relief is consistent with the protection of investors. The Commission noted that:

Doing so will provide the public an opportunity to consider and comment on whether these proposed alternative approaches would indeed be more efficient and cost-effective than those otherwise required by Rule 613, and whether such approaches would adversely affect the reliability or accuracy of CAT Data or otherwise undermine the goals of Rule 613. Moreover, if—as the SROs represent—efficiency gains and cost savings would result from including the proposed approaches in the CAT NMS Plan without adverse effects, then the resultant benefits could potentially flow to investors (e.g., lower broker-dealer reporting costs resulting in fewer costs passed on to Customers).¹⁵⁴

The Participants incorporated the exemptive relief into the proposed CAT NMS Plan, which was noticed for comment, and the Commission ultimately approved the CAT NMS Plan with the more efficient and cost-effective alternative approaches described in the exemptive relief. Accordingly, the Participants believe that the costs incurred in developing the exemptive request were critical to the creation of a better CAT than was

¹⁵⁰ Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Jan. 30, 2015).

¹⁵¹ See Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Apr. 3, 2015); Letter from the SROs to Brent J. Fields, Secretary, Commission (Sept. 2, 2015).

¹⁵² See 2016 Exemptive Order.

¹⁵³ *Id.* at 11857.

¹⁵⁴ *Id.*

¹⁴⁸ See Section D(11) of Appendix C of the CAT NMS Plan.

¹⁴⁹ Securities Exchange Rel. No. 77265 (Mar. 1, 2016), 81 FR 11856 (Mar. 7, 2016) ("2016 Exemptive Order").

¹⁴⁷ See CAT NMS Plan Approval Order at 84737.

originally contemplated by Rule 613, and therefore should be recoverable as part of Historical CAT Assessment 1.

(v) Request for Extensions for Filing the CAT NMS Plan

Rule 613(a)(1) under Regulation NMS required the Participants to jointly file the CAT NMS Plan on or before April 28, 2013, less than a year after the adoption of Rule 613. In recognition of the complexity of the project to create the CAT NMS Plan as well as industry interest in limiting or eliminating certain requirements of Rule 613 (*e.g.*, addressing the reporting of options market maker quotes), the Participants requested two extensions of the deadline to file the CAT NMS Plan. The Participants described the need for additional time as follows:

The SROs stated in their Request Letter that they do not believe that the 270-day time period provided for in Rule 613(a)(1) provides sufficient time for the development of the RFP, formulation and submission of bids, and review and evaluation of such bids. The SROs also stated that they believe additional time beyond the 270 days provided for in Rule 613(a)(1) is necessary in order to provide sufficient time for effective consultation with and input from the industry and the public on the proposed solution chosen by the SROs for the creation of the consolidated audit trail at the conclusion of the RFP process and the NMS plan itself.¹⁵⁵

In recognition of the need for additional time to refine the technical description of and requirements for the CAT and to allow for additional evaluation of the proposed cost and funding considerations, the SEC granted two extensions of this deadline.¹⁵⁶ The SEC determined that both extensions were appropriate, in the public interest, and consistent with the protection of investors.¹⁵⁷ In reaching this conclusion, the Commission stated that “it understands that the creation of a consolidated audit trail is a significant undertaking and that a proposed NMS plan must include detailed information and discussion about many things.”¹⁵⁸ The SEC also noted the following:

This additional time to complete the RFP process should allow the SROs to engage in a more thoughtful and comprehensive process for the development of an NMS plan. In this regard, the Commission notes that the

additional time to solicit comment from the industry and the public at certain key points in the development of the NMS plan could identify issues that can be resolved earlier in the development of the consolidated audit trail and prior to filing the NMS plan with the Commission.¹⁵⁹

Given the Commission’s recognition of the reasonableness and value of the extension of the deadline to file the CAT NMS Plan, the Participants believe that the costs incurred in developing the extension request were important to the process of developing the CAT NMS Plan, and therefore should be recoverable as part of Historical CAT Assessment 1.

(vi) Submission and Approval of the CAT NMS Plan

After extensive analyses and discussions with the DAG, bidders, market participants and the SEC staff, the Participants finalized the draft of the CAT NMS Plan and filed the CAT NMS Plan with the SEC on September 30, 2014. Following additional discussions, the Participants filed several amendments to the CAT NMS Plan during 2015 and 2016. With these additional changes, the SEC published the CAT NMS Plan for notice and comment in May 2016.¹⁶⁰ Following the comment period, the SEC approved the Plan in November 2016.¹⁶¹

(vii) Legal Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include legal costs of \$3,196,434. The legal services were performed by WilmerHale. The selection considerations and fees for WilmerHale were described in detail above. Prior to the creation of CAT LLC, WilmerHale was engaged to represent the consortium of SROs, not the individual Participants. For administrative purposes, FINRA agreed to receive such legal bills, although such costs were shared among the Participants. Therefore, the legal costs incurred with respect to WilmerHale do not include legal costs incurred by the individual Participants. These pre-formation legal costs are described in detail above and are further described below:

- Analyzed various legal matters associated with the Selection Plan and drafted an amendment to Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the DAG;

- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on the CAT NMS Plan;

- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (*e.g.*, Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG, and governance support during the transition to the new governance structure under the CAT NMS Plan;

- Drafted exemptive requests;
- Provided interpretations related to the CAT NMS Plan;

- Provided support with regard to discussions among the exchanges, FINRA and other third parties, such as Deloitte;

- Provided tax advice with regard to CAT’s status as a tax-exempt organization; and

- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

(viii) Consulting Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include consulting costs of \$10,589,273. The consulting services were performed by Deloitte. The selection considerations and fees for Deloitte were described in detail above. Prior to the creation of CAT LLC, for administrative purposes, Deloitte was engaged by FINRA to provide consulting services related to CAT, but the costs were shared by the consortium of SROs per agreement. Therefore, the consulting costs incurred with respect to Deloitte do not include consulting costs incurred by the individual Participants. The pre-formation consulting costs include the following:

- Established and implemented program operations for the CAT project, including the program management office and workstream design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participants’ independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, reviewing technical requirements of other NMS plans, analyzing OATS and CAT requirements, and drafting appendices to the Plan;

¹⁵⁵ Securities Exchange Act Rel. No. 69060 (Mar. 7, 2013), 78 FR 15771, 15772 (Mar. 12, 2013) (“March 2013 Exemptive Order”).

¹⁵⁶ See March 2013 Exemptive Order; Securities Exchange Act Rel. No. 71018 (Dec. 6, 2013), 78 FR 75669 (Dec. 12, 2013) (“December 2013 Exemptive Order”).

¹⁵⁷ March 2013 Exemptive Order at 15772; December 2013 Exemptive Order at 75670.

¹⁵⁸ March 2013 Exemptive Order at 15772.

¹⁵⁹ *Id.* at 15773.

¹⁶⁰ See Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

¹⁶¹ See CAT NMS Plan Approval Order.

- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG;

- Provided support for updating the SEC on the progress of the development of the CAT;

- Provided support for industry outreach sessions, including with regard to program design and agenda development, program support and logistics and coordination; and
- Provided support in fact finding, drafting content and meeting coordination for WilmerHale with regard to the CAT and the development of the CAT NMS Plan.

Such Pre-Formation Costs did not include costs related to the Chair of the CAT NMS Plan Operating Committee, as the CAT NMS Plan had not yet been adopted.

(ix) Public Relations Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include public relations costs of \$57,174. The public relations services were performed by Peppercomm. The selection considerations and fees for Peppercomm are described in detail above. The costs related to Peppercomm were shared among the SROs. Therefore, the public relations costs do not include public relations costs incurred by the individual Participants. The pre-formation public relations costs include services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT.

(B) Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs related to cloud hosting services as a part of Historical CAT Assessments. CAT LLC believes that the costs related to cloud hosting services described in detail above are reasonable and appropriate given the strict data processing timelines and storage requirements imposed by the Commission-approved CAT NMS Plan

and should be recoverable as a part of Historical CAT Assessment 1.

(i) Reasonableness of AWS Costs Given the Requirements of the CAT NMS Plan

CAT LLC believes that the costs for the cloud hosting services are reasonable, both in terms of the level of the fees paid by CAT LLC for cloud hosting services provided by AWS and the scope of the services performed by AWS for CAT LLC. CAT LLC believes that both the scope and amount of the costs for cloud hosting services are reasonable given the current requirements of the CAT NMS Plan adopted pursuant to Rule 613, including the strict data processing timeline, storage and other technical requirements under the Commission-approved CAT NMS Plan.

CAT LLC believes that the level of fees for the cloud hosting services is reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.

CAT LLC also believes that the scope of services provided by AWS for the CAT are appropriate given the current requirements of the Commission-approved CAT NMS Plan. As described above, the cloud hosting services costs reflect a variety of factors including, among other things:

- *Breadth of Cloud Activities.* AWS was engaged by FCAT, the Plan Processor, to provide a broad range of services to the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS necessary to the CAT include storage services, databases, compute services, and other services (such as networking, management tools and development operations (“DevOps”) tools). AWS also was engaged to provide the various environments for CAT, such as the development, performance testing, test and production environments, which are required by the CAT NMS Plan.

- *High Data Volume.* The cost for AWS services for the CAT is a function of the volume of CAT Data. While it is not linear, the greater the amount of CAT Data, the greater the cost of AWS services to the CAT. The data volume handled by AWS now far exceeds the original volume estimates for the CAT.

- *Plan Requirements.* The cost for AWS services also reflects the technical requirements necessary to meet the stringent performance and other requirements for processing CAT Data. These Plan-dictated processing timelines, storage, testing, security and

other technical requirements are significant drivers of AWS costs.

- *Cost Avoidance Efforts.* CAT LLC and FCAT have engaged in ongoing efforts to seek to avoid and minimize AWS costs where permissible under the Plan. Accordingly, these cost avoidance efforts have limited the extent of AWS costs.

In addition, various requirements of the CAT NMS Plan adopted pursuant to Rule 613 contribute to the significant cloud hosting services costs, and that various Plan requirements could be amended or removed without affecting the regulatory purpose of the CAT. Indeed, CAT LLC has repeatedly sought exemptive relief and filed amendments to the CAT NMS Plan, and has even filed suit against the Commission, to seek to revise or eliminate certain costly requirements related to the CAT. However, despite these efforts, absent the Commission granting exemptive relief or approving cost savings amendments to the CAT NMS Plan, CAT LLC, the Participants and Industry Members are all required to comply with such requirements.

(ii) *Effect of CAT Design on CAT Costs*

(a) *Efficient CAT Design*

CAT is reasonably designed to efficiently and effectively utilize cloud computing and storage services, given the requirements of the Commission-approved CAT NMS Plan, including requirements related to security, operational reliance and quality assurance, and maintainability.

The Plan Processor uses state-of-the-art software that meets the strict security standards of the CAT NMS Plan. CAT utilizes a big data processing framework that is extensively used by large data processing companies, such as Apple, Meta, Netflix, IBM and Google. As such, it has substantial commercial support and support in the open-source community. It is also well suited for use with regard to iterative types of algorithms and query functions and analytics that the CAT requires, and it provides the heightened security necessary for the CAT.

The development and implementation of the design of CAT is not and has not been static. CAT LLC and the Plan Processor are always evaluating new innovations and service offerings from AWS and other providers to seek to maximize efficiency and cost avoidance while still satisfying the requirements of the CAT NMS Plan. These efforts have led to substantial savings to date. The cloud hosting costs for 2023 were less than the cloud hosting costs for 2022 by \$8 million despite processing seven

trillion more events in 2023 due to the efficiency and cost avoidance efforts for cloud hosting services. For example, when AWS introduced new storage options, FCAT adopted the cost-efficient new storage option after establishing that the new offering would satisfy the security and other standards of the CAT NMS Plan. This change led to millions of dollars of savings in storage costs. Similarly, when AWS introduced a new compute processor, FCAT adopted this new compute processor, which led to millions of dollars in savings in compute costs. However, in other cases, new cloud technology developments could not be implemented in CAT because they would not satisfy the security or other requirements of the CAT NMS Plan.

When evaluating the design of the CAT, it must be kept in mind that the CAT is not a typical commercial technology project. The ability to make use of technology approaches that may lead to cost avoidance is also subject to the restrictive requirements of the CAT NMS Plan, such as processing timeframes, requirements for retention of data versions, query requirements, and security standards. Because such requirements are set forth in the CAT NMS Plan, any modification of such requirements are subject to the time-consuming process of amending the CAT NMS Plan or seeking an exemption from the relevant requirement. For example, CAT LLC recently has filed an amendment to address several of these expensive Plan requirements.¹⁶²

(b) CAT Was Designed to Minimize Industry Member Effort

The CAT System also was designed to minimize the extent to which Industry Members would need to alter their systems to report to CAT. During the design process, Industry Member groups argued that it would make more sense financially for the CAT to accommodate differences in industry systems, than for all Industry Members to change their systems. Moreover, such design choices would facilitate consistency, uniformity and accuracy in reporting. Requiring the CAT to make such accommodations may increase CAT costs while accommodating CAT Reporters.

Based on the requirements in the CAT NMS Plan and/or in response to industry requests for functionality to be embedded with the Plan Processor to

streamline or limit Industry Member system changes, the CAT has been designed to limit the effect on Industry Members. The following provides examples of such accommodations:

- *Industry Member Reporting.* In light of the complexity of Industry Member market activity, the CAT's order reporting and linkage scenarios document for Industry Members is over 800 pages in length, addressing nearly 200 scenarios.¹⁶³ The Industry Member Technical Specifications allow for dozens of specific event types, which drive complexity for the Plan Processor, but streamline reporting for Industry Members. Furthermore, the Plan Processor greatly expanded Industry Member linkage requirements to support, among other things, child events and supplemental events, allowing for "stateless as-you-go" and "batch end-of-day" reporting when all data is available. Accordingly, CAT takes on the significant cost and effort of providing the required linkages between CAT events; correspondingly, Industry Members are not required to perform this costly task.

- *File Submission Process.* The CAT was designed to accommodate the varying needs of CAT Reporters with regard to the file submission process. For example, in a 2018 letter, FIF stated that "[t]he SFTP-based submission process is cumbersome, exposes industry members to unnecessary complexity, and puts the burden of support on the CAT Reporter rather than imbedding more functionality into the Plan Processor."¹⁶⁴ Currently, FCAT provides two mechanisms for submitting files: SFTP via a private network, and the Web via Reporter Web Portal.

- *Error Corrections.* The industry also emphasized the need for the CAT to provide error correction tools and functionalities to identify, rectify and re-submit corrections within the required timeframe. For example, FIF stated in a 2018 letter the following:

To be clear, if OATS-like error correction tools are not made available on Day 1, hundreds of firms will be required to create and test their own tools or obtain vendor alternatives prior to the CAT Go-Live Date. Proprietary tools will require additional system builds, access to and ingestion of CAT data to perform system validation, and testing which will further stress the limited number of subject matter experts ("SMEs") dedicated to the implementation of CAT reporting. Should this occur, inevitably firms (especially small firms who lack the

necessary IT staff to write code and develop proprietary systems), may be put in the position of passing onto investors the cost required to build hundreds of redundant systems.¹⁶⁵

CAT provides various tools to help Industry Members identify and rectify errors.

- *Data Ingestion Format.* The industry also recommended that CAT adopt a flexible input format that provides an option for Industry Members to submit data in formats that are already in use to reduce costs and potential reporting errors. For example, FIF argued the following:

FIF CAT WG is not proposing a specific format; rather, we are proposing flexibility of input formats which includes support of existing formats (e.g., OATS, FIX) as well as a baseline specification where all fields are defined, and normalized. The input formats must be clearly and thoroughly defined in Technical Specifications, including FAQs.

Mandating a uniform format for reporting data to the CAT simplifies the task for the Central Repository of consolidating/storing data, but it puts the burden on each CAT Reporter to accurately translate their current (e.g., OATS) reporting information into a uniform CAT interface. However, that is likely to yield more errors because it is very dependent on accurate, complete and timely information (Technical Specifications, FAQs, meta-data, competent CAT help desk) available to CAT Reporters, availability of sophisticated CAT test tools to validate interface protocols, and the skill levels of the estimated 300+ unique CAT Reporters/Submitters during Phase 1 of CAT. Concentrating the responsibility of data conversions with the Central Repository is a reasonable trade-off that should yield fewer errors, and greater accuracy.¹⁶⁶

CAT provides such a flexible input format.

(c) Effect of Initial Plan Processor Design

The costs for cloud hosting services are appropriate and have not been adversely affected by the original design and approaches of the Initial Plan Processor. FCAT's design costs are the result of the requirements of the Commission-approved CAT NMS Plan.

When FCAT took over as the Plan Processor from Thesys, it utilized certain aspects of the technical specifications created by Thesys in its design. However, FCAT has not maintained aspects of the original design that would not be appropriate for the CAT. FCAT revised and enhanced the original technical specifications of the CAT System to increase its

¹⁶² See, e.g., Securities Exchange Act Rel. No. 99938 (Apr. 10, 2024), 89 FR 26983 (Apr. 16, 2024); Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (Mar. 27, 2024) (proposing amendments to the CAT NMS Plan for \$23 million in annual savings).

¹⁶³ See CAT Industry Member Reporting Scenarios v.4.10 (Oct. 21, 2022).

¹⁶⁴ Letter from Janet Early, FIF, to Thesys CAT (Mar. 29, 2018).

¹⁶⁵ Letter from Christopher Bok, FIF, to Jay Clayton, Chair, Commission, at 4 (Dec. 11, 2018).

¹⁶⁶ Letter from Mary Lou Von Kaenel, Managing Director, FIF, to Brent Fields, Secretary, Commission at 92 (July 18, 2016), <https://www.sec.gov/comments/4-698/4698-13.pdf>.

efficiency and efficacy, and to ensure its compliance with the CAT NMS Plan. For example, the Initial Plan Processor's approach utilized many more fields than FCAT's approach, which relies on additional linkages. With the additional linkages, the CAT System takes on more of the CAT-related burdens than the Industry Members. Such an approach serves to facilitate consistency, uniformity and accuracy in reporting.

Moreover, FCAT did not utilize the system built by the Initial Plan Processor; it rebuilt the CAT System based on revised technical specifications. For example, the Initial Plan Processor used an on-premises processing approach which was not geared toward the huge amounts of data stored in the CAT, while FCAT adopted a cloud-based solution in response to such data demands.

Furthermore, given the very short timeframe to develop the CAT System and the prior optimization of certain query tools (e.g., Diver) for regulatory use with significant amounts of data, FCAT determined to rely upon certain existing FINRA tools and adapt them for use with the CAT.

(iii) Consideration of AWS Alternatives

CAT LLC continues to support the selection of AWS as the cloud hosting services provider for CAT given the compliance, operational, and security requirements of the CAT. Independent analyses confirm these conclusions, noting that "AWS is an excellent choice for either strategic or tactical use and recommends considering AWS for almost all cloud IaaS or IaaS+PaaS scenarios."¹⁶⁷ AWS provides the following benefits to CAT, among others:

- **Broad Suitability.** AWS has a long track record of successfully serving cloud customers with mission-critical projects.
- **Proven Scalability.** AWS has demonstrated that it is capable of building and delivering services on a large scale.
- **Track Record of Innovation.** AWS continues to rapidly innovate, both in terms of new domains of capability and at a fundamental level, thereby facilitating innovation for its customers.
- **Resiliency/Dependability.** Another benefit of AWS is its resiliency; it has a strong track record of stable services. As noted in a review of cloud service providers, "[c]ustomers like to have a broad set of options for resilience and

for their cloud providers to have a strong track record of stable services (continuously available, without operational quirks). Only AWS fulfills both desires."¹⁶⁸

- **Technical and Customer Support.** AWS consistently provides high-quality technical and customer support and engagement. Given the size, scope and regulatory importance of CAT, customer support and engagement that CAT has with the highest levels of AWS are very important to the success of the CAT.

- **Scale.** AWS is capable of supporting large-scale solutions, which is critical given the size and magnitude of the CAT.

- **Security.** AWS provides the security features necessary for the CAT.

In addition, the nature of the CAT, including the amount of data it must process and the size of its data footprint, does not allow for a multi-cloud solution as this would be cost prohibitive and greatly increase the security boundary and associated risk profile of the CAT. For example, a multi-cloud hosting option would increase costs, complexity, and risk for operations with regard to, for example, DevOps, production support, and networking. Similarly, with regard to security, a multi-cloud solution would increase risk, including with regard to the need for data transfers between cloud providers and the expansion of the security boundary. With regard to labor, a multi-cloud solution would lose economies of scale due to the need to support unique cloud requirements. Accordingly, the use of single-cloud solution continues to provide advantages with regard to cost, complexity, and risk. Indeed, "[t]he best practice is to focus on a single primary strategic provider."¹⁶⁹

Furthermore, if another cloud service provider were determined to be a better match for the CAT at some future date, switching cloud service providers would be a very significant, expensive and time-consuming effort. Such an effort would likely be a 10-to-15-year commitment at a substantial expense. Such a move would require the replication or redesign of the underlying cloud environments (e.g., organizational setup, identify management, accounts, environments, DevOps tooling likes release management/config management/network management), as the new provider likely would not have the same infrastructure and software. Once that process has been completed, an exabyte of CAT data would need to

be securely migrated to the new platform.

(C) Funding Model Filings

CAT LLC believes that the recovery of costs related to the development of the funding model is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

Funding the CAT is a critical aspect of Rule 613 and the CAT NMS Plan. Article XI of the CAT NMS Plan describes in detail the requirements for funding the CAT, and the Participants are required to comply with and enforce compliance with the funding requirements of the CAT NMS Plan, just as with other aspects of the Plan. Accordingly, the development and implementation of a funding model for the CAT is as much a part of the requirements of the CAT NMS Plan as the development and operation of the CAT System. CAT LLC sees no reason to distinguish the efforts to develop a funding model from, for example, efforts to develop the CAT System, in seeking to recover reasonable CAT costs.

Moreover, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that "the reasonably budgeted CAT costs shall include . . . legal costs."¹⁷⁰ In addition, the CAT NMS Plan also requires Participants to include in their fee filings "a brief description of the amount and type of the Historical CAT Costs, including . . . legal . . . costs."¹⁷¹ In keeping with these provisions, this filing provides a brief description of reasonably budgeted legal costs above. These legal costs include costs related to the development of the CAT Funding Model.

In addition, the legal costs incurred for the assistance in developing the CAT Funding Model are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the specialized services were performed by experienced counsel at negotiated rates for such services that reflect both the extent of the services and market rates. Moreover, the scope of the legal costs associated with the development of the funding model reflect the complexity of the task in satisfying the detailed requirements of the CAT NMS Plan, the standards of the Exchange Act, and the many perspectives of the different

¹⁶⁷ See, e.g., Lydia Leong and Adrian Wong, Solution Comparison for Strategic Cloud Integrated IaaS and PaaS Providers (July 28, 2023) ("Strategic Cloud Assessment Article").

¹⁶⁸ Strategic Cloud Assessment Article.

¹⁶⁹ *Id.*

¹⁷⁰ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁷¹ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

market constituents potentially affected by or interested in the funding model, including Industry Members, Participants and investors. The many and varied comments by market participants on CAT funding over the years demonstrate the complexity of the task.

(D) Costs Related to Litigation With the SEC

CAT LLC believes that the recovery of legal costs related to the litigation with the SEC regarding the CAT NMS Plan is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.¹⁷² Moreover, CAT LLC initiated such litigation, and incurred the related legal costs, because it was critical to address the Commission's interpretations of the CAT NMS Plan. Among other things, such interpretations threatened to impose unnecessary costs on the CAT, which would be borne by the Participants and Industry Members. Indeed, in response to the litigation, the Commission provided exemptive relief that allowed alternative, more cost-effective approaches to the implementation of the CAT. Specifically, in the 2023 exemptive order, the Commission stated:

The conditional exemptive relief in this Order allows for the implementation of alternative regulatory solutions that continue to advance the regulatory goals that Rule 613 and the CAT NMS Plan were intended to promote, while reducing the implementation and operational costs, burdens, and/or difficulties that would otherwise be incurred by the Participants and Industry Members that must fund the CAT.¹⁷³

CAT LLC believes it is reasonable and appropriate to incur costs to limit the need to incur even greater costs due to certain interpretations of the Plan.

In addition, the legal costs incurred during the litigation are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the specialized services were performed by experienced counsel at market rates for such services. As such, the legal costs related to this litigation incurred during the period covered by Historical CAT Assessment 1 were reasonable.

Finally, Industry Members will directly benefit from the result of the

litigation because it has addressed CAT NMS Plan requirements that would have imposed significantly greater costs on the CAT. Accordingly, it is reasonable and appropriate that the costs of such litigation be included in the Historical CAT Costs 1.

(E) Costs Related to the Initial Plan Processor

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017, which was the date by which Participants were required to begin reporting to the CAT, due to the delay in the commencement of reporting to the CAT. As discussed above, the Participants determined to exclude all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Thesys costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Thesys costs incurred after November 15, 2018 are the \$19,628,791 in capitalized developed technology costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these \$19,628,791 in costs.

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. CAT LLC notes that the development and implementation of the CAT System, while unprecedented in scope and design, is like any other large and innovative technology project in that, inevitably, there were adjustments and refinements in the technical approach as the project developed, even with substantial planning efforts and oversight prior to the build. This is even more likely when the project faces a very tight implementation schedule, such as the one imposed by the Commission in Rule 613 and the CAT NMS Plan. However, an adjusted approach does not mean that the funds were not valid expenditures and should not be recovered.

The reasonableness of Thesys costs should be evaluated by the Commission as of the time they were incurred, not in hindsight. As detailed above, the Commission concluded in 2016 that "the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor," and that "the process set

forth in the Selection Plan should be permitted to continue."¹⁷⁴ Following this process, the Participants notified the Commission of the selection of Thesys as the Initial Plan Processor on January 17, 2017.¹⁷⁵ At the time, neither the Commission nor the industry argued that the selection of the Initial Plan Processor was unreasonable or otherwise inconsistent with the CAT NMS Plan, nor did they predict the selection would result in unanticipated delays in the implementation of the CAT System. On the contrary, on April 4, 2017, the President of SIFMA wrote that "SIFMA looks forward to commencing work with the SROs and Thesys."¹⁷⁶

As noted in the CAT Funding Model Approval Order, "[i]n Rule 613, the Commission made the determination that the costs of the CAT should be shared by the Participants and Industry Members."¹⁷⁷ If the CAT Funding Model had existed on Day 1, the risk of any unanticipated costs or challenges associated with the Initial Plan Processor would have been fairly and reasonably shared among the Participants and Industry Members on an ongoing basis. Given that the Commission concluded in 2012 that the costs of the CAT would be shared by the Participants and Industry Members, it is not fair or reasonable to determine in hindsight that all of the risk involved in developing the CAT should be allocated entirely to the Participants.

(F) CAIS Implementation Costs

CAT LLC believes that the recovery of CAIS-related costs is appropriate, and that the amount and scope of such costs, as described above, are reasonable, and that the reasonableness of historical costs should be evaluated by the Commission as of the time they were incurred, not in hindsight.

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable CAIS operating costs as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that "the reasonably budgeted CAT costs shall include . . . CAIS operating fees."¹⁷⁸ In addition, the CAT NMS Plan also

¹⁷⁴ CAT NMS Plan Approval Order at 84737.

¹⁷⁵ Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf>.

¹⁷⁶ Letter from Kenneth E. Bentsen, Jr., SIFMA, to Participants re: Selection of Thesys as CAT Processor (Apr. 4, 2017), <https://www.sifma.org/wp-content/uploads/2017/05/SIFMA-Submits-Comment-Letter-to-SRO-on-the-selection-of-Thesys-as-the-CAT-Processor.pdf>.

¹⁷⁷ CAT Funding Model Approval Order at 62650.

¹⁷⁸ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁷² See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁷³ Settlement Exemptive Order at 77129–30.

requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . CAIS operating fees.”¹⁷⁹ In keeping with these provisions, this filing provides a brief description of reasonably budgeted CAIS operating fees.

In addition, CAT LLC determined that the CAIS operating fees described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. The “CAIS Operating Costs” for Historical CAT Assessment 1 total \$9,480,587, with Pre-FAM costs of \$2,072,908, FAM 1 costs of \$254,998, FAM 2 costs of \$1,590,298, and FAM 3 costs of \$5,562,383. As described above, the CAIS operating fees were incurred with regard to two categories of CAIS-related efforts: (1) the acceleration of the reporting of LTIDs; and (2) the development of the CAIS Technical Specifications and the building of CAIS. These two categories of costs are discussed in more detail below.

(i) LTID Reporting

During the period covered by Historical CAT Assessment 1, the CAIS operating costs included costs related to the acceleration of the reporting of LTIDs earlier than originally contemplated during this period at the request of the SEC and in accordance with exemptive relief granted by the SEC.¹⁸⁰ As the SEC approved in this exemptive relief, the Participants proposed “to require the reporting of LTIDs to the CAT in Phases 2c and 2d, instead of with the rest of Customer Account Information in Phase 2e, which potentially could result in an earlier elimination of broker-dealer recordkeeping, reporting and monitoring requirements of the Large Trader Rule.”¹⁸¹ To implement the reporting of LTIDs to the CAT, the following steps were taken during the period covered by Historical CAT Assessment 1:

- After FCAT developed the LTID Technical Specifications, the LTID Technical Specifications were published on January 31, 2020, with additional updates provided to the LTID Technical Specifications through April 2021.¹⁸²

- The LTID account information testing environment opened on August 24, 2020.

- The LTID account information reporting production environment opened on December 14, 2020.

- CAT Reporters were required to request their production readiness certification for account information related to LTIDs by the deadline of April 9, 2021.

- The LTID account information reporting for Phases 2a, 2b and 2c for Large Industry Members went live on April 26, 2021.

- The LTID account information reporting for Phases 2d for Large Industry Members went live on December 13, 2021.

- The LTID account information reporting for Phases 2a, 2b, 2c and 2d for Small Industry Members went live on April 26, 2021.

Throughout this project, FCAT and CAT LLC worked closely with the industry on LTID and CAIS reporting. Between December 2019 and December 2021, at least 57 checkpoint calls, webinars, and technical working group meetings with industry representatives were hosted to address issues and to educate CAT Reporters regarding LTID and CAIS reporting.¹⁸³

The LTID reporting project was successfully completed in a timely fashion, and the fees related to the project were reasonable. Accordingly, CAT LLC appropriately seeks to recover such costs via Historical CAT Assessment 1.

(ii) CAIS Reporting

During the period covered by Historical CAT Assessment 1, FCAT began the development of the full CAIS Technical Specifications and the building of CAIS. The CAIS Technical Specifications were developed during this period as follows:

- Iterative drafts of the CAIS Technical Specifications were published on June 30, 2020, December 1, 2020, and January 1, 2021.¹⁸⁴

- The full, final CAIS Technical Specifications were published on January 29, 2021.

- Updated versions of the CAIS Technical Specifications were published throughout 2021.¹⁸⁵

As discussed above, FCAT and CAT LLC frequently engaged with the industry regarding the development of CAIS, hosting regular checkpoint calls, webinars, and technical working group meetings with industry representatives to address any issues, including addressing the interplay between Industry Members’ existing customer systems and CAIS, and to educate CAT Reporters regarding LTID and CAIS reporting. Such engagement was critical to the CAIS development process as the CAIS project was unprecedented in terms of its content, scope and complexity.

During this period, FCAT also commenced the building of the CAIS system in accordance with the CAIS Technical Specifications during the period covered by Historical CAT Assessment 1. The CAIS system was ready for industry testing shortly after the end of this period in January 2022.

The CAIS Technical Specifications and the CAIS system, as developed during this period, continue to be in use today. Industry Members have been required to report, and have continuously reported, required data to CAIS on a daily basis since November 7, 2022, consistent with interim reporting obligations. The CAIS system accepts and validates the CAIS data submitted by Industry Members and provides Industry Members with initial feedback on data errors. In light of the unprecedented nature of the CAIS system, certain changes to the system, such as changes related to error corrections and the CAIS regulatory portal, were necessary to finalize CAIS reporting. FCAT worked to address these remaining issues,¹⁸⁶ and, as of May 31, 2024, FCAT indicated that it had achieved the final CAIS reporting milestone. Accordingly, CAT LLC appropriately seeks to recover CAIS operating costs via Historical CAT Assessment 1.

(G) Public Relations Costs

CAT LLC believes that the recovery of public relations costs is appropriate and that the amount and scope of such costs, as described above, are reasonable.

The Commission has long recognized that external public relations costs are reasonably associated with creating, implementing and maintaining the CAT. In the CAT NMS Plan Approval Order, the Commission estimated that the Participants had collectively spent approximately \$2,400,000 in

¹⁷⁹ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁸⁰ See Phased Reporting Exemptive Relief Order at 23079–80.

¹⁸¹ *Id.* at 23078–79, n.70.

¹⁸² The LTID Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

¹⁸³ Such contact points with the industry are described in detail on the Events web page of the CAT website (<https://www.catnmsplan.com/events>).

¹⁸⁴ The CAIS Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

¹⁸⁵ Six updated versions of the CAIS Technical Specifications were published during 2021, in March, May, June, August, October and December.

¹⁸⁶ See, e.g., CAT Q4 2023 Quarterly Progress Report (Jan. 30, 2024) (<https://www.catnmsplan.com/sites/default/files/2024-01/CAT-Q4-2023-QPR.pdf>).

preparation of the CAT NMS Plan on external public relations, legal, and consulting costs, and estimated that the Participants would continue to incur external public relations costs associated with maintaining the CAT upon approval of the CAT NMS Plan.¹⁸⁷

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for public relations services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . public relations costs.”¹⁸⁸ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . public relations costs.”¹⁸⁹ In keeping with these provisions, a brief description of reasonable public relations costs are described above.

In addition, CAT LLC determined that the public relations costs described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. The services performed by the public relations firms through 2021 were limited in scope to assist CAT LLC, which has no employees of its own, to be better positioned to understand and address CAT matters to the benefit of all market participants and to communicate on important CAT topics with the public. In addition, the costs for these services were appropriately limited. During the 10-year period covered by Historical CAT Assessment 1, the average cost per year for these services was approximately \$36,000.

(H) Legal Costs Related to the Limitation of Liability Provision in CAT Reporter Agreements

CAT LLC believes that the recovery of legal costs related to the limitation of liability provision, including costs related to the proceedings before the SEC and costs related to the proposed amendment to the Consolidated Audit Trail Reporter Agreement and the Consolidated Audit Trail Reporting Agent Agreement (the “Reporting Agreements”) is appropriate and that the amount and scope of such costs as described above are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of

Historical CAT Assessments.¹⁹⁰ In addition, CAT LLC determined that the legal costs incurred for the assistance with regard to the limitation of liability provisions are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1.

Moreover, it is critical that CAT LLC, which has no employees of its own, have the ability to fund a legal defense in litigation and other legal proceedings against it. In response to CAT LLC requiring Industry Members to agree to the limitation of liability provision to submit data to the CAT, SIFMA filed an application for review of actions taken by CAT LLC and the Participants pursuant to Sections 19(d) and 19(f) of the Exchange Act. Contemporaneously with the filing of this proceeding, SIFMA moved for a stay of the requirement that Industry Members sign a Reporter Agreement, or in the alternative, asked the Commission to further delay the launch of CAT reporting on June 22, 2020. CAT LLC must have the resources to defend itself from litigious actions by others, like these.

Although a limitation of liability provision ultimately was not adopted as proposed, it was a reasonable provision to propose for the CAT Reporter Agreements, given that such provisions are in accordance with industry norms. Limitations of liability are ubiquitous within the securities industry and have long governed the economic relationships between self-regulatory organizations and the entities that they regulate. For example, U.S. securities exchanges have adopted rules to limit their liability for losses that Industry Members incur through their use of exchange facilities.¹⁹¹ Similarly, FINRA’s former order audit trail, OATS, which has functioned as an integrated audit trail of order, quote, and trade data for equity securities, required FINRA members to acknowledge an agreement that includes a limitation of liability provision.¹⁹² In addition, such a provision was intended to ensure the financial stability of the CAT. Accordingly, it was reasonable for CAT

¹⁹⁰ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁹¹ See, e.g., NASDAQ Equities Rule 4626.

¹⁹² FINRA Rule 1013(a)(1)(R) requires all applicants for FINRA Membership to acknowledge the FINRA Entitlement Program Agreement and Terms of Use, which applies to OATS. Industry Members click to indicate that they agree to its terms—including its limitation of liability provision—every time they access FINRA’s OATS system to report trade information (i.e., repeatedly over the course of a trading day for many Industry Members).

LLC to propose the use of such a provision.¹⁹³

Furthermore, as described above, the specialized services were performed by experienced counsel at market rates for such services. Accordingly, the legal costs for the efforts related to the limitation of liability provision were reasonable.

