



FEDERAL REGISTER

Vol. 89

Friday,

No. 178

September 13, 2024

Pages 74829–75444

OFFICE OF THE FEDERAL REGISTER



The **FEDERAL REGISTER** (ISSN 0097-6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see www.federalregister.gov.

The seal of the National Archives and Records Administration authenticates the **Federal Register** as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at www.govinfo.gov, a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 1, 1 (March 14, 1936) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, gpocusthelp.com.

The annual subscription price for the **Federal Register** paper edition is \$860 plus postage, or \$929, for a combined **Federal Register**, **Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is \$330, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register**, including postage, is based on the number of pages: \$11 for an issue containing less than 200 pages; \$22 for an issue containing 200 to 400 pages; and \$33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for \$3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see bookstore.gpo.gov.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 89 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202-512-1800
Assistance with public subscriptions	202-512-1806

General online information 202-512-1530; 1-888-293-6498

Single copies/back copies:

Paper or fiche	202-512-1800
Assistance with public single copies	1-866-512-1800 (Toll-Free)

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:

Email	FRSubscriptions@nara.gov
Phone	202-741-6000

The Federal Register Printing Savings Act of 2017 (Pub. L. 115-120) placed restrictions on distribution of official printed copies of the daily **Federal Register** to members of Congress and Federal offices. Under this Act, the Director of the Government Publishing Office may not provide printed copies of the daily **Federal Register** unless a Member or other Federal office requests a specific issue or a subscription to the print edition. For more information on how to subscribe use the following website link: <https://www.gpo.gov/frsubs>.



Contents

Federal Register

Vol. 89, No. 178

Friday, September 13, 2024

Agricultural Marketing Service

PROPOSED RULES

Marketing Order:

Raisins Produced from Grapes Grown in California,
74851–74866

Agriculture Department

See Agricultural Marketing Service

Centers for Disease Control and Prevention

NOTICES

Award of a Sole Source Cooperative Agreement:

Northwestern Provincial Health Office, Zambia, 74961–
74962

Draft Hazard Review:

Wildland Fire Smoke Exposure among Farmworkers and
Other Outdoor Workers, 74960–74961

Centers for Medicare & Medicaid Services

NOTICES

Hearings, Meetings, Proceedings, etc.:

Medicare Program; Fiscal Year 2026 Applications for
New Medical Services and Technologies Add-On
Payments, 74962–74964

Children and Families Administration

NOTICES

Award of a Supplement:

American Public Human Services Association for the
Association of Administrators of the Interstate
Compact on the Placement of Children in
Washington, DC, 74964–74965

Civil Rights Commission

NOTICES

Meetings; Sunshine Act, 74867

Coast Guard

NOTICES

Request for Membership Application:

National Offshore Safety Advisory Committee, 74972–
74973

Commerce Department

See International Trade Administration

See National Oceanic and Atmospheric Administration

See Patent and Trademark Office

Committee for Purchase From People Who Are Blind or Severely Disabled

NOTICES

Procurement List; Additions and Deletions, 74928–74930

Commodity Futures Trading Commission

NOTICES

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

Notification of Pending Legal Proceedings, 74930–74931

Consumer Product Safety Commission

NOTICES

Meetings; Sunshine Act, 74931

Energy Department

See Federal Energy Regulatory Commission

NOTICES

Hearings, Meetings, Proceedings, etc.:

Environmental Management Site-Specific Advisory
Board, Oak Ridge, 74931–74932

Environmental Protection Agency

RULES

Air Quality State Implementation Plans; Approvals and
Promulgations:

New Hampshire; Ambient Air Quality Standards, 74834–
74836

Pennsylvania; Attainment Plan for the Indiana
Nonattainment Area for the 2010 1-Hour Sulfur
Dioxide National Ambient Air Quality Standard,
74836–74847

Tennessee; Nitrogen Oxides SIP Call Alternative

Monitoring and Domtar Paper Co., LLC, 74847–74850

NOTICES

Environmental Impact Statements; Availability, etc., 74940

Recommendations of Specifications, Standards and

Ecolabels for Federal Purchasing, 74940–74942

Export-Import Bank

NOTICES

Request to Increase the Amount of the Long-Term General
Guarantee on the Interest of Secured Notes Issued by
the Private Export Funding Corp., 74943

Federal Communications Commission

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 74948–74949

Privacy Act; Systems of Records, 74943–74948

Federal Deposit Insurance Corporation

NOTICES

Meetings; Sunshine Act, 74949

Federal Energy Regulatory Commission

NOTICES

Application:

Brookfield White Pine Hydro LLC, 74932–74933

Pacific Gas and Electric Co., Pacific Generation LLC,
74933

Change of Implementation Date:

Electronic Tariff Filings, 74933

Combined Filings, 74933–74939

Environmental Assessments; Availability, etc.:

Village of Enosburg Falls, VT, 74939

Environmental Impact Statements; Availability, etc.:

Alabama Power Co., 74937

Hearings, Meetings, Proceedings, etc.:

Scott's Mill Hydro, LLC; Technical Conference, 74939

Request under Blanket Authorization:

Florida Gas Transmission Co., LLC, 74934–74935

Tolling 60-Day Period for Action to Allow for Further

Consideration:

Unison Energy, LLC, Tiger Infrastructure Partners Fund

III AIV U LP, 74934

Federal Highway Administration**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 75010–75011

Federal Motor Carrier Safety Administration**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Road Test Requirement, 75011–75012

Federal Reserve System**NOTICES**

Change in Bank Control:
Acquisitions of Shares of a Bank or Bank Holding Company, 74950
Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies, 74949–74950

Federal Trade Commission**NOTICES**

Petition to Reopen and Set Aside or Modify Order:
Coopharma, 74950–74960

Fish and Wildlife Service**NOTICES**

Permits; Applications, Issuances, etc.:
Endangered and Threatened Species, 74977–74981

Food and Drug Administration**RULES**

Guidance:
Enforcement Policy for Required Warnings for Cigarette Packages and Advertisements, 74831–74832

NOTICES

Hearings, Meetings, Proceedings, etc.:
General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee, 74965–74966
New Drugs Regulatory Program Modernization:
Integrated Assessment of Marketing Applications and Integrated Review Documentation, 74966–74968
Withdrawal of Approval of Drug Application:
Sandoz Inc., et al.; Correction, 74968–74969

Foreign Assets Control Office**RULES**

Reporting, Procedures and Penalties Regulations, 74832–74834

NOTICES

Sanctions Action, 75012–75058

Health and Human Services Department

See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health

Homeland Security Department

See Coast Guard

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Chemical-Terrorism Vulnerability Information, 74975–74977
Various Homeland Security Acquisitions Regulations Forms, 74974–74975

Hearings, Meetings, Proceedings, etc.:

Data Privacy and Integrity Advisory Committee, 74973–74974

Interior Department

See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

Internal Revenue Service**PROPOSED RULES**

Corporate Alternative Minimum Tax Applicable after 2022, 75062–75243

International Trade Administration**NOTICES**

Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
2,4-Dichlorophenoxyacetic Acid from India, 74908–74910
2,4-Dichlorophenoxyacetic Acid from the People's Republic of China, 74906–74908
Carbazole Violet Pigment 23 from India, 74873–74875
Certain Cased Pencils from the People's Republic of China, 74894–74895
Certain Epoxy Resins from India, 74889–74891
Certain Epoxy Resins from Taiwan, 74896–74898
Certain Epoxy Resins from the People's Republic of China, 74891–74894
Certain Epoxy Resins from the Republic of Korea, 74912–74915
Certain Metal Lockers and Parts Thereof from the People's Republic of China, 74901–74904
Certain Steel Nails from the People's Republic of China, 74882–74884
Finished Carbon Steel Flanges from India, 74884–74887, 74899–74901
Glycine from India and the People's Republic of China, 74898–74899
Large Power Transformers from the Republic of Korea, 74869–74871
Light-Walled Rectangular Pipe and Tube from Mexico, 74916–74919
Light-Walled Rectangular Pipe and Tube from the People's Republic of China, 74875–74878, 74904–74906
Polyethylene Retail Carrier Bags from Malaysia, 74872–74873
Prestressed Concrete Steel Wire Strand from the United Arab Emirates, 74887–74888
Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Ukraine, 74919–74921
Silicon Metal from Malaysia, 74910–74912
Stainless Steel Sheet and Strip in Coils from the Republic of Korea, 74915–74916
Steel Propane Cylinders from Thailand, 74878–74880
Utility Scale Wind Towers from Malaysia, 74867–74869
Utility Scale Wind Towers from the Republic of Korea, 74880–74882

International Trade Commission**NOTICES**

Investigations; Determinations, Modifications, and Rulings, etc.:
Certain Hydrodermabrasion Systems and Components Thereof III, 74995–74996

Labor Department

See Occupational Safety and Health Administration

Land Management Bureau**NOTICES**

Application for Withdrawal Extension:

Gallinas Peak and West Turkey Cone Electronic Sites,
NM, 74982

Record of Decision:

Approved Resource Management Plan Amendment for
the Greenlink West Transmission Project, Clark,
Esmeralda, Lyon, Mineral, Nye, Storey, and Washoe
Counties, NV, 74981–74982

Millennium Challenge Corporation**NOTICES**

Compact with the State of Belize, 74997–74998

Hearings, Meetings, Proceedings, etc., 74998–74999

National Institutes of Health**NOTICES**

Hearings, Meetings, Proceedings, etc.:

Center for Scientific Review, 74969–74971

National Institute of Mental Health, 74969–74970

National Institute on Alcohol Abuse and Alcoholism,
74970–74971

National Institute on Minority Health and Health
Disparities, 74970

National Oceanic and Atmospheric Administration**NOTICES**

Hearings, Meetings, Proceedings, etc.:

North Pacific Fishery Management Council, 74924–74926

South Atlantic Fishery Management Council, 74924

Taking or Importing of Marine Mammals:

Geophysical Surveys Related to Oil and Gas Activities in
the Gulf of Mexico, 74921–74923

National Park Service**NOTICES**

Inventory Completion:

Cape Girardeau County Sheriff's Office, Jackson, MO,
74990–74991

Indiana University, Bloomington, IN, 74982–74983

Madison County Coroner's Office, Fredericktown, MO,
74994–74995

Perry County Coroner's Office, Perryville, MO, 74994

San Bernardino County Museum, Redlands, CA, 74989–
74990

Stoddard County Sheriff's Office, Bloomfield, MO, 74992

The University of Toledo, Toledo, OH, 74988–74989

U.S. Army Corps of Engineers, Sacramento District,
Sacramento, CA, 74992–74994

U.S. Department of the Interior, National Park Service,
Fort Sumter and Fort Moultrie National Historical
Park, Sullivan's Island, SC, 74987–74988

Western Washington University, Department of
Anthropology, Bellingham, WA, 74984

Repatriation of Cultural Items:

Turtle Bay Exploration Park, Redding, CA, 74988

U.S. Army Corps of Engineers, Sacramento District,
Sacramento, CA, 74985–74987

University of California, Berkeley, Berkeley CA, 74983–
74984, 74991–74992

Occupational Safety and Health Administration**NOTICES**

Hearings, Meetings, Proceedings, etc.:

Federal Advisory Council on Occupational Safety and
Health, 74996–74997

Patent and Trademark Office**NOTICES**

Agency Information Collection Activities; Proposals,

Submissions, and Approvals:

Patent Reexaminations, Supplemental Examinations, and
Post Patent Submissions, 74926

Third-Party Submissions and Protests, 74927–74928

Pension Benefit Guaranty Corporation**NOTICES**

Requests for Nominations:

Advisory Committee of the Pension Benefit Guaranty
Corp., 74999

Presidential Documents**PROCLAMATIONS**

Special Observances:

Patriot Day and National Day of Service and
Remembrance (Proc. 10807), 74829–74830

Railroad Retirement Board**NOTICES**

Agency Information Collection Activities; Proposals,

Submissions, and Approvals, 74999–75003

Securities and Exchange Commission**NOTICES**

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 75004

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

Small Issuer Exemption from Registration under the
Securities Act and its Attendant Form, 75003

Application:

MA Specialty Credit Income Fund and MA Asset
Management, LLC, 75003

Wellington Global Multi-Strategy Fund and Wellington
Management Co. LLP, 75004

Self-Regulatory Organizations; Proposed Rule Changes:

Cboe C2 Exchange, Inc., 75246–75293

Cboe EDGA Exchange, Inc., 75296–75343

Nasdaq GEMX, LLC, 75346–75393

Nasdaq PHLX LLC, 75396–75443

Small Business Administration**NOTICES**

Disaster Declaration:

California, 75005–75007

Florida, 75005

Florida; Public Assistance Only, 75007

Iowa, 75006

New Hampshire, 75006

New York, 75004–75005

South Dakota, 75007–75008

Texas, 75008

West Virginia, 75007

State Department**NOTICES**

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

Foreign Service Officer Test Registration Form, 75008–
75009

Surface Transportation Board**NOTICES**

Exemption:

Lease and Operation; Georges Creek Division Railroad,
LLC, Eighteen Thirty Group, LLC, 75009

Lease Renewal; Iowa Northern Railway Co., North Central
Iowa Rail Corridor, LLC, 75009–75010

Transportation Department

See Federal Highway Administration

See Federal Motor Carrier Safety Administration

Treasury Department

See Foreign Assets Control Office

See Internal Revenue Service

NOTICES

Hearings, Meetings, Proceedings, etc.:

Financial Research Advisory Committee, 75058–75059

Veterans Affairs Department**NOTICES**

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

35 Percent Exemption Request from 85/15 Reporting
Requirement, 75059–75060

Child Care Provider Information—For the Child Care
Subsidy Program, 75059

Separate Parts In This Issue**Part II**

Treasury Department, Internal Revenue Service, 75062–
75243

Part III

Securities and Exchange Commission, 75246–75293

Part IV

Securities and Exchange Commission, 75296–75343

Part V

Securities and Exchange Commission, 75346–75393

Part VI

Securities and Exchange Commission, 75396–75443

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.

To subscribe to the Federal Register Table of Contents electronic mailing list, go to <https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new>, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

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:
10807 74829

7 CFR
Proposed Rules:
989 74851

21 CFR
1141 74831

26 CFR
Proposed Rules:
1 75061

31 CFR
501 74832

40 CFR
52 (3 documents) 74834,
74836, 74847

Presidential Documents

Title 3—

Proclamation 10807 of September 10, 2024

The President

Patriot Day and National Day of Service and Remembrance, 2024

By the President of the United States of America

A Proclamation

Today, we honor the brave Americans who met the terror of September 11 with extraordinary acts of courage and sacrifice. In our darkest hour—when terrorists believed they could bring our country to its knees—those Americans proved that our Nation’s unbreakable spirit would prevail.

In the moments, days, and years after the attacks on September 11, heroes were forged. Firefighters, police officers, and first responders ran into the inferno of jet fuel and debris at Ground Zero, risking their own lives to save the lives of others. Service members and civilians rushed into the fiery breach at the Pentagon again and again to rescue their colleagues. The patriotic passengers of Flight 93 made the ultimate sacrifice to prevent their plane from being used to take more innocent souls. And in big cities, rural towns, suburbs, and Tribal communities, hundreds of thousands of American hands went up—ready to serve our Nation in uniform.

We owe these patriots of the 9/11 Generation a debt of gratitude that we can never fully repay. They were deployed to Afghanistan to make sure the United States would not be attacked again. They served in Iraq and other war zones to defend our democracy and deny terrorists safe haven. They followed Osama bin Laden to the ends of the Earth and ultimately sent him to the gates of hell. And 2 years ago, we made sure his deputy met the same fate.

The First Lady and I hold all those whose loved ones gave their last full measure of devotion in this fight close in our hearts. And we will never stop working to fulfill our country’s sacred obligation to them and every military and veteran family, caregiver, and survivor: to properly prepare and equip those we send into harm’s way and to care for them and their families when they return home—and when they do not.

Over the last 23 years, what was destroyed, we have repaired. What was threatened, we have fortified. What was attacked—the indomitable American spirit—prevailed. That is who we are. That is the soul of our Nation. There is nothing we cannot accomplish when we defend with all our hearts that which makes us unique in the world: our democracy. That is what the heroes and patriots of 9/11 did. And that is what we must all continue to do today.

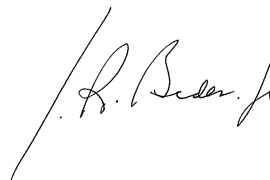
To observe this day with service, find opportunities to volunteer in your community at americorps.gov/911-day.

By a joint resolution approved December 18, 2001 (Public Law 107–89), the Congress has designated September 11 of each year as “Patriot Day,” and by Public Law 111–13, approved April 21, 2009, the Congress has requested the observance of September 11 as an annually recognized “National Day of Service and Remembrance.”

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, do hereby proclaim September 11, 2024, as Patriot Day and National Day of Service and Remembrance. I call upon all departments,

agencies, and instrumentalities of the United States to display the flag of the United States at half-staff on Patriot Day and National Day of Service and Remembrance in honor of the individuals who lost their lives on September 11, 2001. I invite the Governors of the United States and its Territories and interested organizations and individuals to join in this observance. I call upon the people of the United States to participate in community service in honor of those our Nation lost, to observe this day with appropriate ceremonies and activities, including remembrance services, and to observe a moment of silence beginning at 8:46 a.m. Eastern Daylight Time to honor the innocent victims who perished as a result of the terrorist attacks on September 11, 2001.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth 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. 178

Friday, September 13, 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.

The Code of Federal Regulations is sold by the Superintendent of Documents.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1141

[Docket No. FDA-2024-D-3742]

Enforcement Policy for Required Warnings for Cigarette Packages and Advertisements; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the availability of a final guidance for industry entitled “Enforcement Policy for Required Warnings for Cigarette Packages and Advertisements.” This guidance describes FDA’s enforcement policy for the final rule, “Tobacco Products; Required Warnings for Cigarette Packages and Advertisements,” which established new required cigarette health warnings for cigarette packages and advertisements. The guidance is intended to assist entities required to comply with the rule.

DATES: The announcement of the guidance is published in the **Federal Register** on September 13, 2024.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

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-D-3742 for “Enforcement Policy for Required Warnings for Cigarette Packages and Advertisements.” Received comments 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.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Center for Tobacco Products, Food and Drug Administration, Document Control Center, 10903 New Hampshire Ave., Bldg. 71, Rm. G335, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the guidance document may be sent. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Beth Buckler, Center for Tobacco Products, Food and Drug Administration, Document Control Center, 10903 New Hampshire Ave., Bldg. 71, Rm. G335, Silver Spring, MD 20993-0002, 877-287-1373, AskCTP@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled “Enforcement Policy for Required

Warnings for Cigarette Packages and Advertisements.” This guidance describes FDA’s enforcement policy for the final rule, “Tobacco Products; Required Warnings for Cigarette Packages and Advertisements” (85 FR 15638, March 18, 2020; codified at 21 CFR part 1141), which established new required cigarette health warnings for cigarette packages and advertisements. The guidance is intended to assist entities required to comply with the rule. We are issuing this guidance consistent with our good guidance practices (GGP) regulation (21 CFR 10.115). We are implementing this guidance without prior public comment because we have determined that prior public participation is not feasible or appropriate (§ 10.115(g)(2)). We made this determination because FDA needs to communicate its enforcement policy in a timely manner given that the rule is now in effect due to developments in litigation, as explained below. Although this guidance document is being implemented immediately, it remains subject to comment in accordance with FDA’s GGP regulation.

In the **Federal Register** of March 18, 2020, FDA issued a final rule establishing new cigarette health warnings for cigarette packages and advertisements. The final rule implements a provision of the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Pub. L. 111–31) that requires FDA to issue regulations requiring color graphics depicting the negative health consequences of smoking to accompany new textual warning statements. The Tobacco Control Act amends the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) to require each cigarette package and advertisement to bear one of the new required warnings. The final rule specifies the 11 new textual warning label statements and accompanying color graphics. Additionally, the final rule requires the random and equal display and distribution of the required warnings for cigarette packages and quarterly rotation of the required warnings for cigarette advertisements in accordance with an FDA-approved plan (referred to as cigarette plans), consistent with the Tobacco Control Act. Pursuant to section 201(b) of the Tobacco Control Act, the rule was published with an effective date of June 18, 2021, 15 months after the date of publication of the final rule.

On April 3, 2020, the final rule was challenged in the U.S. District Court for

the Eastern District of Texas.¹ The District Court issued multiple orders postponing the effective date of the rule, the most recent of which postponed the effective date to November 6, 2023.² On December 7, 2022, the District Court issued an order vacating the rule.³ On March 21, 2024, the U.S. Court of Appeals for the Fifth Circuit issued an opinion reversing the District Court and concluding that FDA’s rule is consistent with the First Amendment.⁴ The opinion remanded the case to the District Court for consideration of plaintiffs’ remaining claims. A petition for rehearing en banc was denied on May 21, 2024,⁵ and the court’s mandate issued on May 29, 2024.⁶ Accordingly, the rule is no longer vacated. Because the November 6, 2023, date in the District Court’s most recent order postponing the rule’s effective date has passed, the rule is now in effect.

FDA recognizes that some manufacturers, distributors, and retailers already may have begun to prepare to implement the rule’s requirements. For instance, some manufacturers, distributors, and retailers already have submitted and obtained approval of cigarette plans. Even so, FDA recognizes that entities may need time to implement the rule’s requirements. In the guidance, FDA sets out its enforcement policy for the final rule. As discussed in the guidance, FDA intends to exercise enforcement discretion and generally not enforce requirements of the final rule for 15 months after the issuance of this guidance, until December 12, 2025. FDA also intends to exercise enforcement discretion and generally not enforce requirements of the final rule for an additional 30 days, until January 12, 2026, with respect to products manufactured before December 12, 2025. These time periods are consistent with section 201(b) of the Tobacco

¹ *R.J. Reynolds Tobacco Co. et al., v. United States Food and Drug Administration et al.*, No. 6:20–cv–00176 (E.D. Tex. filed April 3, 2020).

² *R.J. Reynolds Tobacco Co.*, No. 6:20–cv–00176 (E.D. Tex. November 7, 2022) (order postponing effective date), Doc. No. 104. See also “Tobacco Products; Required Warnings for Cigarette Packages and Advertisements; Delayed Effective Date,” 87 FR 72384 (November 25, 2022).

³ *R.J. Reynolds Tobacco Co.*, No. 6:20–cv–00176 (E.D. Tex. December 7, 2022) (opinion and order; final judgment), Docs. No. 106; 107.

⁴ *R.J. Reynolds Tobacco Co. et al., v. United States Food and Drug Administration et al.*, No. 23–40076 (5th Cir. March 21, 2024) (panel opinion), Doc. No. 140–1.

⁵ *R.J. Reynolds Tobacco Co. et al.*, No. 23–40076 (5th Cir. May 21, 2024) (order denying petition for rehearing), Doc. No. 162–2.

⁶ *R.J. Reynolds Tobacco Co. et al.*, No. 23–40076 (5th Cir. May 29, 2024) (mandate), Doc. No. 163–2.

Control Act and the effective date of the final rule upon its publication. As FDA recommended at the time of publication of the final rule, FDA recommends that entities that do not already have approved cigarette plans submit such plans as soon as possible, but in any event, within 5 months, by February 10, 2025.

The guidance represents the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3521). The collections of information in 21 CFR 1141.10 have been approved under OMB control number 0910–0877.

III. Electronic Access

Persons with access to the internet may obtain an electronic version of the guidance at <https://www.regulations.gov>, <https://www.fda.gov/tobacco-products/rules-regulations-and-guidance/guidance>, or <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>.

Dated: September 10, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–20850 Filed 9–12–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 501

Reporting, Procedures and Penalties

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Interim final rule; request for comments.

SUMMARY: The Department of the Treasury’s Office of Foreign Assets Control (OFAC) is issuing this interim final rule to amend the Reporting, Procedures and Penalties Regulations (the “Regulations”), extending recordkeeping requirements for certain transactions from five to 10 years, consistent with the statute of limitations

for violations of certain sanctions administered by the Office of Foreign Assets Control (OFAC).

DATES:

Effective date: This interim final rule is effective March 12, 2025.

Comments due date: Written comments may be submitted on or before October 15, 2024.

ADDRESSES: You may submit comments via the following methods, electronic is preferred:

Federal eRulemaking Portal: www.regulations.gov. Follow the instructions on the website for submitting comments. Refer to Docket Number OFAC-2024-0004.

Mail: Office of Foreign Assets Control, U.S. Department of the Treasury, Treasury Annex/Freedman's Bank Building, 1500 Pennsylvania Avenue NW, Washington, DC 20220. Refer to Docket Number OFAC-2024-0004.

Instructions: All submissions received must include the agency name and the **Federal Register** Doc. number that appears at the end of this document. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT:

Assistant Director for Licensing, 202-622-2480; Assistant Director for Regulatory Affairs, 202-622-4855; Assistant Director for Compliance, 202-622-2490 or <https://ofac.treasury.gov/contact-ofac>.

SUPPLEMENTARY INFORMATION:

Background

On April 24, 2024, the President signed into law the 21st Century Peace through Strength Act, Public Law 118-50, div. D (the "Act"). Section 3111 of the Act extended from five years to 10 years the statute of limitations for civil and criminal violations of the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.* (IEEPA), and the Trading with the Enemy Act, 50 U.S.C. 4301 *et seq.* (TWEA). Prior to the Act's enactment, civil enforcement actions brought by OFAC under IEEPA or TWEA were subject to the five-year statute of limitations set forth in 28 U.S.C. 2462. The new 10-year statute of limitations—codified at 50 U.S.C. 1705(d) and 4315(d)—became effective upon the President's signature of the Act on April 24, 2024. This new 10-year statute of limitations applies to any violation that

was not time-barred at the time of its enactment. Consequently, OFAC may now commence an enforcement action for civil violations of IEEPA- or TWEA-based sanctions prohibitions within 10 years of the latest date of the violation if such date was after April 24, 2019. As set forth in the Act, the commencement of a civil enforcement action includes the issuance of a pre-penalty notice or a finding of violation.

To match the new statute of limitations period, OFAC is publishing this interim final rule 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. OFAC is soliciting public comments for 30 days on this interim final rule.

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: <https://ofac.treasury.gov>.

Public Participation

Because the amendment of the Regulations is a rule of agency procedure and involves a foreign affairs function, the provisions of Executive Order 12866 of September 30, 1993, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), as amended, and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601-612) does not apply.

Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the collections of information related to 31 CFR 501.601, paragraph IV.B of appendix A to part 501, and 515.572 have been previously approved by the Office of Management and Budget (OMB) under control number 1505-0164. This final rule modifies the requirements for recordkeeping under these sections by increasing the period for recordkeeping to 10 years from five years to align with a statutory amendment. This modification to this collection of information, as well as an unrelated consolidation of certain OFAC information collections, will be submitted to OMB for review under control number 1505-0164. Written comments and recommendations for the modified collection can be submitted by visiting <https://www.reginfo.gov/public/do/PRAMain>. Find this document by

selecting "Currently Under Review—Open for Public Comments" or by using the search function. Comments are welcome and must be received by November 13, 2024.

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 control number. The likely filers and record-keepers affected by these collections of information contained in 31 CFR part 501 are financial institutions, business organizations, nonprofit organizations, individuals, households, non-governmental organizations, and legal representatives.

The burden of the recordkeeping requirement imposed by this rule is minimal because the records required to be maintained are likely maintained under standard business practice. The recent increase in the recordkeeping period to 10 years from five years could impose a temporary incremental burden on recordkeepers while they update their recordkeeping practices and adjust storage requirements to maintain records for a longer period of time. Accordingly, the total burden for this collection is estimated to be:

Estimated Number of Respondents: 2,505,086.

Frequency of Response: When requested by OFAC.

Estimated Total Number of Annual Responses: 2,505,086.

Estimated Time per Response: No additional time to retain records for additional time.

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.

List of Subjects in 31 CFR Part 501

Administrative practice and procedure, Banks, Banking, Exports, Foreign trade, Licensing and registration, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, OFAC amends 31 CFR parts 501 and 515 as follows:

PART 501—REPORTING, PROCEDURES AND PENALTIES REGULATIONS

■ 1. The authority citation for part 501 continues to read as follows:

Authority: 8 U.S.C. 1189; 18 U.S.C. 2332d, 2339B; 19 U.S.C. 3901–3913; 21 U.S.C. 1901–1908; 22 U.S.C. 287c, 2370(a), 6009, 6032, 7205, 8501–8551; 31 U.S.C. 321(b); 50 U.S.C. 1701 *et seq.*, 4301–4341; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note).

Subpart C—Reports

■ 2. Revise and republish § 501.601 to read as follows:

§ 501.601 Records and recordkeeping requirements.

Except as otherwise provided, every person engaging in any transaction subject to the provisions of this chapter shall keep a full and accurate record of each such transaction engaged in, regardless of whether such transaction is effected pursuant to license or otherwise, and such record shall be available for examination for at least 10 years after the date of such transaction. Except as otherwise provided, every person holding property blocked pursuant to the provisions of this chapter or funds transfers retained pursuant to § 596.504(b) of this chapter shall keep a full and accurate record of such property, and such record shall be available for examination for the period of time that such property is blocked and for at least 10 years after the date such property is unblocked.

■ 3. Revise paragraph IV.B of appendix A to part 501 to read as follows:

Appendix A to Part 501—Economic Sanctions Enforcement Guidelines

* * * * *

IV. * * *

B. The late filing of a required report, whether set forth in regulations or in a specific license, may result in a civil monetary penalty in an amount up to \$3,550, if filed within the first 30 days after the report is due, and a penalty in an amount up to \$7,104 if filed more than 30 days after the report is due. If the report relates to blocked assets, the penalty may include an additional \$1,422 for every 30 days that the report is overdue, up to 10 years.

* * * * *

PART 515—CUBAN ASSETS CONTROL REGULATIONS

■ 4. The authority citation for part 515 continues to read as follows:

Authority: 22 U.S.C. 2370(a), 6001–6010, 7201–7211; 31 U.S.C. 321(b); 50 U.S.C. 4301 *et seq.*; Pub. L. 101–410, 104 Stat. 890 (28

U.S.C. 2461 note); 22 U.S.C. 6021–6091; Pub. L. 105–277, 112 Stat. 2681; Pub. L. 111–8, 123 Stat. 524; Pub. L. 111–117, 123 Stat. 3034; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748; Proc. 3447, 27 FR 1085, 3 CFR, 1959–1963 Comp., p. 157; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614.

■ 5. Revise and republish paragraph (b)(1) of § 515.572 as follows:

§ 515.572 Provision of travel, carrier, other transportation-related, and remittance forwarding services.

* * * * *

(b) * * *

(1) Persons subject to U.S. jurisdiction providing services authorized pursuant to paragraphs (a)(1) through (4) of this section must retain for at least 10 years from the date of the transaction a certification from each customer indicating the section of this part that authorizes the person to travel or send remittances to Cuba. In the case of a customer traveling under a specific license, the specific license number or a copy of the license must be maintained on file with the person subject to U.S. jurisdiction providing services authorized pursuant to this section.

* * * * *

Lisa M. Palluconi,
Acting Director, Office of Foreign Assets Control.

[FR Doc. 2024–20674 Filed 9–11–24; 8:45 am]

BILLING CODE 4810–AL–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2024–0255; FRL–12071–02–R1]

Air Plan Approval; New Hampshire; Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving most of a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. This revision updates the State regulation containing ambient air quality standards. EPA is approving all the State’s updated standards, except the primary annual fine particle (PM_{2.5}) standard, which we are conditionally approving because it does not match EPA’s current National Ambient Air Quality Standard for PM_{2.5}. This action is being taken in accordance with the Clean Air Act.

DATES: This rule is effective on October 15, 2024.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2024–0255. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: Alison C. Simcox, Air Quality Branch, Air and Radiation Division (Mail Code 5–MD), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109–3912, (617) 918–1684; simcox.alison@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

Table of Contents

- I. Background and Purpose
- II. Final Action
- III. Incorporation by Reference
- IV. Statutory and Executive Order Reviews

I. Background and Purpose

On July 11, 2024 (89 FR 56825), EPA published a Notice of Proposed Rulemaking (NPRM) for the State of New Hampshire.

The NPRM proposed approval of New Hampshire’s update to its Env-A 300, “Ambient Air Quality Standards” (AAQS). The formal SIP revision was submitted by the state on December 22, 2022.

EPA determined that the state’s updated AAQS are consistent with the National Ambient Air Quality Standards (NAAQS) in 40 CFR part 50 for all standards except the PM_{2.5} primary annual standard, which EPA strengthened subsequent to New Hampshire’s SIP submittal (89 FR 16202).

Additional background and rationale for EPA's proposed action are explained in the NPRM and will not be restated here. No public comments were received on the NPRM.

II. Final Action

EPA is approving most of New Hampshire's revised Env-A 300, "Ambient Air Quality Standards" as a revision to the New Hampshire SIP. We are conditionally approving the primary annual PM_{2.5} standard, provided that the State submits in a timely manner the portion of Env-A 300 that includes the current EPA PM_{2.5} primary annual NAAQS of 9.0 µg/m³.

The State must submit to EPA by a date not later than 1 year from final approval a revision to Env-A 300 that includes the current PM_{2.5} primary annual NAAQS. If the State fails to do so, this approval will become a disapproval on that date. EPA will notify the State by letter that this action has occurred. At that time, this commitment will no longer be a part of the approved New Hampshire SIP. EPA subsequently will publish a notice in the notice section of the **Federal Register** notifying the public that the conditional approval automatically converted to a disapproval.

If the State meets its commitment, within the applicable time frame, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the new legislative authority. If EPA disapproves the new submittal, the conditionally approved regulation will also be disapproved at that time. If EPA approves the submittal, the regulation will be fully approved in its entirety and replace the conditionally approved regulation in the SIP.

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of New Hampshire's regulation Env-A 300 "Ambient Air Quality Standards" as discussed in sections I and II of this preamble and described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the

State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.¹

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act 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 Clean Air Act. 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 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 13563 (76 FR 3821, January 21, 2011);
- 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 an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- 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 Clean Air Act.

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, Feb. 16, 1994) directs Federal agencies to identify and address

"disproportionately high and adverse human health or environmental effects" of their actions on communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. EPA defines 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."

NH DES did not consider EJ; EPA did not perform an EJ analysis or consider EJ as part of its decision. NH DES did not evaluate environmental justice 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 action. Due to the nature of the action being taken here, this 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 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.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in

¹ 62 FR 27968 (May 22, 1997).

the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 12, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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.

Dated: September 9, 2024.

David Cash,
Regional Administrator, EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart EE—New Hampshire

■ 2. Section 52.1519 is amended by adding paragraph (a)(12) to read as follows:

§ 52.1519 Identification of plan-conditional approval.

(a) * * *

(12) On December 22, 2022, the New Hampshire Department of Environmental Services (NHDES) submitted a request to amend New Hampshire’s Env-A 300, “Ambient Air Quality Standards” regulation, as a revision to New Hampshire’s State Implementation Plan (SIP). NHDES revised this regulation to incorporate into its SIP revised National Ambient Air Quality Standards (NAAQS). On March 6, 2024, EPA strengthened the fine particulate matter (PM_{2.5}) primary annual NAAQS. On May 16, 2024, New Hampshire submitted a letter to EPA committing to adopt a revised version of Env-A 300 which includes the current EPA PM_{2.5} primary annual NAAQS.