(I) Costs for the Chair of CAT Operating Committee

CAT LLC believes that the recovery of consulting costs related to the Chair of the CAT Operating Committee is appropriate and that the amount and scope of such costs are reasonable.

As a preliminary matter, the selection of the Chair of the Operating Committee complies with the requirements of Section 4.2 of the CAT NMS Plan. The initial Chair that served during the period covered by Historical CAT Assessment was designated by a Participant as the Participant’s alternate voting member. Accordingly, the Chair is a representative of the Participants, as required by the CAT NMS Plan.

In addition, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for consulting as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . consulting . . .” costs.¹⁹⁴ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . consulting”¹⁹⁵ costs. In keeping with these provisions, a brief description of reasonable consulting costs is included in this filing, and such reasonable consulting costs include the costs related to the Chair position.

The Participants determined that the position of the Chair was a critical role for the implementation of the CAT, and an independent Chair would appropriately consider and address the views of each of the Participants. The Participants also determined that it was important to have a Chair with a strong background regarding issues related to the regulatory obligations of self-regulatory organizations, including their obligations under national market system plans. The compensation paid to the Chair is appropriate for a person with such background and skills. The

¹⁹³ See Letter from Michael Simon, Chair, CAT Operating Committee, to Vanessa Countryman, Secretary, Commission (Dec. 18, 2020).

¹⁹⁴ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁹⁵ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁸⁷ CAT NMS Plan Approval Order at 84917–18.

¹⁸⁸ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁸⁹ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

average annual amount paid to the Chair from 2017 through the end of FAM 3 was \$292,733.30. Separate from the Chair, CAT LLC relies upon a Leadership Team of representatives of the SROs to oversee the day-to-day implementation of the CAT NMS Plan. CAT LLC does not compensate any member of the Leadership Team.

(11) Fee Implementation Assistance for Industry Members

(A) Reconciliation of CAT Invoices

(i) Reconciliation of CAT Invoices to Underlying Trades Provided by CAT

CAT LLC understands that there are three types of reconciliation processes related to the invoices:

- *Reconciliation of CAT Invoices to Underlying Trades:* Reconciling the CAT invoice amount to the underlying trades provided by CAT;
- *Matching Trades to Books and Records:* Providing the means to match the underlying trades provided by CAT with CAT invoices to other books and records independently maintained by individual CAT Reporters (e.g., exchange trade journals/acknowledgements) and data sources of self-regulatory organizations independent of CAT; and
- *Order Originator Identification:* Providing the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices, which would facilitate firms' ability to pass through CAT Fees to their customers.

As discussed further below, CAT LLC only considers the first type of process to be a "reconciliation" and the only type of process that is required under the CAT NMS Plan. CAT LLC provides the means to reconcile the CAT invoice amount to the underlying trades provided by CAT.

The CAT NMS Plan does not require CAT LLC to facilitate the second type of process: matching underlying trades for a CAT invoice with a firm's internal books and records. CAT LLC has access only to the underlying trades provided by CAT; it does not have access to a firm's internal books and records. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying trades with their own books and records.

The CAT NMS Plan also does not require CAT LLC to provide the ability to identify the order originator for the underlying trades for the CAT invoices. Accordingly, the billing guidance and

processes do not provide CAT Reporters with the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices. CAT LLC has been working closely with CAT Reporters to explain its billing approach and to address any outstanding billing questions. But, it should not be lost that CAT LLC provides information sufficient to allow CAT Reporters to reconcile CAT invoice amounts with the underlying trades provided by CAT LLC.

(ii) Match the Underlying Trades Provided by CAT With CAT Invoices to Firms' Internal Books and Records Independent of CAT

The CAT NMS Plan does not require CAT LLC to facilitate the matching of underlying trades for a CAT invoice with a firm's internal books and records, which may consist of trading data from various sources external to CAT. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying trades with their own books and records.

In this regard, it is important to recognize that CAT LLC has developed a billing approach that greatly improves upon existing billing practices for similar regulatory fees (e.g., fees related to Section 31). Accordingly, with the additional information voluntarily provided by CAT LLC, CAT Reporters generally will have sufficient information to match their underlying trades provided by CAT with their own internal books and records that are independent of CAT or to SRO data that is independent of CAT data. However, CAT LLC emphasizes that providing such additional information is not required by the CAT NMS Plan.

To facilitate the introduction of CAT fees, CAT LLC has worked with FCAT to develop an approach to CAT billing that is consistent with existing billing constructs used with regard to Section 31-related sales values fees, subject to certain enhancements. Under this billing approach, FCAT is providing additional linkage elements, not necessarily provided in the Section 31-sales value fee context, to facilitate CAT Reporters' ability to match the underlying trades provided by CAT with their internal books and records and to reduce the complexity of that process. Specifically, FCAT is providing various key elements of the trade itself, such as the tradeID and branch

sequence,¹⁹⁶ to CAT Reporters in the trade billing details provided with their CAT invoices ("Additional Trade Details"). As a result, CAT Reporters now have numerous alternative methods for matching a trade with their internal books and records where they previously did not have such matching methods in other fee contexts.

With the Additional Trade Details, CAT LLC and FCAT believe that the overwhelming majority of underlying trades provided by CAT bills can be matched with a CAT Reporter's internal books and records. CAT LLC recognizes that there may be certain cases in which such matching is more difficult given various firm-specific considerations, but believes that such instances are significantly more limited than with regard to the SRO fees charged in relation to Section 31.¹⁹⁷ By providing Additional Trade Details that are not available in other fee contexts, FCAT enhances the Industry Members' ability to match the underlying trades provided with CAT invoices with books and records and SRO data, both of which are independent of CAT data.

(iii) CAT LLC is Not Required To Facilitate CAT Reporters' Ability To Pass Through Fees to Their Customers

Similar to other regulatory fees, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Accordingly, Historical CAT Assessment 1 does not address the process by which any CAT Reporters may pass through the fee to their customers. Likewise, the CAT billing approach provided by the Plan Processor is designed to address the needs of CAT Reporters with regard to the reconciliation of CAT invoices with

¹⁹⁶ See CAT Technical Specifications for Billing Trade Details; Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>); CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

¹⁹⁷ For years, broker-dealers have faced similar reconciliation issues with regard to SRO fees related to Section 31. Broker-dealers have responded to this issue in the Section 31 context by exercising their discretion as to whether and the manner and extent to which they pass on those fees (e.g., by rounding up its fees to the nearest cent, or decide to charge for, or not charge for, certain transactions, or assess a specific fee or incorporate the costs into other fee programs). See, e.g., Securities Exchange Act Rel. No. 49928 (June 28, 2004), 69 FR 41060, 41072 (July 7, 2004) (noting that broker-dealers may "over-collect" Section 31-related fees charged to their clients due to rounding practices, and double-counting with regard to certain transactions).

the underlying trades provided by CAT LLC with the invoices; they are not designed to address issues related to any pass-through fees. Accordingly, facilitating CAT Reporters' ability to pass through fees to their clients is outside the scope of this fee filing. Nevertheless, as described below, CAT LLC and the Plan Processor have expended significant efforts to provide technical assistance to Industry Members regarding the implementation of Historical CAT Assessment 1, including providing Additional Trade Details that provide significant details about each underlying trade.

(a) Originating Brokers Versus Executing Brokers

In its approval of the CAT Funding Model, the Commission approved charging CAT fees to the CAT Executing Broker, rather than the originating broker. This fee filing must comply with the requirements of the CAT Funding Model, and, therefore, charges the Historical CAT Assessment 1 to CAT Executing Brokers.

Moreover, charging originating brokers would introduce significant complexity to the billing process from the CAT's perspective, and would increase the costs of implementing CAT fees. Charging the CAT Executing Broker is simple and straightforward, and leverages a one-to-one relationship between billable events (trades) and billable parties, similar to other transaction-based fees. In contrast, for a single trade event, there may be many originating brokers, and each trade must be broken down on a pro-rata basis, to account for one or more layers of aggregation, disaggregation, and representation of the underlying orders. While CAT is indeed designed to capture and unwind complex aggregation scenarios, the data and linkages are structured to facilitate regulatory use, and not a billing mechanism that assesses fees on a distinct set of executed trades; it is not simply a matter of using existing CAT linkages. Furthermore, charging originating brokers would implicate issues related to lifecycle linkage rates, and issues related to corrections, cancellations and allocations, while charging CAT Executing Brokers would avoid such issues.

(b) Identification of Order Originator for Underlying Trades

As noted, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT Fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate

firms' ability to do so. Nevertheless, the Additional Trade Details provided with regard to the underlying trades on CAT invoices may assist with this process. Like with Section 31-related sales value fees, however, it is not always possible to trace every fee on a transaction back to the originating party. Industry Members have faced these issues under Section 31-related sales values fees for many years.¹⁹⁸ However, with the Additional Trade Details provided under the CAT billing approach, in many cases, CAT Reporters will be able to identify the order originator for the underlying trades provided by CAT with CAT invoices. In some cases, CAT LLC believes that certain issues related to certain types of market activity may implicate CAT Reporters' ability to identify the order originator for a limited set of underlying trades for the CAT invoices. Although CAT LLC does not believe that it is required to address these issues, CAT LLC and FCAT have been carefully researching and analyzing these types of issues as they are identified, and have been working voluntarily to assist CAT Reporters with these issues as necessary and when possible. In addition, CAT LLC intends to continue to provide CAT Reporters with billing guidance through FAQs, CAT Alerts and Helpdesk responses to address outstanding billing questions.

(B) Significant Technical Assistance

CAT LLC has worked with FCAT to provide significant technical assistance to Industry Members to allow the Industry Members to understand how Historical CAT Assessment 1 will be implemented and billed, including webinars, CAT alerts, mock invoices, and responses to questions posed to the FCAT Help Desk.

- *Technical Specifications and Scenarios.* CAT LLC has provided detailed technical documentation for CAT billing, including (1) technical specifications, which describe the CAT Billing Trade Details Files associated with monthly CAT invoices, including detailed information about data elements and file formats as well as access instructions, network and

transport options;¹⁹⁹ (2) trade details schemas;²⁰⁰ and (3) CAT billing scenarios.²⁰¹

- *Industry Webinars.* CAT LLC has hosted two industry webinars specifically dedicated to CAT billing. The first webinar, hosted on September 28, 2023, discussed the operational implementation of the CAT Reporter billing process.²⁰² The second webinar, hosted on November 7, 2023, provided (1) a demonstration of the CAT Reporter Portal and how to access CAT billing documents, including CAT invoices; and (2) additional information on underlying trade details in relation to the CAT Reporter billing process and an overview of the CAT Contact Management System.²⁰³ 485 participants and 394 participants attended the two webinars, respectively.

- *CAT Alert.* CAT LLC has published a detailed CAT Alert that describes how FCAT, as the Plan Processor acting on behalf of CAT LLC, will calculate applicable fees, issue invoices to and collect payment from CAT Executing Brokers.²⁰⁴

- *Frequently Asked Questions (FAQs).* CAT LLC also has continued to engage with the industry on billing issues by making responses to billing FAQs available on the CAT website. The FAQs address a broad range of frequently asked questions, including, for example, which Industry Members will receive invoices, how fees are calculated, when and how fees are required to be paid, how to access invoices, and how to update the billing contact. To date, responses to 27 FAQs are available on the CAT website, and CAT LLC will provide additional responses to FAQs as warranted.²⁰⁵

- *Mock Invoices.* To assist Industry Members with compliance with the commencement of Historical CAT

¹⁹⁹ CAT Technical Specifications for Billing Trade Details, Version 1.0 r1 (Dec. 8, 2023) (https://catnmsplan.com/sites/default/files/2023-12/12.07.2023-CAT-Technical-Specifications-for-Billing-Trade-Details-v1.0r1_CLEAN.pdf).

²⁰⁰ Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>).

²⁰¹ CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

²⁰² CAT Billing Webinar, Part 1 (Sept. 28, 2023) (<https://www.catnmsplan.com/events/part-1-cat-billing-webinar>).

²⁰³ CAT Billing Webinar, Part 2 (Nov. 7, 2023) (<https://www.catnmsplan.com/events/part-2-cat-billing-webinar>).

²⁰⁴ See CAT Alert 2023-02 (Oct. 12, 2023) (<https://www.catnmsplan.com/sites/default/files/2023-10/10.12.23-CAT-Alert-2023-02.pdf>).

²⁰⁵ See CAT Billing FAQs, Section V of CAT FAQs (https://www.catnmsplan.com/faq?search_api_fulltext=&field_topics=271&sort_by=field_faq_number).

¹⁹⁸ "FINRA charges a Regulatory Transaction Fee ("RTF") to industry members to reimburse FINRA for the Section 31 fees that FINRA pays to the Commission. FINRA does not currently provide industry members with the data that industry members require for proper reconciliation of RTF fees. This has been a major problem for the industry for many years." Letter from Howard Meyerson, Managing Director, FIF, to Robert Cook, Chief Executive Officer, FINRA at 2 (Dec. 15, 2023) (<https://fif.com/index.php/working-groups/category/271-comment-letters?download=2820:fif-letter-to-finra-on-pass-through-of-finra-cat-fees&view=category>).

Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices for Historical CAT Assessment 1 since December 2023 for billable activity occurring in November 2023. The mock invoices are in the same form as the actual, payable invoices, including both the relevant transaction data and the corresponding fee (as originally contemplated). However, no payments are required in response to such mock invoices; they are to be used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data provides CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended to facilitate the payment of Historical CAT Assessment 1. For the November, December, and January billing periods, FCAT has generated trade detail files for 569 distinct firms that are CAT Executing Brokers. As such, CAT Reporters have actively engaged in the billing process via the mock invoices.

- *Help Desk Assistance.* CAT LLC also provides detailed, individualized assistance to Industry Members regarding CAT fees and the billing process through the FCAT Help Desk.²⁰⁶ For example, the Help Desk has assisted with 406 cases related to the billing of CAT fees from July 2023 through March 2024.

By providing such detailed and sustained assistance to Industry Members regarding CAT fees and billing, CAT LLC has successfully addressed questions raised by Industry Members regarding the CAT fees and billing processes.

(C) Ample Preparation Time

CAT LLC has provided Industry Members with ample time to comply with the implementation of Historical CAT Assessment 1. CAT LLC originally proposed issuing the first invoices for Historical CAT Assessment 1 in December 2023 based on transactions in Eligible Securities in November 2023. In consideration of the feedback about the need for additional time to implement the new fee, CAT LLC pushed back this timeline by four months, proposing to issue the first Historical CAT Assessment 1 in April 2024 based on

transactions in March 2024.²⁰⁷ This filing pushes this timeline back even further for implementing Historical CAT Assessment 1, proposing to issue the first invoices for Historical CAT Assessment 1 in November 2024 based on transactions in Eligible Securities in October 2024. Moreover, as discussed above, during these additional months, FCAT has been working closely with Industry Members to provide guidance regarding their mock bills and reconciliation efforts related thereto.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of the Exchange Act. The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,²⁰⁸ which requires, among other things, that the Exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and not designed to permit unfair discrimination between customers, issuers, brokers and dealers. The Exchange also believes that the proposed rule change is consistent with the provisions of Section 6(b)(4) of the Act,²⁰⁹ because it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange further believes that the proposed rule change is consistent with Section 15A(b)(9) of the Act,²¹⁰ which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. These provisions also require that the Exchange be "so organized and [have] the capacity to be able to carry out the purposes" of the Act and "to comply, and . . . to enforce compliance by its members and persons associated with its members," with the provisions of the Exchange Act.²¹¹ Accordingly, a reasonable reading of the Act indicates that it intended that regulatory funding be sufficient to permit an exchange to fulfill its statutory responsibility under the Act, and contemplated that such funding would be achieved through equitable

assessments on the members, issuers, and other users of an exchange's facilities.

The Exchange believes that this proposal is consistent with the Act because it implements provisions of the Plan and is designed to assist the Exchange in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan "is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act."²¹² To the extent that this proposal implements the Plan and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

The Exchange believes that the proposed fees paid by the CEBBs and CEBs are reasonable, equitably allocated and not unfairly discriminatory. First, the Historical CAT Assessment 1 fees to be collected are directly associated with the costs of establishing and maintaining the CAT, where such costs include Plan Processor costs and costs related to technology, legal, consulting, insurance, professional and administration, and public relations costs. The Exchange has already incurred such development and implementation costs and the proposed Historical CAT Assessment 1 fees, therefore, would allow the Exchange to collect certain of such costs in a fair and reasonable manner from Industry Members, as contemplated by the CAT NMS Plan.

The proposed Historical CAT Assessment 1 fees would be charged to Industry Members in support of the maintenance of a consolidated audit trail for regulatory purposes. The proposed fees, therefore, are consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business operations. The proposed fees would not cover Exchange services unrelated to the CAT. In addition, any surplus would be used as a reserve to offset future fees. Given the direct relationship between CAT fees and CAT costs, the Exchange believes that the proposed fees are reasonable, equitable and not unfairly discriminatory.

As further discussed below, the SEC approved the CAT Funding Model,

²⁰⁶ The CAT NMS Plan requires that the Plan Processor "staff a CAT help desk, as described in Appendix D, CAT Help Desk, to provide technical expertise." Section 6.10(c)(vi) of the CAT NMS Plan. See also Section 10.3 of Appendix D of the CAT NMS Plan for a description of the Plan requirements for the CAT Help Desk.

²⁰⁷ Securities Exchange Act Rel. No. 34–99366 (January 17, 2024), 89 FR 10239 (February 13, 2024) ("SR–ISE–2024–02").

²⁰⁸ 15 U.S.C. 78f(b)(6).

²⁰⁹ 15 U.S.C. 78f(b)(4).

²¹⁰ 15 U.S.C. 78o–3(b)(9).

²¹¹ See Section 6(b)(1) of the Exchange Act.

²¹² CAT NMS Plan Approval Order at 84697.

finding it was reasonable and that it equitably allocates fees among Participants and Industry Members. The Exchange believes that the proposed fees adopted pursuant to the CAT Funding Model approved by the SEC are reasonable, equitably allocated and not unfairly discriminatory.

(1) Implementation of CAT Funding Model in CAT NMS Plan

Section 11.1(b) of the CAT NMS Plan states that “[t]he Participants shall file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves.” Per Section 11.1(b) of the CAT NMS Plan, the Exchange has filed this fee filing to implement the Industry Member CAT fees included in the CAT Funding Model. The Exchange believes that this proposal is consistent with the Exchange Act because it is consistent with, and implements, the CAT Funding Model in the CAT NMS Plan, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the CAT NMS Plan. In approving the CAT NMS Plan, the SEC noted that the Plan “is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.”²¹³ Similarly, in approving the CAT Funding Model, the SEC concluded that the CAT Funding Model met this standard.²¹⁴ As this proposal implements the Plan and the CAT Funding Model described therein, and applies specific requirements to Industry Members in compliance with the Plan, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Exchange Act.

(2) Calculation of Fee Rate for Historical CAT Assessment 1 is Reasonable

The SEC has determined that the CAT Funding Model is reasonable and satisfies the requirements of the Exchange Act. Specifically, the SEC has concluded that the method for determining Historical CAT Assessments as set forth in Section 11.3 of the CAT NMS Plan, including the formula for calculating the Historical Fee Rate, the identification of the parties responsible for payment and the transactions subject to the fee rate for the Historical CAT Assessment, is

reasonable and satisfies the Exchange Act.²¹⁵ In each respect, as discussed above, Historical CAT Assessment 1 is calculated, and would be applied, in accordance with the requirements applicable to Historical CAT Assessments as set forth in the CAT NMS Plan. Furthermore, as discussed below, the Exchange believes that each of the figures for the variables in the SEC-approved formula for calculating the fee rate for Historical CAT Assessment 1 is reasonable and consistent with the Exchange Act. Calculation of the Historical Fee Rate for Historical CAT Assessment 1 requires the figures for the Historical CAT Costs 1, the executed equivalent share volume for the prior twelve months, the determination of Historical Recovery Period 1, and the projection of the executed equivalent share volume for Historical Recovery Period 1. Each of these variables is reasonable and satisfies the Exchange Act, as discussed throughout this filing.

(A) Historical CAT Costs 1

The formula for calculating a Historical Fee Rate requires the amount of Historical CAT Costs to be recovered. Specifically, Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan requires a fee filing to provide:

a brief description of the amount and type of the Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs.

In accordance with this requirement, the Exchange has set forth the amount and type of Historical CAT Costs 1 for each of these categories of costs above.

Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan also requires that the fee filing provide “sufficient detail to demonstrate that the Historical CAT Costs are reasonable and appropriate.” As discussed below, the Exchange believes that the amounts set forth in this filing for each of these cost categories is “reasonable and appropriate.” Each of the costs included in Historical CAT Costs 1 are reasonable and appropriate because the costs are consistent with standard industry practice, based on the need to comply with the requirements of the CAT NMS Plan, incurred subject to negotiations performed on an arm’s length basis, and/or are consistent with the needs of any legal entity, particularly one with no employees.

(i) Technology: Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover costs related to cloud hosting services as a part of Historical CAT Assessments.²¹⁶ CAT LLC determined that the costs related to cloud hosting services described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. As described above, the cloud hosting services costs reflect, among other things, the breadth of the CAT cloud activities, data volume far in excess of the original volume estimates, the need for specialized cloud services given the volume and unique nature of the CAT, the processing time requirements of the Plan, and regular efforts to seek to minimize costs where permissible under the Plan. CAT LLC determined that use of cloud hosting services is necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT, and that the fees for cloud hosting services negotiated by FCAT were reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.²¹⁷ Indeed, the actual costs of the CAT are far in excess of the original estimated costs of the CAT due to various factors, including the higher volumes and greater complexity of the CAT than anticipated when Rule 613 was originally adopted.

To comply with the requirements of the Plan, the breadth of the cloud activities related to the CAT is substantial. The cloud services not only include the production environment for the CAT, but they also include two industry testing environments, support environments for quality assurance and stress testing and disaster recovery capabilities. Moreover, the cloud storage costs are driven by the requirements of the Plan, which requires the storage of multiple versions of the data, from the original submitted version of the data through various processing steps, to the final version of the data.

Data volume is a significant driver of costs for cloud hosting services. When the Commission adopted the CAT NMS Plan in 2016, it estimated that the CAT would need to receive 58 billion records per day²¹⁸ and that annual operating

²¹⁶ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²¹⁷ For a discussion of the amount and type of cloud hosting services fees, see Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

²¹⁸ Appendix D-4 of the CAT NMS Plan at n.262.

²¹³ CAT NMS Plan Approval Order at 84696.

²¹⁴ CAT Funding Model Approval Order at 62686.

²¹⁵ *Id.* at 62662–63.

costs for the CAT would range from \$36.5 million to \$55 million.²¹⁹ Through 2021, the actual data volumes have been five times that original estimate. The data volumes for each period are set forth in detail above.²²⁰

In addition to the effect of the data volume on the cloud hosting costs, the processing timelines set forth in the Plan contribute to the cloud hosting costs. Although CAT LLC has proactively sought to manage cloud hosting costs while complying with the Plan, including through requests to the Commission for exemptive relief and an amendment to the CAT NMS Plan, stringent CAT NMS Plan requirements do not allow for any material flexibility in cloud architecture design choices, processing timelines (e.g., the use of non-peak processing windows), or lower-cost storage tiers. As a result, the required CAT processing timelines contribute to the cloud hosting costs of the CAT.

The costs for cloud hosting services also reflect the need for specialized cloud hosting services given the data volume and unique processing needs of the CAT. The data volume as well as the data processing needs of the CAT necessitate the use of cloud hosting services. The equipment, power and services required for an on-premises data model, the alternative to cloud hosting services, would be cost prohibitive. Moreover, as CAT was being developed, there were limited cloud hosting providers that could satisfy all the necessary CAT requirements, including the operational and security criteria. Over time more providers offering cloud hosting services that would satisfy these criteria have entered the market. CAT LLC will continue to evaluate alternative cloud hosting services, recognizing that the time and cost to move to an alternative cloud provider would be substantial.

The reasonableness of the cloud hosting services costs is further supported by key cost discipline mechanisms for the CAT—a cost-based funding structure, cost transparency, cost management efforts (including regular efforts to lower compute and storage costs where permitted by the Plan) and oversight. Together, these mechanisms help ensure the ongoing reasonableness of the CAT's costs and the level of fees assessed to support those costs.²²¹

(ii) Technology: Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to operating fees as a part of Historical CAT Assessments.²²² CAT LLC determined that the costs related to operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The operating fees include the negotiated fees paid by CAT LLC to the Plan Processor to operate and maintain the system for order-related information and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (e.g., management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the selection of FCAT as the Plan Processor was reasonable and appropriate given its expertise with securities regulatory reporting, after a process of considering other potential candidates.²²³ CAT LLC also determined that the fixed price contract, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, was reasonable and appropriate, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity.²²⁴ The services performed by FCAT for each period and the costs related to such services are described above.²²⁵

(iii) Technology: CAIS Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to CAIS operating fees as a part of Historical CAT Assessments.²²⁶ CAT LLC determined that the costs related to CAIS operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The CAIS operating fees include the fees paid to the Plan Processor to operate and maintain CAIS and to perform the business operations related to the system, including compliance, security, testing, training, communications with the industry (e.g., management of the FINRA CAT Helpdesk, FAQs, website and webinars)

and program management. CAT LLC determined that the FCAT-negotiated fees for Kingland's CAIS-related services, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity, were reasonable and appropriate.²²⁷ The services performed by Kingland for each period and the costs for each period are described above.²²⁸

(iv) Technology: Change Request Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to change request fees as a part of Historical CAT Assessments.²²⁹ CAT LLC determined that the costs related to change request fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. It is common practice to utilize a change request process to address evolving needs in technology projects. This is particularly true for a project like CAT that is the first of its kind, both in substance and in scale. The substance and costs of each of the change requests are evaluated by the Operating Committee, and approved in accordance with the requirements for Operating Committee meetings. In each case, CAT LLC determined that the change requests were necessary to implement the CAT. As described above, the change requests cover various technology changes, including, for example, changes related to CAT reporting, data feeds and exchange functionality. CAT LLC also determined that the costs for each change request were appropriate for the relevant technology change. A description of the change requests for each FAM Period and their total costs are set described above.²³⁰ As noted above, the total costs for change requests through FAM Period 3 represent a small percentage of Historical CAT Costs 1—that is, 0.25% of Historical CAT Costs 1.

(v) Capitalized Developed Technology Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to capitalized developed technology costs as a part of

²¹⁹ CAT NMS Plan Approval Order at 84801.

²²⁰ See Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

²²¹ See Securities Exchange Act Rel. No. 97151 (Mar. 15, 2023), 88 FR 17086, 17117 (Mar. 21, 2023) (describing key cost discipline mechanisms for the CAT).

²²² Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²³ See Section 3(a)(2)(B)(i)(b) above.

²²⁴ See Sections 3(a)(2)(B)(i)(b), 3(a)(2)(B)(ii)(b), 3(a)(2)(B)(iii)(b) and 3(a)(2)(B)(iv)(b) above.

²²⁵ *Id.*

²²⁶ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²⁷ See Sections 3(a)(2)(B)(i)(c), 3(a)(2)(B)(ii)(c), 3(a)(2)(B)(iii)(c) and 3(a)(2)(B)(iv)(c) above.

²²⁸ *Id.*

²²⁹ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²³⁰ See Sections 3(a)(2)(B)(i)(d), 3(a)(2)(B)(ii)(d), 3(a)(2)(B)(iii)(d) and 3(a)(2)(B)(iv)(d) above.

Historical CAT Assessments.²³¹ Capitalized developed technology costs include costs related to certain development costs, costs related to certain modifications, upgrades and other changes to the CAT, CAIS implementation fees and license fees. The amount and type of costs for each period are described in more detail above.²³² CAT LLC determined that these costs are reasonable and should be included as a part of Historical CAT Costs 1.

These costs involve the activity of both the Initial Plan Processor and FCAT, as the successor Plan Processor.²³³ With regard to the Initial Plan Processor, the Participants utilized an RFP to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan. CAT LLC entered into an agreement with the Initial Plan Processor in which CAT LLC would pay the Initial Plan Processor a negotiated, fixed price fee.²³⁴ In addition, as described above, CAT LLC determined that it was appropriate to enter into an agreement with FCAT as the successor Plan Processor.²³⁵

(vi) Legal

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to legal fees as a part of Historical CAT Assessments.²³⁶ CAT LLC determined that the legal costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Given the unique nature of the CAT, the number of parties involved with the CAT (including, for example, the SEC, Participants, Industry Members, and vendors) and the many regulatory issues associated with the CAT, the scope of the necessary legal services are substantial. CAT LLC determined that the scope of the legal services is necessary to implement and maintain the CAT and that the legal rates reflect the specialized services necessary for such a project. When hiring each law

firm for a CAT project, CAT LLC interviewed multiple firms, and determined to hire each firm based on a variety of factors, including the relevant expertise and fees. In each case, CAT LLC determined that the hourly fee rates were in line with market rates for the specialized legal expertise. In addition, CAT LLC determined that the total costs incurred for each CAT project were appropriate given the breadth of services provided. The services performed by each law firm for each period and the costs related to such services are described above.²³⁷

(vii) Consulting

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover consulting costs as a part of Historical CAT Assessments.²³⁸ CAT LLC determined that the consulting costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Because there are no CAT employees²³⁹ and because of the significant number of issues associated with the CAT, the consultants provided assistance in the management of various CAT matters and the processes related to such matters.²⁴⁰ CAT LLC considered a variety of factors in choosing a consulting firm and determined to select Deloitte after an interview process.²⁴¹ CAT LLC also determined that the consulting services were provided at reasonable market rates, as the fees were negotiated annually and comparable to the rates charged by other consulting firms for similar work.²⁴² Moreover, the total costs for such consulting services were appropriate in light of the breadth of services provided by Deloitte. The services performed by Deloitte and the costs related to such services are described above.²⁴³

(viii) Insurance

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover insurance costs as a part of Historical CAT Assessments.²⁴⁴ CAT

LLC determined that the insurance costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that it is common practice to have directors' and officers' liability insurance, and errors and omissions liability insurance. CAT LLC further determined that it was important to have cyber security insurance given the nature of the CAT, and such a decision is consistent with the CAT NMS Plan, which states that the cyber incident response plan may include "[i]nsurance against security breaches."²⁴⁵ In selecting the insurance providers for these policies, CAT LLC engaged in an evaluation of alternative insurers, including a comparison of the pricing offered by the alternative insurers.²⁴⁶ Based on this analysis, CAT LLC determined that the selected insurance policies provided appropriate coverage at reasonable market rates.²⁴⁷

(ix) Professional and Administration

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover professional and administration costs as a part of Historical CAT Assessments.²⁴⁸ CAT LLC determined that the professional and administration costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Because there are no CAT employees, all required accounting, financial, tax, cash management and treasury functions for CAT LLC have been outsourced at market rates. In addition, the required annual financial statement audit of CAT LLC is included in professional and administration costs, which costs are also at market rates.

CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees.²⁴⁹ The hourly fee rates for this firm were in line with market rates for the financial advisory services provided.²⁵⁰ Moreover, the total costs for such financial advisory services was

²³¹ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²³² See Sections 3(a)(2)(B)(i)(e), 3(a)(2)(B)(ii)(e), 3(a)(2)(B)(iii)(e) and 3(a)(2)(B)(iv)(e) above.

²³³ *Id.*

²³⁴ See Section 3(a)(2)(B)(i)(e) above.

²³⁵ See Section 3(a)(2)(B)(i)(b) above.

²³⁶ Section 11.3(b)(iii)(B)(II)(B)(2) of the CAT NMS Plan.

²³⁷ See Sections 3(a)(2)(B)(i)(f), 3(a)(2)(B)(ii)(f), 3(a)(2)(B)(iii)(f) and 3(a)(2)(B)(iv)(f) above.

²³⁸ Section 11.3(b)(iii)(B)(II)(B)(3) of the CAT NMS Plan.

²³⁹ As stated in the filing of the proposed CAT NMS Plan, "[i]t is the intent of the Participants that the Company have no employees." Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614, 30621 (May 17, 2016).

²⁴⁰ CAT LLC uses certain third parties to perform tasks that may be performed by administrators for other NMS Plans. See, e.g., CTA Plan and CQ Plan.

²⁴¹ See Section 3(a)(2)(B)(i)(g) above.

²⁴² See Sections 3(a)(2)(B)(i)(g), 3(a)(2)(B)(ii)(g), 3(a)(2)(B)(iii)(g) and 3(a)(2)(B)(iv)(g) above.

²⁴³ *Id.*

²⁴⁴ Section 11.3(b)(iii)(B)(II)(B)(4) of the CAT NMS Plan.

²⁴⁵ Section 4.1.5 of Appendix D of the CAT NMS Plan.

²⁴⁶ See Sections 3(a)(2)(B)(i)(h), 3(a)(2)(B)(ii)(h), 3(a)(2)(B)(iii)(h) and 3(a)(2)(B)(iv)(h) above.

²⁴⁷ *Id.*

²⁴⁸ Section 11.3(b)(iii)(B)(II)(B)(5) of the CAT NMS Plan.

²⁴⁹ See Section 3(a)(2)(B)(i)(i) above.

²⁵⁰ See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

appropriate in light of the breadth of services provided by Anchin. The services performed by Anchin and the costs related to such services are described above.²⁵¹

CAT LLC also determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the role given the balance of these considerations.²⁵² Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services.²⁵³ Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Grant Thornton. The services performed by Grant Thornton and the costs related to such services are described above.²⁵⁴

The professional and administrative costs also include costs related to the receipt of certain market data from Exegy. After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy. Exegy provided the data elements required by the CAT NMS Plan, and the fees were reasonable and in line with market rates for the market data received.²⁵⁵

The professional and administrative costs also include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation and operation of the controls specified by NIST Special Publication 800-53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in

its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment.²⁵⁶

(x) Public Relations Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover public relations costs as a part of Historical CAT Assessments.²⁵⁷ CAT LLC determined that the public relations costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that the types of public relations services utilized were beneficial to the CAT and market participants more generally. Public relations services were important for various reasons, including monitoring comments made by market participants about CAT and understanding issues related to the CAT discussed on the public record.²⁵⁸ By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT issues to the benefit of all market participants.²⁵⁹ Moreover, CAT LLC determined that the rates charged for such services were in line with market rates.²⁶⁰ As noted above, the total public relations costs through FAM Period 3 represent a small percentage of Historical CAT Costs 1—that is, 0.1% of Historical CAT Costs 1.

(B) Total Executed Equivalent Share Volume for the Prior 12 Months

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. CAT LLC determined the total executed equivalent share volume for the prior twelve months by counting executed equivalent shares in the same manner as it will count executed equivalent shares for CAT billing purposes.

(C) Historical Recovery Period 1

CAT LLC has determined to establish a Historical Recovery Period of 24 months for Historical CAT Assessment 1 and that such length is reasonable. CAT LLC determined that the length of Historical Recovery Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the

need to repay the loans notes to the Participants in a timely fashion. CAT LLC determined that 24 months for Historical Recovery Period 1 would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to Section 31.²⁶¹ In addition, in establishing a Historical Recovery Period of 24 months, CAT LLC recognized that the total costs for Historical CAT Assessment 1 was less than the total costs for 2022 and 2023, and therefore it would be appropriate to recover those costs in two years.

(D) Projected Executed Equivalent Share Volume for Historical Recovery Period 1

CAT LLC has determined to calculate the projected total executed equivalent share volume for the 24 months of Historical Recovery Period 1 by doubling the executed equivalent share volume for the prior 12 months. CAT LLC determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has remained relatively constant in recent years. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395, the executed equivalent share volume for 2022 was 4,039,821,841,560.31, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6. Accordingly, the projected total executed equivalent share volume for Historical Recovery Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.²⁶²

(E) Actual Fee Rate for Historical CAT Assessment 1

(i) Decimal Places

As noted in the Plan amendment for the CAT Funding Model, as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee rate.²⁶³ Accordingly, proposed paragraph (a)(1)(B) of the fee schedule would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 by one-third, and rounding the result to 6 decimal places. CAT LLC

²⁵¹ *Id.*

²⁵² See Section 3(a)(2)(B)(i)(i) above.

²⁵³ See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

²⁵⁴ *Id.*

²⁵⁵ See Section 3(a)(2)(B)(i)(i) above.

²⁵⁶ *Id.*

²⁵⁷ Section 11.3(b)(iii)(B)(III)(B)(6) of the CAT NMS Plan.

²⁵⁸ See Section 3(a)(2)(B)(i)(j) above.

²⁵⁹ See Sections 3(a)(2)(B)(i)(j), 3(a)(2)(B)(ii)(j), 3(a)(2)(B)(iii)(j) and 3(a)(2)(B)(iv)(j) above.