* * * * *

■ 3. In § 52.1520(c) the table “EPA-Approved New Hampshire Regulations” is amended by revising the existing entry for “Env-A 300” to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA-APPROVED NEW HAMPSHIRE REGULATIONS

State citation	Title/subject	State effective date	EPA approval date ¹	Explanations
Env-A 300	Ambient Air Quality Standards	5/24/2022	7/13/2024	[Insert Federal Register citation]

¹ In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

* * * * *
[FR Doc. 2024–20721 Filed 9–12–24; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2024–0024; FRL–11529–02–R3]

Air Plan Approval; Pennsylvania; Attainment Plan for the Indiana Nonattainment Area for the 2010 1-Hour Sulfur Dioxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision

submitted by the Commonwealth of Pennsylvania (Pennsylvania or PA). The revision pertains to the attainment plan for the Indiana, PA nonattainment area for the 2010 1-hour sulfur dioxide (SO₂) national ambient air quality standard (NAAQS). The EPA is approving these revisions to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on October 15, 2024.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2024–0024. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on

the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through www.regulations.gov, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT:

Megan Goold, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2027. Ms. Goold can also be reached via electronic mail at goold.megan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On June 22, 2010, the EPA published a new 1-hour primary SO₂ NAAQS of 75 parts per billion (ppb) at 40 CFR

50.17(a), which is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations does not exceed 75 ppb, as determined in accordance with 40 Code of Federal Regulations (CFR) part 50 appendix T (75 FR 35520, June 22, 2010). Under CAA section 107(d)(1), the EPA is required to designate areas as “nonattainment,” “attainment,” or “unclassifiable” within two years of establishing a new or revising an existing standard. As part of this process, states must submit recommendations for area designations and boundaries to the EPA within one year of the effective date of the standard. Effective on October 4, 2013,¹ the Indiana, PA Nonattainment Area (hereafter referred to as “the Indiana, PA NAA”) (which encompasses Indiana County, and Plumcreek Township, South Bend Township and Elderton Borough of Armstrong County) was designated as nonattainment for the 2010 SO₂ NAAQS. The area encompasses the primary SO₂ emitting sources: the Keystone Generating Station (Keystone), Conemaugh Generating Station (Conemaugh), Homer City Generating Station (Homer City), and Seward Generating Station (Seward). The October 4, 2013, final designation triggered a requirement for Pennsylvania to submit by April 4, 2015 (within 18 months per CAA section 191(a)), a SIP revision with an attainment plan for how the Indiana, PA NAA would attain the 2010 SO₂ NAAQS as expeditiously as practicable, but no later than October 4, 2018, (five years from the designation per CAA section 192(a)) in accordance with CAA sections 110(a), 172(c) and 191–192.

For a number of areas, including the Indiana, PA NAA, the EPA published a March 18, 2016 Finding of Failure to Submit, with an effective date of April 18, 2016, finding that Pennsylvania and other pertinent states had failed to submit the required SO₂ attainment plan by this submittal deadline. (See 81 FR 14736, March 18, 2016). This finding initiated a deadline under CAA section 179(a) for the potential imposition of new source review and highway funding sanctions. However, as a result of Pennsylvania’s October 11, 2017 submittal (hereafter referred to as “the 2017 SIP submittal”), and the EPA’s subsequent October 13, 2017 letter to Pennsylvania finding the submittal complete, the CAA section 179(a) sanctions were not imposed. Additionally, under CAA section 110(c), the March 18, 2016, finding triggered a

requirement that the EPA promulgate a Federal implementation plan (FIP) within two years of the effective date of the finding unless, by that time, the state has made the necessary complete submittal, and the EPA has approved the submittal as meeting applicable requirements. The EPA took final action approving this attainment plan on October 19, 2020 (85 FR 66240, October 19, 2020), which removed the FIP obligation.

On December 18, 2020, the Sierra Club, Clean Air Council, and Citizens for Pennsylvania’s Future filed a petition for judicial review with the U.S. Court of Appeals for the Third Circuit, challenging that final approval.² On April 5, 2021, the EPA filed a motion for voluntary remand without vacatur of its approval of the Indiana, PA SO₂ attainment plan.

On August 17, 2021, the U.S. Court of Appeals for the Third Circuit granted the EPA’s request for remand without vacatur of the final approval of Pennsylvania’s SO₂ attainment plan for the Indiana, PA NAA, and required that the EPA take final action in response to the remand no later than one year from the date of the court’s order.

On August 18, 2022, the EPA revised and corrected its prior full approval action (85 FR 66240, October 19, 2020) without further submission from Pennsylvania (effective September 19, 2022) (87 FR 50778, August 18, 2022). Specifically, the EPA retained the approval of the emissions inventory and nonattainment new source review (NNSR) program requirements, and disapproved the attainment demonstration, reasonably available control measures and reasonably available control technology (RACT/RACT) requirements, reasonable further progress (RFP) requirements, and contingency measures (hereafter referred to as the “2022 Partial Approval/Partial Disapproval”) (87 FR 50778, August 18, 2022). The partial disapproval action initiated a sanctions clock under CAA section 179, providing for emission offset sanctions for new sources if the EPA has not fully approved a revised attainment plan within 18 months (March 19, 2024) after final partial disapproval, and providing for highway funding sanctions if the EPA has not fully approved a revised plan within 6 months thereafter (September 19, 2024). The sanctions clock can be stopped only if the conditions of the EPA’s regulations at 40 CFR 52.31 are met. Also, under CAA section 110(c), the partial disapproval

action initiated an obligation for the EPA to promulgate a FIP within two years unless Pennsylvania has submitted, and the EPA has fully approved, a plan addressing the disapproved attainment planning requirements.

On October 12, 2023, Pennsylvania submitted a 2023 SO₂ Attainment Plan SIP Revision for the Indiana, PA NAA (hereafter referred to as the “2023 SIP submittal”). The 2023 SIP submittal addresses the requirements of CAA sections 172(c), 191 and 192 and the disapproved attainment planning requirements in the EPA’s 2022 Partial Approval/Partial Disapproval. Specifically, this SIP revision contains a modified attainment demonstration using dispersion modeling, evaluates sources for RACT/RACM purposes, gives an RFP explanation, provides for contingency measures, and includes revised emissions limitations and control measures.

Nonattainment area SO₂ SIPs must meet the applicable requirements of the CAA, specifically CAA sections 110, 172, 191 and 192. The EPA’s regulations governing nonattainment area SIPs are set forth at 40 CFR part 51, with specific procedural requirements and control strategy requirements residing at subparts F and G, respectively. Soon after Congress enacted the 1990 amendments to the CAA, the EPA issued comprehensive guidance on SIPs in a document entitled the “General Preamble for the Implementation of title I of the Clean Air Act Amendments of 1990,” published in the **Federal Register** at 57 FR 13498 (April 16, 1992) (General Preamble). Among other things, the General Preamble addressed SO₂ SIPs and fundamental principles for SIP control strategies. *Id.* at 13545–49, 13567–68. On April 23, 2014, the EPA issued guidance and recommendations for meeting the statutory requirements in SO₂ SIPs addressing the 2010 primary NAAQS, in a document entitled, “Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions” (hereafter referred to as “2014 SO₂ Nonattainment Guidance”).³ In the 2014 SO₂ Nonattainment Guidance, the EPA described the statutory requirements for a complete nonattainment area SIP, which include an accurate emissions inventory of current emissions for all sources of SO₂ within the nonattainment area; an attainment demonstration; enforceable emissions limitations and control measures;

³ Memorandum from Stephen D. Page, “Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions”, April 23, 2014. www.epa.gov/sites/default/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf.

¹ 78 FR 47191 (August 5, 2013).

² *Sierra Club, et al. v. EPA*, Case No. 20–3568 (3d Cir.).

demonstration of RFP; implementation of RACM (including RACT); nonattainment new source review; and adequate contingency measures for the affected area.

For the EPA to fully approve a SIP as meeting the requirements of CAA sections 110, 172, 191, and 192 and the EPA's regulations at 40 CFR part 51, the SIP for the affected area needs to demonstrate to the EPA's satisfaction that each of the aforementioned requirements have been met. Under CAA sections 110(l) and 193, the EPA may not approve a SIP that would interfere with any applicable requirement concerning NAAQS attainment and RFP, or any other applicable requirement, and no requirement in effect before November 15, 1990 (or required to be adopted by an order, settlement, agreement, or plan in effect before November 15, 1990), in any area which is a nonattainment area for any air pollutant, may be modified in any manner unless it ensures equivalent or greater emission reductions of such air pollutant.

CAA section 172(c)(1) directs states with areas designated as nonattainment to demonstrate that the submitted plan provides for attainment of the NAAQS. 40 CFR part 51, subpart G further delineates the control strategy requirements that SIPs must meet, and the EPA has long required that all SIPs and control strategies reflect the four fundamental principles of quantification, enforceability, replicability, and accountability. See General Preamble, 57 FR 13498 at 13567–68 (April 16, 1992). SO₂ attainment plans must consist of two components: (1) emission limits and other controls, including measures that assure implementation of permanent, enforceable and necessary emission controls, and (2) a modeling analysis which meets the requirements of 40 CFR part 51, appendix W and demonstrates that these emission limits and control measures provide for timely attainment of the primary SO₂ NAAQS as expeditiously as practicable, but by no later than the attainment date for the affected area. In all cases, the emission limits and control measures must be accompanied by appropriate methods and conditions to determine compliance with the respective emission limits and control measures, and must be quantifiable (*i.e.*, a specific amount of emission reduction can be ascribed to the measures), fully enforceable (specifying clear, unambiguous and measurable requirements for which compliance can be practicably determined), replicable (the procedures for determining compliance are

sufficiently specific and non-subjective so that two independent entities applying the procedures would obtain the same result), and accountable (source-specific limits must be permanent and must reflect the assumptions used in the SIP demonstrations).

II. Summary of SIP Revision and EPA Analysis

On June 7, 2024 (89 FR 48523), the EPA published a notice of proposed rulemaking (NPRM) for Pennsylvania. In the NPRM, the EPA proposed approval of a revision to Pennsylvania's SIP to demonstrate attainment of the 2010 SO₂ NAAQS in the Indiana, PA NAA. As noted, Pennsylvania submitted the formal SIP revision on October 12, 2023. This submission includes Pennsylvania's attainment demonstration and other attainment plan elements required under the CAA, including the requirement for meeting RFP toward attainment of the NAAQS, RACM/RACT, enforceable emission limitations and control measures, and contingency measures. Notably, the submission does not contain information regarding the required emissions inventory or the state's NNSR program, as these were previously approved by the EPA (87 FR 50778, August 18, 2022). In this action, the EPA is determining that the Pennsylvania 1-hour SO₂ attainment plan for Indiana, PA meets the applicable statutory and regulatory requirements and is thus approving Pennsylvania's submission into its SIP. Also, the EPA is incorporating the following SO₂ emission limits into the source-specific section of the PA SIP for the Keystone Plant, Conemaugh Station and Seward Station (as well as the compliance strategies listed in the unredacted portion of the Consent Order and Agreements (COAs) found in appendix C of the state submittal):

- **Keystone**—Remove 9,600 lbs/hr on a 24-hour (daily) block average and replace with 8,328 lbs/hr combined based on a 24-hour block average for Boiler 1 & Boiler 2 (Source IDs 031 & 032).
- **Seward**—Remove 3,038.4 lbs/hr and replace with 2,895 lbs/hr combined based on a 30-day operating hours average rolling by one day for Source IDs 034 & 035. Remove 13,308 tpy and replace with 12,680 tpy combined for Source IDs 034 & 035. Add the requirement to inject limestone into Source ID 034 and Source ID 035 during initial firing each time Source ID 034 and Source ID 035 are operated to reduce the magnitude and frequency of

SO₂ emission spikes in accordance with good air pollution control practices.

- **Conemaugh**—Add 3,080 lbs/hr combined on a 3-hour block average for Units 1 & 2 (Source IDs 031 & 032).

Other specific requirements of the Indiana County attainment plan and the rationale for the EPA's action are explained in the NPRM, and its associated technical support document (TSD), and will not be restated here.

III. EPA's Response to Comments Received

The EPA received four sets of comments in response to the NPRM. Two sets of comments were in opposition to the EPA's proposed action. The EPA also received one comment in support of the EPA's proposed action and one that was not relevant.

Comment 1. The comment asserts that the EPA's interpretation of what contingency measures are permissible in an SO₂ attainment plan is not the "best reading" of the Clean Air Act. The comment cites section 172(c)(9), Contingency Measures, emphasizing that contingency measures take effect "without further action by the State or Administrator." The comment takes issue with the approach to SO₂ contingency measures set forth in the EPA's General Preamble, which states that "contingency measures" mean ". . . the State agency has a comprehensive program to identify sources of violations of the SO₂ NAAQS and to undertake an aggressive follow-up for compliance and enforcement." See 57 FR 13498 at 13547 (April 16, 1992). The comment asserts that an enforcement action is "further action," which contradicts section 172(c)(9). Additionally, the comment claims that the EPA's citation to the state's authority to enforce its SIP is already required by CAA section 110(a)(2)(C) and does not necessarily meet the conditions of an enforcement program, let alone the contingency measure requirement, without a schedule and mechanism requiring action when violations occur. The comment suggests alternative contingency measures including switching to low-sulfur fuel, limiting operation until the SIP is revised, or a daily SO₂ emission limit. Lastly, the comment states that the SIP lacks provisions to ensure "aggressive follow-up" can and will take place in the event the area fails to attain the NAAQS and therefore fails to meet the requirements of section 172(c)(9).

Response 1. The EPA disagrees with this comment.

First, as a general matter, the EPA's longstanding approach to contingency

measures in SO₂ attainment plans, based on the Agency's technical expertise and understanding of control strategies addressing SO₂, has been consistently applied by the EPA and states since shortly after the enactment of the 1990 Clean Air Act Amendments, including in the General Preamble, updated guidance memoranda⁴ and numerous SO₂ SIP approval actions.⁵

Second, in response to the comment's specific objection that contingency measures are to take effect "without further action," the EPA has interpreted "without further action" in the ozone, lead, and carbon monoxide contexts to mean no further rulemaking or legislative action, though the EPA recognized that certain actions such as notification of sources or modifications of permits would be needed for effective implementation. 57 FR 13498, 13512 and 13533 (April 16, 1992), 58 FR 67748, 67752 (December 22, 1993). Undertaking enforcement against sources for violations of emission limitations that were necessary to provide for SO₂ NAAQS attainment is consistent with the EPA's longstanding position across all of the NAAQS that ministerial actions to effectuate contingency measures, rather than additional rulemaking or legislative action to adopt new contingency measures, is appropriate to meet the requirements of CAA section 172(c)(9). To commence an enforcement action when an emission limitation violation is identified, no further administrative or legislative action is necessary, and the state can expeditiously proceed to remedy the violation—even without needing to wait to determine whether such violation has caused or contributed to a violation of the NAAQS in the nonattainment area.

Contrary to the comment's suggestion that Pennsylvania does not have a comprehensive enforcement program as required by CAA section 110(a)(2)(C), Pennsylvania has such a program as specified in section 4(27) of the

Pennsylvania Air Pollution Control Act (APCA), 35 P.S. § 4004(27), which authorizes the Pennsylvania Department of Environmental Protection (PADEP) to take any action it deems necessary or proper for the effective enforcement of the Act and the rules and regulations promulgated thereunder. Such actions include the issuance of orders (*i.e.*, enforcement orders and orders to take corrective action to address air pollution or the danger of air pollution from a source) and the assessment of civil penalties. Any person in violation of the APCA, the rules and regulations, any order of PADEP, or a plan approval or operating permit conditions could also be subject to criminal fines upon conviction under section 9, 35 P.S. § 4009. Section 7.1 of the APCA, 35 P.S. § 4007.1, prohibits PADEP from issuing plan approvals and operating permits for any applicant, permittee, or a general partner, parent or subsidiary corporation of the applicant or the permittee that is placed on PADEP's Compliance Docket until the violations are corrected to the satisfaction of PADEP. Consequently, the EPA disagrees with the comment's assertion that in order to credit PADEP's comprehensive enforcement program as satisfying the CAA section 172(c)(9) SO₂ contingency measure requirement, the program would have to include elements such as mandatory additional penalties or elimination of agency discretion to prosecute violations.

Again, the enforcement process is more streamlined and targeted compared to rulemaking or legislation, which as discussed above, is considered disallowed "further action" for other criteria pollutants, and moreover enforcement is more akin to permissible implementation steps such as notification of sources and modification of permits. *Compare* 57 FR 13498, 13547 (April 16, 1992) (discussing a comprehensive program to identify violations and undertaking aggressive follow-up for compliance and enforcement) *with* 57 FR 13498, 13512 and 13533 (April 16, 1992) (interpreting "without further action" to mean no further rulemaking or legislation but to allow implementation steps such as modification of permits and notification of sources) *and* 58 FR 67748, 67752 (December 22, 1993). Thus, enforcement serves as an appropriate contingency measure for SO₂ nonattainment SIPs.

In addition to having a fully approved comprehensive enforcement program, PADEP has included what it refers to as additional contingency measures that are automatically triggered based on varying parameters, as described

below.⁶ First, when any of the four sources' emissions in the NAA reach 99% of the SO₂ emissions limit for the facility, within 48 hours the facility is required to undertake a full system audit of the SO₂ emitting sources and submit a written report to PADEP within 15 days, and corrective actions shall be identified by PADEP as necessary. Second, if the Strongstown monitor in the NAA registers a daily maximum 1-hour average concentration exceeding 75 ppb, PADEP will notify the facilities in the NAA, and each facility is required to identify whether any of its SO₂-emitting sources were running at the time of the exceedance, and within a reasonable time period leading up to the exceedance, not to exceed 24 hours. If any of the SO₂-emitting sources were running at the time of the exceedance, the facility must then analyze the meteorological data on the day the hourly exceedance occurred to ensure that the exceedance was not due to SO₂ emissions from the respective facility. The facility's findings must be submitted to PADEP within 30 days of being notified of the exceedance.⁷ These emissions-threshold-activated and exceedance-activated measures further ensure that "aggressive follow-up" will occur without further regulatory steps taken by the state. They also further reduce the likelihood of a violation of the emission limits or NAAQS. These measures are in line with the additional contingency measures the EPA mentions in the 2014 SO₂ Nonattainment Guidance and in the General Preamble and are included in the Pennsylvania SIP.⁸ The most recent

⁶ These measures enhance Pennsylvania's fully approved enforcement program that serves to meet the contingency measure requirement, are not necessary to meet applicable requirements of the CAA under section 110(a)(2)(A), and are already included in the SIP.

⁷ Note the daily maximum 1-hour average concentration can be above 75 ppb multiple times in one year and still not violate the NAAQS due to the statistical nature of the design values. Therefore, this measure could be triggered multiple times before a design value of 75 ppb, and therefore a NAAQS violation, ever occurs.

⁸ These exceedance-activated and emissions-threshold-activated measures were retained in the SIP, as explained in the partial disapproval, 87 FR 15166, 15177 (March 17, 2022) (final rule published 87 FR 50778 (August 18, 2022)), and the 2023 SIP submittal's attainment plan reiterates these requirements and the plan will be included in the SIP. For the sake of clarity and consistency, Keystone's COA will be removed from the SIP because the state has requested the removal of the 9600 lb/hr 24-hr SO₂ emission limit which was approved into the SIP via a source-specific SIP revision based on the COA; included in that COA is the emissions-threshold activated measure which in the COA is based on the previously disapproved emissions limit. With the approval of the 2023

Continued

⁴ SO₂ Guideline Document, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, EPA-452/R-94-008, February 1994 (1994 SO₂ Guideline); Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions, Office of Air Quality Planning and Standards, Stephen D. Page, April 23, 2014 (2014 SO₂ Nonattainment Guidance).

⁵ 87 FR 61514, 61522–61523 (October 12, 2022); 84 FR 51988, 51994–51995 (October 1, 2019); 84 FR 32672, 32677 (July 9, 2019) (final rule 84 FR 49659 (September 23, 2019)); 83 FR 51629, 51632–51633 (October 12, 2018); 83 FR 40487, 40497 (August 15, 2018) (final rules 85 FR 49967 (August 17, 2020) and 84 FR 10692 (March 22, 2019)); 82 FR 45242, 45251 (September 28, 2017) (final rule 83 FR 25922 (June 5, 2018)); 82 FR 40086, 40097–40098 (August 24, 2017) (final rule 85 FR 73218 (November 17, 2020)).

design values at the Strongstown monitor in the NAA are 19 ppb in 2022, 22 ppb in 2021, and 25 ppb in 2020, which are well below the 1-hour primary 2010 SO₂ NAAQS of 75 ppb. The proactive nature of PADEP's emissions-threshold-activated and exceedance-activated measures, as well as the direct quantifiable impact of the SO₂ control measures and the current design values in the NAA, make it very unlikely that a NAAQS violation could occur in this area while the sources are complying with their emission limits.

The comment listed several options for contingency measures that the comment suggests should be included in the SIP. The EPA acknowledges that one or more of these options may be appropriate in a specific situation, and for a specific source, if the area fails to achieve RFP or fails to attain the NAAQS by the statutory attainment date. However, because Indiana, PA is a multisource area with several emission units per facility, requiring one or more of these measures may not be appropriate depending on the cause of the potential violations of the SO₂ standard, which would need to be evaluated at the time of occurrence. For example, triggering a fuel-switch at one facility may not bring the area into attainment if the issue is caused by another facility violating its limit. Similarly, limiting operation of one facility may be appropriate if the subject facility is the cause of the problem, but requiring further measures at other facilities may not be warranted where the cause of the NAAQS violation was non-compliance with emission limits by a different facility and where the NAAQS violation can be most efficiently remedied by bringing that source into compliance with its established emission limits. Likewise, limiting operations at all SO₂-emitting facilities in the area may not appropriately address the issue due to the localized nature of SO₂ emissions and possible direct link between ambient concentrations and emissions from a specific facility. Similarly, changing the limits at all facilities, for example from a longer-term limit to a shorter-term limit, may appropriately address the problem, but it also may not, and the state would evaluate appropriate measures if and when an issue arises. These are illustrative examples, and while not exhaustive, they highlight the need for the state to be able to respond appropriately in a

particular scenario due to the localized nature of SO₂ impacts.

In summary, the EPA's longstanding approach to implementing the section 172(c)(9) contingency measures requirement in SO₂ attainment plans via comprehensive enforcement programs is appropriate. This approach is based upon the EPA's technical expertise and in-depth understanding of SO₂ control strategies and is consistent with the approaches undertaken for other criteria pollutants that have distinguished acceptable ministerial steps from regulatory or legislative action in satisfying the Act's requirement that contingency measures take effect "without further action." Accordingly, in this case, Pennsylvania's fully approved comprehensive enforcement program, and as bolstered by the state's aforementioned requirements that are triggered automatically when emissions thresholds are reached or NAAQS exceedances are recorded, is approved as meeting the CAA section 172(c)(9) contingency measure requirement.

Comment 2. A comment takes issue with the EPA's approach to attainment determinations when an area initially fails to attain by the attainment date. The comment cites the requirement for the EPA to determine within six months of the attainment date whether the standard has been attained for a given area. Section 179(c)(1) of the Clean Air Act further states that if the Administrator has found that the area did not attain, the EPA "may revise or supplement such determination at any time based on more complete information or analysis concerning the area's air quality as of the attainment date." The comment notes that the EPA's 1996 SO₂ Memorandum⁹ and 2014 SO₂ Nonattainment Guidance do not require a new SIP submittal and further modeling is not required if the source characteristics are "still reasonably represented." The comment claims that the EPA ought to require states to submit a demonstration that modeling assumptions have not changed. The comment states that because neither the EPA nor the state are reevaluating modeling assumptions, there is an added responsibility on the public to comment on the record on proposed attainment determinations. Lastly, the comment notes that this issue is magnified by the improper use of 30-day rolling averages as emission limits, further complicating compliance.

Response 2. This comment is outside the scope of this action and does not require a response. The EPA notes that in this action, it is not implementing CAA section 179(c) or making a determination of attainment by the attainment date. To the extent the comment relates to objections to the emission limits adopted in the attainment plan, as explained elsewhere, the EPA concludes that the plan will provide for attainment, accounting for worst-case allowable emissions and meteorology.

Comment 3. The comment asserts that the EPA's approach to reasonably available control measures (RACM) and reasonably available control technology (RACT) in the context of SO₂ attainment plans is not the "best reading" of the Clean Air Act. The comment cites the EPA's 2014 SO₂ Nonattainment Guidance, stating that the requirement to implement all RACM is fulfilled if a plan provides for attainment of the SO₂ standards. The comment then cites requirements for attainment plans, 42 U.S.C. 7502(c)(1) (emphasis added):

Such plan provisions shall provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards.

In interpreting the provision, the comment highlights the word "and" in these nonattainment plan provisions, stating that the requirement for all RACM and RACT must be fulfilled *and* the requirement for attainment must also be met. The comment also states that the EPA must give effect to every word and phrase in a statutory provision and that the EPA has failed to give effect to the requirement that all RACM/RACT be implemented. Next, the comment claims that the EPA fails to consider the plain meaning of statutory terms in reference to "available" control options. The comment claims that the EPA's proposal fails to determine whether additional controls are needed and is lacking an analysis of control efficiencies for existing and potential controls, as well as costs for upgrades.

Response 3. In identifying the "best reading" of a statutory requirement, the EPA has considered the overall and specific purpose of the requirement, the technical context in which it is imposed, and the most reasonable manner in which its obligations may be fulfilled. The Clean Air Act nonattainment planning requirements in section 172(c) applicable to states are set

attainment plan into the SIP, the emissions-threshold activated measure and the exceedance-activated measure for Keystone are still included in the SIP.

⁹Memorandum from Sally L. Shaver, "Attainment Determination Policy for Sulfur Dioxide Nonattainment Areas", January 26, 1996 (1996 SO₂ Memorandum).

in place to provide for attainment and subsequent maintenance of the NAAQS in a designated nonattainment area—*i.e.*, an area which the EPA has previously determined is not meeting the NAAQS. All section 172(c) requirements are targeted to remedy that NAAQS-violating occurrence. As the comment referenced, RACM/RACT is required under Clean Air Act section 172(c)(1) *for nonattainment areas*. Section 172(c)(1) of the CAA requires the implementation of all RACM as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of RACT) and shall provide for attainment of the NAAQS.

The comment suggests that the RACM/RACT requirement of section 172(c)(1) requires a state to assess and adopt measures that go further than what is necessary to attain the SO₂ NAAQS in the nonattainment area, but such an approach undercuts the purpose of this provision as applied in the SO₂ nonattainment plan context. At its core, this RACM/RACT requirement serves to remedy the status quo situation of an area not meeting the NAAQS, in order to prospectively achieve NAAQS attainment. This is clear from the requirement's placement within one of the two paragraphs in section 172(c)—along with section 172(c)(6)'s requirement that the plan include emissions limitations as necessary to provide for NAAQS attainment—that specify enumerated remedial measures that are not otherwise required absent an area's being designated nonattainment. Moreover, when applied in the SO₂ nonattainment plan context, these provisions of section 172(c) must be read in concert with the other applicable statutory provision that Congress enacted in 1990 specifically governing SO₂ plans, section 192(a), that similarly stressed the need for remedial implementation plans to provide for NAAQS attainment. As explained elsewhere and further below, for SO₂ the EPA has long taken the technical view that this source-oriented pollutant, compared to more regional pollutants like ozone and particulate matter, can be addressed via identification of necessary emission limits, and the control measures needed to meet them, that will provide for attaining air quality. When that analysis has been undertaken and appropriate attainment-providing emission limits have been devised, the central purpose of the section 172(c) attainment planning requirements will have been fulfilled, and it is not

necessary to require additional controls. Consequently, the EPA does not consider that it would be the “best reading” of the RACM/RACT requirement to interpret “reasonably” in section 172(c)(1), when applied in the SO₂ SIP context, as requiring imposition of additional controls when those that are necessary to provide for NAAQS attainment have already been identified and required.

For decades, the EPA has consistently defined RACT for SO₂ as that control technology that will achieve the NAAQS within statutory timeframes. *See, e.g.*, General Preamble, 57 FR 13498, 13547 (April 16, 1992), which was published soon after the enactment of the 1990 Clean Air Act Amendments; *see also*, 1994 SO₂ Guideline at 6–39. RACT for certain other criteria pollutants is control technology that is reasonably available considering technological and economic feasibility (see December 9, 1976 memorandum from Roger Strelow, “Guidance for Determining Acceptability of SIP Regulations in Non-Attainment Areas”). The EPA's definition of RACT for SO₂, as that control technology which is necessary to achieve the NAAQS (40 CFR 51.100 (o)),¹⁰ is based on the specific characteristics of SO₂. Since SO₂ RACT is already defined as the technology necessary to achieve the SO₂ NAAQS, control technology that failed to achieve the NAAQS would fail to be SO₂ RACT, and control technology beyond what is necessary to attain the SO₂ NAAQS would be beyond the central purpose of the nonattainment planning requirements of section 172(c).

When determining RACT for SO₂, it is appropriate to take into account the necessity of the control in meeting the standard. As noted, the EPA's definition of RACT in the SO₂ nonattainment context accounts for the characteristics of the specific pollutant. For a pollutant such as SO₂, the relationship between an individual source's emissions and the overall air quality can be explicitly quantified, and the emission reductions necessary to attain the NAAQS are based on a limited number of sources in a NAA.¹¹ Therefore, a state can

¹⁰ RACT means devices, systems, process modifications, or other apparatus or techniques that are reasonably available taking into account: (1) The necessity of imposing such controls in order to attain and maintain a national ambient air quality standard; (2) The social, environmental, and economic impact of such controls; and (3) Alternative means of providing for attainment and maintenance of such standard. (This provision defines RACT for the purposes of 40 CFR 51.341(b) only.)

¹¹ For reference, in the Indiana, PA NAA, 99.6% of the area's SO₂ emissions inventory comes from the four facilities controlled in the attainment plan.

explicitly calculate the emission reductions necessary to provide for attainment of the SO₂ NAAQS, and it is appropriate not to require states to impose control measures requiring further reductions beyond what is necessary to achieve attainment.

For the Indiana, PA NAA, PADEP provided the necessary modeling, which demonstrated the specific hourly emission limits (and comparably stringent longer-term limits) that are required to provide for attainment of the standard. The EPA reviewed this modeling and determined it comports with the EPA's Guideline on Air Quality Models (40 CFR part 51, appendix W) and the EPA's 2014 SO₂ Nonattainment Guidance. Therefore, the EPA concluded that the emission limits established as RACM were shown to provide for attainment and thus met the longstanding definition of RACT for SO₂. PADEP implemented these emission limits as expeditiously as practicable (with Keystone's and Conemaugh's limits effective immediately after August 15, 2023, and Seward's limits effective immediately after August 17, 2023 via Consent Orders and Agreements).

While the comment disagrees with the EPA's approach to RACM/RACT for SO₂ and characterizes its version as a better reading of the Act, the comment does not explain why its reading of the Act is a better reading specific to the SO₂ NAAQS. The comment does not address the specific characteristics of the pollutant, characteristics that the EPA has considered while it has consistently defined RACT for SO₂.¹²

As discussed above, this has been the EPA's longstanding definition and approach for SO₂ RACT since the 1990 Clean Air Act Amendments. The EPA has consistently applied this definition of SO₂ RACT and promulgated numerous implementation plan approvals using this approach.¹³ Consequently, the EPA disagrees with the comment's assertion that its approach does not reflect the “best

¹² The comment refers to the visibility program's method of determining retrofit controls. However, the visibility program operates under a different statutory and regulatory framework, and SO₂ is one of many visibility impairing pollutants.

¹³ 87 FR 61514, 61520–61521 (October 12, 2022); 84 FR 32672, 32676–32677 (July 9, 2019) (final rule 84 FR 49659 (September 23, 2019)); 83 FR 50314, 50321–50324 (October 5, 2018) (final rule 84 FR 51988 (October 1, 2019)); 83 FR 12516, 12519–12520 (March 22, 2018) (final rule 83 FR 51629 (October 12, 2018)); 83 FR 40487, 40497 (August 15, 2018) (final rules 85 FR 49967 (August 17, 2020) and 84 FR 10692 (March 22, 2019)); 82 FR 45242, 45250–45251 (September 28, 2017) (final rule 83 FR 25922 (June 5, 2018)); 82 FR 40086, 40096–40097 (August 24, 2017) (final rule 85 FR 73218 (November 17, 2020)).

reading” of Clean Air Act section 172(c)(1) for SO₂ implementation plans.

Comment 4. Two comments claim that longer-term emission limits do not support attainment of the 1-hour SO₂ standard. One comment states that the EPA’s 2014 SO₂ Nonattainment Guidance¹⁴ allows the use of 30-day emission limits as long as hourly emissions above the critical emission value¹⁵ (CEV) are rare and if the magnitude of emissions do not significantly exceed the CEV. The comment further states that the EPA justified 30-day emission limits to allow for operational flexibility at sources. Next, the comment claims that the EPA’s 2014 SO₂ Nonattainment Guidance highlights the value of supplemental limits, *e.g.*, caps on the frequency or magnitude of elevated emissions, but fails to explain and justify approving longer-term emission limits in the absence of supplemental limits. Further, the comment states that the EPA’s recognition of the value of supplemental limits in the 2014 SO₂ Nonattainment Guidance demonstrates that 30-day rolling averages, when used without supplemental limits, insufficiently protect the NAAQS.

The second comment states that the SO₂ limit was set as a 1-hour standard to protect human health from harmful, short-term exposures of SO₂ and that Seward’s and Keystone’s emission limits are not protective under that standard. The comment claims that the Seward and Keystone generating stations “regularly and frequently” exceed their hourly CEV. Citing data from January 1, 2018 through March 31, 2024, the comment asserts that Keystone exceeded the 9,718 lbs/hr CEV on 532 occasions and that Seward exceeded the 3,830 lbs/hr CEV on 349 occasions, which occurred on 28 separate days in 2018, 7 days in 2019, 13 days in 2020, 31 days in 2021, 58 days in 2022, 40 days in 2023, and 16 days in 2024. The comment claims that the PADEP justification for disregarding these exceedances, *i.e.*, because they “occurred over a large number of possible operating hours per year,” is dismissive of the fact that the SO₂ standard is a short-term standard and that just four hours on four days with SO₂ concentrations over 75 ppb will lead to nonattainment of the NAAQS.

Response 4. The EPA disagrees with the assertion that longer-term limits

cannot be protective of a 1-hour SO₂ standard. As explained in the NPRM for this action, and in the EPA’s 2014 SO₂ Nonattainment Guidance, the EPA believes that appropriately set longer-term limits can be protective of the 1-hour SO₂ NAAQS.

The EPA acknowledges the concern that longer-term emission limits can allow short periods with emissions above the CEV, which, if coincident with meteorological conditions conducive to high SO₂ concentrations, could in turn create the possibility of an hourly NAAQS exceedance occurring on a day when an exceedance would not have occurred if emissions were continuously controlled at the level corresponding to the CEV. However, for several reasons, the EPA believes that the approach recommended in its guidance document suitably addresses this concern.

First, from a practical perspective, the EPA expects the actual emission profile of a source subject to an appropriately set longer-term average limit to be similar to the emission profile of a source subject to an analogous 1-hour average limit. The EPA expects this similarity because it has recommended that the longer-term average limit be set at a level that is comparably stringent to the otherwise applicable 1-hour limit (reflecting a downward adjustment from the CEV) and that takes the source’s emissions profile (and inherent level of emissions variability) into account. This downward adjustment of the limit is to compensate for the loss of stringency inherent in applying a longer-term average limit, by requiring most values to be lower than they are required to be with a 1-hour limit at the CEV. As a result, the EPA expects either form of emission limit to yield comparable air quality.