²⁶⁰ *Id.*

²⁶¹ As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model Approval Order at 62682.

²⁶² This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

²⁶³ CAT Funding Model Approval Order at 62658, n.658.

determined that the use of six decimal places is reasonable as it balances the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

(ii) Reasonable Fee Level

The Exchange believes that imposing Historical CAT Assessment 1 with a fee rate of \$0.000013 per executed equivalent share is reasonable because it provides for a revenue stream for the Company that is aligned with Historical CAT Costs 1 and such costs would be spread out over an appropriate recovery period, as discussed above. Moreover, the Exchange believes that the level of the fee rate is reasonable, as it is comparable to other transaction-based fees. Indeed, Historical CAT Assessment 1 is significantly lower than fees assessed pursuant to Section 31 (*e.g.*, \$0.0009 per share to 0.0004 per share),²⁶⁴ and, as a result, the magnitude of Historical CAT Assessment 1 is small, and therefore will mitigate any potential adverse economic effects or inefficiencies.²⁶⁵ Furthermore, the reasonable fee rate for Historical CAT Assessment 1 further supports CAT LLC's decision to seek to recover all Historical CAT Costs prior to 2022, rather than establishing separate Historical CAT Assessments for pre-FAM, FAM 1, FAM 2 and FAM 3 costs.

(3) Historical CAT Assessment 1 Provides for an Equitable Allocation of Fees

Historical CAT Assessment 1 provides for an equitable allocation of fees, as it equitably allocates CAT costs between and among the Participants and Industry Members. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act, including the formula for calculating Historical CAT Assessments as well as the Industry Members to be charged the Historical CAT Assessments.²⁶⁶ In approving the CAT Funding Model, the SEC stated that "[t]he Participants have sufficiently demonstrated that the proposed allocation of fees is reasonable."²⁶⁷ Accordingly, the CAT Funding Model sets forth the requirements for allocating fees related to Historical CAT Costs among Participants and Industry Members, and the fee filings for

Historical CAT Assessments must comply with those requirements.

Historical CAT Assessment 1 provides for an equitable allocation of fees as it complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. For example, as described above, the calculation of Historical CAT Assessment 1 complies with the formula set forth in Section 11.3(b) of the CAT NMS Plan. In addition, Historical CAT Assessment 1 would be charged to CEBBs and CEBBs in accordance with Section 11.3(b) of the CAT NMS Plan. Furthermore, the Participants would continue to remain responsible for their designated share of Past CAT Costs through the cancellation of loans made by the Participants to CAT LLC.

In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1—Historical CAT Costs 1 (including Excluded Costs), the count for the executed equivalent share volume for the prior 12 months, the length of the Historical Recovery Period, and the projected executed equivalent share volume for the Historical Recovery Period—are reasonable. Moreover, these inputs lead to a reasonable fee rate for Historical CAT Assessment 1 that is lower than other fee rates for transaction-based fees. A reasonable fee rate allocated in accordance with the requirements of the CAT Funding Model provides for an equitable allocation of fees.

(4) Historical CAT Assessment 1 Is Not Unfairly Discriminatory

Historical CAT Assessment 1 is not an unfairly discriminatory fee. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act. In reaching this conclusion, the SEC analyzed the potential effect of Historical CAT Assessments calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Historical CAT Assessment 1 complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. In addition, as discussed above, each of the inputs into the calculation of Historical CAT

Assessment 1 and the resulting fee rate for Historical CAT Assessment 1 is reasonable. Therefore, Historical CAT Assessment 1 does not impose an unfairly discriminatory fee on Industry Members.

Finally, the Exchange believes the proposed fees established pursuant to the CAT Funding Model promote just and equitable principles of trade, and, in general, protect investors and the public interest, and are provided in a transparent manner and specificity in the fee schedule. The Exchange also believes that the proposed fees are reasonable because they would provide ease of calculation, ease of billing and other administrative functions, and predictability of a fee based on fixed rate per executed equivalent share. Such factors are crucial to estimating a reliable revenue stream for CAT LLC and for permitting Exchange members to reasonably predict their payment obligations for budgeting purposes.

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

Section 6(b)(8) of the Act²⁶⁸ requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that Historical CAT Assessment 1 implements provisions of the CAT NMS Plan that were approved by the Commission and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan.

In addition, all Participants (including exchanges and FINRA) are proposing to introduce Historical CAT Assessment 1 on behalf of CAT LLC to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive fee filing, and, therefore, it does not raise competition issues between and among the Participants.

Furthermore, in approving the CAT Funding Model, the SEC analyzed the potential competitive impact of the CAT Funding Model, including competitive issues related to market services, trading services and regulatory services, efficiency concerns, and capital formation.²⁶⁹ The SEC also analyzed the potential effect of CAT fees calculated pursuant to the CAT Funding Model on affected categories of market

²⁶⁴ CAT Funding Model Approval Order at 62663, 62682.

²⁶⁵ *Id.*

²⁶⁶ See Section 11.3(b) of the CAT NMS Plan.

²⁶⁷ CAT Funding Model Approval Order at 62629.

²⁶⁸ 15 U.S.C. 78f(b)(8).

²⁶⁹ CAT Funding Model Approval Order at 62676–86.

participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Based on this analysis, the SEC approved the CAT Funding Model as compliant with the Exchange Act. Historical CAT Assessment 1 is calculated and implemented in accordance with the CAT Funding Model as approved by the SEC.

As discussed above, each of the inputs into the calculation of Historical CAT Assessment 1 is reasonable and the resulting fee rate for Historical CAT Assessment 1 calculated in accordance with the CAT Funding Model is reasonable. Therefore, Historical CAT Assessment 1 would not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act²⁷⁰ and Rule 19b-4(f)(2) thereunder.²⁷¹

²⁷⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁷¹ 17 CFR 240.19b-4(f)(2).

because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-ISE-2024-42 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-ISE-2024-42. This file number should be included on the subject line if email 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 (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-ISE-2024-42 and should be submitted on or before October 3, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷²

Sherry R. Haywood,

Assistant Secretary.

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²⁷² 17 CFR 200.30-3(a)(12).



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Securities and Exchange Commission

Self-Regulatory Organizations; MIAX PEARL LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Pearl Options Fee Schedule To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100952; File No. SR–PEARL–2024–36]

Self-Regulatory Organizations; MIAx PEARL LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the MIAx Pearl Options Fee Schedule to Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail

September 5, 2024.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”) ¹ and Rule 19b–4 thereunder,² notice is hereby given that on August 23, 2024, MIAx PEARL, LLC (“MIAx Pearl” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing a proposal to amend the MIAx Pearl Options Fee Schedule (“Fee Schedule”) to establish fees for Industry Members³ related to certain historical costs of the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”) incurred prior to January 1, 2022. These fees would be payable to Consolidated Audit Trail, LLC (“CAT LLC” or “the Company”) ⁴ and referred to as Historical CAT Assessment 1, and would be described in a section of the Exchange’s fee schedule entitled “Consolidated Audit Trail Funding Fees.” The fee rate for Historical CAT Assessment 1 will be \$0.000013 per executed equivalent share. CAT Executing Brokers will receive their first monthly invoice for

Historical CAT Assessment 1 in November 2024 calculated based on their transactions as CAT Executing Brokers for the Buyer (“CEBB”) and/or CAT Executing Brokers for the Seller (“CEBS”) in October 2024.

The text of the proposed rule change is available on the Exchange’s website at <https://www.miaxglobal.com/markets/us-options/pearl-options/rule-filings> at MIAx Pearl’s principal office, and at the Commission’s Public Reference Room.

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

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

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

1. Purpose

On July 11, 2012, the Commission adopted Rule 613 of Regulation NMS, which required the self-regulatory organizations (“SROs”) to submit a national market system (“NMS”) plan to create, implement and maintain a consolidated audit trail that would capture customer and order event information for orders in NMS securities across all markets, from the time of order inception through routing, cancellation, modification or execution.⁵ On November 15, 2016, the Commission approved the CAT NMS Plan.⁶ Under the CAT NMS Plan, the Operating Committee has the discretion to establish funding for CAT LLC to operate the CAT, including establishing fees for Industry Members to be assessed by CAT LLC that would be implemented on behalf of CAT LLC by the Participants.⁷ The Operating Committee adopted a revised funding model to fund the CAT (“CAT Funding Model”). On September 6, 2023, the Commission approved the CAT Funding Model, after

concluding that the model was reasonable and that it satisfied the requirements of Section 11A of the Exchange Act and Rule 608 thereunder.⁸

The CAT Funding Model provides a framework for the recovery of the costs to create, develop and maintain the CAT, including providing a method for allocating costs to fund the CAT among Participants and Industry Members. The CAT Funding Model establishes two categories of fees: (1) CAT fees assessed by CAT LLC and payable by certain Industry Members to recover a portion of historical CAT costs previously paid by the Participants (“Historical CAT Assessment” fees); and (2) CAT fees assessed by CAT LLC and payable by Participants and Industry Members to fund prospective CAT costs (“Prospective CAT Costs” fees).⁹

Under the CAT Funding Model, “[t]he Operating Committee will establish one or more fees (each a ‘Historical CAT Assessment’) to be payable by Industry Members with regard to CAT costs previously paid by the Participants (‘Past CAT Costs’).” ¹⁰ In establishing a Historical CAT Assessment, the Operating Committee will determine a “Historical Recovery Period” and calculate a “Historical Fee Rate” for that Historical Recovery Period. Then, for each month in which a Historical CAT Assessment is in effect, each CEBB and CEBS would be required to pay the fee—the Historical CAT Assessment—for each transaction in Eligible Securities executed by the CEBB or CEBS 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.¹¹

Each Historical CAT Assessment to be paid by CEBBs and CEBSs is designed

⁸ Securities Exchange Act Rel. No. 98290 (Sept. 6, 2023), 88 FR 62628 (Sept. 12, 2023) (“CAT Funding Model Approval Order”).

⁹ Under the CAT Funding Model, the Operating Committee may establish one or more Historical CAT Assessments. Section 11.3(b) of the CAT NMS Plan. This filing only establishes Historical CAT Assessment 1 related to certain Historical CAT Costs as described herein; it does not address any other potential Historical CAT Assessment related to other Historical CAT Costs. In addition, under the CAT Funding Model, the Operating Committee also may establish CAT Fees related to CAT costs going forward. Section 11.3(a) of the CAT NMS Plan. This filing does not address any potential CAT Fees related to CAT costs going forward. Any such other fee for any other Historical CAT Assessment or CAT Fee for Prospective CAT Costs will be subject to a separate fee filing.

¹⁰ Section 11.3(b) of the CAT NMS Plan.

¹¹ In approving the CAT Funding Model, the Commission stated that, “[i]n the Commission’s view, the proposed recovery of the Past CAT Costs via the Historical CAT Assessment is reasonable.” CAT Funding Model Approval Order at 62662.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ An “Industry Member” is defined as “a member of a national securities exchange or a member of a national securities association.” See Miami International Securities Exchange LLC (“MIAx Rule”) Rule 1701(u). The Exchange notes that MIAx Chapter XVII is incorporated by reference into the Exchange’s rulebook. As such, MIAx Chapter XVII also applies to the Exchange. See also Section 1.1 of the CAT NMS Plan. Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the CAT NMS Plan and/or the CAT Compliance Rule. See MIAx Rule 1701.

⁴ The term “CAT LLC” may be used to refer to Consolidated Audit Trail, LLC or CAT NMS, LLC, depending on the context.

⁵ Securities Exchange Act Rel. No. 67457 (July 18, 2012), 77 FR 45721 (Aug. 1, 2012) (“Rule 613 Adopting Release”).

⁶ Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (“CAT NMS Plan Approval Order”).

⁷ Section 11.1(b) of the CAT NMS Plan.

to contribute toward the recovery of two-thirds of the Historical CAT Costs. Because the Participants previously have paid Past CAT Costs via loans to the Company, the Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made by the Participants to the Company on a pro rata basis based on the outstanding loan amounts due under the loans, instead of through the payment of a CAT fee.¹² In addition, the Participants also will be 100% responsible for certain Excluded Costs (as discussed below).

CAT LLC proposes to charge CEBBs and CEBs (as described in more detail below) Historical CAT Assessment 1 to recover certain historical CAT costs incurred prior to January 1, 2022, in accordance with the CAT Funding Model. To implement this fee on behalf of CAT LLC, the CAT NMS Plan requires the Participants to "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.'" ¹³ The Plan further states that "Participants will be required to file

with the SEC pursuant to Section 19(b) of the Exchange Act a filing for each Historical CAT Assessment." ¹⁴ Accordingly, the purpose of this filing is to implement a Historical CAT Assessment on behalf of CAT LLC for Industry Members, referred to as Historical CAT Assessment 1, in accordance with the CAT NMS Plan.¹⁵

The Exchange previously filed a fee filing to implement Historical CAT Assessment 1. On January 17, 2024, the SEC published this prior filing for Historical CAT Assessment 1, temporarily suspended the fee filing, and instituted proceedings to determine whether to approve or disapprove the fee filing.¹⁶ The Exchange has withdrawn its original fee filing for Historical CAT Assessment 1. This Historical CAT Assessment 1 replaces the prior Historical CAT Assessment 1 that was previously filed with the Commission.

(1) CAT Executing Brokers

Historical CAT Assessment 1 will be charged to each CEBB and CEBs for each applicable transaction in Eligible Securities.¹⁷ The CAT NMS Plan defines a "CAT Executing Broker" to mean:

(a) with respect to a transaction in an Eligible Security that is executed on an exchange, the Industry Member identified as

the Industry Member responsible for the order on the buy-side of the transaction and the Industry Member responsible for the sell-side of the transaction in the equity order trade event and option trade event in the CAT Data submitted to the CAT by the relevant exchange pursuant to the Participant Technical Specifications; and (b) with respect to a transaction in an Eligible Security that is executed otherwise than on an exchange and required to be reported to an equity trade reporting facility of a registered national securities association, the Industry Member identified as the executing broker and the Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event in the CAT Data submitted to the CAT by FINRA pursuant to the Participant Technical Specifications; provided, however, in those circumstances where there is a non-Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event or no contra-side executing broker is identified in the TRF/ORF/ADF transaction data event, then the Industry Member identified as the executing broker in the TRF/ORF/ADF transaction data event would be treated as CAT Executing Broker for the Buyer and for the Seller.¹⁸

The following fields of the Participant Technical Specifications indicate the CAT Executing Brokers for the transactions executed on an exchange.

EQUITY ORDER TRADE (EOT)¹⁹

No.	Field name	Data type	Description	Include key
12.n.8/13.n.8	member	Member Alias	The identifier for the member firm that is responsible for the order on this side of the trade. Not required if there is no order for the side as indicated by the NOBUYID/NOSELLID instruction. This must be provided if orderID is provided.	C

OPTION TRADE (OT)²⁰

No.	Field name	Data type	Description	Include key
16.n.13/17.n.13	member	Member Alias	The identifier for the member firm that is responsible for the order ..	R

In addition, the following fields of the Participant Technical Specifications would indicate the CAT Executing

Brokers for the transactions executed otherwise than on an exchange.

¹² Section 11.3(b)(ii) of the CAT NMS Plan.

¹³ Section 11.1(b) of the CAT NMS Plan.

¹⁴ Section 11.3(b)(iii)(B)(I) of the CAT NMS Plan.

¹⁵ Note that there may be one or more Historical CAT Assessments depending on the timing of the completion of the Financial Accountability Milestones, among other things. Section 11.3(b) of the CAT NMS Plan.

¹⁶ Securities Exchange Act Rel. No. 99375 (Jan. 17, 2024), 89 FR 11116 (Feb. 13, 2024) (SR-PEARL-2024-01).

¹⁷ In its approval of the CAT Funding Model, the Commission determined that charging CAT fees to CAT Executing Brokers was reasonable. In reaching this conclusion the Commission noted that the use

of CAT Executing Brokers is appropriate because the CAT Funding Model is based upon the calculation of *executed* equivalent shares, and, therefore, charging CAT Executing Brokers would reflect their executing role in each transaction. Furthermore, the Commission noted that, because CAT Executing Brokers are already identified in transaction reports from the exchanges and FINRA's equity trade reporting facilities recorded in CAT Data, charging CAT Executing Brokers could streamline the billing process. CAT Funding Model Approval Order at 62629.

¹⁸ Section 1.1 of the CAT NMS Plan. Note that CEBBs and CEBs may, but are not required to, pass-through their CAT fees to their clients, who

may, in turn, pass their fees to their clients until they are imposed ultimately on the account that executed the transaction. See CAT Funding Model Approval Order at 62649.

¹⁹ See Table 23, Section 4.7 (Order Trade Event) of the CAT Reporting Technical Specifications for Plan Participants, Version 4.1.0-r21 (Apr. 15, 2024), https://www.catnmsplan.com/sites/default/files/2024-04/04.15.2024-CAT_Reporting_Technical_Specifications_for_Participants_4.1.0-r21.pdf ("CAT Reporting Technical Specifications for Plan Participants").

²⁰ See Table 51, Section 5.2.5.1 (Simple Option Trade Event) of the CAT Reporting Technical Specifications for Plan Participants.

TRF/ORF/ADF TRANSACTION DATA EVENT (TRF)²¹

No.	Field name	Data type	Description	Include key
26	reportingExecutingMpid	Member Alias	MPID of the executing party	R
28	contraExecutingMpid	Member Alias	MPID of the contra-side executing party.	C

(2) Calculation of Historical Fee Rate 1

The Operating Committee determined the Historical Fee Rate to be used in calculating Historical CAT Assessment 1 (“Historical Fee Rate 1”) by dividing the Historical CAT Costs for Historical CAT Assessment 1 (“Historical CAT Costs 1”) by the projected total executed share volume of all transactions in Eligible Securities for the Historical Recovery Period for Historical CAT Assessment 1 (“Historical Recovery Period 1”), as discussed in detail below. Based on this calculation, the Operating Committee has determined that Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. This rate is then divided by three and rounded to determine the fee rate of \$0.000013 per executed equivalent share that will be assessed to CEBBs and CEBBs, as also discussed in detail below.

(A) Executed Equivalent Shares for Transactions in Eligible Securities

Under the CAT NMS Plan, for purposes of calculating each Historical CAT Assessment, executed equivalent shares in a transaction in Eligible Securities will be reasonably counted as follows: (1) each executed share for a transaction in NMS Stocks will be counted as one executed equivalent share; (2) each executed contract for a transaction in Listed Options will be counted based on the multiplier applicable to the specific Listed Options (*i.e.*, 100 executed equivalent shares or such other applicable multiplier); and

(3) each executed share for a transaction in OTC Equity Securities shall be counted as 0.01 executed equivalent share.²²

(B) Historical CAT Costs 1

The CAT NMS Plan states that “[t]he Operating Committee will reasonably determine the Historical CAT Costs sought to be recovered by each Historical CAT Assessment, where the Historical CAT Costs will be Past CAT Costs minus Past CAT Costs reasonably excluded from Historical CAT Costs by the Operating Committee. Each Historical CAT Assessment will seek to recover from CAT Executing Brokers two-thirds of Historical CAT Costs incurred during the period covered by the Historical CAT Assessment.”²³ As described in detail below, Historical CAT Costs 1 would be \$318,059,819. This figure includes Past CAT Costs of \$401,312,909 minus certain Excluded Costs of \$83,253,090. Participants collectively will remain responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), plus the Excluded Costs of \$83,253,090. CEBBs collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), and CEBBs collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67). The following describes in detail Historical CAT Costs 1 with regard to four separate historical time periods as well as Past CAT Costs excluded from Historical CAT Costs 1 (“Excluded Costs”). The following cost

details are provided in accordance with the requirement in the CAT NMS Plan to provide in the fee filing “a brief description of the amount and type of Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs.”²⁴ Each of the costs described below are reasonable, appropriate and necessary for the creation, implementation and maintenance of CAT.

(i) Historical CAT Costs Incurred Prior to June 22, 2020 (Pre-FAM Costs)

Historical CAT Costs 1 would include costs incurred by CAT prior to June 22, 2020 (“Pre-FAM Period”) and already funded by the Participants, excluding Excluded Costs (described further below). Historical CAT Costs 1 would include costs for the Pre-FAM Period of \$124,290,730. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$41,430,243.33), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$41,430,243.33) and CEBBs paying one-third (\$41,430,243.33). These costs do not include Excluded Costs, as discussed further below. The following table breaks down Historical CAT Costs 1 for the Pre-FAM Period into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs 1 for Pre-FAM Period (prior to June 22, 2020) *
Capitalized Developed Technology Costs **	\$51,847,150
Technology Costs:	33,568,579
Cloud Hosting Services	10,268,840
Operating Fees	21,085,485
CAIS Operating Fees	2,072,908
Change Request Fees	141,346
Legal	19,674,463
Consulting	17,013,414
Insurance	880,419
Professional and administration	1,082,036

²¹ See Table 61, Section 6.1 TRF/ORF/ADF Transaction Data Event) of the CAT Reporting Technical Specifications for Plan Participants.

²² Section 11.3(a)(i)(B) and 11.3(b)(i)(B) of the CAT NMS Plan. In approving the CAT Funding

Model, the Commission concluded that “the use of executed equivalent share volume as the basis of the proposed cost allocation methodology is reasonable and consistent with the approach taken

by the funding principles of the CAT NMS Plan.” CAT Funding Model Approval Order at 62640.

²³ Section 11.3(b)(i)(C) of the CAT NMS Plan.

²⁴ Section 11.3(b)(iii)(B)(II)(B) of the CAT NMS Plan.

Operating expense	Historical CAT costs 1 for Pre-FAM Period (prior to June 22, 2020) *
Public relations	224,669
Total Operating Expenses	124,290,730

* The costs described in this table of costs for the Pre-FAM Period were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website. In addition, in accordance with Section 6.6(a)(i) of the CAT NMS Plan, in 2018 CAT LLC provided the SEC with "an independent audit of fees, costs, and expenses incurred by the Participants on behalf of the Company prior to the Effective Date of the Plan that will be publicly available." The audit is available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$2,115,545 incurred during the period prior to June 22, 2020 have been appropriately excluded from the above table.²⁵

The Pre-FAM Period includes a broad range of CAT-related activity from 2012 through June 22, 2020, including the evaluation of the requirements of SEC Rule 613, the development of the CAT NMS Plan, the evaluation and selection of the initial and successor Plan Processors, the commencement of the creation and implementation of the CAT to comply with Rule 613 and the CAT NMS Plan, including technical specifications for transaction reporting and regulatory access, and related technology and the commencement of reporting to the CAT. The following describes the costs for each of the categories for the Pre-FAM Period.

(a) Technology Costs—Cloud Hosting Services

The \$10,268,840 in technology costs for cloud hosting services represent costs incurred for services provided by the cloud services provider for the CAT, Amazon Web Services, Inc. ("AWS"), during the Pre-FAM Period.

As part of its proposal for acting as the successor Plan Processor for the CAT, FCAT selected AWS as a subcontractor to provide cloud hosting services. In 2019, after reviewing the capabilities of other cloud services providers, FCAT determined that AWS was the only cloud services provider at that time sufficiently mature and capable of providing the full suite of necessary cloud services for the CAT, including, for example, the security, resiliency and complexity necessary for the CAT computing requirements. The

use of cloud hosting services is standard for this type of high-volume data activity and reasonable and necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT the fees incurred by the Plan Processor for cloud hosting services provided by AWS as FCAT's subcontractor [*sic*] on a monthly basis for the cloud hosting services, and FCAT, in turn, pays such fees to AWS. The fees for cloud hosting services were negotiated by FCAT on an arm's length basis with the goals of managing cost and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the expected volume of data, the breadth of services provided and market rates for similar services. The fees for cloud hosting services during the Pre-FAM Period were paid to FCAT by CAT NMS, LLC²⁶ and subsequently Consolidated Audit Trail, LLC (as previously noted, both entities are referred to generally as "CAT LLC"),²⁷ and FCAT, in turn, paid AWS. CAT LLC was funded via loan contributions by the Participants.²⁸

AWS was engaged by FCAT to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS include storage services, databases, compute services and other

services (such as networking, management tools and DevOps tools). AWS also was engaged to provide various environments for CAT, such as development, performance testing, test and production environments.

The cost for AWS services for the CAT is a function of the volume of CAT Data. The greater the amount of CAT Data, the greater the cost of AWS services to the CAT. During the Pre-FAM Period from the engagement of AWS in February 2019 through June 2020, AWS provided cloud hosting services for volumes of CAT Data far in excess of the volume predictions set forth in the CAT NMS Plan. The CAT NMS Plan states, when all CAT Reporters are submitting their data to the CAT, it "must be sized to receive[,] process and load more than 58 billion records per day,"²⁹ and that "[i]t is expected that the Central Repository will grow to more than 29 petabytes of raw, uncompressed data."³⁰ However, the volume of CAT Data for the Pre-FAM Period was far in excess of these predicted levels. By the end of this period, data submitted to the CAT included options and equities Participant Data,³¹ Phase 2a and Phase 2b Industry Member Data³² (including certain linkages), as well as SIP Data,³³ reference data and other types of Other Data.³⁴ The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during the Pre-FAM Period.³⁵

²⁵ With respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

²⁶ CAT NMS, LLC was formed by FINRA and the U.S. national securities exchanges to implement the requirements of SEC Rule 613 under the Exchange Act. SEC Rule 613 required the SROs to jointly submit to the SEC the CAT NMS Plan to create, implement and maintain the CAT. The SEC

approved the CAT NMS Plan on November 15, 2016. CAT NMS Plan Approval Order.

²⁷ On August 29, 2019, the Participants formed a new Delaware limited liability company named Consolidated Audit Trail, LLC for the purpose of conducting activities related to the CAT from and after the effectiveness of the proposed amendment of the CAT NMS Plan to replace CAT NMS, LLC. See Securities Exchange Act Rel. No. 87149 (Sept. 27, 2019), 84 FR 52905 (Oct. 3, 2019).

²⁸ For each of the costs paid by CAT NMS, LLC and Consolidated Audit Trail, LLC as discussed throughout this filing, CAT NMS, LLC and Consolidated Audit Trail, LLC paid these costs via loan contributions by the Participants to CAT NMS,

LLC and Consolidated Audit Trail, LLC, respectively.

²⁹ Appendix D-4 of the CAT NMS Plan at n.262.

³⁰ Appendix D-5 of the CAT NMS Plan.

³¹ See Section 6.3(d) of the CAT NMS Plan.

³² See Securities Exchange Rel. No. 88702 (Apr. 20, 2020), 85 FR 23075 (Apr. 24, 2020) ("Phased Reporting Exemptive Relief Order") for a description of Phase 2a and Phase 2b Industry Member Data.

³³ See Section 6.5(a)(ii) of the CAT NMS Plan.

³⁴ See Appendix C-108 of the CAT NMS Plan.

³⁵ Note that the volume data described in this table does not include CAIS data.

	Date range: 3/29/19 to 4/12/20 *	Date range: 4/13/20 to 6/21/20 **
Average Daily Volume in Billions:		
Participant—Equities	5	5
Participant—Options	80	981
Industry Member—Equities		3
Industry Member—Options		0.04
SIP—Options & Equities	64	70
Average Total Daily Volume	149	166
Cumulative Total Events for the Period	3,890	4,990
Total Compute Hours for the Period	*** N/A	5,663,247
Storage Footprint at End of Period (Petabytes)	30.57	47.96

* The Participant Equities in RSA format.

** Start of Industry Member reporting on 4/13/2020.

*** Note that, although there were compute hours during this period, data related to such compute hours are no longer available in current data.

(b) Technology Costs—Operating Fees

The \$21,085,485 in technology costs related to operating fees represent costs incurred with regard to activities of FCAT as the Plan Processor. Operating fees are those fees paid by CAT LLC to FCAT as the Plan Processor to operate and maintain the CAT and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.*, management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management as required by the CAT NMS Plan.

FCAT was selected to assume the role of the successor Plan Processor. Prior to this selection, the Participants engaged in discussions with two prior Bidders³⁶ for the successor Plan Processor role. The Operating Committee formed a Selection Subcommittee in accordance with Section 4.12 of the CAT NMS Plan to evaluate and review Bids and to make a recommendation to the Operating Committee with respect to the selection of the successor Plan Processor. In an April 9, 2019 letter to the Commission, the Participants described the reasons for its selection of the successor Plan Processor:

The Selection Subcommittee considered factors including, but not limited to, the following, in recommending FINRA to the Operating Committee as the successor Plan Processor:

- FINRA's specialized technical expertise and capabilities in the area of broker-dealer technology;
- The need to appoint a successor Plan Processor with specialized expertise to develop, implement, and maintain the CAT System in accordance with the CAT NMS Plan and SEC Rule 613;
- FINRA's detailed proposal in response to CATLLC's recent inquiries; and
- FINRA's data query and analytics systems demonstration to the Participants.

Based on these and other factors, the Selection Subcommittee determined that FINRA was the most appropriate Bidder to become the successor Plan Processor.³⁷

On February 26, 2019, the Operating Committee (with FINRA recusing itself) voted to select FINRA as the successor Plan Processor pursuant to Section 6.1(t) of the CAT NMS Plan.³⁸ On March 29, 2019, CAT LLC and FCAT (a wholly owned subsidiary of FINRA) entered into a Plan Processor Agreement pursuant to which FCAT would perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT a negotiated monthly fixed price for the operation of the CAT. This fixed price contract was negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity. The operating fees during the Pre-FAM Period were paid to FCAT by CAT LLC.

From March 29, 2019 (the commencement of the Plan Processor Agreement with FCAT) through June 22, 2020 (the end of the Pre-FAM Period), the Plan Processor's activities with respect to the CAT included the following:

- Commenced user acceptance testing with market data provided by Exegy Incorporated ("Exegy"), a market data provider;³⁹

³⁷ Letter from Michael J. Simon, Chair, CAT NMS, LLC Operating Committee, to Brent J. Fields, Secretary, SEC (Apr. 9, 2019), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection-040919.pdf>.

³⁸ *Id.*

³⁹ The use of Exegy to provide market data, including the costs and market data provided, is discussed below in Section 3(a)(2)(B)(i)(i).

- Published Technical Specifications and related reporting scenarios documents for Phase 2a, 2b and 2c reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;

- Facilitated testing for Phase 2a and 2b reporting for Industry Members;

- Began developing Technical Specifications and related reporting scenarios documents for Phase 2d reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;

- Published Central Repository Access Technical Specifications, and provided regulator access to test data from Industry Members;

- Facilitated Participant exchanges that support options market makers sending Quote Sent Time to the CAT;

- Facilitated the introduction of OPRA and Options NBBO Other Data to CAT;

- Addressed compliance items, including drafting CAT policies and procedures, and addressing requirements under Regulation SCI;

- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;

- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;

- Oversaw the security of the CAT;

- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;

- Provided support to subcontractors under the Plan Processor Agreement;

- Provided support in discussions with Participants, the SEC and its staff;

- Operated the FINRA CAT Helpdesk, which is the primary source for answers to questions about CAT, including questions regarding: clock synchronization, firm reporting

³⁶ The term "Bidder" is defined in Section 1.1 of the CAT NMS Plan.

responsibilities, interpretive questions, technical specifications for reporting to CAT and more;

- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content;⁴⁰ and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

The \$2,072,908 in technology costs related to CAIS operating fees represent the fees paid for FCAT's subcontractor charged with the development and operation of CAT's Customer and Account Information System ("CAIS"). The CAT is required under the CAT NMS Plan to capture and store Customer Identifying Information and Customer Account Information in a database separate from the transactional database and to create a CAT-Customer-ID for each Customer.

During the Pre-FAM Period, the CAIS-related services were provided by the Plan Processor through the Plan Processor's subcontractor, Kingland Systems Incorporation ("Kingland"). Kingland had experience operating in the securities regulatory technology space, and as a part of its proposal for acting as the Plan Processor for the CAT, FCAT selected Kingland as a subcontractor to provide certain CAIS-related services.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay to the Plan Processor the fees incurred by FCAT for CAIS-related services provided by FCAT through Kingland on a monthly basis. FCAT negotiated the fees for Kingland's CAIS-related services on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity. The fees for CAIS-related services during the Pre-FAM Period were paid by CAT LLC to FCAT. FCAT, in turn, paid Kingland.

During the Pre-FAM Period, Kingland began development of the CAIS Technical Specifications and the building of CAIS. In addition, Kingland also worked on the build related to the CCID Alternative, an alternative approach to customer information that

was not included in the CAT NMS Plan as originally adopted.⁴¹ Furthermore, Kingland also worked on the acceleration of the reporting of large trader identifiers ("LTID") earlier than originally contemplated during this period, in accordance with exemptive relief granted by the SEC.⁴²

(d) Technology Costs—Change Request Fees

The technology costs related to change request fees include costs related to certain modifications, upgrades or other changes to the CAT. Change requests are standard practice and necessary to reflect operational changes, including changes related to new market developments, such as new market participants. In general, if CAT LLC determines that a modification, upgrade or other change to the functionality or service is necessary and appropriate, CAT LLC will submit a request for such a change to the Plan Processor. The Plan Processor will then respond to the request with a proposal for implementing the change, including the cost (if any) of such a change. CAT LLC then determines whether to approve the proposed change. The change request costs were paid by CAT LLC to FCAT. During the Pre-FAM Period, CAT LLC incurred costs of \$141,346 related to change requests implemented by FCAT. Such change requests related to a development fee regarding the OPRA and SIP data feeds, and the reprocessing of certain exchange data.⁴³

(e) Technology Costs—Capitalized Developed Technology Costs

This category of costs includes capitalizable application development costs incurred in the development of the CAT. The capitalized developed technology costs for the Pre-FAM Period of \$51,847,150 relate to technology provided by the Initial Plan Processor and the successor Plan Processor.

Initial Plan Processor: Thesys CAT, LLC. The capitalized developed technology costs related to the Initial Plan Processor include costs incurred with regard to testing for Participant reporting, Participant reporting to the CAT, a security assessment of the CAT, and the development of the billing function for the CAT.

⁴¹ For a discussion of the CCID Alternative, see Securities Exchange Act Rel. No. 88393 (Mar. 17, 2020), 85 FR 16152 (Mar. 20, 2020).

⁴² Phased Reporting Exemptive Relief Order at 23079–80.

⁴³ Note that CAT LLC also has incurred costs related to specific Industry Members (e.g., reprocessing costs related to Industry Member reporting errors).

On January 17, 2017, the Selection Committee of the CAT NMS Plan selected the Initial Plan Processor, Thesys Technologies, LLC, for the CAT NMS Plan pursuant to Article V of the CAT NMS Plan.⁴⁴ The Participants utilized a request for proposal ("RFP") to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan, taking into consideration that the Initial Plan Processor had experience operating in the securities regulatory technology space, among other considerations. On April 6, 2017, CAT LLC entered into an agreement with Thesys CAT LLC ("Thesys CAT"), a Thesys affiliate, to perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT. Under the agreement, CAT LLC would pay Thesys CAT a negotiated, fixed price fee for its role as the Initial Plan Processor. Effective January 30, 2019, the Plan Processor Agreement with Thesys CAT was terminated, and FCAT was subsequently selected as the successor Plan Processor.

From January 17, 2017 through January 30, 2019, the time in which the Thesys CAT was engaged for the CAT, but excluding the period from November 15, 2017 through January 30, 2019, the Initial Plan Processor engaged in various activities with respect to the CAT, including preparing iterative drafts of Participant Technical Specifications, Industry Member Technical Specifications and the Central Repository Access Technical Specifications. In addition, Thesys CAT also developed CAT technology, addressed compliance items, including drafting CAT policies and procedures, addressing Regulation SCI requirements, establishing a CAT Compliance Officer and a Chief Information Security Officer, addressed security-related matters for the CAT, and worked towards the initiation of Participant reporting per the Participant Technical Specifications.

Successor Plan Processor: FCAT. The capitalized developed technology costs related to FCAT include: (1) development costs incurred during the

⁴⁰ The CAT website is <https://www.catnmsplan.com>.

⁴⁴ Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf>.

application development stage to meet various agreed-upon milestones regarding the CAT, including the completion of go-live functionality related to options ingestion and validation, equities regulatory services agreement query tool updates and unlinked options data query, options linkages release, Industry Member Phase 2a file submission and data integrity (including error corrections), and Industry Member testing, including reporting relationships, ATS order type management, basic reporting statistics, SFTP data integrity feedback and error correction; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including a one-time development fee for a secure analytics workspace, a one-time development fee of an Industry Member connectivity solution, and a one-time development fee for the acceleration of multi-factor authentication; (3) CAIS implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$19,674,463 represent the fees paid for legal services provided by two law firms, Wilmer Cutler Pickering Hale and Dorr LLP (“WilmerHale”) and Pillsbury Winthrop Shaw Pittman LLP (“Pillsbury”), during the Pre-FAM Period. The legal costs exclude those costs incurred from November 15, 2017 through November 15, 2018.