Second, from a more theoretical perspective, the EPA has compared the likely air quality with a source having maximum allowable emissions under an appropriately set longer-term limit, to the likely air quality with the source having maximum allowable emissions under the comparable 1-hour limit. In this comparison, in the 1-hour average limit scenario, the source is presumed at all times to emit at the CEV, and in the longer-term average limit scenario, the source is presumed occasionally to emit more than the CEV, but on average, and presumably at most times, to emit well below the CEV. In an “average year,”¹⁶

compliance with the 1-hour limit is expected to result in three exceedance days (*i.e.*, three days with maximum hourly values above 75 ppb) and a fourth day with a maximum hourly value at 75 ppb. By comparison, with the source complying with a longer-term limit, it is possible that additional hourly exceedances would occur that would not occur in the 1-hour limit scenario (if emissions exceed the CEV at times when meteorology is conducive to poor air quality). However, this comparison must also factor in the likelihood that exceedances that would be expected in the 1-hour limit scenario would not occur in the longer-term limit scenario. This result arises because the longer-term limit requires lower emissions most of the time (because the limit is set below the CEV), so a source complying with an appropriately set longer-term limit is likely to have lower emissions at critical times than would be the case if the source were emitting as allowed with a 1-hour limit.

To illustrate this point, the EPA conducted a statistical analysis using a range of scenarios using actual plant data. The analysis is described in appendix B of the EPA’s 2014 SO₂ Nonattainment Guidance. Based on the analysis described in the 2014 SO₂ Nonattainment Guidance, the EPA expects that an emission profile with maximum allowable emissions under an appropriately set, comparably stringent 30-day average limit is likely to have the net effect of having a lower number of hourly exceedances and better air quality than an emission profile with maximum allowable emissions under a 1-hour emission limit at the CEV. This result provides a compelling policy rationale for allowing the use of a longer averaging period in appropriate circumstances where the facts indicate this result can be expected to occur.

The 2014 SO₂ Nonattainment Guidance offers specific recommendations for determining an appropriate longer-term average limit. PADEP correctly followed the recommendations in devising the longer-term limits for Seward and Keystone. The 24-hour average limit of 8,328 lbs/hr went into effect for Keystone on August 15, 2023, and the 30-day average limit of 2,895 lbs/hr went into effect for Seward on August 17, 2023. The EPA reviewed the comment’s hourly data files for Seward and Keystone from January 1, 2018 through March 31, 2024, in which the CEV at Keystone was exceeded on 532

¹⁴ www.epa.gov/sites/default/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf.

¹⁵ The maximum modeled emission rate expressed as a 1-hour average that results in attainment is labeled the “critical emissions value” or CEV.

¹⁶ An “average year” is used to mean a year with average air quality. While 40 CFR part 50, appendix T, provides for averaging three years of annual 99th percentile daily maximum hourly values (*e.g.*, the fourth highest maximum daily hourly concentration in a year with 365 days with valid data), this

discussion and an example below uses a single “average year” to simplify the illustration of relevant principles.

separate occasions, and the CEV at Seward was exceeded on 349 separate occasions. During the majority of this time period, the sources were not subject to the new limits developed for this attainment plan. Additionally, the stated number of occasions over the CEV for Seward and Keystone during the six and one quarter years of data equate to less than one percent of the hours for each source, which EPA considers to be a minimal amount of occasions over the CEV. The EPA disagrees with the comment on the air quality consequences of these occasions of elevated emissions. While there were times after the new 30-day limit went into effect where hourly emissions were above the CEV, there is no evidence that these emissions caused an exceedance of the NAAQS. The EPA believes that a full analysis of the air quality impact of Pennsylvania's limits must consider these hours of elevated emissions in conjunction with the far greater number of hours when emissions are required to be well below the level that would model violations (*i.e.*, the CEV). The comment provided no modeling analysis that incorporated both the hours of emissions above the CEV and the hours below. For reasons described in more detail in the EPA's guidance, the NPRM and the EPA's Technical Support Document: Critical Emission Value Modeling Analysis for the Indiana, PA 1-Hour SO₂ Nonattainment Area (EPA Modeling TSD) for this action, the EPA believes that the net effect of these compensating factors is that PADEP's limits provide adequate assurance that the area will attain the SO₂ standard.

The EPA disagrees with the comment's assertion that supplemental limits must be required to limit the magnitude of emissions spikes when a longer-term limit is established. As explained in detail above, a comparably stringent longer-term limit can provide for protection of the NAAQS, even without supplemental limits. In any event, PADEP exercised additional options for restricting the frequency and magnitude of occurrences of elevated emissions per the 2014 SO₂ Nonattainment Guidance,¹⁷ such as

setting averaging times shorter than thirty days or analyzing emissions data¹⁸ to determine when to target emission episodes using supplemental limits. For Keystone, PADEP applied a shorter averaging time of 24 hours. For Seward, which has a 30-day limit, PADEP included a supplemental limit in the form of a work practice requirement of injecting limestone into the combustor during initial firing which was deemed appropriate due to specific emissions data patterns experienced during those periods.

Comment 5: The comment states that the CEVs set for each stationary SO₂ source impacting nonattainment in Indiana County are not protective of the NAAQS. The comment cites an assessment of the EPA's modeling analysis which asserts that the CEVs yield peak concentrations approximately 50 micrograms per cubic meter above the NAAQS. Steven Klafka, Conemaugh, Homer City, Keystone and Seward Generating Stations Indiana County, Pennsylvania Evaluation of Compliance with the 1-hour NAAQS for SO₂, (Wingra Engineering July 8, 2024).

Response 5: The EPA has reviewed the July 8, 2024 modeling analysis prepared for the Sierra Club by Wingra Engineering (July 2024 Wingra Analysis) and found several deficiencies with it. These include the choice of meteorological data and the combining of emission sources across an amalgamated modeling domain. The July 2024 Wingra Analysis otherwise utilizes the same modeling system components (receptor grid locations/elevations/hill-height scales, building downwash parameters, surface characteristics, etc.) as those used in the modeling analysis performed by Pennsylvania and reviewed by the EPA. For consistency purposes, the comment's July 2024 Wingra Analysis utilized the same versions of the AERMOD platform used by Pennsylvania.

As described in section 6 of PADEP's Air Dispersion Modeling Technical Support Document (Docket file EPA-R03-OAR-2024-0024-0003 attachment 9) the air dispersion modeling for the Indiana, PA NAA utilized representative meteorological

datasets from two sites. Data from the Johnstown-Cambria County Airport (KJST) meteorological site represented atmospheric conditions in the vicinity of Keystone and Homer City power plants. The KJST meteorological site is approximately 58 kilometers southeast of Keystone and approximately 38 kilometers southeast of Homer City. Data from the Ash Site #1 meteorological site represented atmospheric conditions in the vicinity of Conemaugh and Seward. The Conemaugh-Seward (Ash Site #1) meteorological site is located between the two power plants, approximately 1.9 kilometers northeast of the Conemaugh power plant and approximately 1.7 kilometers south-southwest of the Seward power plant.

Based on the EPA's Guideline on Air Quality Models (40 CFR part 51, appendix W), meteorological data used as input to a dispersion model should be selected on the basis of spatial and climatological (temporal) representativeness as well as the ability of the individual parameters selected to characterize the transport and dispersion conditions in the area of concern. Representativeness of the meteorological data is dependent on numerous factors. These factors include but are not limited to: (1) the proximity of the meteorological monitoring site to the area under consideration; (2) the complexity of the terrain; (3) the exposure of the meteorological monitoring site; and (4) the period of time during which data are collected. Both meteorological data sets used in Pennsylvania's modeling analysis meet applicable completeness requirements.

While the July 2024 Wingra Analysis claims that the Ash Site #1 is representative of impacts from emissions released by all four plants, the EPA disagrees because of the difference in local topography around the modeled sources. The decision to utilize the KJST meteorological site for the Homer City and Keystone power plants and the Ash Site #1 for the Conemaugh and Seward power plants was largely based on the modeled sources' topographical settings (terrain features). Each of the meteorological sites were best suited to capture the proper boundary layer characteristics for their respective sources.

The Indiana, PA NAA sits along the Allegheny Plateau physiographic province of the Appalachian Mountains system west of the eastern continental divide. Maps depicting topographical elevations in the vicinity of the Indiana, PA NAA showing the locations of the Conemaugh, Homer City, Keystone and Seward power plants and the KJST and

¹⁷ According to the 2014 SO₂ Nonattainment Guidance, p. 34, states have several additional options for restricting the frequency and magnitude of occurrences of elevated emissions. First, states may apply shorter averaging times, such as 24 hours, which provide less allowance of emission spikes than would longer averaging times, such as 30 days. Second, for sources that are or will be operating emission control equipment, states may establish requirements for the operation of this control equipment. For such sources, a substantial component of the variability in emissions often arises from variations in the operation of the control

equipment, perhaps including operating the source when the control equipment is not operating. States have multiple options for requiring less variability in control equipment operation. One option would be a direct work practice requirement for operation of the control equipment, perhaps specifying some minimum level of control efficiency and associated monitoring, recordkeeping, and reporting requirements.

¹⁸ If this type of information on historic emission patterns is not available, it may be difficult to determine supplemental limits.

Ash Site #1 meteorological sites can be found in the EPA's technical support document that is part of the public record in the docket for this action (Figures 1 and 2 of the EPA Modeling TSD). Relatively flat terrain resides in the western portion of the nonattainment area where the Homer City and Keystone power plants are located. Both power plants sit at significantly lower elevations than the KJST site. Furthermore, the KJST site is located on some of the highest terrain in western Pennsylvania and no topographic features between the KJST site and Homer City and Keystone would unduly influence the wind fields at the KJST site. In contrast, the Conemaugh and Seward power plants are located along the Conemaugh River in the southeastern part of the Indiana, PA NAA between the Chestnut (west) and Laurel (east) ridges that define the northern terminus of the Ligonier Valley. The latter two power plants reside within a valley marked by higher terrain to the east and west. This valley impacts local meteorological parameters such as wind fields and atmospheric stability. Air flow can become channeled within valley features, and topography can influence vertical atmospheric stability, especially at night, setting up potentially strong vertical temperature inversions.

The July 2024 Wingra Analysis amalgamates all of the model receptors Pennsylvania utilized in its three modeling domains covering the entire Indiana, PA NAA. The rationale for dividing the Indiana, PA NAA into three separate modeling domains (with different sources and meteorological data) was explained in the Air Dispersion Modeling Technical Support Document from PADEP (pages 6–8 to 6–9, 6–15 to 6–17, and 8–1 to 8–3) and in the EPA Modeling TSD (pages 63 and 70) that are part of the public docket for this action.

No rationale was provided in the July 2024 Wingra Analysis submitted during the public comment period to support combining the three modeling domains utilized in PADEP's SIP modeling demonstration. Additionally, no rationale was provided to refute the division of the Indiana, PA NAA into three distinct modeling domains. The EPA believes, therefore, that Wingra Engineering's modeling analysis erred on its modeling domain setup by combining all sources into one amalgamated receptor domain.

Noting the deficiencies in the July 2024 Wingra Analysis, the EPA concludes that the modeling analysis presented by PADEP demonstrates the validity of the CEVs established for the

Conemaugh, Homer City, Keystone and Seward power plants.

Comment 6. The comment states that the adjustment factor of 0.756, used to convert the Seward generating station's CEV to a 30-day rolling average, is too high. The comment claims that Pennsylvania's proposed adjustment factor results in 20% higher emission limits when compared to emission limits calculated with the EPA's adjustment factor of 0.63. The comment states that if the January 2019 through March 2023 dataset is used instead of the 2018–2021 dataset used by PADEP, the Seward adjustment factor would be reduced to 0.712. Next, the comment provided seven different adjustment factors calculated based on differing historic data periods. Additionally, the comment asserts that Seward's SO₂ emissions have increased since 2013, and the proposed 30-day limit increases the likelihood of continued nonattainment if emission reductions are not established.

Response 6. The spreadsheet submitted as Attachment C to the comment, included incorrect calculations for the 30-day average values. As specified in the state submittal, the 30-day rolling average for Seward should be calculated for each operating day, by calculating the average of all the hourly emission data, using only hours during which fuel is combusted from the preceding 30 operating days. In the spreadsheet calculations, the comment always averaged the previous 30-days using 720 hours (total number of hours in 30 days) as opposed to the number of hours when fuel was actually burned. In the SIP submittal, PADEP correctly calculated the 30-day average emission values in developing the adjustment factors for Seward. PADEP also justified the period of time used for the calculations by explaining that, in line with the EPA's 2014 SO₂ Nonattainment Guidance, PADEP used data from years of stable operation. As PADEP described, when the SIP analysis began in 2022, it initially considered emission data for years 2017 through 2021. However, in 2017, there was an operational change at Seward¹⁹ that could have affected the emission variability. Because of operational changes at Seward in 2017 and in an effort to have one consistent emission dataset for all three facilities with longer-term SO₂ emission limits, PADEP calculated the adjustment factors using

¹⁹ After a change of ownership in December 2016, Seward implemented a startup operational change, which is the addition of limestone to the combustor during initial firing to reduce SO₂ emissions.

emission data for years 2018 through 2021. The EPA believes this is consistent with the recommendation on emission data use in the 2014 SO₂ Nonattainment Guidance, pages 29–30.

Also, the comment appears to misunderstand the adjustment factor of 0.63 included in table 1 of appendix B of the 2014 SO₂ Nonattainment Guidance. The EPA's 2014 SO₂ Nonattainment Guidance did not calculate nor provide source-specific adjustment factors for Seward, but rather, calculated the average adjustment factor for 90 sources equipped with a dry scrubber. The EPA believes that if continuous emissions monitoring systems (CEMS) data is available for a source, it is most appropriate to use that data for developing adjustment factors, as long as it continues to represent the distribution of emissions that is expected once the attainment plan is implemented. This was the case with Seward. The EPA concludes that the adjustment factor of 0.756 calculated for Seward is more appropriate because it is source-specific, based on CEMS data and provides for a comparably stringent 30-day average emission limit.

Regarding the comment about the annual SO₂ emissions increases since 2013, the EPA reviewed the data and notes that SO₂ emissions increased from 2013–2018. However, after that period the emissions remained in a similar range. Additionally, annual emissions are not a direct indicator of compliance with the NAAQS nor with the 30-day emission limit which the EPA is approving as providing for attainment in this plan.

Comment 7. The comment claims that the EPA ignores the ongoing negative impacts of Indiana County's major SO₂ sources on neighboring Westmoreland and Cambria counties. The comment states that Pennsylvania has failed to meaningfully address SO₂ sources in Indiana County and that the EPA should encourage Pennsylvania to implement more protective SO₂ limits to wholly address nonattainment caused by these sources and to be protective of vulnerable populations in Indiana County and neighboring areas.

Response 7. The comment's concern regarding negative impacts outside of the Indiana, PA NAA boundaries from the Indiana County SO₂ sources is beyond the scope of this action.

Section 171(2) of the CAA defines nonattainment area to mean for any air pollutant, an area which is designated "nonattainment" with respect to that pollutant within the meaning of section 107(d) of this title. In an earlier, separate action, the boundaries of the Indiana,

PA NAA were set and finalized in August 2013 in “Round One” of EPA’s designations for the 2010 SO₂ NAAQS under section 107(d) of the CAA, and these boundaries were not challenged.²⁰ Westmoreland and Cambria counties are not included within those boundaries.

Pennsylvania’s obligation under section 110(a) of the CAA is to submit “. . . a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State.” CAA section 110(a)(1). Section 110 further provides that “[i]n the case of a plan or plan revision for an area designated as a nonattainment area, [the plan shall] meet the applicable requirements of part D of this subchapter (relating to nonattainment areas).” CAA section 110(a)(2)(I). Section 172(c)(6) then requires the SIP for a nonattainment area to include enforceable emission limitations and control measures as necessary or appropriate to provide for NAAQS attainment “in such area.” In this case, Pennsylvania’s attainment plan for the Indiana, PA NAA includes limits on SO₂ sources and a modeling demonstration showing that SO₂ concentrations throughout the nonattainment area are at or below the NAAQS.

Further, the EPA’s role is limited to determining whether the submitted SIP meets the requirements of the CAA, see section 110(k)—in this action, Pennsylvania’s 2023 SIP submittal does not address areas outside the defined nonattainment area. Absent a clear requirement that Pennsylvania must include model receptors outside of the nonattainment area in its submission, the EPA will confine its analysis to whether the attainment SIP demonstrates attainment within the designated nonattainment area.

On February 12, 2024, EPA published notice in a separate action of its intent to redesignate portions of Cambria and Westmoreland Counties²¹ to nonattainment for the 2010 SO₂ NAAQS (89 FR 9815). The CAA provides the EPA with the authority to revise designations of, or “redesignate,” areas under CAA section 107(d)(3). Such redesignations can originate as requests by states (per CAA section 107(d)(3)(D)), and the EPA can also notify a state at

any time that a designation of any area or portion of an area should be revised, on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the EPA Administrator deems appropriate. If finalized, the nonattainment designation for these counties will require the state to submit nonattainment area requirements per CAA section 172.

Comment 8. The comment states that the SIP should incorporate the closure of the Homer City generating station, as well as the projected 2028 retirements of the Keystone and Conemaugh generating stations. Further, the comment asserts that the SIP should not be approvable until the SO₂ emission limits for these plants are removed.

Response 8. The EPA disagrees with the comment. CAA section 172(c)(6) requires the SIP for a nonattainment area to include enforceable emission limitations and control measures as necessary or appropriate to provide for NAAQS attainment in the area. With this action, the EPA is approving the emission limits for the four sources in the Indiana, PA NAA as meeting this requirement. As such, it is not necessary to include the Homer City retirement nor the projected retirements of Keystone and Conemaugh in the SIP as enforceable measures. And as explained in the NPRM, as the EPA is not aware of PADEP rescinding Homer City’s operating permit, Homer City ceasing operations does not guarantee that the units are permanently and enforceably shutdown. 89 FR 48523, 48528 (June 7, 2024). Nor did PADEP’s 2023 SIP submittal request to incorporate the pending closure of Homer City into the SIP. Similarly for Keystone and Conemaugh, the EPA is not aware of PADEP rescinding the permits for these two sources nor did PADEP’s 2023 SIP submittal request their projected retirements be included in the SIP. The approval of this attainment plan is thus properly based on Homer City’s possible continued operation, as well as Keystone’s and Conemaugh’s continued operations.

IV. Final Action

The EPA is approving the attainment plan for the Indiana, PA NAA for the 2010 1-hour SO₂ NAAQS, which Pennsylvania submitted on October 12, 2023, as a revision to the Pennsylvania SIP. Specifically, the EPA is approving the attainment demonstration, RACM/RACM requirements, RFP requirements, and contingency measures of the attainment plan. The EPA previously approved the emissions inventory and

NNSR program elements of the attainment plan.

This approval terminates the highway funding sanction and FIP clocks started under CAA sections 179 and 110, respectively, resulting from EPA’s partial disapproval of the prior SIP submittal. It also removes the permitting offset sanction that has been in place since March 19, 2024.

V. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of SO₂ emission limits and compliance parameters established in (the unredacted portions of) the COAs for the Seward, Conemaugh and Keystone facilities, as discussed in section II of this preamble and described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.²²

VI. Statutory and Executive Order Reviews

A. General Requirements

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, the 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 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 13563 (76 FR 3821, January 21, 2011);

²² 62 FR 27968 (May 22, 1997).

²⁰ 78 FR 47191 (August 5, 2013); www.epa.gov/sulfur-dioxide-designations/so2-designations-state-designations-round-1.

²¹ EPA designated Cambria County unclassifiable and Westmoreland County attainment/unclassifiable for the 2010 1-hour SO₂ NAAQS effective April 9, 2018. 83 FR 1098 (January 9, 2018).

- 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 an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- 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.

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. The 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.” The 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.”

PADEP did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this 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 action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

In addition, this final rule approving Pennsylvania’s Indiana, PA NAA SO₂ attainment plan does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 12, 2024. Filing a petition for reconsideration by the

Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the Indiana, PA attainment plan for the 2010 1-hour SO₂ NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Adam Ortiz,

Regional Administrator, Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart NN—Pennsylvania

■ 2. In § 52.2020:

■ a. Amend the table in paragraph (d)(3) by:

■ i. Adding entries for “Keystone Generating Station”, “Conemaugh Generating Station”, and “Seward Generating Station” at the end of the table; and

■ ii. Removing the first entry for “Seward Station”; and the entry for “Keystone Plant”.

■ b. Adding in paragraph (e)(1) table the entry “Attainment Plan for the Indiana County, Pennsylvania Nonattainment Area for the 2010 Sulfur Dioxide Primary National Ambient Air Quality Standard” at the end of the table.

The additions read as follows:

§ 52.2020 Identification of plan.

*	*	*	*	*
(d)	*	*	*	
(3)	*	*	*	

Name of source	Permit No.	County	State effective date	EPA approval date	Additional explanation/§ 52.2063 citation
Keystone Generating Station.	Consent Order and Agreement.	Armstrong ...	08/15/23	9/13/2024, [INSERT Federal Register CITATION].	For Source IDs 031 and 032: Combined SO ₂ emission limit; CEMS monitoring; definition of “24-hour block”; Quarterly emission reporting requirement; and reporting of hourly SO ₂ lbs/hr emission averages.
Conemaugh Generating Station.	Consent Order and Agreement.	Indiana	08/15/23	9/13/2024, [INSERT Federal Register CITATION].	For Source IDs 031 and 032: Combined SO ₂ emission limit; CEMS monitoring; definition of “3-hour block”; Quarterly emission reporting requirement; and reporting of hourly SO ₂ lbs/hr emission averages.
Seward Generating Station.	Consent Order and Agreement.	Indiana	08/17/23	9/13/2024, [INSERT Federal Register CITATION].	For Source IDs 034 and 035: Combined SO ₂ emission limit; CEMS monitoring; definition of “operating day”; reporting of hourly SO ₂ lbs/hr emission rate; injection of limestone during initial firing; and quarterly submission of “Hourly Injection Reports.”

* * * * *

(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
Attainment Plan for the Indiana, Pennsylvania Nonattainment Area for the 2010 Sulfur Dioxide Primary National Ambient Air Quality Standard.	Indiana County and portions of Armstrong County (Plumcreek Township, South Bend Township, and Elderton Borough).	10/12/23	9/13/2024, [INSERT Federal Register CITATION]	52.2033(g).

* * * * *

■ 3. Amend § 52.2033 by adding paragraph (g) to read as follows:

§ 52.2033 Control strategy: Sulfur oxides.

* * * * *

(g) EPA approves the Attainment Plan for the Indiana, PA Nonattainment Area for the 2010 Sulfur Dioxide National Ambient Air Quality Standard submitted by the Pennsylvania Department of Environmental Protection on October 12, 2023. EPA approves the attainment demonstration and other attainment plan elements, including Reasonably Available Control Technology (RACT)/Reasonably Available Control Measures (RACM) determination, Reasonable Further Progress (RFP) requirements, and contingency measures.

[FR Doc. 2024–20598 Filed 9–12–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2023–0277; FRL–12065–02–R4]

Air Plan Approval; Tennessee; Nitrogen Oxides SIP Call Alternative Monitoring and Domtar Paper Company, LLC

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), on June 26, 2023. The June 26, 2023, SIP revision specifies monitoring, recordkeeping, and reporting requirements for large industrial non-electricity generating units (EGUs) subject to the nitrogen oxides (NO_x) SIP Call that are permissible as alternatives

to the monitoring, recordkeeping, and reporting requirements of 40 CFR part 75. The SIP revision also establishes source-specific alternative monitoring, recordkeeping, and reporting requirements under the NO_x SIP Call for Domtar Paper Company, LLC (Domtar).

DATES: This rule is effective October 15, 2024.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2023–0277. All documents in the docket are listed on the [regulations.gov](https://www.regulations.gov) website. Although listed in the index, some information may not be publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management 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. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sarah LaRocca, Air Planning and Implementation Branch, Air and Radiation Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8994. Ms. LaRocca can also be reached via electronic mail at larocca.sarah@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On June 26, 2023, TDEC submitted a SIP revision with changes to Tennessee Air Pollution Control Regulation (TAPCR) 1200–03–27–.12(11) (state effective November 24, 2022) to specify alternative NO_x monitoring, recordkeeping, and reporting requirements for large industrial non-EGUs subject to the NO_x SIP Call that are permissible as alternatives to the monitoring, recordkeeping, and reporting requirements of 40 CFR part 75. The June 26, 2023, submittal also requests that EPA approve into Tennessee's SIP Tennessee Air Pollution Control Board operating permit No. 079291 for Domtar, State effective on January 12, 2022, to establish alternative NO_x monitoring, recordkeeping, and reporting requirements for the No. 2 Power Boiler at this facility, as meeting the requirements of 40 CFR 51.121(i). The submission includes a demonstration under Clean Air Act (CAA) section 110(l) intended to show that these revisions would not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA.

Through a notice of proposed rulemaking (NPRM) published on July 16, 2024 (89 FR 57823), EPA proposed to approve the changes to TAPCR 1200–03–27–.12(11) and Tennessee Air Pollution Control Board operating permit No. 079291 for Domtar into Tennessee's SIP. Adopting TAPCR 1200–03–27–.12(11) into Tennessee's SIP also satisfies the condition in the conditional approval actions for Packaging Corporation of America (88 FR 8771; February 10, 2023) and

Eastman Chemical Company (88 FR 14276; March 8, 2023) and EPA is converting those conditional approvals to full approvals through this final action. The contents of TDEC's submission, EPA's rationale for approving the changes, and EPA's rationale for converting the conditional approval actions for Packaging Corporation of America and Eastman Chemical Company to full approvals, are described in more detail in the July 16, 2024, NPRM. Comments on the July 16, 2024, NPRM were due on or before August 15, 2024. EPA did not receive any comments, adverse or otherwise.

II. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, and as discussed in Section I of this preamble, EPA is finalizing the incorporation by reference of TAPCR 1200–03–27–.12(11), state effective on November 24, 2022, into Tennessee's SIP. EPA is also incorporating by reference Tennessee Air Pollution Control Board operating permit No. 079291 for Domtar, state effective on January 12, 2022, into Tennessee's SIP. 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). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.¹

III. Final Action

EPA is approving the aforementioned Tennessee SIP revision consisting of changes to TAPCR 1200–03–27–.12(11) (state effective on November 24, 2022) and Tennessee Air Pollution Control Board operating permit No. 079291 for Domtar (state effective on January 12, 2022) into the SIP. EPA is also converting the conditional approval actions for Packaging Corporation of America (88 FR 8771; February 10, 2023) and Eastman Chemical Company (88 FR 14276; March 8, 2023) to full approvals.

IV. 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 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 rulemaking 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

¹ See 62 FR 27968 (May 22, 1997).

agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. EPA defines 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.”

TDEC 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 action. Consideration of EJ is not required as part of this 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.

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 12, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: September 6, 2024.

Jeananne Gettle,

Acting Regional Administrator, Region 4.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart RR—Tennessee

§ 52.2219 [Removed and Reserved]

■ 2. Remove and reserve § 52.2219.

■ 3. In § 52.2220:

■ a. In paragraph (c), amend Table 1 under “CHAPTER 1200–3–27 NITROGEN OXIDES” by revising the entry for “Section 1200–3–27–.12”; and

■ b. In paragraph (d), amend the table by:

■ i. Revising the entries for “Packaging Corporation of America—Counce Mill”, and “Eastman Chemical Company” at the end of the table; and

■ ii. Adding an entry for “Domtar Paper Company, LLC” at the end of the table.

The revisions and additions read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

TABLE 1—EPA APPROVED TENNESSEE REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Chapter 1200–3–27 Nitrogen Oxides				
*	*	*	*	*
Section 1200–3–27–.12.	NO _x SIP Call Requirements for Stationary Boilers and Combustion Turbines.	12/12/2019	9/13/2024, [Insert first page of Federal Register citation].	Except for 1200–3–27–.12(11), which has a state effective date of November 24, 2022. The remainder of 1200–3–27–.12 remains in the SIP with a state effective date of December 12, 2019.
*	*	*	*	*

(d) * * *

Name of source	Permit No.	State effective date	EPA approval date	Explanation
*	*	*	*	*
Packaging Corporation of America—Counce Mill.	078563	6/10/2021	9/13/2024, [Insert first page of Federal Register citation]	Converting February 10, 2023 conditional approval to full approval.
Eastman Chemical Company	077509	8/11/2021	9/13/2024, [Insert first page of Federal Register citation]	Converting March 8, 2023 conditional approval to full approval.

Name of source	Permit No.	State effective date	EPA approval date	Explanation
Domtar Paper Company, LLC	079291	1/12/2022	9/13/2024, [Insert first page of Federal Register citation]	

Proposed Rules

Federal Register

Vol. 89, No. 178

Friday, September 13, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Doc. No. AMS–SC–23–0039; 23–J–0080]

Raisins Produced From Grapes Grown in California; Recommended Decision and Opportunity To File Written Exceptions to Proposed Amendment of Marketing Order No. 989

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and opportunity to file exceptions.

SUMMARY: This recommended decision proposes to amend Marketing Order No. 989 (Order), which regulates the handling of raisins produced from grapes grown in California. The Raisin Administrative Committee, which locally administers the Order, recommended amendments that would reduce Committee size, eliminate the designated cooperative bargaining association member seat, lower quorum requirements, remove producer district representation, remove the requirement for separate member and alternate nominations for independent and small cooperative producers, remove factors for establishing marketing policy, add language to clarify the quality of reconditioned raisins, add authority to accept voluntary contributions, and add language regarding ownership of intellectual property. In addition, the Agricultural Marketing Service (AMS) may make any such changes to the Order as may be necessary to conform to any amendment that may result from the hearing. This recommended decision invites written exceptions on the proposed amendments.

DATES: Written exceptions must be filed by October 15, 2024.

ADDRESSES: Written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, Room 1031–S, Washington, DC 20250–9200; Fax: (202) 720–9776 or via the internet at

<https://www.regulations.gov>. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. Comments will be made available for public inspection in the Office of the Hearing Clerk during regular business hours or can be viewed at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Christy Pankey, Marketing Specialist, or Matthew Pavone, Chief, Rulemaking Services Branch, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–8085, or Email: Christy.Pankey@usda.gov or Matthew.Pavone@usda.gov.

Small businesses may request information on this proceeding by contacting Richard E. Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–8085, or Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing published in the January 12, 2024, issue of the **Federal Register** (89 FR 2178).

This recommended decision is in conformance with the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Orders 12866, 13563, and 14094.

Notice of this rulemaking action was provided to Tribal governments through the Department of Agriculture's (USDA) Office of Tribal Relations.

Preliminary Statement

Notice is hereby given of the filing with the United States Department of Agriculture's Office of the Hearing Clerk of this recommended decision with respect to the proposed amendments to 7 CFR part 989 ("Marketing Order 989" or "Order") regulating the handling of raisins produced from grapes grown in California and the opportunity to file written exceptions thereto. Copies of this decision can be obtained from Christy Pankey, whose address is listed above.

This recommended decision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act

of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation and amendment of marketing agreements and orders (7 CFR part 900).

The proposed amendments are based on the record of a public hearing on February 13 and 14, 2024 at the office of the Raisin Administrative Committee, 2445 Capitol Street, Suite 200, Fresno, California 93721. Notice of this hearing was published in the **Federal Register** on January 12, 2024 (89 FR 2178). The notice of hearing contained four proposals submitted to the Agricultural Marketing Service (AMS) by the Raisin Administrative Committee (Committee). AMS also proposed to make changes as appropriate based on the results of the hearing.

On October 20, 2022, the Committee recommended to AMS three proposals that would: (1) amend Committee size, composition, producer representation, and quorum requirements; (2) amend nomination procedures for small cooperative and independent producers; (3) remove two factors considered in the development of the annual marketing policy; and add language to clarify the quality of reconditioned raisins. The Committee voted on the above proposed amendments, 20 in favor and 10 opposed, at its August 17, 2022, meeting. On August 16, 2023, the Committee also voted to recommend to AMS the inclusion of two additional amendments that would add authority to accept voluntary contributions and add language regarding Committee ownership of intellectual property. These two amendments are hereinafter referred to as Proposal No. 4. AMS received the Committee's unanimous recommendation for those two amendments on August 21, 2023.

After reviewing all aforementioned proposals and other information submitted by the Committee, AMS decided to schedule this matter for a hearing.

Under Proposal No. 1, membership size would be reduced from 47 to 21 members and alternates, the designated cooperative bargaining association member seat would be eliminated, quorum requirements would be lowered from 25 to 14, producer district representation would be removed, and a designated seat for an unaffiliated independent producer member would

be added. Specifically, producer member seats would be decreased from 35 to 12 and handler member seats would be decreased from 10 to 8.

Proposal No. 2 entails removing the requirement for industry candidates to be nominated as either a member or an alternate. Proposal No. 3 would remove factor “4” and part of factor “5” from considerations when developing the marketing policy and add language clarifying that successfully reconditioned raisins are “standard raisins.”

Proposal No. 4 would enable the Committee to accept voluntary contributions and add language regarding ownership of and rights to intellectual property.

AMS also proposed to make any such changes as may be necessary to the Order to conform to any amendment that may be adopted, or to correct minor inconsistencies and typographical errors.

Ten witnesses testified at the hearing: three independent small producers, two independent small handlers, one independent large handler, one marketing cooperative small producer, one bargaining association small producer, one Committee staff member, and one witness from USDA. Eight industry witnesses supported all four proposals. One witness, representing the Raisin Bargaining Association (RBA), opposed the elimination of the designated cooperative bargaining association member seat under Proposal No. 1. The USDA witness remained neutral.

The Committee is the largest among all marketing order Committees and boards, with 47 members and 47 alternates, for a total of 94 positions. After two years of ongoing discussion and deliberation, the Committee recommended AMS reduce its size after determining that a substantial decline in the California raisin industry and the removal of volume regulation authority in 2018 has resulted in a high percentage of Committee vacancies and low attendance at Committee meetings.

Proponents at the hearing testified that Proposals No. 1 and 2 are expected to reduce Committee vacancies, improve participation, provide a cost savings to the program, increase administrative efficiency, and continue to provide fair representation while better aligning Committee membership with the overall size of the California raisin industry.

The witness representing the RBA contended that the removal of the designated cooperative bargaining association member seat, as recommended by Proposal No. 1, would further diminish the RBA’s ability to act

on the behalf of raisin producers. Further, the witness testified that without the cooperative bargaining association seat small producers would not be afforded a voice on the Committee.

Proponents of Proposal No. 1 testified, however, that a designated seat for the RBA is no longer warranted. The proponents believe that, were the designated cooperative bargaining association seat retained as part of the proposed restructuring, it would provide an outsized influence on the reduced Committee. Furthermore, proponents affirmed that both small producers and RBA producers would retain a voice without the designated cooperative bargaining association member seat and would continue to be represented on the Committee through allocated seats.

Witnesses supported Proposals No. 2–4.

Based on the hearing record, this initial decision recommends amending the Order to incorporate Proposals No. 1–4, as they are likely to address industry concerns without imposing undue burdens on small businesses upon implementation.

At the conclusion of the hearing, the Administrative Law Judge established a deadline of 20 business days from the date the transcript corrections were made available on the AMS website (May 1, 2024) for interested persons to file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing. No briefs were filed.

Material Issues

The material issues presented on the record of hearing are as follows:

1. Whether to:
 - i. Amend § 989.26 to reduce Committee membership size from 47 to 21 members and alternates. Corresponding changes would be made to § 989.126.
 - ii. Amend § 989.26 to remove the designated cooperative bargaining association seat. Corresponding changes would remove references to the designated cooperative bargaining association position in § 989.30.
 - iii. Amend §§ 989.26(c) and 989.126(a)(1) to remove producer district representation and add an unaffiliated independent producer member seat. Corresponding changes would remove §§ 989.22 and 989.122, and references to producer districts in §§ 989.29(b)(2), 989.126(a) and 989.129.
 - iv. Amend § 989.38 to lower quorum requirements from 25 to 14.
2. Whether to amend § 989.29 to eliminate the requirement for separate

nominations for independent producers or producers affiliated with small cooperative marketing associations.