Law Firm: WilmerHale. Following the adoption of Rule 613, the Participants determined it was necessary to engage external legal counsel to advise the Participants with respect to corporate and regulatory legal matters related to the CAT, including drafting and developing the CAT NMS Plan. The Participants considered a variety of factors in their analysis of prospective law firms, including (1) the firm’s qualifications, resources and expertise; (2) the firm’s relevant experience and understanding of the regulatory matters raised by the CAT and in advising on matters of similar scope; (3) the composition of the legal team; and (4) professional fees. Following a series of interviews, the Participants acting as a consortium determined that WilmerHale was well qualified given the balance of these considerations and engaged WilmerHale in February 2013.

WilmerHale’s billing rates are negotiated on an annual basis and are determined with reference to the rates charged by other leading law firms for similar work. The Participants assess

WilmerHale’s performance and review prospective budgets and staffing plans submitted by WilmerHale on an annual basis. WilmerHale’s compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading law firms for similar work.

The legal costs for WilmerHale during the Pre-FAM Period included costs incurred from 2013 until June 22, 2020 to address corporate and regulatory legal matters related to the CAT. The legal fees for this law firm during the period from February 2013 until the formation of the CAT NMS, LLC on November 15, 2016 were paid directly by the exchanges and FINRA to WilmerHale. After the formation of CAT NMS LLC, the legal fees were paid by CAT LLC to WilmerHale.

After WilmerHale was engaged in 2013 through the end of the Pre-FAM Period on June 22, 2020 (excluding the legal costs from November 15, 2017 through November 15, 2018), WilmerHale provided legal assistance to the CAT on a variety of matters, including with regard to the following:

- Analyzed various legal matters associated with the Selection Plan, and drafted an amendment to the Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the Development Advisory Group (“DAG”);
- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on CAT NMS Plan;
- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan, and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;
- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan and related filings;
- Negotiated and drafted the plan processor agreements with the Initial

Plan Processor and the successor Plan Processor;

- Provided assistance with compliance with Regulation SCI;
- Assisted with clock synchronization study;
- Provided assistance with respect to the establishment of CAT security;
- Drafted exemptive requests from CAT NMS Plan requirements, including with regard to options market maker quotes, Customer IDs, CAT Reporter IDs, linking allocations to executions, CAT reporting timeline, FDIDs, customer and account information, timestamp granularity, small industry members, data facility reporting and linkage, allocation reports, SRO-assigned market participant identifiers and cancelled trade indicators, thereby seeking to implement changes that would be cost effective and benefit Industry Members and Participants;
- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Provided advice regarding CAT policies and procedures;
- Analyzed the SEC’s amendment of the CAT NMS Plan regarding financial accountability;
- Provided interpretations of and related to the CAT NMS Plan;
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues; and
- Assisted with third-party vendor agreements.

Law Firm: Pillsbury. The legal costs for CAT during the Pre-FAM Period include costs related to the legal services performed by Pillsbury. The Participants interviewed this law firm as well as other potential law firms to provide legal assistance regarding certain liability matters. After considering a variety of factors in its analysis, including the relevant expertise and fees of the firm, CAT LLC determined to hire Pillsbury in April 2019. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees were paid by CAT LLC to Pillsbury. The legal costs for Pillsbury during the Pre-FAM Period included costs incurred from April 2019 until June 22, 2020 to address legal matters regarding the agreements between CAT Reporters and CAT LLC concerning certain terms associated with CAT Reporting (the “Reporter Agreement”). During that period, Pillsbury advised CAT LLC regarding applicable legal matters, participated in negotiations between the Participants and Industry Members, participated in meetings with senior

SEC staff, the Chairman, and Commissioners, represented CAT LLC and the Participants in an SEC administrative proceeding, and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, litigation involving CAT LLC is an expense of operating the CAT, and, therefore, is appropriately an obligation of both Participants and Industry Members under the CAT Funding Model.

(g) Consulting Costs

The consulting costs of \$17,013,414 represent the fees paid to the consulting firm Deloitte & Touche LLP ("Deloitte") as project manager during the Pre-FAM Period, from October 2012 until June 22, 2020. These consulting costs include costs for advisory services related to the operation of the CAT, and meeting facilitation and communications coordination, vendor support and financial analyses.

To help facilitate project management given the unprecedented complexity and scope of the CAT project, the Participants determined it was necessary to engage a consulting firm to assist with the CAT project in 2012, following the adoption of Rule 613. A variety of factors were considered in the analysis of prospective consulting firms, including (1) the firm's qualifications, resources, and expertise; (2) the firm's relevant experience and understanding of the regulatory issues raised by the CAT and in coordinating matters of similar scope; (3) the composition of the consulting team; and (4) professional fees. Following a series of interviews, the exchanges and FINRA as a consortium determined that Deloitte was well qualified given the balance of these considerations and engaged Deloitte on October 1, 2012.

Deloitte's fee rates are negotiated on an annual basis and are in line with market rates for this type of specialized consulting work. CAT LLC assesses Deloitte's performance and reviews prospective budgets and staffing plans submitted by Deloitte on an annual basis. Deloitte's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading consulting firms for similar work.

The consulting costs for CAT during the period from 2012 until the formation of the CAT NMS, LLC were paid directly by the Participants to Deloitte.

After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC to Deloitte. CAT LLC reviewed the consulting fees each month and approved the invoices.

After Deloitte was hired in 2012 through the end of the Pre-FAM Period on June 22, 2020 (excluding the consulting costs from November 15, 2017 through November 15, 2018), Deloitte provided a variety of consulting services, including the following:

- Established and implemented program operations for the CAT project, including the program management [*sic*] office and workstream design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participant's independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, analyzing OATS and CAT requirements, and drafting appendices to the Plan;
- Assisted with cost and funding-related activities for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (*e.g.*, Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with industry outreach and communications regarding the CAT, including assistance with industry outreach events, the development of the CAT website, frequently asked questions, and coordinating with the CAT LLC's public relations firm;
- Provided support for updating the SEC on the progress of the development of the CAT;

- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress;

- Coordinated efforts regarding the selection of the successor Plan Processor;

- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor, including support for the Operating Committee and successor Plan Processor for the new role; and

- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$880,419 represent the cost incurred for insurance for CAT during the Pre-FAM Period. Commencing in 2020, CAT LLC performed an evaluation of various potential alternatives for CAT insurance policies, which included engaging in discussions with different insurance companies and conducting cost comparisons of various alternative approaches to insurance. Based on an analysis of a variety of factors, including coverage and premiums, CAT LLC determined to purchase cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance from USI Insurance Services LLC ("USI"). Such policies are standard for corporate entities, and cyber security liability insurance is important for the CAT System. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

In adopting the CAT NMS Plan, the Commission amended the Plan to add a requirement that CAT LLC's financial statements be prepared in compliance with GAAP, audited by an independent public accounting firm, and made publicly available.⁴⁵ The professional and administration costs include costs related to accounting and accounting advisory services to support the operating and financial functions of CAT, financial statement audit services by an independent accounting firm, preparation of tax returns, and various cash management and treasury functions. In addition, professional and administration costs for the Pre-FAM Period include costs related to the

⁴⁵ Section 9.2 of the CAT NMS Plan.

receipt of market data and a security assessment. The costs for these professional and administration services were \$1,082,036 for the Pre-FAM Period.

Financial Advisory Firm: Anchin Accountants & Advisors ("Anchin"). CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT in April 2018. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The hourly fee rates for this firm were in line with market rates for these financial advisory services. The fees for these services were paid by CAT LLC to Anchin.

After Anchin was hired in April 2018 through the end of the Pre-FAM Period on June 22, 2020 (excluding the period from April 2018 through November 15, 2018), Anchin provided a variety of services, including the following:

- Developed, updated and maintained internal controls;
- Provided cash management and treasury functions;
 - Facilitated bill payments;
 - Provided monthly bookkeeping;
 - Reviewed vendor invoices and documentation in support of cash disbursements;
 - Provided accounting research and consultations on various accounting, financial reporting and tax matters;
 - Addressed not-for-profit tax and accounting considerations;
 - Prepared tax returns;
 - Addressed various accounting, financial and operating inquiries from Participants;
 - Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
 - Addressed accounting and financial reporting matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC, including supporting the dissolution of CAT NMS, LLC;
 - Supported compliance with the CAT NMS Plan;
 - Worked with and provided support to the Operating Committee and various CAT working groups;
 - Prepared monthly, quarterly and annual financial statements;
 - Supported the annual financial statement audits by an independent auditor;
 - Reviewed historical costs from inception; and
 - Provided accounting and financial information in support of SEC filings.

Accounting Firm: Grant Thornton LLP ("Grant Thornton"). In February 2020,

CAT LLC determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the proposed role given the balance of these considerations. Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services. The fees for these services were paid by CAT LLC to Grant Thornton.

Market Data Provider: Exegy. The professional and administrative costs for the Pre-FAM Period included costs related to the receipt of certain market data for the CAT pursuant to an agreement with the CAT LLC, and then with FCAT. Exegy provided SIP Data required by the CAT NMS Plan.

After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy from July 2018 through March 2019. CAT LLC determined that, unlike certain other vendors, Exegy provided market data that included all data elements required by the CAT NMS Plan.⁴⁶ In addition, the fees were reasonable and in line with market rates for the market data received. Accordingly, the professional and administrative costs for the Pre-FAM Period include the Exegy costs from November 2018 through March 2019. The cost of the market data was reasonable for the market data received. The fees for the market data were paid directly by CAT LLC to Exegy.

Upon the termination of the contract between CAT LLC and Exegy, FCAT entered into a contract with Exegy to purchase the required market data from Exegy in July 2019. All costs under the contract were treated as a direct pass through cost to CAT LLC. Therefore, the fees for the market data were paid by CAT LLC to FCAT, who, in turn, paid Exegy for the market data.

Security Assessment: RSM US LLP ("RSM"). The operating costs for the Pre-FAM Period include costs related to a third party security assessment of the

CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation, and operation of the controls specified by NIST Special Publication 800-53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment. RSM performed the assessment from October 2018 through December 2018. Accordingly, the costs for the Pre-FAM Period include the costs incurred in November and December 2018. The cost for the security assessment were paid directly to RSM by CAT LLC.

(j) Public Relations Costs

The public relations costs of \$224,669 represent the fees paid to public relations firms during the Pre-FAM Period for professional communications services to CAT, including media relations consulting, strategy and execution. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants. Specifically, the public relations firms provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). Public relations services were important for various reasons, including monitoring comments made by market participants about CAT and understanding issues related to the CAT discussed on the public record.

The services performed by each of the public relations firms were comparable. The fees for such services were reasonable and in line with market rates. Only one public relations firm was engaged at a time; the three firms were engaged sequentially as the primary public relations contact moved among the three firms during this time period.

Public Relations Firm: Peppercomm, Inc. ("Peppercomm"). The national securities exchanges and FINRA, acting

⁴⁶ See Section 6.5(a)(ii) of the CAT NMS Plan.

as a consortium, determined to hire the public relations firm Peppercomm in October 2014 and continued to engage this firm through September 2017. The exchanges and FINRA made this engagement decision after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fee rates for this public relations firm were negotiated on an arm's length basis and were in line with market rates for these types of services. The public relations costs during the period from October 2014 until the formation of the CAT NMS, LLC were paid directly by the exchanges and FINRA to the public relations firm. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC.

Public Relations Firm: Sloane & Company ("Sloane"). CAT LLC determined to hire a new public relations firm, Sloane, in March 2018,

based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Sloane. CAT LLC continued the engagement with Sloane until February 2020.

Public Relations Firm: Peak Strategies. CAT LLC determined to hire a new public relations firm, Peak Strategies, in March 2020, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Peak Strategies.

(ii) Historical CAT Costs Incurred in Financial Accountability Milestone Period 1

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 1 of the Financial Accountability Milestones ("FAM Period 1"),⁴⁷ which covers the period from June 22, 2020–July 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 1 of \$6,377,343. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$2,125,781), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBs paying one-third (\$2,125,781). The following table breaks down Historical CAT Costs 1 for FAM Period 1 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 1 *
Capitalized Developed Technology Costs **	\$1,684,870
Technology Costs	3,996,800
Cloud Hosting Services	2,642,122
Operating Fees	1,099,680
CAIS Operating Fees	254,998
Change Request Fees	
Legal	481,687
Consulting	137,209
Insurance	
Professional and administration	69,077
Public relations	7,700
Total Operating Expenses	6,377,343

* The costs described in this table of costs for FAM Period 1 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$362,121 incurred during FAM Period 1 have been appropriately excluded from the above table.⁴⁸

By the completion of FAM Period 1, CAT LLC was required to implement the reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of equities transaction data and options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.⁴⁹ CAT LLC completed the requirements of FAM Period 1 by July 31, 2020. The following describes the costs for each of the categories for FAM Period 1.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 1 to provide a broad array of cloud hosting services for the CAT,

including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production environments, during the FAM 1 Period. Accordingly, the \$2,642,122 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 1. The fee arrangement for AWS described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor

Agreement. Moreover, CAT LLC continued to believe that AWS's maturity in the cloud services space as well as the significant cost and time necessary to move the CAT to a different cloud services provider supported the continued engagement of AWS.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the FAM 1 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well as SIP Data, reference data and other

⁴⁷ Section 11.6(a)(i)(A) of the CAT NMS Plan.

⁴⁸ As discussed above, with respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized

over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁴⁹ See definition of "Initial Industry Member Core Equity and Options Reporting" in Section 1.1 of the CAT NMS Plan.

types of Other Data. The following chart provides data regarding the average

daily volume, cumulative total events, total compute hours and storage

footprint of the CAT during FAM Period 1.⁵⁰

	Date range: 6/22/20–7/31/20
Average Daily Volume in Billions:	
Participant—Equities	6
Participant—Options	103
Industry Member—Equities	7
Industry Member—Options	0.31
SIP—Options & Equities	74
Average Total Daily Volume	185
Cumulative Total Events for the Period	5,190
Total Compute Hours for the Period	2,612,082
Storage Footprint at End of Period (Petabytes)	57.47

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 1. Accordingly, the \$1,099,680 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 1. The fee arrangement for FCAT described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, FCAT's activities with respect to the CAT included the following:

- Published iterative drafts of draft Technical Specifications for Phase 2d, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Published iterative drafts of CAIS Technical Specifications, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Facilitated Industry Member reporting of Quote Sent Time on Options Market Maker quotes;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;

- Provided support in discussions with Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 1. Accordingly, the \$254,998 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 1. The fee arrangement for Kingland described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

CAT LLC did not incur costs related to change requests during FAM Period 1.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 1 of \$1,684,870 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include: (1) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including separate production and industry test entitlements, and reprocessing of exchange event timestamps; (2) implementation fees; and (3) license fees.

(f) Legal Costs

The legal costs of \$481,687 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 1.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 1 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to WilmerHale. During FAM Period 1, WilmerHale provided legal assistance to the CAT including with regard to the following:

- Assisted with the development of the CAT funding model and drafted related amendments and fee filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, verbal activity, options market maker quote sent time, TRF linkages, and allocations;
- Provided interpretations related to CAT NMS Plan requirements, including the Financial Accountability Milestone amendment;
- Assisted with compliance with Regulation SCI;

⁵⁰ Note that the volume data described in this table does not include CAIS data.

- Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;

- Assisted with the drafting of the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;

- Assisted with communications and presentations for the industry regarding CAIS;

- Drafted SRO rule filings related to the CAT Compliance Rule;

- Provided support for Compliance Subcommittee, including with regard to response to OCIE examinations and the annual assessment;

- Provided guidance regarding CAT technical specifications;

- Assisted with third-party vendor agreements; and

- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to Pillsbury. During FAM Period 1, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(g) Consulting Costs

The consulting costs of \$137,209 represent the fees paid to Deloitte as project manager during FAM Period 1. CAT LLC continued to employ Deloitte during FAM Period 1 based on, among other things, their expertise and cumulative experience with the CAT. The fee rates for Deloitte during FAM Period 1 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 1 were paid by CAT LLC to the consulting firm. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 1, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;

- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;

- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;

- Provided support for updating the SEC on the progress of the development of the CAT;

- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor; and

- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

Although insurance was in effect during FAM Period 1, CAT LLC did not incur costs related to insurance during FAM Period 1.

(i) Professional and Administration Costs

Financial Advisory Firm: Anchin. The professional and administration costs of \$69,077 represent the fees paid to Anchin during FAM Period 1. CAT LLC continued to employ Anchin during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these type of financial advisory services. The fees for these services during FAM Period 1 were paid by CAT LLC to Anchin. During FAM Period 1, Anchin provided a variety of services, including the following:

- Maintained internal controls;
- Provided cash management and treasury functions;

- Facilitated bill payments;

- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;

- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed various accounting, financial reporting and operating inquiries from Participants;

- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;

- Supported compliance with the CAT NMS Plan;

- Worked with and provided support to the Operating Committee and various CAT working groups; and
- Prepared monthly and quarterly financial statements.

(j) Public Relations Costs

The public relations costs of \$7,700 represent the fees paid to Peak Strategies during FAM Period 1. CAT LLC continued to employ Peak Strategies during FAM Period 1 based on, among other things, their expertise and history with the project. The fee rates for this firm were reasonable and in line with market rates for these types of services. The fees for these services during FAM Period 1 were paid by CAT LLC to Peak Strategies. During FAM Period 1, Peak Strategies continued to provide professional communications services to CAT LLC, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(iii) Historical CAT Costs Incurred in Financial Accountability Milestone Period 2

Historical CAT Costs 1 would include costs incurred by CAT LLC and already funded by Participants during Period 2 of the Financial Accountability Milestones ("FAM Period 2"),⁵¹ which covers the period from August 1, 2020–December 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 2 of \$42,976,478. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$14,325,493), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third

⁵¹ Section 11.6(a)(i)(B) of the CAT NMS Plan.

(\$14,325,493) and CEBs paying one-third (\$14,325,493). The following table

breaks down Historical CAT Costs 1 for FAM Period 2 into the categories set

forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 2 *
Capitalized Developed Technology Costs **	\$6,761,094
<i>Technology Costs</i>	31,460,033
Cloud Hosting Services	20,709,212
Operating Fees	9,108,700
CAIS Operating Fees	1,590,298
Change Request Fees	51,823
Legal	2,766,644
Consulting	532,146
Insurance	976,098
Professional and administration	438,523
Public relations	41,940
Total Operating Expenses	42,976,478

* The costs described in this table of costs for FAM Period 2 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$1,892,505 incurred during FAM Period 2 have been appropriately excluded from the above table.⁵²

By the completion of FAM Period 2, CAT LLC was required to implement the following with regard to the CAT:

(a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, CustomerID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission.⁵³

CAT LLC completed the requirements of FAM Period 2 by December 31, 2020. The following describes the costs for each of the categories for FAM Period 2.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 2 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production environments, during the FAM 2 Period. Accordingly, the \$20,709,212 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 2.

The fee arrangement for AWS described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the FAM 2 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well as SIP Data, and Other Data, including reference data. In addition, Industry Members began reporting LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 2.⁵⁴

	Date range: 8/1/20–12/31/20
Average Daily Volume in Billions:	
Participant—Equities	6
Participant—Options	116
Industry Member—Equities	11
Industry Member—Options	0.98
SIP—Options & Equities	80
Average Total Daily Volume	282
Cumulative Total Events for the Period	2,170
Total Compute Hours for the Period	15,660,392
Storage Footprint at End of Period (Petabytes)	114.59

⁵² As discussed above, with respect to certain costs that were “appropriately excluded,” such excluded costs relate to the amortization of capitalized technology costs, which are amortized over the life of the Plan Processor Agreement. As

such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁵³ See definition of “Full Implementation of Core Equity Reporting Requirements” in Section 1.1 of the CAT NMS Plan.

⁵⁴ Note that the volume data described in this table does not include CAIS data.

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 2. Accordingly, the \$9,108,700 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 2. The fee arrangement for FCAT described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, FCAT's activities with respect to the CAT included publishing the Technical Specifications for Phase 2d and overseeing the reporting of firm to firm and intrafirm linkages by Industry Members. In addition, FCAT also continued to engage in the following activities during FAM Period 2:

- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the development and implementation of the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 2. Accordingly, the \$1,590,298 in technology costs for CAIS operating fees

represent costs incurred for services provided by Kingland during FAM Period 2. The fee arrangement for Kingland described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

During FAM Period 2, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 2, CAT incurred costs of \$51,823 related to a change request regarding the addition of functionality for exchange Participants to report rejected messages to the CAT.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 2 of \$6,761,094 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to separate production and industry test entitlements, market maker reference data, and back-processing of exchange exception logic; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$2,766,644 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 2.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 2 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM

Period 2 were paid by CAT LLC to WilmerHale. During FAM Period 2, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, allocations, exchange activity, OTQT, initial data validation, error corrections and recordkeeping;
- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs and technical specifications;
- Provided support for the Operating Committee, Compliance Subcommittees, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6 of the CAT NMS Plan;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for the Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
- Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
- Provided guidance regarding SRO rule filings for the retirement of systems;
- Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;
- Assisted with third-party vendor agreements (e.g., with regard to Anchin, Grant Thornton and insurance policies);
- Assisted with change requests; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to Pillsbury. During FAM Period 2, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted and filed a proposed amendment to the CAT NMS Plan regarding liability matters. As discussed above, liability issues related to the CAT are important matters that

needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(g) Consulting Costs

The consulting costs of \$532,146 represent the fees paid to Deloitte as project manager during FAM Period 2. CAT LLC continued to employ Deloitte during FAM Period 2 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 2 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 2 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 2, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$976,098 represent the fees paid for insurance during FAM Period 2. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$438,523 represent the fees paid to Anchin and Grant Thornton for

financial services provided during FAM Period 2.

Financial Advisory Firm: Anchin.

CAT LLC continued to engage Anchin during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these types of financial advisory services. The fees for these services during FAM Period 2 were paid by CAT LLC to Anchin. During FAM Period 2, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated [sic] bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from the Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audit by an independent auditor; and
- Reviewed historical costs from inception.

Accounting Firm: Grant Thornton.

CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 2 based on, among other things, its expertise and cumulative knowledge of CAT LLC. CAT LLC continued to believe that Grant Thornton was well qualified for its role and its fee rates were in line with market rates for these accounting services. The fees for these services during FAM Period 2 were paid by CAT LLC to Grant Thornton. During FAM Period 2, Grant Thornton performed a financial statement audit for CAT LLC as an independent accounting firm.

(j) Public Relations Costs

The public relations costs of \$41,940 represent the fees paid to Peak

Strategies during FAM Period 2. CAT LLC continued to employ Peak Strategies during FAM Period 2 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 2 were paid by CAT LLC to Peak Strategies. During FAM Period 2, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(iv) Historical CAT Costs Incurred in Financial Accountability Milestone Period 3

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 3 of the Financial Accountability Milestones ("FAM Period 3"),⁵⁵ which covers the period from January 1, 2021—December 31, 2021. Historical CAT Costs 1 would include costs for FAM Period 3 of \$144,415,268. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$48,138,423), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$48,138,423) and CEBBs paying one-third (\$48,138,423). The following table breaks down Historical CAT Costs 1 for FAM Period 3 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

⁵⁵ Section 11.6(a)(i)(C) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 3 *
Capitalized Developed Technology Costs **	\$10,763,372
Technology Costs	123,639,402
Cloud Hosting Services	94,574,759
Operating Fees	23,106,091
CAIS Operating Fees	5,562,383
Change Request Fees	396,169
Legal	6,333,248
Consulting	1,408,209
Insurance	1,582,714
Professional and administration	595,923
Public relations	92,400
Total Operating Expenses	144,415,268

* The costs described in this table of costs for FAM Period 3 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$5,108,044 incurred during FAM Period 3 have been appropriately excluded from the above table.⁵⁶

By the completion of FAM Period 3, CAT LLC was required to implement the following requirements with regard the CAT:

(a) reporting to the Order Audit Trail System ("OATS") is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or

order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)–(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met.⁵⁷

CAT LLC completed the requirements of FAM Period 3 by December 31, 2021. The following describes the costs for each of the categories for FAM Period 3.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 3 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production

environments, during the FAM 3 Period. Accordingly, the \$94,574,759 in technology costs for cloud hosting services represents costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 3. The fee arrangement for AWS described above for the earlier periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During FAM Period 3, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a, Phase 2b, Phase 2c and Phase 2d Industry Member Data (including certain linkages), SIP Data, Other Data, including reference data, and LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 3.⁵⁸

	Date range: 1/1/21 to 4/25/21	Date range: 4/26/21 to 12/31/21 *
Average Daily Volume in Billions:		
Participant—Equities	9	9
Participant—Options	135	136
Industry Member—Equities	20	19
Industry Member—Options	2	2
SIP—Options & Equities	129	137
Average Total Daily Volume	297	304
Cumulative Total Events for the Period	7,480	5,310
Total Compute Hours for the Period	15,860,304	33,487,318

⁵⁶ As discussed above, with respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized over the life of the Plan Processor Agreement. As

such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁵⁷ See definition of "Full Availability and Regulatory Utilization of Transactional Database Functionality" in Section 1.1 of the CAT NMS Plan.

⁵⁸ Note that the volume data described in this table does not include CAIS data.

	Date range: 1/1/21 to 4/25/21	Date range: 4/26/21 to 12/31/21 *
Storage Footprint at End of Period (Petabytes)	180.22	284.62

* Start of Participant Equities in CAT format and SIP Equities on 4/26/21.

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 3. Accordingly, the \$23,106,091 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 3. The fee arrangement for FCAT described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, FCAT's activities with respect to the CAT included the following:

- Facilitated Phase 2c and Phase 2d testing for Industry Members;
- Oversaw creation of linkages of the lifecycle of order events based on the received data through Phase 2d;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement with FCAT discussed above, Kingland continued in its role as a

subcontractor for the development and implementation of CAIS during FAM Period 3. Accordingly, the \$5,562,383 in technology costs for CAIS operating fees represents costs incurred for services provided by Kingland during FAM Period 3. The fee arrangement for Kingland described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs. The full CAIS Technical Specifications were published during FAM Period 3.

(d) Technology Costs—Change Request Fees

During FAM Period 3, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 3, CAT incurred costs of \$396,169 related to change requests, including the following: (1) the addition of functionality for exchange Participants to report rejected messages to the CAT; (2) the migration of MIRS query engine to AWS to reduce operational costs and increase resiliency; and (3) updating the Participant Technical Specifications to allow for two-sided Participant option quote reporting.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 3 of \$10,763,372 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor, including the transition from equity data received by FINRA pursuant to various regulatory services agreements between FINRA and Participant exchanges to the equity CAT Data, and the completion of the Industry Member Phase 2d options manual and

complex orders go-live requirements; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to off-exchange volume concentration, Participant 24-hour trading and an external metastore; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$6,333,248 represent the fees paid for legal services provided by three law firms, WilmerHale, Pillsbury and Covington & Burling LLP ("Covington") during FAM Period 3.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 3 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to WilmerHale. During FAM Period 3, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements, including, for example, verbal activity regarding Phase 2c cutover, error reports, error corrections, Phase 2d Reporting, unique Order-ID on internal route events, reporting addresses, recordkeeping, and unique CCID for foreign customers;
- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs, CAIS requirements, ADF, and technical specifications;
- Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6(c) of the CAT NMS Plan;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for Compliance Subcommittee, including with regard to

responses to OCIE examinations and the annual assessment;

- Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
- Provided guidance regarding SRO rule filings for the retirement of systems;
- Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;
- Provided assistance with change requests;
- Provided guidance and regulatory support for litigation regarding the response to the SEC's exemptive orders;
- Assisted with communications with the industry, including CAT Alerts and presentations;
- Provided guidance regarding the confidentiality of CAT Data, including third-party information requests;
- Assisted with cost management analysis and proposals; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to Pillsbury. During FAM Period 3, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During this period, Pillsbury advised CAT LLC regarding applicable legal matters, reviewed and responded to comment letters regarding the proposed Plan amendment, participated in meetings with senior SEC staff, responded to comments submitted following the SEC's April 6, 2021 order instituting proceedings,⁵⁹ and assessed legal matters regarding the SEC's October 29, 2021 order denying the proposed Plan amendment.⁶⁰

Law Firm: Covington. CAT LLC hired Covington for litigation with the SEC regarding certain exemptive orders related to the CAT, including orders issued in December 2020.⁶¹ CAT LLC interviewed this law firm as well as other potential law firms, considering a variety of factors in its analysis for choosing legal assistance, including the

relevant expertise and fees of the potential lawyers. CAT LLC approved the engagement of Covington in January 2021. The fee rates for this law firm, which were calculated based on hourly rates, were in line with market rates for specialized services. The legal fees for FAM Period 3 for this firm were paid by CAT LLC to Covington.

After Covington was hired in 2021 through the end of 2021, the firm provided legal assistance regarding the litigation with the SEC regarding the 2020 Orders. These services included researching, drafting, and filing motions to stay the 2020 orders and related materials in proceedings before the SEC, as well as researching, drafting, and filing petitions for judicial review of the 2020 Orders in proceedings before the U.S. Court of Appeals for the D.C. Circuit. Covington oversaw ongoing litigation proceedings on these matters, and also supported WilmerHale with respect to settlement negotiations with the SEC staff regarding the 2020 Orders.

In addition to these services, CAT LLC engaged Covington in November 2021 to provide assistance with respect to the SEC's disapproval of CAT NMS Plan amendments concerning a proposed limitation on liability in the event of a data breach or similar event. Covington provided advice concerning CAT's response to the SEC's disapproval order. This work accounted for a minority of Covington's fees in 2021.⁶²

(g) Consulting Costs

The consulting costs of \$1,408,209 represent the fees paid to Deloitte as project manager during FAM Period 3. CAT LLC continued to employ Deloitte during FAM Period 3 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 3 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 3 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 3, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team,

including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;

- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$1,582,714 represent the fees paid for insurance during FAM Period 3. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$595,923 represent the fees paid to Anchin and Grant Thornton for financial services during FAM Period 3.

Financial Advisory Firm: Anchin. CAT LLC continued to employ Anchin during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these financial advisory services. The fees for these services during FAM Period 3 were paid by CAT LLC to Anchin. During FAM Period 3, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated *[sic]* bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from Participants;

⁵⁹ Securities Exchange Act Rel. No. 91487 (Apr. 6, 2021), 86 FR 19054 (Apr. 12, 2021).

⁶⁰ Securities Exchange Act Rel. No. 93484 (Oct. 29, 2021), 86 FR 60933 (Nov. 4, 2021).

⁶¹ See Securities Exchange Act Rel. No. 90688 (Dec. 16, 2020), 85 FR 83634 (Dec. 22, 2020); and Securities Exchange Act Rel. No. 90689 (Dec. 16, 2020), 85 FR 83667 (Dec. 22, 2020) (collectively, the "2020 Orders").

⁶² As discussed above with regard to Pillsbury's work on liability matters, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, such activity is a necessary part of the operation of the CAT.

- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Accounting Firm: Grant Thornton. CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 3 based on, among other things, their expertise and cumulative knowledge of CAT LLC. CAT LLC determined that Grant Thornton was well qualified for its role and that its fixed fee rates were in line with market rates for these accountant services. The fees for these services during FAM Period 3 were paid by CAT LLC to Grant Thornton. During FAM Period 3, Grant Thornton provided audited financial statements for CAT LLC.

(j) Public Relations Costs

The public relations costs of \$92,400 represent the fees paid to Peak Strategies during FAM Period 3. CAT LLC continued to employ Peak Strategies during FAM Period 3 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM

Period 3 were paid by CAT LLC to Peak Strategies. During FAM Period 3, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(v) Excluded Costs

Historical CAT Costs 1 would not include three categories of CAT costs ("Excluded Costs"): (1) \$14,749,362 of costs related to the termination of the relationship with the Initial Plan Processor; (2) \$48,874,937, which are all CAT costs incurred from November 15, 2017 through November 15, 2018; and (3) \$19,628,791, which are costs paid to the Initial Plan Processor from November 16, 2018 through February

2019 when the relationship with the Initial Plan Processor was concluded. The Participants would remain responsible for 100% of these costs, which total \$83,253,090. CAT LLC determined to exclude these Excluded Costs from Historical CAT Costs 1 because these costs relate to the delay in the start of reporting to the CAT and the conclusion of the relationship with the Initial Plan Processor.⁶³

(a) Costs Related to Conclusion of Relationship With Initial Plan Processor

First, Historical CAT Costs 1 would not include \$14,749,362 of costs related to the conclusion of the relationship with the Initial Plan Processor. Such costs include costs related to the American Arbitration Association, the legal assistance of Pillsbury with regard to the arbitration with the Initial Plan Processor, and the settlement costs related to the arbitration with the Initial Plan Processor. The Participants would remain responsible for 100% of these \$14,749,362 in costs.

(b) Costs Incurred From November 15, 2017 Through November 15, 2018

Second, Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018. CAT LLC determined to exclude all costs during this one-year period of \$48,874,937 from fees charged to Industry Members due to the delay in the start of reporting to the CAT. The Participants would remain responsible for 100% of these \$48,874,937 in costs. The following table breaks down these costs into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Excluded costs for November 15, 2017–November 15, 2018 *
Capitalized Developed Technology Costs	\$37,852,083
<i>Technology Costs</i> .....	.....
Cloud Hosting Services .....	.....
Operating Fees .....	.....
CAIS Operating Fees .....	.....
Change Request Fees .....	.....
Legal	6,143,278
Consulting	4,452,106
Insurance .....	.....
Professional and administration	340,145
Public relations	87,325
Total Operating Expenses	48,874,937

* The costs described in this table of Excluded Costs were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

⁶³ In approving the CAT Funding Model, the Commission states that the proposed exclusion of the first two categories of Excluded Costs "is reasonable in the Commission's view because it would not require all costs incurred by the Participants to be recovered from Industry Members

through the Historical CAT Assessment, specifically excluding those costs related to the delay in the start of reporting to the CAT and costs related to the conclusion of the relationship with the Initial Plan Processor." CAT Funding Model Approval Order at 62663. In addition to the first two

categories of Excluded Costs, CAT LLC is now proposing a third category of Excluded Costs that would exclude all costs paid to the Initial Plan Processor after November 15, 2018.

The following provides additional detail regarding the Excluded Costs.

(I) Technology Costs—Cloud Hosting Services, Operating Fees, CAIS Operating Fees and Change Request Fees

CAT LLC did not incur technology costs related to the categories of cloud hosting services, operating fees, CAIS operating fees or change requests during the period from November 15, 2017 through November 15, 2018.

(II) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for the period from November 15, 2017 through November 15, 2018 include capitalizable application development costs of \$37,852,083 incurred in the development of the CAT by the Initial Plan Processor. Such costs include development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Initial Plan Processor. Such costs include costs related to Industry Member technical specifications for orders and transactions, the system security plan, testing and production for Participant CAT reporting, third-party security assessment and response, query portal, onboarding of the Chief Information Security Officer, and ingestion of FINRA TRF data and FINRA data related to halts and corporate actions.

(III) Legal Costs

The legal costs of \$6,143,278 represent the fees paid to WilmerHale for legal services from November 15, 2017 through November 15, 2018. During this period, WilmerHale provided legal assistance to the CAT including with regard to the following:

- Provided legal support for the governance of the CAT, including governance support for the Operating Committee, Advisory Committee, Compliance Subcommittee, and CAT working groups;
- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan;
- Provided assistance related to CAT security;
- Drafted exemptive requests, including requests related to PII;
- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Provided interpretations of and related to the CAT NMS Plan;

- Provided advice with regard to regulator access to the CAT;
- Assisted with the Plan Processor transition;
- Provided assistance regarding communications with the industry regarding the CAT;
- Provided advice regarding Customer Account Information and PII;
- Provided support for litigation related to SEC exemptive orders; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretative and implementation issues.

(IV) Consulting Costs

The consulting costs of \$4,452,106 represent the fees paid to Deloitte for their role as project manager for the CAT from November 15, 2017 through November 15, 2018. During this period, Deloitte engaged in the following activities with respect to the CAT:

- Implemented program operations for the CAT project;
- Provided governance support to the Operating Committee, including support for Subcommittees and working groups of the Operating Committee (e.g., Compliance Subcommittee, Cost and Funding Working Group, Technical Working Group, Industry Outreach Working Group, Security Working Group and Steering Committee);
- Assisted with cost and funding issues for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress.

(V) Insurance

CAT LLC did not incur costs related to insurance during the period from November 15, 2017 through November 15, 2018.

(VI) Professional and Administration Costs

The professional and administration costs of \$340,145 represent the fees paid to Anchin, Exegy and RSM from November 15, 2017 through November 15, 2018.

Financial Advisory Firm: Anchin. From the commencement of its engagement [sic] in April 2018 through November 15, 2018, Anchin engaged in the following activities with respect to the CAT:

- Developed, updated and maintained internal controls;
 - Provided cash management and treasury functions;
 - Facilitated bill payments;
 - Provided monthly bookkeeping;
 - Reviewed vendor invoices and documentation in support of cash disbursements;
 - Provided accounting research and consultations on various accounting, financial reporting and tax matters;
 - Addressed not-for-profit tax and accounting considerations;
 - Prepared tax returns;
 - Addressed various accounting, financial reporting and operating inquiries from Participants;
 - Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
 - Addressed accounting and financial matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC, including supporting the dissolution of CAT NMS, LLC;
 - Supported compliance with the CAT NMS Plan;
 - Worked with and provided support to the Operating Committee and various CAT working groups;
 - Prepared monthly, quarterly and annual financial statements;
 - Supported the annual financial statement audits by an independent auditor;
 - Reviewed historical costs from inception; and
 - Provided accounting and financial information in support of SEC filings.
- Market Data Provider: Exegy.* From July 2018 through November 15, 2018, CAT LLC purchased market data from Exegy (as described in more detail above).

Security Assessment: RSM. From October 2018 through November 15, 2018, CAT LLC incurred costs for RSM's performance of a security assessment (as described in more detail above).

(VII) Public Relations Costs

The public relations costs of \$87,325 represent the fees paid to Sloane from November 15, 2017 through November 15, 2018. From the commencement of its engagement [sic] in March 2018 through November 15, 2018, Sloane provided professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, Sloane provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting

such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan).

(c) Costs Paid to Initial Plan Processor From November 16, 2018 Through February 2019

Third, Historical CAT Costs 1 would not include the \$19,628,791 in costs paid to the Initial Plan Processor from November 16, 2018 through February 2019 when CAT LLC's relationship with the Initial Plan Processor concluded. CAT LLC determined that Historical CAT Costs 1 would not include any fees paid to the Initial Plan Processor after November 15, 2017,⁶⁴ which was the date by which Participants were required to begin reporting to the CAT.⁶⁵ As discussed above, the Participants determined that Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Initial Plan Processor costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Initial Plan Processor costs incurred after November 15, 2018 are the \$19,628,791 in costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these \$19,628,791 in costs.

(C) Historical Recovery Period 1

Under the CAT NMS Plan, the Operating Committee is required to reasonably establish the length of the Historical Recovery Period used in calculating each Historical Fee Rate based upon the amount of the Historical CAT Costs to be recovered by the Historical CAT Assessment, and to describe the reasons for its length.⁶⁶ The Historical Recovery Period used in calculating the Historical Fee Rate may

not be less than 24 months or more than five years.⁶⁷ The Operating Committee has determined to establish a Historical Recovery Period 1 of 24 months for Historical CAT Assessment 1.

The Operating Committee determined that the length of Historical Recovery Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans to the Participants in a timely fashion. The Operating Committee determined that 24 months for Historical Recovery Period 1 would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to Section 31.⁶⁸ In addition, in establishing a Historical Recovery Period of 24 months, the Operating Committee recognized that the total costs for Historical CAT Assessment 1 were less than the total costs for 2022 and 2023,⁶⁹ and therefore it would be reasonable and appropriate to recover costs subject to this filing over an approximate two-year period.

The length of the Historical Recovery Period 1 and the reasons for its length are provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.⁷⁰

(D) Projected Total Executed Equivalent Share Volume

The calculation of Historical Fee Rate 1 also requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for Historical Recovery Period 1. Under the CAT NMS Plan, the Operating Committee is required to "reasonably determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each Historical Recovery Period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months."⁷¹ The Operating Committee is

required to base its projection on the prior twelve months, but it may use its discretion to analyze the likely volume for the upcoming year. Such discretion would allow the Operating Committee to use its judgment when estimating projected total executed equivalent share volume if the volume over the prior twelve months was unusual or otherwise unfit to serve as the basis of a future volume estimate.⁷²

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. The Operating Committee has determined to calculate the projected total executed equivalent share volume for the 24 months of Historical Recovery Period 1 by doubling the executed equivalent share volume for the prior 12 months. The Operating Committee determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has remained relatively constant. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395, the executed equivalent share volume for 2022 was 4,039,821,841,560.31, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6. Accordingly, the projected total executed equivalent share volume for Historical Recovery Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.⁷³

The projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1 and a description of the calculation of the projection is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.⁷⁴

(E) Historical Fee Rate 1

Historical Fee Rate 1 would be calculated by dividing Historical CAT Costs 1 by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1, as described in detail above.⁷⁵ Specifically,

⁶⁴ As discussed below, CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. See Section 3(a)(10)(E) below.

⁶⁵ The SEC approved the CAT NMS Plan on November 15, 2016, and Participant reporting was required to begin on the first anniversary of this date, November 15, 2017. See Section 6.3 of the CAT NMS Plan and CAT NMS Plan Approval Order.

⁶⁶ Section 11.3(b)(i)(D)(I) and Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

⁶⁷ Section 11.3(b)(i)(D)(I) of the CAT NMS Plan. In the CAT Funding Model Approval Order, the SEC stated that "[i]n the Commission's view, it is reasonable for the Operating Committee to establish the length of the Historical Recovery Period to be no less than 24 months and no more than five years." CAT Funding Model Approval Order at 62664.

⁶⁸ As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model at 62682.

⁶⁹ The total CAT costs for 2022 were approximately \$186 million and the total CAT costs for 2023 were approximately \$233 million.

⁷⁰ Section 11.3(b)(iii)(B)(II)(C) of the CAT NMS Plan.

⁷¹ Section 11.3(b)(i)(E) of the CAT NMS Plan.

⁷² CAT Funding Model Approval Order at 62664.

⁷³ This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

⁷⁴ Section 11.3(b)(iii)(B)(II)(D) of the CAT NMS Plan.

⁷⁵ In approving the CAT Funding Model, the Commission stated that "[t]he calculation of the Historical Fee Rate 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 is

Historical Fee Rate 1 would be calculated by dividing \$318,059,819 by 7,961,507,681,810.42. As a result, the Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. Historical Fee Rate 1 is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide the Historical Fee Rate in a fee filing for a Historical CAT Assessment.⁷⁶

(3) Past CAT Costs and Participants

Participants would not be required to pay any fees associated with Historical CAT Assessment 1 as the Participants previously have paid all Past CAT Costs. The CAT NMS Plan explains that:

Because Participants previously have paid Past CAT Costs via loans to the Company, Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs and such other additional Past CAT Costs as reasonably determined by the Operating Committee will be paid by the cancellation of loans made to the Company on a pro rata basis based on the outstanding loan amounts due under the loans.⁷⁷

The CAT NMS Plan further states that "Historical CAT Assessments are designed to recover two-thirds of the Historical CAT Costs."⁷⁸

(4) Monthly Fees

CEBBs and CEBSs would be required to pay fees for Historical CAT Assessment 1 on a monthly basis for the period in which Historical CAT Assessment 1 is in effect.⁷⁹ A CEBB or CEBS's fee for each month would be calculated based on the transactions in Eligible Securities executed by the CEBB or CEBS from the prior month.⁸⁰ Proposed paragraph (a)(1)(A) of the fee schedule would state that each CAT Executing Broker would receive its first invoice in November 2024, and "would receive an invoice each month thereafter in which Historical CAT Assessment 1 is in effect." Proposed paragraph (a)(1)(B) of the fee schedule would state

reasonable." CAT Funding Model Approval Order at 62664.

⁷⁶ Section 11.3(b)(iii)(B)(II)(A) of the CAT NMS Plan.

⁷⁷ Section 11.3(b)(ii) of the CAT NMS Plan.

⁷⁸ *Id.* In approving the CAT Funding Model, the Commission stated that "[t]he proposed allocation of the Historical CAT Assessment solely to CEBSs and CEBBs, and ultimately Industry Members, is reasonable. The Historical CAT Assessment will still be divided into thirds," as the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made to the Company. CAT Funding Model Approval Order at 62666.

⁷⁹ See Section 11.3(b)(iii)(A) of the CAT NMS Plan.

⁸⁰ See proposed paragraph (a)(1)(B) of the fee schedule.

that "Consolidated Audited Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis." In addition, proposed paragraph (b)(1) of the fee schedule states that each CEBB and CEBS is required to pay its CAT fees "each month."

(5) Actual Recovery Period for Historical CAT Assessment 1

The CAT NMS Plan states that, "[n]otwithstanding the length of the Historical Recovery Period used in calculating the Historical Fee Rate, each Historical CAT Assessment calculated using the Historical Fee Rate will remain in effect until all Historical CAT Costs for the Historical CAT Assessment are collected."⁸¹ Accordingly, Historical CAT Assessment 1 will remain in effect until all Historical CAT Costs 1 have been collected. The actual recovery period for Historical CAT Assessment 1 may be shorter or longer than Historical Recovery Period 1 depending on the actual executed equivalent share volumes during the time that Historical CAT Assessment 1 is in effect.⁸²

(6) Consolidated Audit Trail Funding Fees

To implement Historical CAT Assessment 1, a new section would be added to the Exchange's fee schedule for "Consolidated Audit Trail Funding Fees", and it would include the proposed paragraphs described below.

(A) Fee Schedule for Historical CAT Assessment 1

The CAT NMS Plan states that:

Each month in which a Historical CAT Assessment is in effect, each CEBB and each CEBS shall pay a fee for each transaction in Eligible Securities executed by the CEBB or CEBS 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 reasonably determined pursuant to paragraph (b)(i) of this Section 11.3.⁸³

Accordingly, based on the factors discussed above, the Exchange proposes to add paragraph (a)(1) to the Consolidated Audit Trail Funding Fees section of its fee schedule. Proposed

⁸¹ Section 11.3(b)(i)(D)(II) of the CAT NMS Plan.

⁸² In approving the CAT Funding Model, the Commission stated that, "[i]n the Commission's view, it is reasonable for Industry Members to be charged a Historical CAT Assessment until all Historical CAT Costs for the Historical CAT Assessment are collected." CAT Funding Model Approval Order at 62665.

⁸³ Section 11.3(b)(iii)(A) of the CAT NMS Plan.

paragraph (a)(1) would state the following:

(A) Each CAT Executing Broker shall receive its first invoice for Historical CAT Assessment 1 in November 2024, which shall set forth the Historical CAT Assessment 1 fees calculated based on transactions in October 2024, and shall receive an invoice for Historical CAT Assessment 1 for each month thereafter in which Historical CAT Assessment 1 is in effect.

(B) Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis. Each month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer ("CEBB") and/or the CAT Executing Broker for the Seller ("CEBS") (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of \$0.000013 per executed equivalent share.

(C) Historical CAT Assessment 1 will remain in effect until \$212,039,879.34 (two-thirds of Historical CAT Costs 1) are collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time. Consolidated Audit Trail, LLC will provide notice when Historical CAT Assessment 1 will no longer be in effect.

(D) Each CAT Executing Broker shall be required to pay each invoice for Historical CAT Assessment 1 in accordance with paragraph (b).

As noted in the Plan amendment for the CAT Funding Model, "as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee rate.⁸⁴ Accordingly, proposed paragraph (a)(1)(B) of the fee schedule would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 of \$0.00003994969693072937 by one-third, and rounding the result to 6 decimal places.⁸⁵ The Operating Committee determined to use six decimal places to balance the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

⁸⁴ CAT Funding Model Approval Order at 62658, n.658.

⁸⁵ Dividing \$0.00003994969693072937 by three equals \$0.00001331656564357646. Rounding \$0.00001331656564357646 to six decimal places equals \$0.000013.

The proposed language in paragraph (a)(1)(A) of the fee schedule would describe when CAT Executing Brokers would receive their first monthly invoice for Historical CAT Assessment 1. Specifically, CAT Executing Brokers would receive their first monthly invoice for Historical CAT Assessment 1 in November 2024 and the fees set forth in that invoice would be calculated based on transactions executed in the prior month, that is, transactions executed in October 2024. The payment for the first invoice would be required within 30 days after the receipt of the first invoice (unless a longer period is indicated), as described in paragraph (b)(2) of the fee schedule.

Proposed paragraph (a)(1)(A) of the fee schedule also would describe the monthly cadence of the invoices for Historical CAT Assessment 1. Specifically, after the first invoices are provided to CAT Executing Brokers in November 2024, invoices will be sent to CAT Executing Brokers each month thereafter while Historical CAT Assessment 1 is in effect.

Proposed paragraph (a)(1)(B) of the fee schedule would describe the invoices for Historical CAT Assessment 1. Proposed paragraph (a)(1)(B) of the fee schedule would state that “Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis.” Proposed paragraph (a)(1)(B) of the fee schedule also would describe the fees to be set forth in the invoices for Historical CAT Assessment 1. Specifically, it would state that “[e]ach month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer (“CEBB”) and/or the CAT Executing Broker for the Seller (“CEBS”) (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of \$0.000013 per executed equivalent share.”

Furthermore, proposed paragraph (a)(1)(C) of the fee schedule would describe how long Historical CAT Assessment 1 would remain in effect. It would state that “Historical CAT Assessment 1 will remain in effect until \$212,039,879.34 (two-thirds of Historical CAT Costs 1) are collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time.” This proposed paragraph would further state that “Consolidated Audit Trail,

LLC will provide notice when Historical CAT Assessment 1 will no longer be in effect.”

Historical CAT Assessment 1 will be assessed for all transactions executed in each month through the end of the month in which two-thirds of Historical CAT Costs 1 are assessed, and then CAT LLC will provide notice that Historical CAT Assessment 1 is no longer in effect. Since Historical CAT Assessment 1 is a monthly fee based on transaction volume from the prior month, Historical CAT Assessment 1 may collect more than two-thirds of Historical CAT Costs 1. To the extent that occurs, any excess money collected during the final month in which Historical CAT Assessment 1 is in effect will be used to offset future fees and/or to fund the reserve for the CAT.

Finally, proposed paragraph (a)(1)(D) of the fee schedule sets forth the requirement for the CAT Executing Brokers to pay the invoices for Historical CAT Assessment 1. It would state that “[e]ach CAT Executing Broker shall be required to pay each invoice for Historical CAT Assessment 1 in accordance with paragraph (b).”

(B) Manner of Payment

Paragraph (b)(1) to the “Consolidated Audit Trail Funding Fees” section of its fee schedule describes the manner of payment of Industry Member CAT fees. Paragraph (b)(1) states that “[e]ach CAT Executing Broker shall pay its CAT fees as required pursuant to paragraph (a) each month to the Consolidated Audit Trail, LLC in the manner prescribed by the Consolidated Audit Trail, LLC.” The CAT NMS Plan requires the Operating Committee to establish a system for the collection of CAT fees.⁸⁶ The Plan Processor has established a billing system for CAT fees.⁸⁷ Therefore, the Exchange proposes to require CAT Executing Brokers to pay Historical CAT Assessment 1 in accordance with such system.

(C) Failure To Pay CAT Fees

The CAT NMS Plan further states that:

Participants shall require each Industry Member to pay all applicable fees authorized under this Article XI within thirty (30) days after receipt of an invoice or other notice indicating payment is due (unless a longer

payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due (as determined in accordance with the preceding sentence), such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (a) the Prime Rate plus 300 basis points; or (b) the maximum rate permitted by applicable law.⁸⁸

Accordingly, the Exchange previously has added this requirement to the Exchange’s fee schedule. Specifically, paragraph (b)(2) of the fee schedule states:

Each CAT Executing Broker shall pay the CAT fees required pursuant to paragraph (a) within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If a CAT Executing Broker fails to pay any such CAT fee when due, such CAT Executing Broker shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of (i) the Prime Rate plus 300 basis points, or (ii) the maximum rate permitted by applicable law.

The requirements of paragraph (b)(2) would apply to Historical CAT Assessment 1.

(7) Historical CAT Assessment Details

The CAT NMS Plan states that:

Details regarding the calculation of a CAT Executing Broker’s Historical CAT Assessment will be provided upon request to such CAT Executing Broker. At a minimum, such details would include each CAT Executing Broker’s executed equivalent share volume and corresponding fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.⁸⁹

Such information would provide CEBBs and CEBBs with the ability to understand the details regarding the calculation of their Historical CAT Assessment.⁹⁰ CAT LLC will provide CAT Executing Brokers with these details regarding the calculation of their Historical CAT Assessments on their monthly invoice for the Historical CAT Assessment.

In addition, CAT LLC will make certain aggregate statistics regarding Historical CAT Assessments publicly available. Specifically, the CAT NMS

⁸⁶ Section 11.4 of the CAT NMS Plan.

⁸⁷ The billing process and system are described in CAT Alert 2023–02 as well as the CAT FAQs related to the billing of CAT fees, the Industry Member CAT Reporter Portal User Guide, the FCAT Industry Member Onboarding Guide, the FCAT Connectivity Supplement for Industry Members and the CAT Billing Webinars (dated Sept. 28, 2023, and Nov. 7, 2023), each available on the CAT website.

⁸⁸ Section 11.4 of the CAT NMS Plan.

⁸⁹ Section 11.3(a)(iv)(A) of the CAT NMS Plan.

⁹⁰ In approving the CAT Funding Model, the Commission stated that, “[i]n the Commission’s view, providing CAT Execut[ing] Brokers information regarding the calculation of their CAT Fees will aid in transparency and permit CAT Execut[ing] Brokers to confirm the accuracy of their invoices for CAT Fees.” CAT Funding Model Approval Order at 62667.

Plan states that, “[f]or each Historical CAT Assessment, at a minimum, CAT LLC will make publicly available the aggregate executed equivalent share volume and corresponding aggregate fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise on an exchange, and (3) by buy-side transactions and sell-side transactions.”⁹¹ Such aggregate statistics will be available on the CAT website.

Furthermore, CAT LLC will make publicly available on the CAT website the total amount invoiced each month that Historical CAT Assessment 1 is in effect as well as the total amount invoiced for Historical CAT Assessment 1 for all months since its commencement. CAT LLC also will make publicly available on the CAT website the total costs to be collected from Industry Members for Historical CAT Assessment 1. By reviewing statistics regarding how much has been invoiced and how much remains to be invoiced for Historical CAT Assessment 1, Industry Members would have sufficient information to reasonably track how much longer Historical CAT Assessment 1 is likely to be in place.

(8) Implementation Assistance

To assist Industry Members with compliance with the commencement of Historical CAT Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices prior to the commencement of Historical CAT Assessment 1. Specifically, CAT Executing Brokers have received mock invoices based on transaction data each month since November 2023. The mock invoices are in the same form as the actual, payable invoices, including both the relevant transaction data and the corresponding fee. However, no payments have been required in response to such mock invoices; they have been used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data has provided CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended

to facilitate the payment of Historical CAT Assessment 1.

(9) Financial Accountability Milestones

The CAT NMS Plan states that “[n]o Participant will make a filing with the SEC pursuant to Section 19(b) of the Exchange Act regarding any Historical CAT Assessment until any applicable Financial Accountability Milestone described in Section 11.6 has been satisfied.”⁹² The CAT NMS Plan further states that “in all filings submitted by the Participants to the Commission under Section 19(b) of the Exchange Act, to establish or implement Post-Amendment Industry Member Fees pursuant to this Article, . . . the Participants shall clearly indicate whether such fees are related to Post-Amendment Expenses incurred during Period 1, Period 2, Period 3, or Period 4.”⁹³ As discussed in detail below, all applicable Financial Accountability Milestones for Historical CAT Assessment 1—that is, Period 1, Period 2 and Period 3 of the Financial Accountability Milestones—have been satisfied. Furthermore, as discussed below, this filing clearly indicates that Historical CAT Assessment 1 relates to Post-Amendment Expenses incurred during Periods 1, 2 and 3 of the Financial Accountability Milestones.

(A) Period 1 of the Financial Accountability Milestones

In accordance with Section 11.6(b) of the CAT NMS Plan, Historical CAT Assessment 1 seeks to recover costs that are related to “all fees, costs, and expenses (including legal and consulting fees, costs, and expenses) incurred by or for the Company in connection with the development, implementation and operation of the CAT from the effective date of [Section 11.6 of the CAT NMS Plan] until such time as Full Implementation of CAT NMS Plan Requirements has been achieved”⁹⁴ (“Post-Amendment Expenses”) incurred during FAM Period 1. FAM Period 1 began on June 22, 2020, the effective date of Section 11.6 of the CAT NMS Plan, and concluded on July 31, 2020, the date of Initial Industry Member Core Equity and Options Reporting. Section 1.1 of the CAT NMS Plan defines “Initial Industry Member Core Equity and Options Reporting” as:

The reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of both: (a) equities

transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information; and (b) options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants’ Quarterly Progress Reports.⁹⁵ As indicated by the Participants’ Quarterly Progress Report for the third quarter of 2020,⁹⁶ Initial Industry Member Core Equity and Option Reporting was completed on schedule on July 22, 2020, which is prior to the July 31, 2020 deadline.

Under the FAM Period 1 requirement of Initial Industry Member Core Equity and Options Reporting, Industry Members—excluding Small Industry Members that are not OATS reporters—were required to report two categories of data to the CAT: equities transaction data and options transaction data (both excluding Customer Account Information, Customer-ID, and Customer Identifying Information) by July 31, 2020. Pursuant to exemptive relief provided by the Commission, the Commission authorized the Participants’ Compliance Rules to allow core equity reporting for Industry Members (Phase 2a) to begin on June 22, 2020 and core options reporting for Industry Members (Phase 2b) to begin on July 20, 2020.⁹⁷

In adopting the FAMs, the Commission stated that the equities transaction reporting required for FAM Period 1 “is consistent with the functionality that the Participants describe on the CAT NMS Plan website as ‘Production Go-Live for Equities 2a file submission and data integrity

⁹⁵ The Quarterly Progress Reports are available at <https://www.catnmsplan.com/implementation-plan>.

⁹⁶ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020) and Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021).

⁹⁷ See Phased Reporting Exemptive Relief Order. Under the CAT NMS Plan as adopted, the Participants were required, through their Compliance Rules, to require their Large Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2018, and to require their Small Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2019. Sections 6.7(a)(v) and (vi) of the CAT NMS Plan. The SEC granted exemptive relief from these provisions of the CAT NMS Plan to allow for the phased implementation of Industry Member reporting via five phases addressing the reporting requirements for Phase 2a Industry Member Data, Phase 2b Industry Member Data, Phase 2c Industry Member Data, Phase 2d Industry Member Data and Phase 2e Industry Member Data.

⁹¹ Section 11.3(a)(iv)(B) of the CAT NMS Plan. In approving the CAT Funding Model, the Commission stated that “[t]he publication of the aggregate executed equivalent share volume and aggregate fee is appropriate because it would allow Participants and CAT Executing Brokers a high-level validation of executed volume and fees.” CAT Funding Model Approval Order at 62667.

⁹² Section 11.3(b)(iii)(B)(III) of the CAT NMS Plan.

⁹³ Section 11.6(b) of the CAT NMS Plan.

⁹⁴ Section 11.6 of the CAT NMS Plan.

validations.’’⁹⁸ The Phase 2a Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order, and includes the following data related to Eligible Securities that are equities:

- All events and scenarios covered by OATS, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions;

- Reportable Events for: (1) proprietary orders, including market maker orders, for Eligible Securities that are equities; (2) electronic quotes in listed equity Eligible Securities (*i.e.*, NMS stocks) sent to a national securities exchange or FINRA’s Alternative Display Facility (“ADF”); (3) electronic quotes in unlisted Eligible Securities (*i.e.*, OTC Equity Securities) received by an Industry Member operating an interdealer quotation system (“IDQS”); and (4) electronic quotes in unlisted Eligible Securities sent to an IDQS or other quotation system not operated by a Participant or Industry Member;

- Firm Designated IDs (“FDIDs”), which Industry Members must report to the CAT as required by Sections 6.3(d)(i)(A) and 6.4(d)(ii)(C) of the CAT NMS Plan;

- Industry Members would be required to report all street side representative orders, including both agency and proprietary orders and mark such orders as representative orders, except in certain limited exceptions as described in the Industry Member Technical Specifications;

- The link between the street side representative order and the order being represented when: (1) the representative order was originated specifically to represent a single order received either from a customer or another broker-dealer; and (2) there is (a) an existing direct electronic link in the Industry Member’s system between the order being represented and the representative order and (b) any resulting executions are immediately and automatically applied to the represented order in the Industry Member’s system;

- Manual and Electronic Capture Time for Manual Order Events;

- Special handling instructions for the original receipt or origination of an order during Phase 2a; and

- When routing an order, whether the order was routed as an intermarket sweep order (“ISO”).

In Phase 2a, Industry Members were not required to report modifications of

a previously routed order in certain limited instances, nor were they required to report a cancellation of an order received from a Customer after the order has been executed.⁹⁹

The Quarterly Progress Report for the third quarter of 2020 states that “Interim Step: Production Go-Live for Equities 2a file submission and data integrity validation (Large Industry Members and Small OATS Reporters)” was completed on June 22, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of “equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information” was completed on June 22, 2020.

In adopting the FAMS, the Commission stated that the options transaction reporting required for FAM Period 1 is “consistent with the functionality that the Participants describe on the CAT NMS Plan website as ‘Production Go-Live for Options 2b file submission and data integrity validations.’”¹⁰⁰ The Phase 2b Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order, and includes the Industry Member Data related to Eligible Securities that are options and related to simple electronic option orders, excluding electronic paired option orders. A simple electronic option order is an order to buy or sell a single option that is not related to or dependent on any other transaction for pricing and timing of execution that is either received or routed electronically by an Industry Member. Electronic receipt of an order is defined as the initial receipt of an order by an Industry Member in electronic form in standard format directly into an order handling or execution system. Electronic routing of an order is the routing of an order via electronic medium in standard format from one Industry Member’s order handling or execution system to an exchange or another Industry Member. An electronic paired option order is an electronic option order that contains both the buy and sell side that is routed to another Industry Member or exchange for crossing and/or price improvement as a single transaction on an exchange. Responses to auctions of simple orders and paired simple orders would be reportable in Phase 2b. Furthermore, combined orders in options would be treated in Phase 2b in the same way as equity representative orders are treated

in Phase 2a. A combined order would mean, as permitted by SRO rules, a single, simple order in Listed Options created by combining individual, simple orders in Listed Options from a customer with the same exchange origin code before routing to an exchange. During Phase 2b, the single combined order sent to an exchange must be reported and marked as a combined order, but the linkage to the underlying orders is not required to be reported until Phase 2d.¹⁰¹

The Quarterly Progress Report for the third quarter of 2020 states that “Interim Step: Production Go-Live for Options 2b file submission and data integrity validations” was completed on July 20, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of “options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information” was completed on July 20, 2020.

As discussed above, the Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from June 22, 2020 through July 31, 2020. The total costs for this period, as discussed above, are \$6,377,343. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBBs paying one-third (\$2,125,781).

(B) Period 2 of the Financial Accountability Milestones

Historical CAT Assessment 1 seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 2. FAM Period 2 began on August 1, 2020, and concluded on December 31, 2020, the date of the Full Implementation of Core Equity Reporting. Section 1.1 of the CAT NMS Plan defines “Full Implementation of Core Equity Reporting” as:

the point at which: (a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-

⁹⁸ Securities Exchange Act Rel. No. 88890 (May 15, 2020), 85 FR 31322, 31330 n.97 (May 22, 2020) (“FAM Adopting Release”).

⁹⁹ Phased Reporting Exemptive Relief Order at 23076–78.

¹⁰⁰ FAM Adopting Release at 31330, n.98.

¹⁰¹ Phased Reporting Exemptive Relief Order at 23078.

firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants' Quarterly Progress Reports. As indicated by the Participants' Quarterly Progress Report for the fourth quarter of 2020,¹⁰² Full Implementation of Core Equity Reporting was completed on schedule by December 31, 2020.

Specifically, the Full Implementation of Core Equity Reporting requires the satisfaction of two prongs. The first prong requires Participants to have fully implemented the first phase of equities transaction reporting for Industry Members (excluding Small Industry Members that are not OATS reporters) at an Error Rate of less than 5%. In addition, equities transaction data produced by the CAT at this stage must also be sufficiently interlinked so as to permit full analysis of an order's lifecycle across the national market, excluding full linkage of representative orders. As CAT LLC reported on its Quarterly Progress Reports, Phase 2a was fully implemented as of October 26, 2020, including intra-firm, inter-firm, national securities exchange, and trade reporting facilities linkages.¹⁰³ In addition to the reporting of Phase 2a Industry Member Data as described above with regard to FAM Period 1, the following linkage data was added to the CAT as described in the Quarterly Progress Reports for the third and fourth quarter of 2020:

- “Production Go-Live for Equities 2a Intrafirm Linkage validations” was completed on 7/27/2020;¹⁰⁴
- “Production Go-Live for Firm to Firm Linkage validations for Equities 2a (Large Industry Members and Small

OATS Reporters)” was completed on October 26, 2020; and

- “Production Go-Live for Equities 2a Exchange and TRF Linkage validations (Large Industry Members and Small OATS Reporters)” was completed on October 26, 2020.

Furthermore, as CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2020, the average overall error rate for Phase 2a Industry Member Data was less than 5% as of December 31, 2020. The average overall error rate was calculated by dividing the compliance errors by processed records.

The second prong of this FAM requires that the equities transaction data collected by the CAT at this stage be made available to regulators through two basic query tools required by the CAT NMS Plan—a targeted query tool that will enable regulators to retrieve data via an online query screen with a variety of predefined selection criteria, and a user-defined direct query tool that will provide regulators with the ability to query data using all available attributes and data sources.¹⁰⁵ As CAT LLC reported on its Quarterly Progress Reports, the query tool functionality incorporating the data from Phase 2a was available to the Participants and the Commission as of December 31, 2020.¹⁰⁶

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.¹⁰⁷

As discussed above, Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from August 1, 2020 through December 31, 2020. The total costs for this period, as discussed above, are \$42,976,478.

¹⁰⁵ Section 6.10(c)(i)(A) of the CAT NMS Plan requires the Plan Processor to “provide Participants and the SEC with access to all CAT Data stored in the Central Repository” via an “online targeted query tool.” Appendix D, Sections 8.1.1–8.1.3 of the CAT NMS Plan describes the required functionality associated with this regulatory tool. Appendix D, Section 8.2.1 describes the required functionality associated with a user-defined direct query tool that will “deliver large sets of data that can then be used in internal surveillance or market analysis applications.”

¹⁰⁶ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020); Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021); and Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰⁷ Securities Exchange Act Rel. No. 98848 (Nov. 2, 2023), 88 FR 77128, 77129 n.13 (Nov. 8, 2023) (“Settlement Exemptive Order”).

Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remain [*sic*] two-thirds, with CEBBs paying one-third (\$14,325,492.70) and CEBBs paying one-third (\$14,325,492.70).

(C) Period 3 of the Financial Accountability Milestones

Historical CAT Assessment 1 seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 3. FAM Period 3 began on January 1, 2021, and concluded on December 31, 2021, the date of the Full Availability and Regulatory Utilization of Transactional Database Functionality. Section 1.1 of the CAT NMS Plan defines “Full Availability and Regulatory Utilization of Transactional Database Functionality” as:

the point at which: (a) reporting to the Order Audit Trail System (“OATS”) is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)-(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants' Quarterly Progress Reports. As indicated by the Participants' Quarterly Progress

¹⁰² Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰³ For a description of the requirements of Phases 2a, see Phased Reporting Exemptive Relief Order.

¹⁰⁴ Q3 2020 Quarterly Progress Report (Oct. 20, 2021).

Report for the fourth quarter of 2021,¹⁰⁸ Full Availability and Regulatory Utilization of Transactional Database Functionality was completed on schedule by December 31, 2021.

Specifically, the “Full Availability and Regulatory Utilization of Transactional Database Functionality” requires the satisfaction of five prongs. The first prong requires that reporting to the Order Audit Trail System (“OATS”) is no longer required for new orders. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021,¹⁰⁹ FINRA retired OATS effective September 1, 2021.¹¹⁰ Accordingly, after the retirement of OATS, reporting to OATS was no longer required.

In addition to Phase 2a and Phase 2b Industry Member Data, the second and third prongs of “Full Availability and Regulatory Utilization of Transactional Database Functionality” require Industry Member reporting of Phase 2c Industry Member Data and Phase 2d Industry Member Data. The Phase 2c Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order. That Order states that “Phase 2c Industry Member Data” is Industry Member Data related to Eligible Securities that are equities other than Phase 2a Industry Member Data, Phase 2d Industry Member Data, or Phase 2e Industry Member Data. Specifically, the Phase 2c Industry Member Data includes Industry Member Data that is related to Eligible Securities that are equities and that is related to: (1) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (2) quotes in unlisted Eligible Securities sent to an IDQS operated by a CAT Reporter (reportable by the Industry Member sending the quotes) (except for quotes reportable in Phase 2d, as discussed below); (3) electronic quotes in listed equity Eligible Securities (*i.e.*, NMS stocks) that are not sent to a national securities exchange or FINRA’s Alternative Display Facility; (4) reporting changes to client instructions regarding modifications to algorithms; (5) marking as a representative order any order originated to work a customer order in price guarantee scenarios, such as a guaranteed VWAP; (6) flagging rejected external routes to indicate a route was not accepted by the receiving destination; (7) linkage of duplicate electronic messages related to a Manual

Order Event between the electronic event and the original manual route; (8) special handling instructions on order route reports (other than the ISO, which is required to be reported in Phase 2a); (9) quote identifier on trade events; (10) reporting of LTIDs (if applicable) for accounts with Reportable Events that are reportable to CAT as of and including Phase 2c; (11) reporting of date account opened or Account Effective Date (as applicable) for accounts and reporting of a flag indicating the Firm Designated ID type as account or relationship; (12) order effective time for orders that are received by an Industry Member and do not become effective until a later time; (13) the modification or cancellation of an internal route of an order; and (14) linkages to the customer orders(s) being represented for representative order scenarios, including agency average price trades, net trades, aggregated orders, and disconnected Order Management System (“OMS”)—Execution Management System (“EMS”) scenarios, as required in the Industry Member Technical Specifications.¹¹¹

Phase 2c Industry Member Data also includes electronic quotes that are provided by or received in a CAT Reporter’s order/quote handling or execution systems in Eligible Securities that are equities and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: (1) an equity bid or offer is displayed publicly or has been communicated (a) for listed securities to the ADF operated by FINRA; or (b) for unlisted equity securities to an “interdealer quotation system,” as defined in FINRA Rule 6420(c); or (2) an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing; *i.e.*, no further manual or electronic action is required by the responder providing the quote in order to execute or cause a trade to be executed). With respect to OTC Equity Securities, OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter (other than such an IDQS that does not match and execute orders) are reportable by the Industry Member sending them in Phase 2c. Accordingly, any response to a request for quote or other form of solicitation response provided in a standard electronic format (*e.g.*, FIX) that meets this quote definition (*i.e.*, an equity bid or offer which is accessible

electronically by customers or other market participants and is immediately actionable for execution or routing) would be reportable in Phase 2c.¹¹²

The Phase 2d Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order. “Phase 2d Industry Member Data” is Industry Member Data that is related to Eligible Securities that are options other than Phase 2b Industry Member Data, Industry Member Data that is related to Eligible Securities that are equities other than Phase 2a Industry Member Data or Phase 2c Industry Member Data, and Industry Member Data other than Phase 2e Industry Member Data. Phase 2d Industry Member Data includes with respect to the Eligible Securities that are options: (1) simple manual orders; (2) electronic and manual paired orders; (3) all complex orders with linkages to all CAT-reportable legs; (4) LTIDs (if applicable) for accounts with Reportable Events for Phase 2d; (5) date account opened or Account Effective Date (as applicable) for accounts with an LTID and flag indicating the Firm Designated ID type as account or relationship for such accounts; (6) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (7) the modification or cancellation of an internal route of an order; and (8) linkage between a combined order and the original customer orders. Phase 2d Industry Member Data also would include electronic quotes that are provided by or received in a CAT Reporter’s order/quote handling or execution systems in Eligible Securities that are options and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: a listed option bid or offer which is accessible electronically by customers or other market participants and is immediately actionable (*i.e.*, no further action is required by the responder providing the quote in order to execute or cause a trade to be executed). Accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (*e.g.*, FIX) that meets this definition is reportable in Phase 2d for options.¹¹³

Phase 2d Industry Member Data also includes with respect to Eligible Securities that are options or equities (1) receipt time of cancellation and modification instructions through Order Cancel Request and Order Modification

¹⁰⁸ Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹⁰⁹ *Id.*

¹¹⁰ Securities Exchange Act Rel. No. 92239 (June 23, 2021), 86 FR 34293 (June 29, 2021).