3. Whether to remove paragraph (a)(4) and the last part of paragraph (a)(5) from § 989.54, and to amend §§ 989.24 and 989.58 by adding language that would clarify that raisins that have been reconditioned, inspected, and certified as meeting the minimum grade shall be classified as standard raisins.

4. Whether to add §§ 989.63 and 989.64 to establish authorities regarding the acceptance of voluntary contributions, ownership rights of intellectual property, and the collection of rents/royalties from such intellectual property.

5. Whether any conforming changes need to be made as a result of the above proposed amendments. Conforming changes may also include correction of non-substantive, typographical errors.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof.

Material Issue No. 1—Committee Membership Size and Composition, Producer District Representation, and Quorum Requirements

Section 989.26 “Establishment and membership” should be amended to reduce the number of Committee members from 47 to 21. This amendment would decrease the number of producer members from 35 to 12 and handler members from 10 to 8. Further, § 989.26 should be amended to eliminate the designated cooperative bargaining association member position. The public member position would remain unchanged. Corresponding changes would reapportion producer and handler members in § 989.126 and remove the references to the cooperative bargaining association and cooperative bargaining association(s) officers or employees in § 989.30.

Additionally, §§ 989.26(c) and 989.126(a) should be amended to remove producer districts and to designate one unaffiliated independent producer member and alternate position on the Committee. This change would combine nominations for the current three districts into a single ballot for independent producer members and alternates and include an additional nomination for an unaffiliated independent producer member and alternate position. Corresponding changes would remove §§ 989.22 and 989.122, and references to producer districts in §§ 989.29(b)(2), 989.126(a) and 989.129.

Finally, § 989.38 “Procedure” should be amended to lower quorum requirements from 25 to 14.

The evidence of record is that the Committee has experienced an increase in Committee vacancies due to a substantial decline in the size of the California raisin industry. Lower levels of engagement from industry members have also been observed since the removal of volume regulation authority from the Order in 2018. The record further shows that the raisin industry’s decline is a result of volatile producer returns over the past two decades, and that industry members lost interest in attending Committee meetings after volume regulation authority was removed in 2018.

The Committee believes reducing Committee size and reapportioning membership, including the elimination of the designated cooperative bargaining association member seat and the removal of producer districts, would reduce Committee vacancies and improve attendance, provide a cost savings, increase administrative efficiencies, provide fair representation, and balance Committee membership with the overall size of the California raisin industry. The amendment to lower quorum requirements to align with the reduced Committee size would also aid in achieving those goals.

Currently, § 989.26 provides that Committee membership consist of 47 members, of whom 35 shall represent producers, 10 shall represent handlers, 1 shall represent the cooperative bargaining association, and 1 shall be a public member. For each member of the Committee there shall be an alternate member who shall have the same qualifications as the member for whom they represent as an alternate. The industry is comprised of three marketing segments: independent producers and handlers, a cooperative marketing association—Sun-Maid Growers of California (Sun-Maid), and a cooperative bargaining association—the Raisin Bargaining Association (RBA). Member representation, excluding all designated seats, is based on a proportional share system. Witnesses testified that this system ensures fair representation on the Committee by allocating producer and handler seats based on each marketing segment’s proportional share or contribution to total raisin acquisitions. The designated cooperative bargaining association member and public member seats are not based on proportional shares. Section 989.26(e) provides the cooperative bargaining association member shall be selected from the cooperative bargaining association(s)

and the public member shall be nominated by Committee members.

Proposal No. 1 would reduce the size of the Committee from 47 to 21 members. In addition, the proposal includes the elimination of the designated cooperative bargaining association member seat, the addition of an unaffiliated independent producer member seat, removal of producer districts, and lowering Committee quorum requirements. The proportional share system and requirement that each member have an alternate would remain unchanged. The restructured Committee would consist of the following:

- twelve (12) producer member seats (reduced from 35), of which one independent producer member seat would be allocated to an unaffiliated independent producer,
- eight (8) handler members seats (reduced from 10), and
- one (1) public member.

In addition, the quorum requirement would be reduced from 25 to 14.

The record shows the decline in the industry, the high percentage of Committee vacancies, and low attendance rates substantiate the proposed amendment to reduce Committee size. Several witnesses testified that the decline in the crop size and the number of producers has made it increasingly difficult to fill Committee seats. This has led to a number of issues with the Committee’s ability to effectively administer the program due to the large number of vacancies and low attendance.

Industry Decline

The economic viability of raisins produced from grapes grown in California has been on an unsustainable path for many years. Several witnesses testified to the significant decrease in raisin bearing acres, from 225,000 to 98,000, and the number of raisin producers, from 3,500 to 1,500, due to industry instability over the past two decades. Hearing evidence shows the decline is attributable to the various challenges the California raisin industry has faced since its peak in 2000 and to the different strategies that raisin producers have employed in an effort to mitigate the financial strain posed by such challenges. The record shows these challenges, including overproduction, foreign competition, changing consumer preferences, and overall high production costs have negatively impacted producer returns.

Overproduction and foreign competition have created a challenging environment for raisin producers, impacting their ability to achieve favorable returns. Hearing evidence

shows gradual increases in raisin production by foreign countries, who benefit from low production costs and government subsidies, diminished the California raisin industry’s world market share and depressed prices for domestic handlers and producers. Witnesses testified that the California raisin industry lost its pricing power in global markets after raisin production in foreign countries such as Turkey, Uzbekistan, and Afghanistan surpassed U.S. production and drove the prices of raisins down. For the California raisin industry, some export markets such as Europe, where the industry had established a strong foothold, are no longer available to U.S. raisin handlers because they cannot compete due to higher shipping costs. Further, one witness testified that until the 2000’s, the industry remained competitive despite increases in foreign production. Domestic raisin producers, however, experienced a sharp downturn in profitability after a four-year period of large crops that resulted in a tremendous surplus, market oversaturation, and reduced pricing. Thus, the California raisin industry, which once dominated the global market by producing over 50 percent of the world’s supply in the 1990s, now accounts for approximately just 8 percent of the world market share today.

The hearing record also shows consumer preferences have shifted away from raisins, furthering the decline in raisin demand. One witness testified that raisins are not as popular with younger generations, such as Millennials and Generation Z. Such changes in consumer preferences have contributed to decreases in demand and lower sales and revenue for producers, leading to declining production levels and diminished returns.

High production costs due to drought, labor shortage, and other factors have also contributed to less than favorable returns for raisin producers. Witnesses testified to rising labor costs, such as double-digit wage inflation mandated by the State of California, and labor shortages, particularly during harvest. These factors require producers to offer higher wages to attract or retain workers, and have systemically increased the cost of raisin production. In addition, rising input costs related to irrigation, fertilizer, environmental regulation, taxation, and multiple years of drought have also driven the cost of production higher. As such, cost increases have made raisin production more expensive, leading some producers to scale back or abandon raisin production altogether.

The record shows that the myriad of challenges faced by the California raisin industry has pushed many raisin producers to either sell their land or transition to more profitable crops. One witness testified that among the largest factors contributing to the industry's decline is producers pulling out vineyards due to insufficient producer returns. Another witness testified that the California raisin industry has shrunk over the years due to higher-value crops replacing raisins on farmland in the production area. The record suggests raisin producers have used these tactics, and other strategies, such as cutting production costs that inevitably led to greater decreases in production, to optimize returns. Overall, the increase in Committee vacancies and low attendance at meetings is attributable to the decrease in raisin production, and the number of raisin producers, as a result of declining demand, high production costs, and low grower returns.

The record shows the decline in the California raisin industry has directly

impacted the number of Committee vacancies as there are fewer producers in industry to draw from. Further, low attendance rates at Committee meetings are attributable to both the increase in Committee vacancies and to raisin producers becoming uninterested in Committee operations after the removal of volume regulation authority from the Order. The record further indicates that the Committee is the largest of all marketing orders, comprising 47 members and 47 alternates. However, witnesses testified that the Committee has increasingly struggled to fill member positions due to the significant decline in the number of producers and bearing acres in the past 20 years, and that this difficulty arises because the Committee did not downsize in response to the shrinking industry, leading to a rise in vacancies.

Committee Vacancies

Record evidence includes a data table from the Committee that highlights low levels of attendance and high vacancies during Committee meetings. The Committee's data, illustrated in Table 1,

a replication of exhibit 16 from the hearing, shows the attendance history for full Committee meetings conducted between August 2019 and June 2023. The Committee held 23 Committee meetings during this period, which appears in column 1. The date each meeting was held appears in column 2. The percentage of members present at each meeting appears in column 3 and is computed by dividing the total number of members voting at each meeting, which appears in column 4, by the total number of Committee seats (47). The total number of members in attendance at each meeting appears in column 5. The total number of alternate members voting at each meeting appears in column 6. The total number of alternates in attendance at each meeting appears in column 7, and the total number of vacant seats at each meeting appears in column 8. Witnesses testified that all Committee meetings are held in-person with an option for members and alternates to participate either by conference call or video.

BILLING CODE P

Table 1: Raisin Administrative Committee Full Committee Meeting Attendance History (August 2019 through June 2023)

#	Date of Meeting	% in attendance (i.e. 38/47 = 81%)	Total Voting (Members & Alternates) Attendance	Members in attendance	Voting Alternates in attendance	Total Alternates in attendance	Vacancies
1	8/15/2019	81%	38	36	2	15	14
2	10/24/2019	66%	31	24	7	14	14
3	4/29/2020	77%	36	30	6	15	17
4	6/24/2020	74%	35	30	5	8	17
5	7/29/2020	72%	34	32	2	8	17
6	8/18/2020	68%	32	25	7	13	17
7	9/16/2020	89%	42	39	3	19	16
8	10/7/2020	77%	36	35	1	9	17
9	1/27/2021	74%	35	32	3	12	15
10	3/31/2021	79%	37	33	4	14	18
11	6/30/2021	60%	28	23	5	13	21
12	8/18/2021	55%	26	22	4	14	21
13	10/6/2021	57%	27	24	3	7	15
14	12/1/2021	60%	28	26	2	8	15
15	1/26/2022	81%	38	36	2	11	15
16	3/30/2022	81%	38	36	2	11	15
17	6/29/2022	60%	28	27	1	5	17
18	8/17/2022	77%	36	31	5	11	18
19	10/5/2022	72%	34	27	7	13	19
20	1/25/2023	81%	38	37	1	12	20
21	4/12/2023	55%	26	25	1	8	20
22	5/10/2023	62%	29	27	2	10	20
23	6/28/2023	60%	28	22	6	10	21
Totals		1674%	760	679	81	260	399
Average		73%	33	30	4	11	17
Average % of Attendance (Avg/47)			70%	63%	7%	24%	37%

Shaded cells in columns 3 and 4 indicate lowest attendance.

Shaded cells in column 8 indicate Public Member/Alt not appointed at this time.

BILLING CODE C

Column 8 in Table 1 illustrates a gradual increase in Committee vacancies, from 14 to 21, for full Committee meetings held between August 2019 and June 2023. The Table further shows an average of 17 positions have remained vacant for approximately 4 years.

Low Attendance

The increase in Committee vacancies has also contributed to low attendance rates. Full Committee meetings with low attendance, between 26 to 28 members present, are highlighted in column 4 of Table 1. Dividing the number of highlighted cells (7) by the number of full Committee meetings held (23)

equates to an average low attendance rate of 30 percent for full Committee meetings held between August 2019 to June 2023.

Witnesses testified that for much of that time, initial member attendance at meetings was approximately 60 percent for full members and roughly 25 percent for alternates. These percentages suggest

that not only are there fewer producers in the industry, but those that remain are likely less interested in committing to long-term Committee service when faced with economic uncertainty and instability due to volatile producer returns.

Removal of Volume Regulation

On November 26, 2018, USDA removed all volume regulation and reserve pool authority after the United States Supreme Court, in *Horne v. USDA*, ruled that the application of the Order's reserve pool authority to the Horne's raisin operation was a taking under the Fifth Amendment to the United States Constitution.

Attendance rates started to decline when the industry removed the authority for volume regulation from the Order. Record evidence shows that Committee meetings were once filled with members when volume regulation was in effect. Witnesses testified that staff did not have to make phone calls and send text messages to get people into meetings because there were so many Committee actions that affected producers' and handlers' bottom-line. Members and alternates wanted to have their opinions heard and to vote on specific volume regulations and reserve pool recommendations and the economic repercussions that would result from them. Historically, given the impact that volume regulation had on the industry, Committee membership was intentionally established as the largest of all marketing orders with 47 members and 47 alternates to ensure equitable representation during the establishment of free and reserve percentages in Committee meetings.

Prior to its removal, volume regulation authorized the Committee to establish free and reserve percentages based on production levels and trade demand as a way to stabilize surplus by controlling the supply of California raisins. Under this regulation, a portion of total raisins produced would be free for handlers to acquire and dispose of in approved market channels, and the other portion would be held in reserve pools by the Committee. This prevented oversupply and volatile fluctuations in the market allowing raisin producers to sell a portion of their crop at a return above the cost of production. The other portion held in reserves was disposed by the Committee in different outlets under various reserve programs. Proceeds from the disposal of raisins held in reserves would be distributed to raisin producers when sold.

The contention with volume regulation stemmed from the disposal of raisins held in reserve. The hearing

record shows that raisin producers were not satisfied with the process whereby reserve raisins were sold in export channels. One witness testified that hundreds and hundreds of people attended meetings when volume regulation was being considered, but after the United States Supreme Court ruling that the reserve system was a taking, and the Order was subsequently amended to remove volume regulation authority, producers lost interest in attending meetings because there was no reserve program to discuss and vote on.

Quorum Requirements

Committee vacancies also increase the difficulty in achieving quorum at meetings with fewer members. Witnesses testified that the Committee often struggles to make quorum and staff must make phone calls to members the day of meetings to get attendance rates up. Further, record evidence shows one instance when quorum requirements were not met during the period shown on Table 1.

Currently under the Order, the quorum requirement is 25. It is a fixed number and is based on the number of Committee positions expected to be filled. Thus, unfilled Committee seats make it more difficult to reach quorum and increases the probability that quorum requirements may not be met when attendance levels are low. One witness testified that there were several meetings where they were barely enough members present to constitute a quorum and conduct Committee business. Another witness testified that the majority of vacant seats are allocated to independent producer alternates, and if these seats are not filled, the absence of a full member at a meeting increases the likelihood of not meeting quorum requirements due to there being no alternate to fill in for the absent member.

The record shows the Committee continued to struggle meeting quorum requirements despite ramping up outreach efforts. Witnesses testified that when quorum is not met, it reduces administrative effectiveness and efficiency and increases nonproductive costs, such as expenses associated with member travel and staff hours because full Committee meetings must be delayed and rescheduled.

Amendment 1—Reducing Committee Size

Reducing Committee size and reapportioning membership, including the elimination of the designated cooperative bargaining association member seat and the removal of

producer districts, along with lowering quorum requirements, would address the current issues concerning Committee vacancies, low attendance, and meeting quorum. Further, it would provide a cost savings, increase administrative efficiencies, continue to provide fair representation, and balance Committee membership with the overall size of the California raisin industry.

Decreasing the number of Committee seats would reduce the likelihood of position vacancies by making it easier to fill each seat. Table 1 shows an average of 41 members currently attend Committee meetings. Column 5 shows 30 full Committee members on average attend Committee meetings and column 7 shows an average of 11 alternate members, for a total of 41 members on average. Witnesses testified that reducing the committee size may help reduce Committee vacancies. Based on the current averages in Table 1, the Committee would have less difficulty filling 21 member and alternate seats.

Amendment 2—Lowering Quorum Requirements

This proposal also reduces quorum requirements from 25 to 14. Reducing quorum requirements is necessary to effectuate the proposed amendment, if implemented. The proposed quorum is 67 percent of voting membership (14 divided by 21 multiplied by 100). This is slightly higher than the current quorum which is 53 percent of voting membership (25 divided by 47 multiplied by 100). Witnesses testified that the higher voting percentage will provide for fair representation by ensuring both producer and handler members are in attendance at meetings to vote on formal recommendations. This also promotes transparency and representation by ensuring no single segment can dictate Committee operations and that all perspectives of the industry are considered when decisions are made. In addition, the probability of not meeting quorum requirements is also reduced with the smaller Committee, increasing administrative efficiencies, and providing a cost savings by decreasing the number of delayed and rescheduled meetings due to low attendance.

A reduced Committee size would also increase competitiveness in nominations and reduce nepotism. Witnesses testified that much of the industry is vertically integrated, where producers own or are employed by a packinghouse, making them handler-affiliated. In these situations, such a producer could occupy a producer or handler member seat, and in many instances it's a family member that

occupies the other seat. Thus, a smaller Committee size would reduce the chances of multiple family members serving due to increased competitiveness.

Amendment 3—Removing Producer Districts

Witnesses testified that many independent producer seats are filled with handler-affiliated producers and the addition of the unaffiliated independent producer member seat ensures fair representation by having a “true” producer on the Committee.

The evidence of record is that an unaffiliated independent producer member is a producer that has no ownership interest in a packinghouse. Such a producer would have no proprietary or employment affiliation to any cooperative marketing association, cooperative bargaining association, or a handler. In addition, in the event there are no qualified candidates to fill the unaffiliated independent producer member or alternate seats, this proposal also adds language to § 989.26 that ensures the designated unaffiliated member, and alternate seats are filled by any independent producer candidates not otherwise slated.

The removal of producer districts also ensures equitable representation on the Committee. Currently under the Order, three independent producer districts exist. All counties north of Fresno County, California, are represented in District No. 1, all counties south of Fresno County, California, are represented in District No. 2, and all of Fresno County, California, is represented in District No. 3. Independent producer members are apportioned as follows; one producer member each for Districts No. 1 and 2, and the remaining producer members to which independent and small cooperative producers are entitled in District No. 3. Separate nomination ballots are mailed to all three districts.