¹¹¹ Phase Reporting Exemptive Relief Order at 23078–79.

¹¹² *Id.* at 23079.

¹¹³ *Id.*

Request events; (2) modifications of previously routed orders in certain instances; and (3) OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter that does not match and execute orders. In addition, subject to any exemptive or other relief, Phase 2d Industry Member Data will include verbal or manual quotes on an exchange floor or in the over-the-counter market, where verbal quotes and manual quotes are defined as bids or offers in Eligible Securities provided verbally or that are provided or received other than via a CAT Reporter's order handling and execution system (e.g., quotations provided via email or instant messaging).¹¹⁴

The Quarterly Progress Report for the fourth quarter of 2021 states that "Phase 2a was fully implemented as of October 26, 2020;" "Phase 2b was fully implemented as of January 4, 2021;" "Phase 2c was implemented as of April 26, 2021;" and "Phase 2d was fully implemented as of December 13, 2021."¹¹⁵ The Quarterly Progress Reports for 2021 provide additional detail regarding the implementation of these steps including the following:

- "Production Go-Live for Equities 2c reporting requirements (Large Industry Members)" was completed on April 26, 2021;
- "LTID Account Information Reporting Go-Live for Phases 2a, 2b and 2c (Large Industry Members)" was completed on April 26, 2021;
- "FCAT Plan Processor creates linkages of the lifecycle of order events based on the received data through Phase 2d Production Go-Live for Options 2d reporting requirements (Large Industry Members)" was completed on December 13, 2021;
- "Production Go-Live for Options 2d reporting requirements (Large Industry Members)" was completed on December 13, 2021;
- "Production Go-Live for Options 2b reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "Production Go-Live for Equities 2c reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "Production Go-Live for Options 2d reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;

- "LTID Account Information Reporting Go-Live for Phases 2d (Large Industry Members)" was completed on December 13, 2021; and

- "LTID Account Information Reporting Go-Live for Phases 2a, 2b, 2c and 2d (Small Industry Members)" was completed on December 13, 2021.¹¹⁶

The third prong of "Full Availability and Regulatory Utilization of Transactional Database Functionality" also imposes an Error Rate requirement of 5% or less. The Quarterly Progress Report for the fourth quarter of 2021 states the average overall error rate was less than 5% as of December 31, 2021. The average overall error rate was calculated by dividing the compliance errors by processed records.

The fourth prong of "Full Availability and Regulatory Utilization of Transactional Database Functionality" requires that the data collected by the CAT at this stage be made available to regulators through an online targeted query tool and a user-defined direct query tool. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021, the query tool functionality incorporating the data from Phases 2a, 2b, 2c and 2d was available to the Participants and to the Commission as of December 31, 2021.¹¹⁷

The fifth prong requires the requirements of Section 6.10(a) of the CAT NMS Plan to have been met. Section 6.10(a) of the CAT NMS Plan requires the Participants to use the tools described in Appendix D to "develop and implement a surveillance system, or enhance existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository." The Exchange implemented a surveillance system, or enhanced existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository as of December 31, 2021 in accordance with Section 6.10(a) of the CAT NMS Plan.¹¹⁸

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for

purposes of determining compliance with this FAM.¹¹⁹

As discussed above, Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from January 1, 2021 through December 31, 2021. The total costs for this period, as discussed above, are \$144,415,268. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$48,138,422.70) and CEBBs paying one-third (\$48,138,422.70).

(D) Additional Considerations Related to the Financial Accountability Milestones

As discussed above, CAT LLC has satisfied the Financial Accountability Milestones ("FAMs") for Periods 1 through 3.¹²⁰ As discussed below, none of the circumstances related to NIA Electronic RFQ Responses, the 2023 Verbal Quotes Exemption, the November 2023 Order, or Executing Broker reporting, affect the conclusion that the FAMs for Periods 1 through 3 were satisfied in a timely fashion.

(i) NIA Electronic RFQ Responses

CAT LLC does not believe that the exemptive relief relating to the reporting of electronic responses for quotes ("RFQs") that are not immediately actionable ("NIA Electronic RFQ Responses") affect the conclusion that FAMs 1 through 3 have been satisfied. The only reason CAT LLC pursued this relief is because certain Industry Members introduced concerns that NIA Electronic RFQ Responses could be considered "orders" reportable pursuant to Rule 613(j)(8) and some Industry Members were not prepared to report such orders to CAT. Thus, the relief was requested on behalf of Industry Members. CAT LLC itself has not taken any position on whether NIA Electronic RFQ Responses are "orders," as the definition of "order" is an SEC rule and the trading processes for NIA Electronic RFQ Responses are the Industry Members', not those of the Participants

¹¹⁶ See Q2 2021 Quarterly Progress Report (July 27, 2021); and Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁷ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁸ See Q1 2021 Quarterly Progress Report (Apr. 30, 2021); Q2 2021 Quarterly Progress Report (July 27, 2021); Q3 2021 Quarterly Progress Report (Nov. 1, 2021); Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁹ Settlement Exemptive Order at 77129 n.13.

¹²⁰ In May 2020, the Commission adopted amendments to the CAT NMS Plan that establish four Financial Accountability Milestones and set target deadlines by which these milestones must be achieved. These amendments also reduce the amount of any fees, costs, and expenses that may be recovered from Industry Members if the Participants fail to meet the target deadlines. FAM Adopting Release.

¹¹⁴ *Id.* at 23079–80.

¹¹⁵ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

or CAT LLC. Accordingly, CAT LLC stated in its letter that “Industry Members must determine whether trading interest falls within the definition of an ‘order’ for CAT purposes. To the extent an NIA Electronic RFQ Response is not considered an ‘order’ as defined in Rule 613(j)(8) and the CAT NMS Plan, it would not be reportable to CAT.”¹²¹

Only “orders” as defined in SEC Rule 613(j)(8) are reportable to CAT. There is no agreement across the industry or among regulators as to whether NIA Electronic RFQ Responses are “orders” reportable to CAT. Certain Industry Members have raised the question as to whether NIA Electronic RFQ Responses are orders, but others have argued that they are not orders under Rule 613(j)(8).¹²² Indeed, members of the Advisory Committee, which CAT LLC relies upon for guidance with regard to Industry Member issues, have not had a definitive view on whether NIA Electronic RFQ Responses are orders. As Rule 613(j)(8) is an SEC rule, CAT LLC believes that only the SEC can provide a definitive determination as to if, and under what circumstances, an NIA Electronic RFQ Response is considered an “order” reportable to CAT. The issue has persisted for some time. As a result, CAT LLC filed an exemptive request regarding NIA Electronic RFQ Responses for clarity on the interpretive issue. As recently as April 2024, Industry Members have re-raised this issue stating that the SEC agrees that it must provide additional guidance on this interpretive issue to resolve the CAT reporting issue for NIA Electronic RFQ Responses:

As further discussed in the prior FIF letters, even if the Commission had the legal authority to require the reporting of NIA RFQ responses to CAT without an amendment to Rule 613, the Commission has not provided guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT. In subsequent discussions with industry members, Commission representatives have agreed that, prior to NIA RFQ responses being reportable to CAT, it would be necessary for the Commission to provide further guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT.¹²³ On May 20, 2024, the Commission granted CAT LLC’s request for exemptive relief from certain CAT reporting requirements

pertaining to NIA Electronic RFQ Responses to the extent such responses are considered “orders” reportable pursuant to Rule 613(j)(8).¹²⁴ The Commission, however, did not provide additional guidance regarding the conditions under which NIA Electronic RFQ Responses would be reportable to CAT. The Commission stated in its exemptive order that “[t]o the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for the Financial Accountability Milestones, provided that any conditions of the exemption are satisfied.”¹²⁵

When the Commission proposed the FAMs, the Participants expressed concern that, “by conditioning the ability of CAT LLC and the Participants to collect Post-Amendment Industry Member Fees on factors dependent on the efforts of Industry Members, the Commission’s proposals inadvertently establish a perverse incentive for Industry Members to devote less than maximum efforts to comply with their obligations related to the CAT as they will pay less fees in such instances.”¹²⁶ The Participants further warned that “Industry Members may request or require unanticipated reporting delays to address Industry Member implementation issues or concerns,” but that, “[f]aced with financial penalties for missed deadlines, the Participants may not be able to fully address legitimate industry concerns or accommodate requests for delays with respect to future deadlines.”¹²⁷ CAT LLC has engaged in good faith to help address NIA Electronic RFQ Responses and other concerns relevant to the ability of Industry Members to meet their CAT reporting obligations. CAT LLC should not be penalized financially for seeking in good faith to resolve a difficult interpretive issue for the benefit of Industry Members.

(ii) 2023 Verbal Quotes Exemption

CAT LLC does not believe that the Commission’s May 19, 2023 order granting temporary exemptive relief relating to certain verbal floor activity and unstructured verbal and electronic upstairs activity (the “2023 Verbal Quotes Exemption”) affects the conclusion that FAMs 1 through 3 have been satisfied. The 2023 Verbal Quotes Exemption, which was issued on May 19, 2023, is not relevant for purposes of

FAM Periods 1 through 3, which only cover the period through December 31, 2021. The relevant exemption for this time period is the Commission’s November 12, 2020 order, which granted relief for the same activity through July 31, 2023 (the “2020 Verbal Quotes Order”).¹²⁸ The Commission has stated that, “to the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for a Financial Accountability Milestone, provided that the conditions of the exemption are satisfied.”¹²⁹ Here, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3.¹³⁰

(iii) November 2023 Order

CAT LLC does not believe that the Commission’s November 2, 2023 order granting relief from certain CAT NMS Plan requirements (the “November 2023 Order”) affects the conclusion that FAMs 1 through 3 have been satisfied. The November 2023 Order is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. As described in the November 2023 Order, the relevant exemptive orders for this time period were issued on December 16, 2020, which also states that “the Commission has determined that the Participants have sufficiently complied with the conditions set forth in the prior Orders and with the technical requirements for Quarterly Progress Reports set forth in section 6.6(c) of the CAT NMS Plan, including for purposes of determining compliance with any applicable Financial Accountability

¹²⁸ Securities Exchange Act Rel. No. 90405, 85 FR 73544 (Nov. 18, 2020) (the “2020 Verbal Quotes Exemption”).

¹²⁹ See, e.g., Securities Exchange Act Rel. No. 89051 (June 11, 2020), 85 FR 36631, 36633 (June 17, 2020). The straightforward reading of the Commission’s statement is that compliance with the conditions of an exemption will be measured as of the deadline for a particular FAM Period.

¹³⁰ As a condition to the 2020 Verbal Quotes Exemption, the Commission required that the Participants provide a written status update on the reporting of these quotes and orders by July 31, 2022, including the estimated costs of reporting these quotes and orders and an implementation plan for the reporting of these quotes and orders. As noted, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3. In any event, on June 3, 2022, the Participants provided the required written status update. See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (June 3, 2022).

¹²¹ See Letter from Brandon Becker, Chair, CAT NMS Plan Operating Committee to Vanessa Countryman, Secretary, Commission (Feb. 13, 2024) at 2.

¹²² See, e.g., Letter from Howard Meyerson, Managing Director, FIF, to Sai Rao, Counsel for Trading and Markets, Office of the Chair (Apr. 25, 2024).

¹²³ *Id.*

¹²⁴ Securities Exchange Act Rel. No. 100181 (May 20, 2024), 89 FR 45715 (May 23, 2024).

¹²⁵ *Id.* at n.11.

¹²⁶ See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission at 9 (Oct. 28, 2019).

¹²⁷ *Id.* at 10.

Milestones.”¹³¹ The November 2023 Exemption Order is consistent with the Commission’s repeated statements in the FAM adopting release that it would have “authority to grant exemptive relief from any requirement associated with a particular Financial Accountability Milestone,” citing Section 36 of the Exchange Act and Rule 608.¹³² Similarly, the CAT NMS Plan expressly contemplates the Commission’s ability to grant exemptive relief from any CAT NMS Plan requirement.¹³³

(iv) Executing Broker Reporting

CAT LLC also completed the requirements of FAM Period 2, including the required linkages, by December 31, 2020. Although Participant exchanges may report the Executing Broker to CAT differently in certain situations, these reporting differences are irrelevant for linkage purposes as the fields used for CAT Executing Broker are not used for linkage.

(10) Additional Support for Reasonableness of Historical CAT Costs

The CAT Funding Model approved by the Commission permits the recovery of reasonable costs in each of the categories of CAT costs sought to be recovered via Historical CAT Assessment 1.¹³⁴ As described in detail above and in further detail below, the CAT costs to be recovered for each category are reasonable. The following discusses in further details how each of the following costs are reasonable: (1) costs incurred prior to the effective date of the CAT NMS Plan; (2) cloud hosting

services costs; (3) costs related to funding model filings; (4) costs related to litigation with the SEC regarding the CAT NMS Plan; (5) costs related to the Initial Plan Processor; (6) CAIS implementation costs; (7) public relations costs; (8) legal costs related to the limitation of liability provision in the CAT Reporter agreements; and (9) costs for the Chair of CAT Operating Committee. As discussed in detail below, each of these costs is reasonable and should be recoverable in accordance with the CAT Funding Model.

(A) Costs Incurred Prior to the Effective Date of CAT NMS Plan

CAT LLC believes that it is reasonable to seek recovery of costs incurred prior to when the CAT NMS Plan became effective in November 2016, such as legal and consulting fees incurred to create the CAT NMS Plan. Rule 613 specifically mandates that the CAT be created, implemented and maintained, and further provides that the CAT NMS Plan include a proposed allocation of estimated costs to fund the creation, implementation and maintenance of the CAT among the Participants (referred to as “plan sponsors”), and between the Participants and Industry Members (referred to as “members of the plan sponsors”).¹³⁵ Consistent with Rule 613, the CAT NMS Plan, as approved by the Commission, specifically authorizes charging Industry Members fees for costs reasonably incurred prior to the date of the approval of the CAT NMS Plan by the Commission in November 2016, including legal and consulting costs. Section 11.1(c) of the CAT NMS Plan states that:

[i]n 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) reasonably incurred by Participants on behalf of the Company prior to the Effective Date in connection with the creation and implementation of the CAT.

Accordingly, the CAT NMS Plan specifically permits the recovery of costs, including legal and consulting costs, reasonably incurred prior to November 2016 in connection with the creation and implementation of the CAT.

Furthermore, the costs incurred to create and implement the CAT prior to the effective date of the CAT NMS Plan (“Pre-Formation Costs”) were reasonable both in scope and amount, in

accordance with the requirements of Section 11.1(c) of the CAT NMS Plan. During the four-year period from 2012 to 2016, a total of \$13,842,881 in Pre-Formation Costs were incurred. This is an average of approximately \$3.5 million per year over this period. The Pre-Formation Costs fell into three categories: legal costs, consulting costs and public relations costs. This includes legal costs of \$3,196,434; consulting costs of \$10,589,273; and public relations costs of \$57,174. The legal, consulting and public relations services were performed by WilmerHale, Deloitte and Peppercomm, respectively. The selection considerations and fees for these three firms are described in detail above and are described further below. The Pre-Formation Costs are direct costs of CAT, which have been funded entirely by the Participants through non-interest-bearing notes. The Pre-Formation Costs do not include the significant costs incurred by each of the individual Participants in responding to the adoption of Rule 613.

The Pre-Formation Costs are reasonable and appropriate as they reflect the extensive efforts that were necessary to create the CAT NMS Plan as mandated after the SEC’s adoption of Rule 613. As described in more detail below, these efforts included, among other things, developing a plan for selecting the Plan Processor, soliciting and evaluating bids, engaging a diverse set of market participants and the SEC in the development of the Plan, interacting with the SEC in their oversight of the development of the Plan, and seeking appropriate exemptive relief to address areas of concern in Rule 613.¹³⁶

(i) Request for Proposal (“RFP”)

The Participants determined to utilize an RFP to ensure that potential alternative solutions for creating the Plan could be presented and considered, and that a detailed and meaningful cost-benefit analysis could be performed. The SEC supported the use of an RFP, and approved its use as it is described in extensive detail in the CAT NMS Plan.¹³⁷

¹³⁶ The Participants described in detail the process for drafting the CAT NMS Plan in its original filing of the CAT NMS Plan. See Letter from Mike Simon, on behalf of the Participants of the CAT NMS Plan, to Brent J. Fields, Secretary, Commission (Sept. 30, 2014). A non-exclusive list of filings and activities associated with CAT, including certain pre-2016 filings, are available on the SEC’s website: <https://www.sec.gov/divisions/marketreg/rule613-info>.

¹³⁷ See detailed discussion of RFP questions in Appendix C of the CAT NMS Plan, and incorporation of RFP requirements in Appendix D at D-2.

¹³¹ *Id.* at 77129 n.12.

¹³² FAM Adopting Release at 31335 (May 22, 2020). Section 36 of the Exchange Act grants the Commission the authority to “conditionally or unconditionally exempt any person, security, or transaction . . . from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.” 15 U.S.C. 78mm(a)(1). Under Rule 608(e) of Regulation NMS, the Commission may “exempt from [Rule 608], either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanism of, a national market system.” 17 CFR 242.608(e).

¹³³ Section 12.3 of the CAT NMS Plan (“[T]o the extent the SEC grants exemptive relief applicable to any provision of this Agreement, Participants and Industry Members shall be entitled to comply with such provision pursuant to the terms of the exemptive relief so granted at the time such relief is granted irrespective of whether this Agreement has been amended.”)

¹³⁴ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(III) of the CAT NMS Plan.

¹³⁵ See, e.g., Rule 613(a)(1)(vii)(D) of the CAT NMS Plan.

In the context of the SEC's adoption of Rule 613, commenters urged the Commission to utilize an RFP process to assist in the planning and design of the NMS plan.¹³⁸ Specifically, the Commission explained:

In this regard, several commenters suggested that the Commission undergo a RFP or request for information ("RFI") process to create and implement a consolidated audit trail. Specifically, FIF urged the Commission to perform a RFP process "to determine the best technical solution for developing a consolidated audit trail." FIF suggested that the Commission "should outline a set of goals and guiding principles they are striving to achieve as part of the adopted CAT filing and leave the determination of data elements and other technical requirements to [an] industry working group." Similarly, Direct Edge suggested that Commission staff should form and engage in a working group to develop an RFP for publication by the Commission. DirectEdge explained that an RFP process would facilitate the identification of the costs and benefits of the audit trail, as well as the consideration of a wider range of technological solutions. Further, commenters, including Broadridge Financial Solutions, Inc., a technology provider, also requested more specific information about the audit trail system to better assess the Commission's initial cost estimates and to determine the best approach to the consolidated audit trail.¹³⁹

In response to these comments, the Commission modified Rule 613 to require the Participants to address certain important considerations regarding the features and details of the NMS plan and to extend the timeframe for submission of the CAT NMS Plan by the Participants from the 90 days as originally proposed to 270 days, in part, to accommodate a process that would address these considerations.¹⁴⁰ As the SEC noted, "[i]n light of the numerous specific requirements of Rule 613, the Participants concluded that publication of a request for proposal ('RFP') was necessary to ensure that potential alternative solutions to creating the consolidated audit trail can be presented and considered by the Participants and that a detailed and meaningful cost/benefit analysis can be performed, both of which are required considerations to be addressed in the CAT NMS Plan."¹⁴¹

The SEC specifically recognized that the Participants planned to use an RFP when it approved the Selection Plan,

and stated that the RFP was a reasonable approach.¹⁴² As the SEC described in its approval order for the Selection Plan, "[t]he Participants filed the [Selection] Plan to govern how the SROs will proceed with formulating and submitting the CAT NMS Plan—and, as part of that process, how to review, evaluate, and narrow down the bids submitted in response to the RFP ('Bids')—and ultimately choosing the plan processor that will build, operate, and maintain the consolidated audit trail ('Plan Processor')."¹⁴³ After evaluating the Selection Plan, including the use of an RFP process, the Commission stated that it "believes the [Selection] Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail."¹⁴⁴

On February 26, 2013, the Participants published an RFP soliciting bids from parties interested in serving as the plan processor for the CAT. Initially, 31 firms submitted intentions to bid. In the following months, the Participants engaged with potential bidders with respect to, among other things, the selection process, selection criteria, and potential bidders' questions and concerns. On March 21, 2014, the Participants received ten bids in response to the RFP.

(ii) Selection Plan

On September 4, 2013, the Participants filed with the Commission a national market system plan to govern the process for Participant review of the bids submitted in response to the RFP, the procedures for evaluating the bids, and, ultimately, selection of the plan processor (the "Selection Plan").¹⁴⁵ The Commission approved the Selection Plan as filed on February 21, 2014.¹⁴⁶ In approving the Selection Plan, the Commission concluded that "it is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor."¹⁴⁷

The Selection Plan divided the review and evaluation of bids, and the selection of the plan processor, into various stages. Specifically, pursuant to the Selection Plan, a selection committee

reviewed all bids and determined which bids contained sufficient information to allow the Participants to meaningfully assess and evaluate the bids. The ten submitted bids were deemed "Qualified Bids," and so passed to the next stage, in which each bidder presented its bids to the Participants on a confidential basis. On July 1, 2014, after conducting careful analysis and comparison of the bids, the Selection Committee voted and selected a shortlist of six eligible bidders. The Selection Committee determined which shortlisted bidders would be provided the opportunity to revise their bids. After the Selection Committee assessed and evaluated the revised bids, the Selection Committee selected the plan processor via two rounds of voting by the Participants, as described in the Selection Plan.

The Selection Plan established an Operating Committee responsible for formulating, drafting, and filing with the Commission the CAT NMS Plan and for ensuring that the Participants' joint obligations under Rule 613 were met in a timely and efficient manner. In formulating the CAT NMS Plan, the Participants also engaged multiple persons across a wide range of roles and expertise, engaged the consulting firm Deloitte as project manager, and engaged the law firm WilmerHale to serve as legal counsel in drafting the Plan. Within this structure, the Participants focused on, among other things, comparative analyses of the proposed technologies and operating models, development of funding models to support the building and operation of the CAT, and detailed review of governance considerations. Given the complexity and scope of developing the CAT NMS Plan, these efforts were extensive.

When it approved the CAT NMS Plan in 2016, the Commission reiterated its belief that the Selection Plan remains a "reasonable approach," that "the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor," and that "the process set forth in the Selection Plan should be permitted to continue":

In approving the Selection Plan, the Commission stated that the Selection Plan is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor. The Commission also found that the Selection Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail. The

¹³⁸ For example, in its comments on proposed Rule 613, FIF suggested "that the SROs should select the processor through a 'request for proposal.'" Rule 613 Adopting Release at 45785.

¹³⁹ Rule 613 Adopting Release at 45738–39.

¹⁴⁰ Rule 613 Adopting Release at 45739.

¹⁴¹ Securities Exchange Act Rel. No. 71596 (Feb. 21, 2014), 79 FR 11152, 11152 (Feb. 27, 2014) ("Selection Plan Approval Order").

¹⁴² *Id.*

¹⁴³ *Id.* at 11153.

¹⁴⁴ *Id.* at 11159.

¹⁴⁵ See Securities Exchange Act Rel. No. 70892 (Nov. 15, 2013), 78 FR 69910 (Nov. 21, 2013).

¹⁴⁶ See Selection Plan Approval Order.

¹⁴⁷ Selection Plan Approval Order at 11160.

Commission believes that the process set out in the Selection Plan for selecting a Plan Processor remains a reasonable approach, which will facilitate the selection of Plan Processor through a fair, transparent and competitive process and that no modifications to the Selection Plan are required to meet the approval standard. . . . In response to the comment that offered support for a specific Bidder, the Commission agrees with the Participants that the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor and thus believes that the process set forth in the Selection Plan should be permitted to continue.¹⁴⁸

(iii) Engagement With Market Participants and SEC

During the process of developing the CAT NMS Plan, the Participants engaged in extensive and meaningful dialogue with market participants and the SEC. To this end, the Participants created a website to update the public on the progress of the CAT NMS Plan, published a request for comment on multiple issues related to the Plan, held multiple public events to inform the industry of the progress of the CAT and to address inquiries, and formed, and later expanded, a DAG to solicit more input from a representative industry group.¹⁴⁹

The DAG included representatives of Participants and Industry Members and conducted meetings to discuss, among other things, technical and operational aspects the Participants were considering for the Plan. The Participants issued press releases soliciting participants for the DAG, and a wide spectrum of firms was deliberately chosen to provide insight from various industry segments affected by CAT. The DAG meetings included discussions of topics such as option market maker quote reporting, requirements for capturing Customer IDs, timestamps and clock synchronization, reporting requirements for order handling scenarios, costs and funding, error handling and corrections, and potential elimination of systems made redundant by the CAT. From the inception of the DAG through September 2014, the DAG participated in 36 meetings, as well as a variety of DAG subcommittee meetings.

(iv) Request for Exemption From Certain Requirements Under Rule 613

Following multiple discussions between the Participants and both the DAG and the bidders, as well as among the Participants themselves, the

Participants recognized that some provisions of Rule 613 would not permit certain solutions to be included in the Plan that the Participants, in coordination with the DAG, determined advisable to effectuate the most efficient and cost-effective CAT. Specifically, “the SROs reached the conclusion that additional flexibility in certain of the minimum requirements specified in Rule 613 would allow them to propose a more efficient and cost-effective approach without adversely affecting the reliability or accuracy of CAT Data, or its security and confidentiality.”¹⁵⁰ Consequently, the Participants submitted a request for exemptive relief from certain provisions of Rule 613 regarding: (1) options market maker quotes; (2) Customer-IDs; (3) CAT-Reporter-IDs; (4) CAT-Order-IDs on allocation reports; and (5) timestamp granularity.¹⁵¹ The Participants filed two supplements to the request for exemptive relief.¹⁵²

After reviewing the exemptive request, the Commission determined that it was appropriate in the public interest and consistent with the protection of investors to grant the requested exemptive relief.¹⁵³ In granting the exemptive relief, the Commission stated:

[T]he Commission is persuaded to provide flexibility in the discrete areas discussed in the Exemption Request so that the alternative approaches can be included in the CAT NMS Plan and subject to notice and comment. Doing so could allow for more efficient and cost-effective approaches than otherwise would be permitted. The Commission at this stage is not deciding whether the proposed approaches detailed below are more efficient or effective than those in Rule 613. However, the Commission believes the proposed approaches should be within the permissible range of alternatives available to the SROs.¹⁵⁴

The Commission further stated that the requested exemptive relief is consistent with the protection of investors. The Commission noted that:

Doing so will provide the public an opportunity to consider and comment on whether these proposed alternative approaches would indeed be more efficient and cost-effective than those otherwise required by Rule 613, and whether such approaches would adversely affect the

reliability or accuracy of CAT Data or otherwise undermine the goals of Rule 613. Moreover, if—as the SROs represent—efficiency gains and cost savings would result from including the proposed approaches in the CAT NMS Plan without adverse effects, then the resultant benefits could potentially flow to investors (e.g., lower broker-dealer reporting costs resulting in fewer costs passed on to Customers).¹⁵⁵

The Participants incorporated the exemptive relief into the proposed CAT NMS Plan, which was noticed for comment, and the Commission ultimately approved the CAT NMS Plan with the more efficient and cost-effective alternative approaches described in the exemptive relief. Accordingly, the Participants believe that the costs incurred in developing the exemptive request were critical to the creation of a better CAT than was originally contemplated by Rule 613, and therefore should be recoverable as part of Historical CAT Assessment 1.

(v) Request for Extensions for Filing the CAT NMS Plan

Rule 613(a)(1) under Regulation NMS required the Participants to jointly file the CAT NMS Plan on or before April 28, 2013, less than a year after the adoption of Rule 613. In recognition of the complexity of the project to create the CAT NMS Plan as well as industry interest in limiting or eliminating certain requirements of Rule 613 (e.g., addressing the reporting of options market maker quotes), the Participants requested two extensions of the deadline to file the CAT NMS Plan. The Participants described the need for additional time as follows:

The SROs stated in their Request Letter that they do not believe that the 270-day time period provided for in Rule 613(a)(1) provides sufficient time for the development of the RFP, formulation and submission of bids, and review and evaluation of such bids. The SROs also stated that they believe additional time beyond the 270 days provided for in Rule 613(a)(1) is necessary in order to provide sufficient time for effective consultation with and input from the industry and the public on the proposed solution chosen by the SROs for the creation of the consolidated audit trail at the conclusion of the RFP process and the NMS plan itself.¹⁵⁶

In recognition of the need for additional time to refine the technical description of and requirements for the CAT and to allow for additional evaluation of the proposed cost and funding considerations, the SEC granted

¹⁵⁰ Securities Exchange Rel. No. 77265 (Mar. 1, 2016), 81 FR 11856 (Mar. 7, 2016) (“2016 Exemptive Order”).

¹⁵¹ Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Jan. 30, 2015).

¹⁵² See Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Apr. 3, 2015); Letter from the SROs to Brent J. Fields, Secretary, Commission (Sept. 2, 2015).

¹⁵³ See 2016 Exemptive Order.

¹⁵⁴ *Id.* at 11857.

¹⁵⁵ *Id.*

¹⁵⁶ Securities Exchange Act Rel. No. 69060 (Mar. 7, 2013), 78 FR 15771, 15772 (Mar. 12, 2013) (“March 2013 Exemptive Order”).

¹⁴⁸ See CAT NMS Plan Approval Order at 84737.

¹⁴⁹ See Section D(11) of Appendix C of the CAT NMS Plan.

two extensions of this deadline.¹⁵⁷ The SEC determined that both extensions were appropriate, in the public interest, and consistent with the protection of investors.¹⁵⁸ In reaching this conclusion, the Commission stated that “it understands that the creation of a consolidated audit trail is a significant undertaking and that a proposed NMS plan must include detailed information and discussion about many things.”¹⁵⁹ The SEC also noted the following:

This additional time to complete the RFP process should allow the SROs to engage in a more thoughtful and comprehensive process for the development of an NMS plan. In this regard, the Commission notes that the additional time to solicit comment from the industry and the public at certain key points in the development of the NMS plan could identify issues that can be resolved earlier in the development of the consolidated audit trail and prior to filing the NMS plan with the Commission.¹⁶⁰

Given the Commission’s recognition of the reasonableness and value of the extension of the deadline to file the CAT NMS Plan, the Participants believe that the costs incurred in developing the extension request were important to the process of developing the CAT NMS Plan, and therefore should be recoverable as part of Historical CAT Assessment 1.

(vi) Submission and Approval of the CAT NMS Plan

After extensive analyses and discussions with the DAG, bidders, market participants and the SEC staff, the Participants finalized the draft of the CAT NMS Plan and filed the CAT NMS Plan with the SEC on September 30, 2014. Following additional discussions, the Participants filed several amendments to the CAT NMS Plan during 2015 and 2016. With these additional changes, the SEC published the CAT NMS Plan for notice and comment in May 2016.¹⁶¹ Following the comment period, the SEC approved the Plan in November 2016.¹⁶²

(vii) Legal Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include legal costs of \$3,196,434. The legal services were performed by WilmerHale. The selection considerations and fees for WilmerHale were described in detail above. Prior to the creation of CAT LLC, WilmerHale was engaged to represent the consortium of SROs, not the individual Participants. For administrative purposes, FINRA agreed to receive such legal bills, although such costs were shared among the Participants. Therefore, the legal costs incurred with respect to WilmerHale do not include legal costs incurred by the individual Participants. These pre-formation legal costs are described in detail above and are further described below:

- Analyzed various legal matters associated with the Selection Plan and drafted an amendment to Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the DAG;
- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on the CAT NMS Plan;
- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG, and governance support during the transition to the new governance structure under the CAT NMS Plan;
- Drafted exemptive requests;
- Provided interpretations related to the CAT NMS Plan;
- Provided support with regard to discussions among the exchanges, FINRA and other third parties, such as Deloitte;
- Provided tax advice with regard to CAT’s status as a tax-exempt organization; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

(viii) Consulting Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include consulting costs of \$10,589,273. The consulting services were performed by Deloitte. The selection considerations

and fees for Deloitte were described in detail above. Prior to the creation of CAT LLC, for administrative purposes, Deloitte was engaged by FINRA to provide consulting services related to CAT, but the costs were shared by the consortium of SROs per agreement. Therefore, the consulting costs incurred with respect to Deloitte do not include consulting costs incurred by the individual Participants. The pre-formation consulting costs include the following:

- Established and implemented program operations for the CAT project, including the program management office and workstream design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participants’ independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, reviewing technical requirements of other NMS plans, analyzing OATS and CAT requirements, and drafting appendices to the Plan;
- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Provided support for industry outreach sessions, including with regard to program design and agenda development, program support and logistics and coordination; and
- Provided support in fact finding, drafting content and meeting coordination for WilmerHale with regard to the CAT and the development of the CAT NMS Plan.

Such Pre-Formation Costs did not include costs related to the Chair of the CAT NMS Plan Operating Committee, as the CAT NMS Plan had not yet been adopted.

(ix) Public Relations Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include public relations costs of \$57,174. The public relations services were performed by Peppercomm. The selection considerations and fees for Peppercomm are described in detail above. The costs related to Peppercomm

¹⁵⁷ See March 2013 Exemptive Order; Securities Exchange Act Rel. No. 71018 (Dec. 6, 2013), 78 FR 75669 (Dec. 12, 2013) (“December 2013 Exemptive Order”).

¹⁵⁸ March 2013 Exemptive Order at 15772; December 2013 Exemptive Order at 75670.

¹⁵⁹ March 2013 Exemptive Order at 15772.

¹⁶⁰ *Id.* at 15773.

¹⁶¹ See Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

¹⁶² See CAT NMS Plan Approval Order.

were shared among the SROs. Therefore, the public relations costs do not include public relations costs incurred by the individual Participants. The pre-formation public relations costs include services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT.

(B) Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs related to cloud hosting services as a part of Historical CAT Assessments. CAT LLC believes that the costs related to cloud hosting services described in detail above are reasonable and appropriate given the strict data processing timelines and storage requirements imposed by the Commission-approved CAT NMS Plan and should be recoverable as a part of Historical CAT Assessment 1.

(i) Reasonableness of AWS Costs Given the Requirements of the CAT NMS Plan

CAT LLC believes that the costs for the cloud hosting services are reasonable, both in terms of the level of the fees paid by CAT LLC for cloud hosting services provided by AWS and the scope of the services performed by AWS for CAT LLC. CAT LLC believes that both the scope and amount of the costs for cloud hosting services are reasonable given the current requirements of the CAT NMS Plan adopted pursuant to Rule 613, including the strict data processing timeline, storage and other technical requirements under the Commission-approved CAT NMS Plan.

CAT LLC believes that the level of fees for the cloud hosting services is reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.

CAT LLC also believes that the scope of services provided by AWS for the CAT are appropriate given the current requirements of the Commission-approved CAT NMS Plan. As described above, the cloud hosting services costs reflect a variety of factors including, among other things:

- *Breadth of Cloud Activities.* AWS was engaged by FCAT, the Plan Processor, to provide a broad range of

services to the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS necessary to the CAT include storage services, databases, compute services, and other services (such as networking, management tools and development operations (“DevOps”) tools). AWS also was engaged to provide the various environments for CAT, such as the development, performance testing, test and production environments, which are required by the CAT NMS Plan.

- *High Data Volume.* The cost for AWS services for the CAT is a function of the volume of CAT Data. While it is not linear, the greater the amount of CAT Data, the greater the cost of AWS services to the CAT. The data volume handled by AWS now far exceeds the original volume estimates for the CAT.

- *Plan Requirements.* The cost for AWS services also reflects the technical requirements necessary to meet the stringent performance and other requirements for processing CAT Data. These Plan-dictated processing timelines, storage, testing, security and other technical requirements are significant drivers of AWS costs.

- *Cost Avoidance Efforts.* CAT LLC and FCAT have engaged in ongoing efforts to seek to avoid and minimize AWS costs where permissible under the Plan. Accordingly, these cost avoidance efforts have limited the extent of AWS costs.

In addition, various requirements of the CAT NMS Plan adopted pursuant to Rule 613 contribute to the significant cloud hosting services costs, and that various Plan requirements could be amended or removed without affecting the regulatory purpose of the CAT. Indeed, CAT LLC has repeatedly sought exemptive relief and filed amendments to the CAT NMS Plan, and has even filed suit against the Commission, to seek to revise or eliminate certain costly requirements related to the CAT. However, despite these efforts, absent the Commission granting exemptive relief or approving cost savings amendments to the CAT NMS Plan, CAT LLC, the Participants and Industry Members are all required to comply with such requirements.

(ii) Effect of CAT Design on CAT Costs

(a) Efficient CAT Design

CAT is reasonably designed to efficiently and effectively utilize cloud computing and storage services, given the requirements of the Commission-approved CAT NMS Plan, including requirements related to security,

operational reliance and quality assurance, and maintainability.

The Plan Processor uses state-of-the-art software that meets the strict security standards of the CAT NMS Plan. CAT utilizes a big data processing framework that is extensively used by large data processing companies, such as Apple, Meta, Netflix, IBM and Google. As such, it has substantial commercial support and support in the open-source community. It is also well suited for use with regard to iterative types of algorithms and query functions and analytics that the CAT requires, and it provides the heightened security necessary for the CAT.

The development and implementation of the design of CAT is not and has not been static. CAT LLC and the Plan Processor are always evaluating new innovations and service offerings from AWS and other providers to seek to maximize efficiency and cost avoidance while still satisfying the requirements of the CAT NMS Plan. These efforts have led to substantial savings to date. The cloud hosting costs for 2023 were less than the cloud hosting costs for 2022 by \$8 million despite processing seven trillion more events in 2023 due to the efficiency and cost avoidance efforts for cloud hosting services. For example, when AWS introduced new storage options, FCAT adopted the cost-efficient new storage option after establishing that the new offering would satisfy the security and other standards of the CAT NMS Plan. This change led to millions of dollars of savings in storage costs. Similarly, when AWS introduced a new compute processor, FCAT adopted this new compute processor, which led to millions of dollars in savings in compute costs. However, in other cases, new cloud technology developments could not be implemented in CAT because they would not satisfy the security or other requirements of the CAT NMS Plan.

When evaluating the design of the CAT, it must be kept in mind that the CAT is not a typical commercial technology project. The ability to make use of technology approaches that may lead to cost avoidance is also subject to the restrictive requirements of the CAT NMS Plan, such as processing timeframes, requirements for retention of data versions, query requirements, and security standards. Because such requirements are set forth in the CAT NMS Plan, any modification of such requirements are subject to the time-consuming process of amending the CAT NMS Plan or seeking an exemption from the relevant requirement. For example, CAT LLC recently has filed an

amendment to address several of these expensive Plan requirements.¹⁶³

(b) CAT Was Designed To Minimize Industry Member Effort

The CAT System also was designed to minimize the extent to which Industry Members would need to alter their systems to report to CAT. During the design process, Industry Member groups argued that it would make more sense financially for the CAT to accommodate differences in industry systems, than for all Industry Members to change their systems. Moreover, such design choices would facilitate consistency, uniformity and accuracy in reporting. Requiring the CAT to make such accommodations may increase CAT costs while accommodating CAT Reporters.

Based on the requirements in the CAT NMS Plan and/or in response to industry requests for functionality to be embedded with the Plan Processor to streamline or limit Industry Member system changes, the CAT has been designed to limit the effect on Industry Members. The following provides examples of such accommodations:

- *Industry Member Reporting.* In light of the complexity of Industry Member market activity, the CAT's order reporting and linkage scenarios document for Industry Members is over 800 pages in length, addressing nearly 200 scenarios.¹⁶⁴ The Industry Member Technical Specifications allow for dozens of specific event types, which drive complexity for the Plan Processor, but streamline reporting for Industry Members. Furthermore, the Plan Processor greatly expanded Industry Member linkage requirements to support, among other things, child events and supplemental events, allowing for "stateless as-you-go" and "batch end-of-day" reporting when all data is available. Accordingly, CAT takes on the significant cost and effort of providing the required linkages between CAT events; correspondingly, Industry Members are not required to perform this costly task.

- *File Submission Process.* The CAT was designed to accommodate the varying needs of CAT Reporters with regard to the file submission process. For example, in a 2018 letter, FIF stated that "[t]he SFTP-based submission process is cumbersome, exposes

industry members to unnecessary complexity, and puts the burden of support on the CAT Reporter rather than imbedding more functionality into the Plan Processor."¹⁶⁵ Currently, FCAT provides two mechanisms for submitting files: SFTP via a private network, and the Web via Reporter Web Portal.

- *Error Corrections.* The industry also emphasized the need for the CAT to provide error correction tools and functionalities to identify, rectify and re-submit corrections within the required timeframe. For example, FIF stated in a 2018 letter the following:

To be clear, if OATS-like error correction tools are not made available on Day 1, hundreds of firms will be required to create and test their own tools or obtain vendor alternatives prior to the CAT Go-Live Date. Proprietary tools will require additional system builds, access to and ingestion of CAT data to perform system validation, and testing which will further stress the limited number of subject matter experts ("SMEs") dedicated to the implementation of CAT reporting. Should this occur, inevitably firms (especially small firms who lack the necessary IT staff to write code and develop proprietary systems), may be put in the position of passing onto investors the cost required to build hundreds of redundant systems.¹⁶⁶

CAT provides various tools to help Industry Members identify and rectify errors.

- *Data Ingestion Format.* The industry also recommended that CAT adopt a flexible input format that provides an option for Industry Members to submit data in formats that are already in use to reduce costs and potential reporting errors. For example, FIF argued the following:

FIF CAT WG is not proposing a specific format; rather, we are proposing flexibility of input formats which includes support of existing formats (e.g., OATS, FIX) as well as a baseline specification where all fields are defined, and normalized. The input formats must be clearly and thoroughly defined in Technical Specifications, including FAQs.

Mandating a uniform format for reporting data to the CAT simplifies the task for the Central Repository of consolidating/storing data, but it puts the burden on each CAT Reporter to accurately translate their current (e.g., OATS) reporting information into a uniform CAT interface. However, that is likely to yield more errors because it is very dependent on accurate, complete and timely information (Technical Specifications, FAQs, meta-data, competent CAT help desk) available to CAT Reporters, availability of sophisticated CAT test tools to validate interface protocols, and the skill levels of the

estimated 300+ unique CAT Reporters/Submitters during Phase 1 of CAT. Concentrating the responsibility of data conversions with the Central Repository is a reasonable trade-off that should yield fewer errors, and greater accuracy.¹⁶⁷

CAT provides such a flexible input format.

(c) Effect of Initial Plan Processor Design

The costs for cloud hosting services are appropriate and have not been adversely affected by the original design and approaches of the Initial Plan Processor. FCAT's design costs are the result of the requirements of the Commission-approved CAT NMS Plan.

When FCAT took over as the Plan Processor from Thesys, it utilized certain aspects of the technical specifications created by Thesys in its design. However, FCAT has not maintained aspects of the original design that would not be appropriate for the CAT. FCAT revised and enhanced the original technical specifications of the CAT System to increase its efficiency and efficacy, and to ensure its compliance with the CAT NMS Plan. For example, the Initial Plan Processor's approach utilized many more fields than FCAT's approach, which relies on additional linkages. With the additional linkages, the CAT System takes on more of the CAT-related burdens than the Industry Members. Such an approach serves to facilitate consistency, uniformity and accuracy in reporting.

Moreover, FCAT did not utilize the system built by the Initial Plan Processor; it rebuilt the CAT System based on revised technical specifications. For example, the Initial Plan Processor used an on-premises processing approach which was not geared toward the huge amounts of data stored in the CAT, while FCAT adopted a cloud-based solution in response to such data demands.

Furthermore, given the very short timeframe to develop the CAT System and the prior optimization of certain query tools (e.g., Diver) for regulatory use with significant amounts of data, FCAT determined to rely upon certain existing FINRA tools and adapt them for use with the CAT.

(iii) Consideration of AWS Alternatives

CAT LLC continues to support the selection of AWS as the cloud hosting services provider for CAT given the compliance, operational, and security requirements of the CAT. Independent analyses confirm these conclusions,

¹⁶³ See, e.g., Securities Exchange Act Rel. No. 99938 (Apr. 10, 2024), 89 FR 26983 (Apr. 16, 2024); Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (Mar. 27, 2024) (proposing amendments to the CAT NMS Plan for \$23 million in annual savings).

¹⁶⁴ See CAT Industry Member Reporting Scenarios v.4.10 (Oct. 21, 2022).

¹⁶⁵ Letter from Janet Early, FIF, to Thesys CAT (Mar. 29, 2018).

¹⁶⁶ Letter from Christopher Bok, FIF, to Jay Clayton, Chair, Commission, at 4 (Dec. 11, 2018).

¹⁶⁷ Letter from Mary Lou Von Kaenel, Managing Director, FIF, to Brent Fields, Secretary, Commission at 92 (July 18, 2016), <https://www.sec.gov/comments/4-698/4698-13.pdf>.

noting that “AWS is an excellent choice for either strategic or tactical use and recommends considering AWS for almost all cloud IaaS or IaaS+PaaS scenarios.”¹⁶⁸ AWS provides the following benefits to CAT, among others:

- *Broad Suitability.* AWS has a long track record of successfully serving cloud customers with mission-critical projects.

- *Proven Scalability.* AWS has demonstrated that it is capable of building and delivering services on a large scale.

- *Track Record of Innovation.* AWS continues to rapidly innovate, both in terms of new domains of capability and at a fundamental level, thereby facilitating innovation for its customers.

- *Resiliency/Dependability.* Another benefit of AWS is its resiliency; it has a strong track record of stable services. As noted in a review of cloud service providers, “[c]ustomers like to have a broad set of options for resilience and for their cloud providers to have a strong track record of stable services (continuously available, without operational quirks). Only AWS fulfills both desires.”¹⁶⁹

- *Technical and Customer Support.* AWS consistently provides high-quality technical and customer support and engagement. Given the size, scope and regulatory importance of CAT, customer support and engagement that CAT has with the highest levels of AWS are very important to the success of the CAT.

- *Scale.* AWS is capable of supporting large-scale solutions, which is critical given the size and magnitude of the CAT.

- *Security.* AWS provides the security features necessary for the CAT.

In addition, the nature of the CAT, including the amount of data it must process and the size of its data footprint, does not allow for a multi-cloud solution as this would be cost prohibitive and greatly increase the security boundary and associated risk profile of the CAT. For example, a multi-cloud hosting option would increase costs, complexity, and risk for operations with regard to, for example, DevOps, production support, and networking. Similarly, with regard to security, a multi-cloud solution would increase risk, including with regard to the need for data transfers between cloud providers and the expansion of the security boundary. With regard to

labor, a multi-cloud solution would lose economies of scale due to the need to support unique cloud requirements. Accordingly, the use of single-cloud solution continues to provide advantages with regard to cost, complexity, and risk. Indeed, “[t]he best practice is to focus on a single primary strategic provider.”¹⁷⁰

Furthermore, if another cloud service provider were determined to be a better match for the CAT at some future date, switching cloud service providers would be a very significant, expensive and time-consuming effort. Such an effort would likely be a 10-to-15-year commitment at a substantial expense. Such a move would require the replication or redesign of the underlying cloud environments (e.g., organizational setup, identify management, accounts, environments, DevOps tooling like release management/config management/network management), as the new provider likely would not have the same infrastructure and software. Once that process has been completed, an exabyte of CAT data would need to be securely migrated to the new platform.

(C) Funding Model Filings

CAT LLC believes that the recovery of costs related to the development of the funding model is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

Funding the CAT is a critical aspect of Rule 613 and the CAT NMS Plan. Article XI of the CAT NMS Plan describes in detail the requirements for funding the CAT, and the Participants are required to comply with and enforce compliance with the funding requirements of the CAT NMS Plan, just as with other aspects of the Plan. Accordingly, the development and implementation of a funding model for the CAT is as much a part of the requirements of the CAT NMS Plan as the development and operation of the CAT System. CAT LLC sees no reason to distinguish the efforts to develop a funding model from, for example, efforts to develop the CAT System, in seeking to recover reasonable CAT costs.

Moreover, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . legal costs.”¹⁷¹ In addition, the CAT NMS Plan also requires

Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . legal . . . costs.”¹⁷² In keeping with these provisions, this filing provides a brief description of reasonably budgeted legal costs above. These legal costs include costs related to the development of the CAT Funding Model.

In addition, the legal costs incurred for the assistance in developing the CAT Funding Model are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the specialized services were performed by experienced counsel at negotiated rates for such services that reflect both the extent of the services and market rates. Moreover, the scope of the legal costs associated with the development of the funding model reflect the complexity of the task in satisfying the detailed requirements of the CAT NMS Plan, the standards of the Exchange Act, and the many perspectives of the different market constituents potentially affected by or interested in the funding model, including Industry Members, Participants and investors. The many and varied comments by market participants on CAT funding over the years demonstrate the complexity of the task.

(D) Costs Related to Litigation With the SEC

CAT LLC believes that the recovery of legal costs related to the litigation with the SEC regarding the CAT NMS Plan is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.¹⁷³ Moreover, CAT LLC initiated such litigation, and incurred the related legal costs, because it was critical to address the Commission’s interpretations of the CAT NMS Plan. Among other things, such interpretations threatened to impose unnecessary costs on the CAT, which would be borne by the Participants and Industry Members. Indeed, in response to the litigation, the Commission provided exemptive relief that allowed alternative, more cost-effective approaches to the implementation of the CAT.

¹⁶⁸ See, e.g., Lydia Leong and Adrian Wong, Solution Comparison for Strategic Cloud Integrated IaaS and PaaS Providers (July 28, 2023) (“Strategic Cloud Assessment Article”).

¹⁶⁹ Strategic Cloud Assessment Article.

¹⁷⁰ *Id.*

¹⁷¹ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁷² Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁷³ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Specifically, in the 2023 exemptive order, the Commission stated:

The conditional exemptive relief in this Order allows for the implementation of alternative regulatory solutions that continue to advance the regulatory goals that Rule 613 and the CAT NMS Plan were intended to promote, while reducing the implementation and operational costs, burdens, and/or difficulties that would otherwise be incurred by the Participants and Industry Members that must fund the CAT.¹⁷⁴

CAT LLC believes it is reasonable and appropriate to incur costs to limit the need to incur even greater costs due to certain interpretations of the Plan.

In addition, the legal costs incurred during the litigation are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the specialized services were performed by experienced counsel at market rates for such services. As such, the legal costs related to this litigation incurred during the period covered by Historical CAT Assessment 1 were reasonable.

Finally, Industry Members will directly benefit from the result of the litigation because it has addressed CAT NMS Plan requirements that would have imposed significantly greater costs on the CAT. Accordingly, it is reasonable and appropriate that the costs of such litigation be included in the Historical CAT Costs 1.

(E) Costs Related to the Initial Plan Processor

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017, which was the date by which Participants were required to begin reporting to the CAT, due to the delay in the commencement of reporting to the CAT. As discussed above, the Participants determined to exclude all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Thesys costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Thesys costs incurred after November 15, 2018 are the \$19,628,791 in capitalized developed technology costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these \$19,628,791 in costs.

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. CAT LLC notes that the development and implementation of the CAT System, while unprecedented in scope and design, is like any other large and innovative technology project in that, inevitably, there were adjustments and refinements in the technical approach as the project developed, even with substantial planning efforts and oversight prior to the build. This is even more likely when the project faces a very tight implementation schedule, such as the one imposed by the Commission in Rule 613 and the CAT NMS Plan. However, an adjusted approach does not mean that the funds were not valid expenditures and should not be recovered.

The reasonableness of Thesys costs should be evaluated by the Commission as of the time they were incurred, not in hindsight. As detailed above, the Commission concluded in 2016 that “the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor,” and that “the process set forth in the Selection Plan should be permitted to continue.”¹⁷⁵ Following this process, the Participants notified the Commission of the selection of Thesys as the Initial Plan Processor on January 17, 2017.¹⁷⁶ At the time, neither the Commission nor the industry argued that the selection of the Initial Plan Processor was unreasonable or otherwise inconsistent with the CAT NMS Plan, nor did they predict the selection would result in unanticipated delays in the implementation of the CAT System. On the contrary, on April 4, 2017, the President of SIFMA wrote that “SIFMA looks forward to commencing work with the SROs and Thesys.”¹⁷⁷

As noted in the CAT Funding Model Approval Order, “[i]n Rule 613, the Commission made the determination that the costs of the CAT should be shared by the Participants and Industry Members.”¹⁷⁸ If the CAT Funding Model had existed on Day 1, the risk of any unanticipated costs or challenges associated with the Initial Plan

Processor would have been fairly and reasonably shared among the Participants and Industry Members on an ongoing basis. Given that the Commission concluded in 2012 that the costs of the CAT would be shared by the Participants and Industry Members, it is not fair or reasonable to determine in hindsight that all of the risk involved in developing the CAT should be allocated entirely to the Participants.

(F) CAIS Implementation Costs

CAT LLC believes that the recovery of CAIS-related costs is appropriate, and that the amount and scope of such costs, as described above, are reasonable, and that the reasonableness of historical costs should be evaluated by the Commission as of the time they were incurred, not in hindsight.

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable CAIS operating costs as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . CAIS operating fees.”¹⁷⁹ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . CAIS operating fees.”¹⁸⁰ In keeping with these provisions, this filing provides a brief description of reasonably budgeted CAIS operating fees.

In addition, CAT LLC determined that the CAIS operating fees described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. The “CAIS Operating Costs” for Historical CAT Assessment 1 total \$9,480,587, with Pre-FAM costs of \$2,072,908, FAM 1 costs of \$254,998, FAM 2 costs of \$1,590,298, and FAM 3 costs of \$5,562,383. As described above, the CAIS operating fees were incurred with regard to two categories of CAIS-related efforts: (1) the acceleration of the reporting of LTIDs; and (2) the development of the CAIS Technical Specifications and the building of CAIS. These two categories of costs are discussed in more detail below.

(i) LTID Reporting

During the period covered by Historical CAT Assessment 1, the CAIS operating costs included costs related to the acceleration of the reporting of LTIDs earlier than originally contemplated during this period at the

¹⁷⁵ CAT NMS Plan Approval Order at 84737.

¹⁷⁶ Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf>.

¹⁷⁷ Letter from Kenneth E. Bentsen, Jr., SIFMA, to Participants re: Selection of Thesys as CAT Processor (Apr. 4, 2017), <https://www.sifma.org/wp-content/uploads/2017/05/SIFMA-Submits-Comment-Letter-to-SRO-on-the-selection-of-Thesys-as-the-CAT-Processor.pdf>.

¹⁷⁸ CAT Funding Model Approval Order at 62650.

¹⁷⁹ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁸⁰ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁷⁴ Settlement Exemptive Order at 77129–30.

request of the SEC and in accordance with exemptive relief granted by the SEC.¹⁸¹ As the SEC approved in this exemptive relief, the Participants proposed “to require the reporting of LTIDs to the CAT in Phases 2c and 2d, instead of with the rest of Customer Account Information in Phase 2e, which potentially could result in an earlier elimination of broker-dealer recordkeeping, reporting and monitoring requirements of the Large Trader Rule.”¹⁸² To implement the reporting of LTIDs to the CAT, the following steps were taken during the period covered by Historical CAT Assessment 1:

- After FCAT developed the LTID Technical Specifications, the LTID Technical Specifications were published on January 31, 2020, with additional updates provided to the LTID Technical Specifications through April 2021.¹⁸³
- The LTID account information testing environment opened on August 24, 2020.
- The LTID account information reporting production environment opened on December 14, 2020.
- CAT Reporters were required to request their production readiness certification for account information related to LTIDs by the deadline of April 9, 2021.
- The LTID account information reporting for Phases 2a, 2b and 2c for Large Industry Members went live on April 26, 2021.
- The LTID account information reporting for Phases 2d for Large Industry Members went live on December 13, 2021.
- The LTID account information reporting for Phases 2a, 2b, 2c and 2d for Small Industry Members went live on April 26, 2021.

Throughout this project, FCAT and CAT LLC worked closely with the industry on LTID and CAIS reporting. Between December 2019 and December 2021, at least 57 checkpoint calls, webinars, and technical working group meetings with industry representatives were hosted to address issues and to educate CAT Reporters regarding LTID and CAIS reporting.¹⁸⁴

The LTID reporting project was successfully completed in a timely

fashion, and the fees related to the project were reasonable. Accordingly, CAT LLC appropriately seeks to recover such costs via Historical CAT Assessment 1.

(ii) CAIS Reporting

During the period covered by Historical CAT Assessment 1, FCAT began the development of the full CAIS Technical Specifications and the building of CAIS. The CAIS Technical Specifications were developed during this period as follows:

- Iterative drafts of the CAIS Technical Specifications were published on June 30, 2020, December 1, 2020, and January 1, 2021.¹⁸⁵
- The full, final CAIS Technical Specifications were published on January 29, 2021.
- Updated versions of the CAIS Technical Specifications were published throughout 2021.¹⁸⁶

As discussed above, FCAT and CAT LLC frequently engaged with the industry regarding the development of CAIS, hosting regular checkpoint calls, webinars, and technical working group meetings with industry representatives to address any issues, including addressing the interplay between Industry Members’ existing customer systems and CAIS, and to educate CAT Reporters regarding LTID and CAIS reporting. Such engagement was critical to the CAIS development process as the CAIS project was unprecedented in terms of its content, scope and complexity.

During this period, FCAT also commenced the building of the CAIS system in accordance with the CAIS Technical Specifications during the period covered by Historical CAT Assessment 1. The CAIS system was ready for industry testing shortly after the end of this period in January 2022.

The CAIS Technical Specifications and the CAIS system, as developed during this period, continue to be in use today. Industry Members have been required to report, and have continuously reported, required data to CAIS on a daily basis since November 7, 2022, consistent with interim reporting obligations. The CAIS system accepts and validates the CAIS data submitted by Industry Members and provides Industry Members with initial feedback on data errors. In light of the

unprecedented nature of the CAIS system, certain changes to the system, such as changes related to error corrections and the CAIS regulatory portal, were necessary to finalize CAIS reporting. FCAT worked to address these remaining issues,¹⁸⁷ and, as of May 31, 2024, FCAT indicated that it had achieved the final CAIS reporting milestone. Accordingly, CAT LLC appropriately seeks to recover CAIS operating costs via Historical CAT Assessment 1.

(G) Public Relations Costs

CAT LLC believes that the recovery of public relations costs is appropriate and that the amount and scope of such costs, as described above, are reasonable.

The Commission has long recognized that external public relations costs are reasonably associated with creating, implementing and maintaining the CAT. In the CAT NMS Plan Approval Order, the Commission estimated that the Participants had collectively spent approximately \$2,400,000 in preparation of the CAT NMS Plan on external public relations, legal, and consulting costs, and estimated that the Participants would continue to incur external public relations costs associated with maintaining the CAT upon approval of the CAT NMS Plan.¹⁸⁸

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for public relations services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . public relations costs.”¹⁸⁹ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . public relations costs.”¹⁹⁰ In keeping with these provisions, a brief description of reasonable public relations costs are described above.

In addition, CAT LLC determined that the public relations costs described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. The services performed by the public relations firms through 2021 were limited in scope to assist CAT LLC, which has no employees of its own, to

¹⁸¹ See Phased Reporting Exemptive Relief Order at 23079–80.

¹⁸² *Id.* at 23078–79, n.70.

¹⁸³ The LTID Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

¹⁸⁴ Such contact points with the industry are described in detail on the Events web page of the CAT website (<https://www.catnmsplan.com/events>).

¹⁸⁵ The CAIS Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

¹⁸⁶ Six updated versions of the CAIS Technical Specifications were published during 2021, in March, May, June, August, October and December.

¹⁸⁷ See, e.g., CAT Q4 2023 Quarterly Progress Report (Jan. 30, 2024) (<https://www.catnmsplan.com/sites/default/files/2024-01/CAT-Q4-2023-QPR.pdf>).

¹⁸⁸ CAT NMS Plan Approval Order at 84917–18.

¹⁸⁹ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁹⁰ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

be better positioned to understand and address CAT matters to the benefit of all market participants and to communicate on important CAT topics with the public. In addition, the costs for these services were appropriately limited. During the 10-year period covered by Historical CAT Assessment 1, the average cost per year for these services was approximately \$36,000.

(H) Legal Costs Related to the Limitation of Liability Provision in CAT Reporter Agreements

CAT LLC believes that the recovery of legal costs related to the limitation of liability provision, including costs related to the proceedings before the SEC and costs related to the proposed amendment to the Consolidated Audit Trail Reporter Agreement and the Consolidated Audit Trail Reporting Agent Agreement (the “Reporting Agreements”) is appropriate and that the amount and scope of such costs as described above are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.¹⁹¹ In addition, CAT LLC determined that the legal costs incurred for the assistance with regard to the limitation of liability provisions are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1.

Moreover, it is critical that CAT LLC, which has no employees of its own, have the ability to fund a legal defense in litigation and other legal proceedings against it. In response to CAT LLC requiring Industry Members to agree to the limitation of liability provision to submit data to the CAT, SIFMA filed an application for review of actions taken by CAT LLC and the Participants pursuant to Sections 19(d) and 19(f) of the Exchange Act. Contemporaneously with the filing of this proceeding, SIFMA moved for a stay of the requirement that Industry Members sign a Reporter Agreement, or in the alternative, asked the Commission to further delay the launch of CAT reporting on June 22, 2020. CAT LLC must have the resources to defend itself from litigious actions by others, like these.

Although a limitation of liability provision ultimately was not adopted as proposed, it was a reasonable provision to propose for the CAT Reporter Agreements, given that such provisions are in accordance with industry norms.

Limitations of liability are ubiquitous within the securities industry and have long governed the economic relationships between self-regulatory organizations and the entities that they regulate. For example, U.S. securities exchanges have adopted rules to limit their liability for losses that Industry Members incur through their use of exchange facilities.¹⁹² Similarly, FINRA’s former order audit trail, OATS, which has functioned as an integrated audit trail of order, quote, and trade data for equity securities, required FINRA members to acknowledge an agreement that includes a limitation of liability provision.¹⁹³ In addition, such a provision was intended to ensure the financial stability of the CAT. Accordingly, it was reasonable for CAT LLC to propose the use of such a provision.¹⁹⁴

Furthermore, as described above, the specialized services were performed by experienced counsel at market rates for such services. Accordingly, the legal costs for the efforts related to the limitation of liability provision were reasonable.

(I) Costs for the Chair of CAT Operating Committee

CAT LLC believes that the recovery of consulting costs related to the Chair of the CAT Operating Committee is appropriate and that the amount and scope of such costs are reasonable.

As a preliminary matter, the selection of the Chair of the Operating Committee complies with the requirements of Section 4.2 of the CAT NMS Plan. The initial Chair that served during the period covered by Historical CAT Assessment was designated by a Participant as the Participant’s alternate voting member. Accordingly, the Chair is a representative of the Participants, as required by the CAT NMS Plan.

In addition, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for consulting as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . .

consulting . . .” costs.¹⁹⁵ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . consulting”¹⁹⁶ costs. In keeping with these provisions, a brief description of reasonable consulting costs is included in this filing, and such reasonable consulting costs include the costs related to the Chair position.

The Participants determined that the position of the Chair was a critical role for the implementation of the CAT, and an independent Chair would appropriately consider and address the views of each of the Participants. The Participants also determined that it was important to have a Chair with a strong background regarding issues related to the regulatory obligations of self-regulatory organizations, including their obligations under national market system plans. The compensation paid to the Chair is appropriate for a person with such background and skills. The average annual amount paid to the Chair from 2017 through the end of FAM 3 was \$292,733.30. Separate from the Chair, CAT LLC relies upon a Leadership Team of representatives of the SROs to oversee the day-to-day implementation of the CAT NMS Plan. CAT LLC does not compensate any member of the Leadership Team.

(11) Fee Implementation Assistance for Industry Members

(A) Reconciliation of CAT Invoices

(i) Reconciliation of CAT Invoices to Underlying Trades Provided by CAT

CAT LLC understands that there are three types of reconciliation processes related to the invoices:

- *Reconciliation of CAT Invoices to Underlying Trades:* Reconciling the CAT invoice amount to the underlying trades provided by CAT;
- *Matching Trades to Books and Records:* Providing the means to match the underlying trades provided by CAT with CAT invoices to other books and records independently maintained by individual CAT Reporters (e.g., exchange trade journals/ acknowledgements) and data sources of self-regulatory organizations independent of CAT; and
- *Order Originator Identification:* Providing the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices, which would facilitate firms’

¹⁹² See, e.g., NASDAQ Equities Rule 4626.

¹⁹³ FINRA Rule 1013(a)(1)(R) requires all applicants for FINRA Membership to acknowledge the FINRA Entitlement Program Agreement and Terms of Use, which applies to OATS. Industry Members click to indicate that they agree to its terms—including its limitation of liability provision—every time they access FINRA’s OATS system to report trade information (i.e., repeatedly over the course of a trading day for many Industry Members).

¹⁹⁴ See Letter from Michael Simon, Chair, CAT Operating Committee, to Vanessa Countryman, Secretary, Commission (Dec. 18, 2020).

¹⁹⁵ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁹⁶ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁹¹ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

ability to pass through CAT Fees to their customers.

As discussed further below, CAT LLC only considers the first type of process to be a “reconciliation” and the only type of process that is required under the CAT NMS Plan. CAT LLC provides the means to reconcile the CAT invoice amount to the underlying trades provided by CAT.

The CAT NMS Plan does not require CAT LLC to facilitate the second type of process: matching underlying trades for a CAT invoice with a firm’s internal books and records. CAT LLC has access only to the underlying trades provided by CAT; it does not have access to a firm’s internal books and records. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying trades with their own books and records.

The CAT NMS Plan also does not require CAT LLC to provide the ability to identify the order originator for the underlying trades for the CAT invoices. Accordingly, the billing guidance and processes do not provide CAT Reporters with the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices. CAT LLC has been working closely with CAT Reporters to explain its billing approach and to address any outstanding billing questions. But, it should not be lost that CAT LLC provides information sufficient to allow CAT Reporters to reconcile CAT invoice amounts with the underlying trades provided by CAT LLC.

(ii) Match the Underlying Trades Provided by CAT With CAT Invoices to Firms’ Internal Books and Records Independent of CAT

The CAT NMS Plan does not require CAT LLC to facilitate the matching of underlying trades for a CAT invoice with a firm’s internal books and records, which may consist of trading data from various sources external to CAT. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying trades with their own books and records.

In this regard, it is important to recognize that CAT LLC has developed a billing approach that greatly improves upon existing billing practices for similar regulatory fees (e.g., fees related to Section 31). Accordingly, with the

additional information voluntarily provided by CAT LLC, CAT Reporters generally will have sufficient information to match their underlying trades provided by CAT with their own internal books and records that are independent of CAT or to SRO data that is independent of CAT data. However, CAT LLC emphasizes that providing such additional information is not required by the CAT NMS Plan.

To facilitate the introduction of CAT fees, CAT LLC has worked with FCAT to develop an approach to CAT billing that is consistent with existing billing constructs used with regard to Section 31-related sales values fees, subject to certain enhancements. Under this billing approach, FCAT is providing additional linkage elements, not necessarily provided in the Section 31-sales value fee context, to facilitate CAT Reporters’ ability to match the underlying trades provided by CAT with their internal books and records and to reduce the complexity of that process. Specifically, FCAT is providing various key elements of the trade itself, such as the tradeID and branch sequence,¹⁹⁷ to CAT Reporters in the trade billing details provided with their CAT invoices (“Additional Trade Details”). As a result, CAT Reporters now have numerous alternative methods for matching a trade with their internal books and records where they previously did not have such matching methods in other fee contexts.

With the Additional Trade Details, CAT LLC and FCAT believe that the overwhelming majority of underlying trades provided by CAT bills can be matched with a CAT Reporter’s internal books and records. CAT LLC recognizes that there may be certain cases in which such matching is more difficult given various firm-specific considerations, but believes that such instances are significantly more limited than with regard to the SRO fees charged in relation to Section 31.¹⁹⁸ By providing

¹⁹⁷ See CAT Technical Specifications for Billing Trade Details; Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>); CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

¹⁹⁸ For years, broker-dealers have faced similar reconciliation issues with regard to SRO fees related to Section 31. Broker-dealers have responded to this issue in the Section 31 context by exercising their discretion as to whether and the manner and extent to which they pass on those fees (e.g., by rounding up its fees to the nearest cent, or decide to charge for, or not charge for, certain transactions, or assess a specific fee or incorporate the costs into other fee programs). See, e.g., Securities Exchange Act Rel. No. 49928 (June 28, 2004), 69 FR 41060, 41072 (July 7, 2004) (noting that broker-dealers may “over-

Additional Trade Details that are not available in other fee contexts, FCAT enhances the Industry Members’ ability to match the underlying trades provided with CAT invoices with books and records and SRO data, both of which are independent of CAT data.

(iii) CAT LLC Is Not Required To Facilitate CAT Reporters’ Ability To Pass Through Fees to Their Customers

Similar to other regulatory fees, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms’ ability to do so. Accordingly, Historical CAT Assessment 1 does not address the process by which any CAT Reporters may pass through the fee to their customers. Likewise, the CAT billing approach provided by the Plan Processor is designed to address the needs of CAT Reporters with regard to the reconciliation of CAT invoices with the underlying trades provided by CAT LLC with the invoices; they are not designed to address issues related to any pass-through fees. Accordingly, facilitating CAT Reporters’ ability to pass through fees to their clients is outside the scope of this fee filing. Nevertheless, as described below, CAT LLC and the Plan Processor have expended significant efforts to provide technical assistance to Industry Members regarding the implementation of Historical CAT Assessment 1, including providing Additional Trade Details that provide significant details about each underlying trade.

(a) Originating Brokers Versus Executing Brokers

In its approval of the CAT Funding Model, the Commission approved charging CAT fees to the CAT Executing Broker, rather than the originating broker. This fee filing must comply with the requirements of the CAT Funding Model, and, therefore, charges the Historical CAT Assessment 1 to CAT Executing Brokers.

Moreover, charging originating brokers would introduce significant complexity to the billing process from the CAT’s perspective, and would increase the costs of implementing CAT fees. Charging the CAT Executing Broker is simple and straightforward, and leverages a one-to-one relationship between billable events (trades) and billable parties, similar to other

collect” Section 31-related fees charged to their clients due to rounding practices, and double-counting with regard to certain transactions).

transaction-based fees. In contrast, for a single trade event, there may be many originating brokers, and each trade must be broken down on a pro-rata basis, to account for one or more layers of aggregation, disaggregation, and representation of the underlying orders. While CAT is indeed designed to capture and unwind complex aggregation scenarios, the data and linkages are structured to facilitate regulatory use, and not a billing mechanism that assesses fees on a distinct set of executed trades; it is not simply a matter of using existing CAT linkages. Furthermore, charging originating brokers would implicate issues related to lifecycle linkage rates, and issues related to corrections, cancellations and allocations, while charging CAT Executing Brokers would avoid such issues.

(b) Identification of Order Originator for Underlying Trades

As noted, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT Fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Nevertheless, the Additional Trade Details provided with regard to the underlying trades on CAT invoices may assist with this process. Like with Section 31-related sales value fees, however, it is not always possible to trace every fee on a transaction back to the originating party. Industry Members have faced these issues under Section 31-related sales values fees for many years.¹⁹⁹ However, with the Additional Trade Details provided under the CAT billing approach, in many cases, CAT Reporters will be able to identify the order originator for the underlying trades provided by CAT with CAT invoices. In some cases, CAT LLC believes that certain issues related to certain types of market activity may implicate CAT Reporters' ability to identify the order originator for a limited set of underlying trades for the CAT invoices. Although CAT LLC does not believe that it is required to address these issues, CAT LLC and FCAT have

been carefully researching and analyzing these types of issues as they are identified, and have been working voluntarily to assist CAT Reporters with these issues as necessary and when possible. In addition, CAT LLC intends to continue to provide CAT Reporters with billing guidance through FAQs, CAT Alerts and Helpdesk responses to address outstanding billing questions.

(B) Significant Technical Assistance

CAT LLC has worked with FCAT to provide significant technical assistance to Industry Members to allow the Industry Members to understand how Historical CAT Assessment 1 will be implemented and billed, including webinars, CAT alerts, mock invoices, and responses to questions posed to the FCAT Help Desk.

- *Technical Specifications and Scenarios.* CAT LLC has provided detailed technical documentation for CAT billing, including (1) technical specifications, which describe the CAT Billing Trade Details Files associated with monthly CAT invoices, including detailed information about data elements and file formats as well as access instructions, network and transport options;²⁰⁰ (2) trade details schemas;²⁰¹ and (3) CAT billing scenarios.²⁰²
- *Industry Webinars.* CAT LLC has hosted two industry webinars specifically dedicated to CAT billing. The first webinar, hosted on September 28, 2023, discussed the operational implementation of the CAT Reporter billing process.²⁰³ The second webinar, hosted on November 7, 2023, provided (1) a demonstration of the CAT Reporter Portal and how to access CAT billing documents, including CAT invoices; and (2) additional information on underlying trade details in relation to the CAT Reporter billing process and an overview of the CAT Contact Management System.²⁰⁴ 485 participants and 394 participants attended the two webinars, respectively.

- *CAT Alert.* CAT LLC has published a detailed CAT Alert that describes how FCAT, as the Plan Processor acting on behalf of CAT LLC, will calculate applicable fees, issue invoices to and collect payment from CAT Executing Brokers.²⁰⁵

- *Frequently Asked Questions (FAQs).* CAT LLC also has continued to engage with the industry on billing issues by making responses to billing FAQs available on the CAT website. The FAQs address a broad range of frequently asked questions, including, for example, which Industry Members will receive invoices, how fees are calculated, when and how fees are required to be paid, how to access invoices, and how to update the billing contact. To date, responses to 27 FAQs are available on the CAT website, and CAT LLC will provide additional responses to FAQs as warranted.²⁰⁶

- *Mock Invoices.* To assist Industry Members with compliance with the commencement of Historical CAT Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices for Historical CAT Assessment 1 since December 2023 for billable activity occurring in November 2023. The mock invoices are in the same form as the actual, payable invoices, including both the relevant transaction data and the corresponding fee (as originally contemplated). However, no payments are required in response to such mock invoices; they are to be used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data provides CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended to facilitate the payment of Historical CAT Assessment 1. For the November, December, and January billing periods, FCAT has generated trade detail files for 569 distinct firms that are CAT Executing Brokers. As such, CAT Reporters have actively engaged in the billing process via the mock invoices.

- *Help Desk Assistance.* CAT LLC also provides detailed, individualized assistance to Industry Members regarding CAT fees and the billing

¹⁹⁹ "FINRA charges a Regulatory Transaction Fee ("RTF") to industry members to reimburse FINRA for the Section 31 fees that FINRA pays to the Commission. FINRA does not currently provide industry members with the data that industry members require for proper reconciliation of RTF fees. This has been a major problem for the industry for many years." Letter from Howard Meyerson, Managing Director, FIF, to Robert Cook, Chief Executive Officer, FINRA at 2 (Dec. 15, 2023) (<https://fif.com/index.php/working-groups/category/271-comment-letters?download=2820:fif-letter-to-finra-on-pass-through-of-finra-cat-fees&view=category>).

²⁰⁰ CAT Technical Specifications for Billing Trade Details, Version 1.0 r1 (Dec. 8, 2023) (https://catnmsplan.com/sites/default/files/2023-12/12.07.2023-CAT-Technical-Specifications-for-Billing-Trade-Details-v1.0r1_CLEAN.pdf).

²⁰¹ Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>).

²⁰² CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

²⁰³ CAT Billing Webinar, Part 1 (Sept. 28, 2023) (<https://www.catnmsplan.com/events/part-1-cat-billing-webinar>).

²⁰⁴ CAT Billing Webinar, Part 2 (Nov. 7, 2023) (<https://www.catnmsplan.com/events/part-2-cat-billing-webinar>).

²⁰⁵ See CAT Alert 2023-02 (Oct. 12, 2023) (<https://www.catnmsplan.com/sites/default/files/2023-10/10.12.23-CAT-Alert-2023-02.pdf>).

²⁰⁶ See CAT Billing FAQs, Section V of CAT FAQs (https://www.catnmsplan.com/faq?search_api_fulltext=&field_topics=271&sort_by=field_faq_number).

process through the FCAT Help Desk.²⁰⁷ For example, the Help Desk has assisted with 406 cases related to the billing of CAT fees from July 2023 through March 2024.

By providing such detailed and sustained assistance to Industry Members regarding CAT fees and billing, CAT LLC has successfully addressed questions raised by Industry Members regarding the CAT fees and billing processes.

(C) Ample Preparation Time

CAT LLC has provided Industry Members with ample time to comply with the implementation of Historical CAT Assessment 1. CAT LLC originally proposed issuing the first invoices for Historical CAT Assessment 1 in December 2023 based on transactions in Eligible Securities in November 2023. In consideration of the feedback about the need for additional time to implement the new fee, CAT LLC pushed back this timeline by four months, proposing to issue the first Historical CAT Assessment 1 in April 2024 based on transactions in March 2024.²⁰⁸ This filing pushes this timeline back even further for implementing Historical CAT Assessment 1, proposing to issue the first invoices for Historical CAT Assessment 1 in November 2024 based on transactions in Eligible Securities in October 2024. Moreover, as discussed above, during these additional months, FCAT has been working closely with Industry Members to provide guidance regarding their mock bills and reconciliation efforts related thereto.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of the Exchange Act. The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,²⁰⁹ which requires, among other things, that the Exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and not designed to permit unfair discrimination between customers, issuers, brokers and dealers. The Exchange also believes that the

proposed rule change is consistent with the provisions of Section 6(b)(4) of the Act,²¹⁰ because it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(8) of the Act,²¹¹ which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. These provisions also require that the Exchange be "so organized and [have] the capacity to be able to carry out the purposes" of the Act and "to comply, and . . . to enforce compliance by its members and persons associated with its members," with the provisions of the Exchange Act.²¹² Accordingly, a reasonable reading of the Act indicates that it intended that regulatory funding be sufficient to permit an exchange to fulfill its statutory responsibility under the Act, and contemplated that such funding would be achieved through equitable assessments on the members, issuers, and other users of an exchange's facilities.

The Exchange believes that this proposal is consistent with the Act because it implements provisions of the Plan and is designed to assist the Exchange in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan "is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act."²¹³ To the extent that this proposal implements the Plan and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

The Exchange believes that the proposed fees paid by the CEBBs and CEBs are reasonable, equitably allocated and not unfairly discriminatory. First, the Historical CAT Assessment 1 fees to be collected are directly associated with the costs of establishing and maintaining the CAT,

where such costs include Plan Processor costs and costs related to technology, legal, consulting, insurance, professional and administration, and public relations costs. The Exchange has already incurred such development and implementation costs and the proposed Historical CAT Assessment 1 fees, therefore, would allow the Exchange to collect certain of such costs in a fair and reasonable manner from Industry Members, as contemplated by the CAT NMS Plan.

The proposed Historical CAT Assessment 1 fees would be charged to Industry Members in support of the maintenance of a consolidated audit trail for regulatory purposes. The proposed fees, therefore, are consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business operations. The proposed fees would not cover Exchange services unrelated to the CAT. In addition, any surplus would be used as a reserve to offset future fees. Given the direct relationship between CAT fees and CAT costs, the Exchange believes that the proposed fees are reasonable, equitable and not unfairly discriminatory.

As further discussed below, the SEC approved the CAT Funding Model, finding it was reasonable and that it equitably allocates fees among Participants and Industry Members. The Exchange believes that the proposed fees adopted pursuant to the CAT Funding Model approved by the SEC are reasonable, equitably allocated and not unfairly discriminatory.

(1) Implementation of CAT Funding Model in CAT NMS Plan

Section 11.1(b) of the CAT NMS Plan states that "[t]he Participants shall file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves." Per Section 11.1(b) of the CAT NMS Plan, the Exchange has filed this fee filing to implement the Industry Member CAT fees included in the CAT Funding Model. The Exchange believes that this proposal is consistent with the Exchange Act because it is consistent with, and implements, the CAT Funding Model in the CAT NMS Plan, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the CAT NMS Plan. In approving the CAT NMS Plan, the SEC noted that the Plan "is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national

²⁰⁷ The CAT NMS Plan requires that the Plan Processor "staff a CAT help desk, as described in Appendix D, CAT Help Desk, to provide technical expertise." Section 6.10(c)(vi) of the CAT NMS Plan. See also Section 10.3 of Appendix D of the CAT NMS Plan for a description of the Plan requirements for the CAT Help Desk.

²⁰⁸ Securities Exchange Act Rel. No. 99375 (Jan. 17, 2024), 89 FR 11116 (Feb. 13, 2024) (SR-PEARL-2024-01).

²⁰⁹ 15 U.S.C. 78f(b)(6).

²¹⁰ 15 U.S.C. 78f(b)(4).

²¹¹ 15 U.S.C. 78f(b)(8).

²¹² See Section 6(b)(1) of the Exchange Act.

²¹³ CAT NMS Plan Approval Order at 84697.

market system, or is otherwise in furtherance of the purposes of the Act.”²¹⁴ Similarly, in approving the CAT Funding Model, the SEC concluded that the CAT Funding Model met this standard.²¹⁵ As this proposal implements the Plan and the CAT Funding Model described therein, and applies specific requirements to Industry Members in compliance with the Plan, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Exchange Act.

(2) Calculation of Fee Rate for Historical CAT Assessment 1 Is Reasonable

The SEC has determined that the CAT Funding Model is reasonable and satisfies the requirements of the Exchange Act. Specifically, the SEC has concluded that the method for determining Historical CAT Assessments as set forth in Section 11.3 of the CAT NMS Plan, including the formula for calculating the Historical Fee Rate, the identification of the parties responsible for payment and the transactions subject to the fee rate for the Historical CAT Assessment, is reasonable and satisfies the Exchange Act.²¹⁶ In each respect, as discussed above, Historical CAT Assessment 1 is calculated, and would be applied, in accordance with the requirements applicable to Historical CAT Assessments as set forth in the CAT NMS Plan. Furthermore, as discussed below, the Exchange believes that each of the figures for the variables in the SEC-approved formula for calculating the fee rate for Historical CAT Assessment 1 is reasonable and consistent with the Exchange Act. Calculation of the Historical Fee Rate for Historical CAT Assessment 1 requires the figures for the Historical CAT Costs 1, the executed equivalent share volume for the prior twelve months, the determination of Historical Recovery Period 1, and the projection of the executed equivalent share volume for Historical Recovery Period 1. Each of these variables is reasonable and satisfies the Exchange Act, as discussed throughout this filing.

(A) Historical CAT Costs 1

The formula for calculating a Historical Fee Rate requires the amount of Historical CAT Costs to be recovered. Specifically, Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan requires a fee filing to provide:

a brief description of the amount and type of the Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs.

In accordance with this requirement, the Exchange has set forth the amount and type of Historical CAT Costs 1 for each of these categories of costs above.

Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan also requires that the fee filing provide “sufficient detail to demonstrate that the Historical CAT Costs are reasonable and appropriate.” As discussed below, the Exchange believes that the amounts set forth in this filing for each of these cost categories is “reasonable and appropriate.” Each of the costs included in Historical CAT Costs 1 are reasonable and appropriate because the costs are consistent with standard industry practice, based on the need to comply with the requirements of the CAT NMS Plan, incurred subject to negotiations performed on an arm’s length basis, and/or are consistent with the needs of any legal entity, particularly one with no employees.

(i) Technology: Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover costs related to cloud hosting services as a part of Historical CAT Assessments.²¹⁷ CAT LLC determined that the costs related to cloud hosting services described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. As described above, the cloud hosting services costs reflect, among other things, the breadth of the CAT cloud activities, data volume far in excess of the original volume estimates, the need for specialized cloud services given the volume and unique nature of the CAT, the processing time requirements of the Plan, and regular efforts to seek to minimize costs where permissible under the Plan. CAT LLC determined that use of cloud hosting services is necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT, and that the fees for cloud hosting services negotiated by FCAT were reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided

and market rates for similar services.²¹⁸ Indeed, the actual costs of the CAT are far in excess of the original estimated costs of the CAT due to various factors, including the higher volumes and greater complexity of the CAT than anticipated when Rule 613 was originally adopted.

To comply with the requirements of the Plan, the breadth of the cloud activities related to the CAT is substantial. The cloud services not only include the production environment for the CAT, but they also include two industry testing environments, support environments for quality assurance and stress testing and disaster recovery capabilities. Moreover, the cloud storage costs are driven by the requirements of the Plan, which requires the storage of multiple versions of the data, from the original submitted version of the data through various processing steps, to the final version of the data.

Data volume is a significant driver of costs for cloud hosting services. When the Commission adopted the CAT NMS Plan in 2016, it estimated that the CAT would need to receive 58 billion records per day²¹⁹ and that annual operating costs for the CAT would range from \$36.5 million to \$55 million.²²⁰ Through 2021, the actual data volumes have been five times that original estimate. The data volumes for each period are set forth in detail above.²²¹

In addition to the effect of the data volume on the cloud hosting costs, the processing timelines set forth in the Plan contribute to the cloud hosting costs. Although CAT LLC has proactively sought to manage cloud hosting costs while complying with the Plan, including through requests to the Commission for exemptive relief and an amendment to the CAT NMS Plan, stringent CAT NMS Plan requirements do not allow for any material flexibility in cloud architecture design choices, processing timelines (*e.g.*, the use of non-peak processing windows), or lower-cost storage tiers. As a result, the required CAT processing timelines contribute to the cloud hosting costs of the CAT.

The costs for cloud hosting services also reflect the need for specialized cloud hosting services given the data volume and unique processing needs of the CAT. The data volume as well as the data processing needs of the CAT

²¹⁸ For a discussion of the amount and type of cloud hosting services fees, *see* Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

²¹⁹ Appendix D–4 of the CAT NMS Plan at n.262.

²²⁰ CAT NMS Plan Approval Order at 84801.

²²¹ *See* Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

²¹⁴ CAT NMS Plan Approval Order at 84696.

²¹⁵ CAT Funding Model Approval Order at 62686.

²¹⁶ *Id.* at 62662–63.

²¹⁷ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

necessitate the use of cloud hosting services. The equipment, power and services required for an on-premises data model, the alternative to cloud hosting services, would be cost prohibitive. Moreover, as CAT was being developed, there were limited cloud hosting providers that could satisfy all the necessary CAT requirements, including the operational and security criteria. Over time more providers offering cloud hosting services that would satisfy these criteria have entered the market. CAT LLC will continue to evaluate alternative cloud hosting services, recognizing that the time and cost to move to an alternative cloud provider would be substantial.

The reasonableness of the cloud hosting services costs is further supported by key cost discipline mechanisms for the CAT—a cost-based funding structure, cost transparency, cost management efforts (including regular efforts to lower compute and storage costs where permitted by the Plan) and oversight. Together, these mechanisms help ensure the ongoing reasonableness of the CAT's costs and the level of fees assessed to support those costs.²²²

(ii) Technology: Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to operating fees as a part of Historical CAT Assessments.²²³ CAT LLC determined that the costs related to operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The operating fees include the negotiated fees paid by CAT LLC to the Plan Processor to operate and maintain the system for order-related information and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (e.g., management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the selection of FCAT as the Plan Processor was reasonable and appropriate given its expertise with securities regulatory reporting, after a process of considering other potential candidates.²²⁴ CAT LLC also determined that the fixed price contract, negotiated on an arm's length basis with the goals of managing costs and

receiving services required to comply with the CAT NMS Plan and Rule 613, was reasonable and appropriate, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity.²²⁵ The services performed by FCAT for each period and the costs related to such services are described above.²²⁶

(iii) Technology: CAIS Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to CAIS operating fees as a part of Historical CAT Assessments.²²⁷ CAT LLC determined that the costs related to CAIS operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The CAIS operating fees include the fees paid to the Plan Processor to operate and maintain CAIS and to perform the business operations related to the system, including compliance, security, testing, training, communications with the industry (e.g., management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the FCAT-negotiated fees for Kingland's CAIS-related services, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity, were reasonable and appropriate.²²⁸ The services performed by Kingland for each period and the costs for each period are described above.²²⁹

(iv) Technology: Change Request Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to change request fees as a part of Historical CAT Assessments.²³⁰ CAT LLC determined that the costs related to change request fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. It is common practice to utilize a change request process to address evolving needs in technology projects. This is

particularly true for a project like CAT that is the first of its kind, both in substance and in scale. The substance and costs of each of the change requests are evaluated by the Operating Committee, and approved in accordance with the requirements for Operating Committee meetings. In each case, CAT LLC determined that the change requests were necessary to implement the CAT. As described above, the change requests cover various technology changes, including, for example, changes related to CAT reporting, data feeds and exchange functionality. CAT LLC also determined that the costs for each change request were appropriate for the relevant technology change. A description of the change requests for each FAM Period and their total costs are set described above.²³¹ As noted above, the total costs for change requests through FAM Period 3 represent a small percentage of Historical CAT Costs 1—that is, 0.25% of Historical CAT Costs 1.

(v) Capitalized Developed Technology Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to capitalized developed technology costs as a part of Historical CAT Assessments.²³² Capitalized developed technology costs include costs related to certain development costs, costs related to certain modifications, upgrades and other changes to the CAT, CAIS implementation fees and license fees. The amount and type of costs for each period are described in more detail above.²³³ CAT LLC determined that these costs are reasonable and should be included as a part of Historical CAT Costs 1.

These costs involve the activity of both the Initial Plan Processor and FCAT, as the successor Plan Processor.²³⁴ With regard to the Initial Plan Processor, the Participants utilized an RFP to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan. CAT LLC entered into an agreement

²²² See Securities Exchange Act Rel. No. 97151 (Mar. 15, 2023), 88 FR 17086, 17117 (Mar. 21, 2023) (describing key cost discipline mechanisms for the CAT).

²²³ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²⁴ See Section 3(a)(2)(B)(i)(b) above.

²²⁵ See Sections 3(a)(2)(B)(i)(b), 3(a)(2)(B)(ii)(b), 3(a)(2)(B)(iii)(b) and 3(a)(2)(B)(iv)(b) above.

²²⁶ *Id.*

²²⁷ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²⁸ See Sections 3(a)(2)(B)(i)(c), 3(a)(2)(B)(ii)(c), 3(a)(2)(B)(iii)(c) and 3(a)(2)(B)(iv)(c) above.

²²⁹ *Id.*

²³⁰ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²³¹ See Sections 3(a)(2)(B)(i)(d), 3(a)(2)(B)(ii)(d), 3(a)(2)(B)(iii)(d) and 3(a)(2)(B)(iv)(d) above.

²³² Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²³³ See Sections 3(a)(2)(B)(i)(e), 3(a)(2)(B)(ii)(e), 3(a)(2)(B)(iii)(e) and 3(a)(2)(B)(iv)(e) above.

²³⁴ *Id.*

with the Initial Plan Processor in which CAT LLC would pay the Initial Plan Processor a negotiated, fixed price fee.²³⁵ In addition, as described above, CAT LLC determined that it was appropriate to enter into an agreement with FCAT as the successor Plan Processor.²³⁶

(vi) Legal

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to legal fees as a part of Historical CAT Assessments.²³⁷ CAT LLC determined that the legal costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Given the unique nature of the CAT, the number of parties involved with the CAT (including, for example, the SEC, Participants, Industry Members, and vendors) and the many regulatory issues associated with the CAT, the scope of the necessary legal services are substantial. CAT LLC determined that the scope of the legal services is necessary to implement and maintain the CAT and that the legal rates reflect the specialized services necessary for such a project. When hiring each law firm for a CAT project, CAT LLC interviewed multiple firms, and determined to hire each firm based on a variety of factors, including the relevant expertise and fees. In each case, CAT LLC determined that the hourly fee rates were in line with market rates for the specialized legal expertise. In addition, CAT LLC determined that the total costs incurred for each CAT project were appropriate given the breadth of services provided. The services performed by each law firm for each period and the costs related to such services are described above.²³⁸

(vii) Consulting

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover consulting costs as a part of Historical CAT Assessments.²³⁹ CAT LLC determined that the consulting costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Because there are no CAT employees²⁴⁰ and

because of the significant number of issues associated with the CAT, the consultants provided assistance in the management of various CAT matters and the processes related to such matters.²⁴¹ CAT LLC considered a variety of factors in choosing a consulting firm and determined to select Deloitte after an interview process.²⁴² CAT LLC also determined that the consulting services were provided at reasonable market rates, as the fees were negotiated annually and comparable to the rates charged by other consulting firms for similar work.²⁴³ Moreover, the total costs for such consulting services were appropriate in light of the breadth of services provided by Deloitte. The services performed by Deloitte and the costs related to such services are described above.²⁴⁴

(viii) Insurance

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover insurance costs as a part of Historical CAT Assessments.²⁴⁵ CAT LLC determined that the insurance costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that it is common practice to have directors' and officers' liability insurance, and errors and omissions liability insurance. CAT LLC further determined that it was important to have cyber security insurance given the nature of the CAT, and such a decision is consistent with the CAT NMS Plan, which states that the cyber incident response plan may include "[i]nsurance against security breaches."²⁴⁶ In selecting the insurance providers for these policies, CAT LLC engaged in an evaluation of alternative insurers, including a comparison of the pricing offered by the alternative insurers.²⁴⁷ Based on this analysis, CAT LLC determined that the selected insurance policies provided appropriate coverage at reasonable market rates.²⁴⁸

(ix) Professional and Administration

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover professional and

administration costs as a part of Historical CAT Assessments.²⁴⁹ CAT LLC determined that the professional and administration costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Because there are no CAT employees, all required accounting, financial, tax, cash management and treasury functions for CAT LLC have been outsourced at market rates. In addition, the required annual financial statement audit of CAT LLC is included in professional and administration costs, which costs are also at market rates.

CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees.²⁵⁰ The hourly fee rates for this firm were in line with market rates for the financial advisory services provided.²⁵¹ Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Anchin. The services performed by Anchin and the costs related to such services are described above.²⁵²

CAT LLC also determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the role given the balance of these considerations.²⁵³ Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services.²⁵⁴ Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Grant Thornton. The services performed by Grant

²³⁵ See Section 3(a)(2)(B)(i)(e) above.

²³⁶ See Section 3(a)(2)(B)(i)(b) above.

²³⁷ Section 11.3(b)(iii)(B)(II)(B)(2) of the CAT NMS Plan.

²³⁸ See Sections 3(a)(2)(B)(i)(f), 3(a)(2)(B)(ii)(f), 3(a)(2)(B)(iii)(f) and 3(a)(2)(B)(iv)(f) above.

²³⁹ Section 11.3(b)(iii)(B)(II)(B)(3) of the CAT NMS Plan.

²⁴⁰ As stated in the filing of the proposed CAT NMS Plan, "[i]t is the intent of the Participants that the Company have no employees." Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614, 30621 (May 17, 2016).

²⁴¹ CAT LLC uses certain third parties to perform tasks that may be performed by administrators for other NMS Plans. See, e.g., CTA Plan and CQ Plan.

²⁴² See Section 3(a)(2)(B)(i)(g) above.

²⁴³ See Sections 3(a)(2)(B)(i)(g), 3(a)(2)(B)(ii)(g), 3(a)(2)(B)(iii)(g) and 3(a)(2)(B)(iv)(g) above.

²⁴⁴ *Id.*

²⁴⁵ Section 11.3(b)(iii)(B)(II)(B)(4) of the CAT NMS Plan.

²⁴⁶ Section 4.1.5 of Appendix D of the CAT NMS Plan.

²⁴⁷ See Sections 3(a)(2)(B)(i)(h), 3(a)(2)(B)(ii)(h), 3(a)(2)(B)(iii)(h) and 3(a)(2)(B)(iv)(h) above.

²⁴⁸ *Id.*

²⁴⁹ Section 11.3(b)(iii)(B)(II)(B)(5) of the CAT NMS Plan.

²⁵⁰ See Section 3(a)(2)(B)(i)(i) above.

²⁵¹ See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

²⁵² *Id.*

²⁵³ See Section 3(a)(2)(B)(i)(i) above.

²⁵⁴ See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

Thornton and the costs related to such services are described above.²⁵⁵

The professional and administrative costs also include costs related to the receipt of certain market data from Exegy. After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy. Exegy provided the data elements required by the CAT NMS Plan, and the fees were reasonable and in line with market rates for the market data received.²⁵⁶

The professional and administrative costs also include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation and operation of the controls specified by NIST Special Publication 800–53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment.²⁵⁷

(x) Public Relations Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover public relations costs as a part of Historical CAT Assessments.²⁵⁸ CAT LLC determined that the public relations costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that the types of public relations services utilized were beneficial to the CAT and market participants more generally. Public relations services were important for various reasons, including monitoring comments made by market participants about CAT and understanding issues related to the CAT discussed on the public record.²⁵⁹ By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT issues to the benefit of all market participants.²⁶⁰ Moreover, CAT LLC determined that the rates charged for

such services were in line with market rates.²⁶¹ As noted above, the total public relations costs through FAM Period 3 represent a small percentage of Historical CAT Costs 1—that is, 0.1% of Historical CAT Costs 1.

(B) Total Executed Equivalent Share Volume for the Prior 12 Months

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. CAT LLC determined the total executed equivalent share volume for the prior twelve months by counting executed equivalent shares in the same manner as it will count executed equivalent shares for CAT billing purposes.

(C) Historical Recovery Period 1

CAT LLC has determined to establish a Historical Recovery Period of 24 months for Historical CAT Assessment 1 and that such length is reasonable. CAT LLC determined that the length of Historical Recovery Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans notes to the Participants in a timely fashion. CAT LLC determined that 24 months for Historical Recovery Period 1 would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to Section 31.²⁶² In addition, in establishing a Historical Recovery Period of 24 months, CAT LLC recognized that the total costs for Historical CAT Assessment 1 was less than the total costs for 2022 and 2023, and therefore it would be appropriate to recover those costs in two years.

(D) Projected Executed Equivalent Share Volume for Historical Recovery Period 1

CAT LLC has determined to calculate the projected total executed equivalent share volume for the 24 months of Historical Recovery Period 1 by doubling the executed equivalent share volume for the prior 12 months. CAT LLC determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has remained relatively constant in recent years. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395, the executed equivalent share volume for 2022 was

4,039,821,841,560.31, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6. Accordingly, the projected total executed equivalent share volume for Historical Recovery Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.²⁶³

(E) Actual Fee Rate for Historical CAT Assessment 1

(i) Decimal Places

As noted in the Plan amendment for the CAT Funding Model, as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee rate.²⁶⁴ Accordingly, proposed paragraph (a)(1)(B) of the fee schedule would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 by one-third, and rounding the result to 6 decimal places. CAT LLC determined that the use of six decimal places is reasonable as it balances the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

(ii) Reasonable Fee Level

The Exchange believes that imposing Historical CAT Assessment 1 with a fee rate of \$0.000013 per executed equivalent share is reasonable because it provides for a revenue stream for the Company that is aligned with Historical CAT Costs 1 and such costs would be spread out over an appropriate recovery period, as discussed above. Moreover, the Exchange believes that the level of the fee rate is reasonable, as it is comparable to other transaction-based fees. Indeed, Historical CAT Assessment 1 is significantly lower than fees assessed pursuant to Section 31 (*e.g.*, \$0.0009 per share to 0.0004 per share),²⁶⁵ and, as a result, the magnitude of Historical CAT Assessment 1 is small, and therefore will mitigate any potential adverse economic effects or inefficiencies.²⁶⁶ Furthermore, the reasonable fee rate for Historical CAT Assessment 1 further supports CAT LLC's decision to seek to recover all

²⁵⁵ *Id.*

²⁵⁶ See Section 3(a)(2)(B)(i)(i) above.

²⁵⁷ *Id.*

²⁵⁸ Section 11.3(b)(iii)(B)(II)(B)(6) of the CAT NMS Plan.

²⁵⁹ See Section 3(a)(2)(B)(i)(j) above.

²⁶⁰ See Sections 3(a)(2)(B)(i)(j), 3(a)(2)(B)(ii)(j), 3(a)(2)(B)(iii)(j) and 3(a)(2)(B)(iv)(j) above.

²⁶¹ *Id.*

²⁶² As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model Approval Order at 62682.

²⁶³ This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

²⁶⁴ CAT Funding Model Approval Order at 62658, n.658.

²⁶⁵ CAT Funding Model Approval Order at 62663, 62682.

²⁶⁶ *Id.*

Historical CAT Costs prior to 2022, rather than establishing separate Historical CAT Assessments for pre-FAM, FAM 1, FAM 2 and FAM 3 costs.

(3) Historical CAT Assessment 1 Provides for an Equitable Allocation of Fees

Historical CAT Assessment 1 provides for an equitable allocation of fees, as it equitably allocates CAT costs between and among the Participants and Industry Members. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act, including the formula for calculating Historical CAT Assessments as well as the Industry Members to be charged the Historical CAT Assessments.²⁶⁷ In approving the CAT Funding Model, the SEC stated that “[t]he Participants have sufficiently demonstrated that the proposed allocation of fees is reasonable.”²⁶⁸ Accordingly, the CAT Funding Model sets forth the requirements for allocating fees related to Historical CAT Costs among Participants and Industry Members, and the fee filings for Historical CAT Assessments must comply with those requirements.

Historical CAT Assessment 1 provides for an equitable allocation of fees as it complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. For example, as described above, the calculation of Historical CAT Assessment 1 complies with the formula set forth in Section 11.3(b) of the CAT NMS Plan. In addition, Historical CAT Assessment 1 would be charged to CEBBs and CEBBs in accordance with Section 11.3(b) of the CAT NMS Plan. Furthermore, the Participants would continue to remain responsible for their designated share of Past CAT Costs through the cancellation of loans made by the Participants to CAT LLC.

In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1—Historical CAT Costs 1 (including Excluded Costs), the count for the executed equivalent share volume for the prior 12 months, the length of the Historical Recovery Period, and the projected executed equivalent share volume for the Historical Recovery Period—are reasonable. Moreover, these inputs lead to a reasonable fee rate for Historical CAT Assessment 1 that is lower than other fee rates for transaction-based fees. A reasonable fee

rate allocated in accordance with the requirements of the CAT Funding Model provides for an equitable allocation of fees.

(4) Historical CAT Assessment 1 Is Not Unfairly Discriminatory

Historical CAT Assessment 1 is not an unfairly discriminatory fee. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act. In reaching this conclusion, the SEC analyzed the potential effect of Historical CAT Assessments calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Historical CAT Assessment 1 complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1 and the resulting fee rate for Historical CAT Assessment 1 is reasonable. Therefore, Historical CAT Assessment 1 does not impose an unfairly discriminatory fee on Industry Members.

Finally, the Exchange believes the proposed fees established pursuant to the CAT Funding Model promote just and equitable principles of trade, and, in general, protect investors and the public interest, and are provided in a transparent manner and specificity in the fee schedule. The Exchange also believes that the proposed fees are reasonable because they would provide ease of calculation, ease of billing and other administrative functions, and predictability of a fee based on fixed rate per executed equivalent share. Such factors are crucial to estimating a reliable revenue stream for CAT LLC and for permitting Exchange members to reasonably predict their payment obligations for budgeting purposes.

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

Section 6(b)(8) of the Act²⁶⁹ requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. The Exchange does not believe that the

proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that Historical CAT Assessment 1 implements provisions of the CAT NMS Plan that were approved by the Commission and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan.

In addition, all Participants (including exchanges and FINRA) are proposing to introduce Historical CAT Assessment 1 on behalf of CAT LLC to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive fee filing, and, therefore, it does not raise competition issues between and among the Participants.

Furthermore, in approving the CAT Funding Model, the SEC analyzed the potential competitive impact of the CAT Funding Model, including competitive issues related to market services, trading services and regulatory services, efficiency concerns, and capital formation.²⁷⁰ The SEC also analyzed the potential effect of CAT fees calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Based on this analysis, the SEC approved the CAT Funding Model as compliant with the Exchange Act. Historical CAT Assessment 1 is calculated and implemented in accordance with the CAT Funding Model as approved by the SEC.

As discussed above, each of the inputs into the calculation of Historical CAT Assessment 1 is reasonable and the resulting fee rate for Historical CAT Assessment 1 calculated in accordance with the CAT Funding Model is reasonable. Therefore, Historical CAT Assessment 1 would not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act.

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

Written comments were neither solicited nor received.

²⁶⁷ See Section 11.3(b) of the CAT NMS Plan.

²⁶⁸ CAT Funding Model Approval Order at 62629.

²⁶⁹ 15 U.S.C. 78f(b)(8).

²⁷⁰ CAT Funding Model Approval Order at 62676–86.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act²⁷¹ and Rule 19b-4(f)(2) thereunder,²⁷² because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-PEARL-2024-36 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-PEARL-2024-36. This file number should be included on the subject line if email 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 (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-PEARL-2024-36 and should be submitted on or before October 3, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷³

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-20477 Filed 9-11-24; 8:45 am]

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²⁷¹ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁷² 17 CFR 240.19b-4(f)(2).

²⁷³ 17 CFR 200.30-3(a)(12).

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Federal Register

Vol. 89, No. 177

Thursday, September 12, 2024

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FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

71153-71794.....	3
71795-72278.....	4
72279-72714.....	5
72715-72956.....	6
72957-73248.....	9
73249-73554.....	10
73555-74104.....	11
74105-74828.....	12

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

10795.....	72279
10796.....	72283
10797.....	72285
10798.....	72287
10799.....	72289
10800.....	72291
10801.....	72293
10802.....	72295
10803.....	73249
10804.....	73555
10805.....	73557
10806.....	74105

Executive Orders:

14126.....73559

Administrative Orders:

Memorandums:

Memorandum of August 9, 2024.....71795

Memorandum of August 16, 2024.....71799

Memorandum of August 23, 2024.....71801

Notices:

Notice of September 6, 2024.....73251

Notice of September 9, 2024.....74101

Notice of September 9, 2024.....74103

Presidential

Determinations:

No. 2024-10 of August 9, 2024.....71797

5 CFR

1200.....	72957
1201.....	72957
1203.....	72957
1209.....	72957
2641.....	74107

6 CFR

Proposed Rules:

37.....74137

9 CFR

317.....	73253
381.....	73253
412.....	73253

10 CFR

72.....	72299, 72304
73.....	73257
1703.....	73258

Proposed Rules:

72.....72342, 72344

1008.....73312

11 CFR

Proposed Rules:

104.....72346

12 CFR

Proposed Rules:

613.....72759

13 CFR

121.....74109

Proposed Rules:

126.....72763

14 CFR

39.....72309, 72312, 72966, 72968, 72971, 72974, 72976, 73260, 73262, 73264, 73267, 73269

61.....73271

71.....72981, 73272, 73273, 74131

Proposed Rules:

25.....73604

39.....73003, 73009, 73014, 73316, 73608

71.....71189, 71191, 71863, 72765, 73020, 73022

15 CFR

734.....71803

736.....72926

738.....72926

740.....71803, 72926

742.....72926

743.....72926

744.....71803

746.....71803

772.....72926

774.....71803, 72926

Proposed Rules:

702.....73612

16 CFR

Proposed Rules:

1112.....73024

1226.....73320

1250.....73024

17 CFR

1.....71803

3.....71803

5.....71803

9.....71803

10.....71803

11.....71803

12.....71803

13.....71803

14.....71803

15.....71803

16.....71803

17.....71803

18.....71803

20.....71803

23.....71803

30.....71803

31.....71803

37	71803
41	71803
43	71803
45	71803
46	71803
49	71803
140	71803
142	71803
144	71803
145	71803
146	71803
147	71803
148	71803
149	71803
150	71803
155	71803
160	71803
162	71803
165	71803
170	71803
171	71803
270	73764
274	73764

18 CFR

Proposed Rules:	
35	74161

19 CFR

12	73274, 73280

21 CFR

573	72315
862	72982
864	72315
866	73565
870	72317
872	71153, 72320
876	72715, 72984
882	71155

886	72322
888	71157
890	71159

24 CFR

Proposed Rules:	
5	72766

26 CFR

1	73568
Proposed Rules:	
1	71193, 71214, 71864
301	71214, 72348

27 CFR

Proposed Rules:	
4	73050
5	73050
19	73050
24	73050
26	73050
27	73050

30 CFR

550	71160

31 CFR

548	72717
587	72717, 72718, 72719
591	72986
1010	72156
1032	72156

32 CFR

Proposed Rules:	
3	71865

33 CFR

100	71821, 71823, 71824,

	72323, 72327, 72721
117	71184
165	71824, 72329, 72987,
	72989, 73289, 73291, 74132,
	74135

Proposed Rules:	
100	72348
165	73054, 73055

36 CFR

214	72990
251	72990
Proposed Rules:	
1191	71215

38 CFR

Proposed Rules:	
4	74162
21	72351

40 CFR

52	71185, 71826, 71830,
	72721, 73568
60	74135
63	73293
81	71830
84	73588
98	71838
180	72994
271	73592
300	72331
705	72336

Proposed Rules:	
52	71230, 71237, 71872,
	72353, 72770, 74165, 74171
55	73617
63	72355
180	72775
300	72356
705	72362

42 CFR

88	73592
423	72998
Proposed Rules:	
121	74174

43 CFR

8360	72999

45 CFR

170	72998

46 CFR

Proposed Rules:	
401	71877

47 CFR

11	72724
63	73601
64	71848
73	72738
Proposed Rules:	
1	74184
64	73321, 74184
90	72780
96	72780

50 CFR

17	72739, 73308
300	73602
622	71860
648	72758
679	71861, 72340, 73002
Proposed Rules:	
17	72362, 73330, 73512
622	72794
635	72796

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion

in today's **List of Public Laws**.

Last List August 1, 2024

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