The record shows the decline in industry has directly impacted independent producer member nominations, leaving fewer eligible producers in some of the designated producer districts. Witnesses testified that the industry had more active producers competing for nominations before the decline. Witnesses further testified that the candidacy pool for independent producers has decreased, leading to continuous nominations of the same producers in Districts 1 and 2, resulting in inequitable representation in producer districts. One witness, identifying as a small producer, testified that this gives an unfair advantage to those much smaller producing regions

by providing automatic seats. This results in an imbalance where industry members in the larger District 3 have less representation, as they must compete for seats on the Committee. Meanwhile, producers in the smaller Districts 1 and 2 face less competition for a seat, giving them greater representation on the Committee that is disproportionate to their district size.

This proposed amendment would remove the requirement that independent producer members represent districts and would combine nominations for the three producer districts into one ballot instead of three individual ballots mailed to each district.

The record shows combining producer districts ensures fair representation. Witnesses testified that the removal of producer districts would increase competitiveness, allowing for a fair nomination process. This is because combining districts would expand the candidacy pool for each producer member position by increasing competition for nominations and would ensure all independent and small cooperative producers have an equal opportunity to be nominated. Combining districts would also lead to a reduced administrative burden and cost savings by reducing the number of separate nomination meetings required to be held and eliminating the tabulation of separate ballots for each district.

Further, this proposal would ensure independent producer member seats are filled in the event producer districts become too small to function adequately due to the significant decline in the number of producers in industry.

Amendment 4—Eliminating Cooperative Bargaining Association Member Seat

This proposal would also eliminate the designated cooperative bargaining association member seat from the restructured Committee. Some witnesses testified that the designated cooperative bargaining association member seat is no longer warranted after volume regulation was removed from the Order. Further, due to a significant decline in the RBA's raisin acquisition totals, a designated member seat would provide the RBA an outsized influence and perpetuate unequal representation on the Committee.

The evidence of record is that on August 14, 2022, the Committee voted 20 in support and 10 opposed on Proposals No. 1–3 and voted unanimously in favor of Proposal No. 4 when it was considered on August 16, 2023. Based on testimony, eight of the

ten members voting in opposition represented the RBA. Those members disagreed with the removal of the designated cooperative bargaining association member seat, but supported all other amendments proposed. One witness, representing the RBA, testified in opposition to the elimination of the designated cooperative bargaining association member seat at the hearing.

The RBA was established to provide California raisin producers with collective bargaining power when negotiating prices with handlers. Witnesses testified that, since the late 1940's, the industry was plagued with huge swings in production and low producer returns which led to the formation of the RBA. Under the RBA, producers leverage their collective strength to negotiate fair prices and ensure economic stability.

The record shows that successful collective bargaining requires strong industry representation and confidential pricing agreements. The witness representing the RBA testified that at one time the RBA represented approximately 40 percent of total raisin acquisitions, reflecting large industry representation. Several witnesses testified that the RBA manager was the only person who knew which handlers signed the pricing agreement, ensuring confidentiality. This would prevent free riders from benefiting from the RBA's agreements.

In 1967, volume regulation and Committee size were amended to provide inclusion and representation for the newly formed cooperative bargaining association, established in 1966. Committee size was increased by one member to represent the RBA because the preponderance of evidence, at that time, indicated the cooperative bargaining association had become a major entity in the raisin industry and should directly participate in marketing decisions.

Volume regulation was also modified to establish preliminary free percentages at an earlier date to give certainty as to the quantity to be released in free tonnage outlets, and to provide a basis for producers and handlers to negotiate an appropriate field price. Witnesses testified that the designated cooperative bargaining association member seat was reserved exclusively for the managerial officer of the RBA due to confidentiality of RBA pricing agreements and volume regulation.

Under volume regulation, not less than 65 percent of desirable free tonnage was released until the Committee had determined that field prices were firmly established, and open price contracts have been closed. Thus, a portion of free

tonnage was withheld until field prices were established, and the RBA manager was the only person that could supply the information as to whether or not the RBA had successfully bargained for a price.

The Committee also used the established field price negotiated by the RBA as a “base price” for export programs, such as the Raisin-Back or Cash-Back program. Witnesses testified, however, that these programs no longer exist after volume regulation authority was removed from the Order and, therefore, the environment in which the RBA manager was necessary to participate in Committee deliberations on volume regulation no longer exists.

Further, the record shows the RBA has diminished in influence due to a decline in membership and raisin acquisition totals. Such a decline in acquisition totals no longer warrants a designated seat based on proportional acquisition totals. The witness representing the RBA explained that the RBA faced many challenges with membership, such as compliance issues and contract violations, and has lost membership in part due to the substantial decline in the number of producers and acreage industrywide. The witness testified that one of the biggest factors contributing to low RBA membership is producers pulling raisin acreage out of production due to insufficient returns over the past 7 to 10 years, which has weakened representation and diminished raisin acquisitions under the RBA.

The record also shows the RBA faced difficulty negotiating prices due to foreign competitors depressing the price of raisins. The RBA witness testified to economic hardships due to foreign competition with production costs that are 20 to 30 percent lower. This weakens the RBA’s position to bargain because foreign countries are selling raisins at a lower price due to their low production costs. The witness further explained that if the RBA cannot get a fair price, it is disastrous for raisin producers and further accelerates the rate that producer pull raisins out of production. Additionally, the witness explained that more RBA members and increased member tonnage would provide greater leverage to negotiate, but overall acquisition totals have gone down. The record shows total RBA raisin acquisitions declined from 30 percent of the total industry acquisitions to 12.5 percent in the past 8 years.

Overall, witnesses testified that the elimination of the designated cooperative bargaining association seat would provide fair and equitable representation on the Committee

because membership would be based on a proportional share system. The record further shows that RBA producers will maintain seats on the Committee based on their proportional share of total acquisitions and could gain more seats if their total raisin acquisitions were to increase. This means that each industry marketing segment represented would be equal or proportionate to total raisins produced and/or acquired. Thus, the number of seats allocated to the RBA would be solely based on their share of total raisin acquisitions, similarly to other industry groups on the Committee. Further, if the cooperative bargaining association designated seat were to remain in the restructured Committee, it would provide an outsized or unequal representation because the cooperative bargaining association would be over-represented proportionally to the other industry segments on the Committee.

The witness representing the RBA contended that if the designated seat is eliminated, it would further diminish RBA’s ability to work on the behalf of raisin producers, that the Committee structure would be too overlaid with handler representation because the cooperative marketing association, Sun-Maid, would have 50 percent representation on the Committee, and that the RBA should continue to be involved in marketing discussions because they represent independent small producers. The designated cooperative bargaining association member seat, however, is not justified based on record evidence. With the removal of volume regulation authority from the Order and the decline in RBA member representation and acquisition totals, the cooperative bargaining association no longer warrants a designated seat.

Additionally, the record shows that much of the industry is vertically integrated, with many entities engaged as both a producer and a handler. The proposed restructured Committee accounts for and reflects these changes in industry composition over the years and the addition of the unaffiliated independent producer member seat would ensure independent producers have a voice on the Committee. The seat also helps to ensure the majority of Committee members represent producers and that there isn’t an unfair balance favoring handler representation on the Committee. Finally, all Committee meetings are open to the public and the RBA could continue to participate in Committee deliberations through allocated producer member seats.

The RBA witness discussed two alternatives for a new Committee size

and structure on the record. The witness suggested that Committee size should not be based on acquisition totals, that every handler should have a seat, and each segment of producers would choose how many producer representatives would serve on the Committee. AMS does not consider this a viable alternative because the witness did not provide any specifics for a proposed restructuring of the Committee. Further, since there are approximately 17 handlers, the alternative would likely result in a Committee size larger than the current size of the Committee. The second alternative proposed by the witness included keeping the designated seat for a total of 22 members and alternates. This is also not a viable alternative because the designated seat would provide the RBA with unequitable representation on the Committee because the seat would not be based on any proportional share of industry acquisitions.

Additionally, the hearing record shows that the Committee discussed several alternatives to the proposed Committee structure over several years before ultimately deciding 21 members and alternates would be an appropriate Committee size. Witnesses testified the Rulemaking Workgroup and Administrative Issues Subcommittee held in-depth discussions and reviewed a multitude of scenarios, proposals, and several reduction options, including 70, 60, and 50 percent size reductions in approximately 12 meetings between January 2020 and July 2023. Finally, one witness testified that the Committee size of 47 members and alternates was established in an era in the late 1940s when industry had approximately 5,000 to 7,000 producers. The current proposal to reduce the Committee size, given the diminished industry make-up, would actually create a Committee that is more representative of producers than as compared to the Committee historically. Thus, the proposed amendments discussed under Material Issue 1 would better align Committee membership with the overall size and configuration of the current California raisin industry by ensuring Committee composition is balanced with the size and needs of the industry.

For the reason stated above, § 989.26 “Establishment and membership” should be amended to reduce the number of Committee members from 47 to 21. Further, § 989.26 should be amended to eliminate the designated cooperative bargaining association member position. Sections 989.26(c) and 989.126(a)(1) should be amended to remove producer districts and to add a

new designated seat for an unaffiliated independent producer member, and § 989.38 “Procedure” should be amended to lower quorum requirements from 25 to 14.

Material Issue No. 2—Nomination Procedures for Independent and Small Cooperative Producers

Section 989.29 “Initial members and nomination of successor members” should be amended to eliminate the requirement for separate nominations for independent producers or producers affiliated with small cooperative marketing associations. Currently no small cooperative marketing association exists within industry. This proposed amendment would remove the requirement that independent producers must be nominated specifically for either a full Committee seat or an alternate member seat. Further, in addition to the proposed amendment that would remove producer district representation by combining nominees for three separate districts into a single ballot, this amendment would eliminate the separate tabulation procedures for full member and alternate member nominations. The notification of nomination meetings would remain unchanged.

The evidence of record is that the Order was amended in 2018 to require separate nomination procedures as a method to increase independent producer nominations by ensuring independent producers interested in serving only as an alternate were not nominated as full members. At that time, the Committee believed providing this additional flexibility for independent producer nominations would encourage participation. However, a witness testified that separate nominations actually discouraged participation on the Committee. Witnesses testified that the number of alternate members attending meetings declined because nominees may have been under the notion that alternates did not need to attend every meeting, fueling low attendance rates and absenteeism.

The record further shows that the number of independent producers nominated did not increase but instead declined, evidenced by the increase in the number of vacant alternate positions shown in table 1 column 8. Witnesses testified that both full members and alternate members should attend meetings to stay informed on industry issues that may require a future vote, and that reverting back to the original nomination procedures for independent producers would streamline the nomination process and ensure alternate

seats are filled. The proposed nomination process would be streamlined because there would be one tabulation of votes instead of two separate tabulations, one for full members and one for alternate members. The Committee also believes that nominations would not be necessary with a smaller Committee size because with fewer seats, competitiveness in nominations would increase. Additionally, current average attendance rates in Table 1 show approximately 41 members would likely be able to serve. Table 1 column 5 shows 30 full Committee members on average attend Committee meetings and column 7 shows an average of 11 alternate members, for a total of 41 members on average.

This proposed amendment would remove language describing separate nomination procedures and add language stipulating one tabulation of ballots according to the highest number of votes for full member and alternate seats. With this revised process, an independent producer receiving the highest number of votes would be designated as the first independent producer member nominee. The producer receiving the second highest number of votes would be designated as the second independent producer member nominee. This tabulation process would continue until all independent producer member seats are nominated. The nominee then receiving the next highest number of votes would be designated as an alternate member nominee, with this process continuing until all seats are filled.

For the reasons stated above, § 989.29 “Initial members and nomination of successor members” should be amended to eliminate the requirement for separate nominations for independent producers or producers affiliated with small cooperative marketing associations.

Material Issue No. 3—Marketing Policy and Quality Standards for Reconditioned Raisins

Section 989.54(a) “Marketing Policy” should be amended to remove factor number 4 “An estimated desirable carryout at the end of the crop year;” and the last part of factor number 5 “, considering the estimated world raisin supply and demand situation.”

Sections 989.24 “Standard raisins, off-grade raisins, other failing raisins, and raisin residual material” and 989.58 “Natural condition raisins” should be amended to add language clarifying the quality of successfully reconditioned raisins as standard raisins. This would add language that clarifies that

successfully reconditioned raisins that meet the Order’s minimum grade, quality, and condition standards are “standard raisins.”

Marketing Policy

The evidence of record is that factor number 4 and the latter portion of factor number 5 are no longer necessary factors to consider in the development of the annual marketing policy due to the removal of volume regulation authority from the Order. Additionally, the record shows the report relied upon to determine the estimated world raisin supply and demand under factor 5 is no longer published and that it would be cost prohibitive to solicit similar information from other sources. The Committee believes that factor 4 and part of factor 5 are market determinants no longer considered by the Committee and removal would increase administrative efficiencies by lessening the administrative burden and costs associated with researching and assembling data that is not needed.

The record shows factor number 4 and part of factor number 5 are unnecessary marketing policy considerations without volume regulation. Witnesses testified that the Committee has not considered a “desirable carryout” listed under Factor 4 since 2019. This is because the “desirable carryout” is the free tonnage inventory at the end of a crop year that would be considered desirable to carry over into the succeeding crop year to maintain continuity of sales until new crop raisins had become available. Witnesses also testified that the information for the latter part of factor 5 was obtained from USDA’s National Agricultural Statistics Service (NASS). NASS, however, discontinued its “Raisins: World Market and Trade Report”, in 2019. Further, the consideration of world raisin supply and demand was primarily to aid in the estimation of probable export market requirements for reserve raisins during a crop year under volume regulation. The Committee no longer establishes free and reserve tonnage percentages, thus factor number 4 “An estimated desirable carryout at the end of the crop year;” and the last part of factor number 5 “, considering the estimated world raisin supply and demand situation” are unnecessary under the current administration of the Order.

Additionally, record evidence shows that reports on world supply and demand may be obtained from other sources. Witnesses testified however, that such reports are expensive and, again, unnecessary after the removal of volume regulation authority from the

Order. Removing factor 4 and the latter part of factor 5 would allow the Committee to focus on pertinent factors to be considered in formulating its marketing policy, instead of considering factors the Committee believes are unnecessary, thereby reducing administrative burden and increasing efficiency. For the reasons stated above, § 989.54(a) "Marketing Policy" factor number 4 "An estimated desirable carryout at the end of the crop year;" and the latter part of factor number 5 "considering the estimated world raisin supply and demand situation" should be removed.

Reconditioned Raisins

The evidence of record is that negative impressions about reconditioned raisins has adversely impacted the sales of such reconditioned fruit. Successfully reconditioned raisins meeting minimum grade, quality, and condition standards under the Order, however, should not be differentiated from other standard raisins. The Committee believes the additional language clarifying the quality of reconditioned raisins as standard raisins would improve efficiencies by streamlining the sales process. Further, this language would help to overcome existing obstacles experienced in the marketing of California raisins and achieve increased sales and sustained growth.

To dispel misconceptions about the quality of reconditioned raisins, this proposal would add a paragraph to § 989.58 explaining that all raisins which have been inspected and certified as meeting the minimum grade, quality, and condition standards, whether upon incoming inspection or upon later inspection after reconditioning, shall be determined to be standard raisins, labeled accordingly, and shall be eligible for commercial disposition as natural condition raisins or packed raisins in normal outlets. Further § 989.24(b) would be amended to clarify that off-grade raisins successfully reconditioned are standard raisins.

The record shows that handlers are adjusting to the decline in raisin production over the past two decades by optimizing sales to meet customer demand. One witness testified there is a greater need to eliminate the differentiation and stigma associated with reconditioned raisins because the volume of production has declined. There is a negative impression in the raisin market that the quality of reconditioned raisins that have been reworked and reinspected to meet the Order's minimum grade requirements, however, is somehow diminished. This

is evidenced by past sale specifications, from both government and outside customer requests, that the product cannot be reconditioned fruit.

Negative impressions associated with reconditioned raisins often revolve around concerns regarding their perceived inferior quality compared to non-reconditioned raisins that meet minimum grade requirements. The record shows, however, that reconditioning is the process of removing defective raisins from a lot, with the end result being a lot comprised of natural condition raisins that meet the Order's requirements. Currently, raisins that fail incoming inspections, or other off-grade raisins, are either disposed in eligible non-normal outlets, returned to the producer, or reconditioned. Witnesses testified that most off-grade raisins are reconditioned by the handler, but sometimes they are returned to producers for reconditioning.

Witnesses further testified that the negative label attached to reconditioned raisins stems from the misconception about the reconditioning process and final product. Witnesses explained that handlers apply different reconditioning processes, ranging from minimally invasive to more intense processes. Such processes are highly dependent on the defects identified within a specified lot. Minimal processes include shaking or vibrating raisins on a conveyor system to remove foreign material or drying raisins with excessive moisture on trays to an acceptable level. A more intense process includes washing and drying to remove moldy or fermented raisins. During this process raisins are placed in a hot water bath that travels along augers and mold belts, removing defective raisins. Raisins that remain are then transferred to a tray and re-dried. Essentially, all reconditioning processes remove defective raisins to improve the grade and quality of the lot to meet incoming inspection requirements. Further, off-grade raisins returned to the producer and reconditioned by them before being shipped back to the handler are not classified as reconditioned raisins. Witnesses testified that raisins reconditioned on producer premises have no designation that the lot was reconditioned, thus including language that clarifies that successfully reconditioned raisins are standard raisins provides for fair marketing practices. Further, the record shows that reconditioning techniques have improved over the years.

Witnesses also testified that the negative misconception of reconditioned raisins is from an outdated categorization for

reconditioned fruit when volume regulation was authorized under the Order. Under volume regulation, raisins reconditioned by handlers were held in a separate reserve pool, and at that time, handlers didn't always successfully recondition product held in the pool. Witnesses testified that today, processors must ensure raisins meet the Order's minimum grade requirements, because outlets under volume regulation were removed from the Order and no reserve pool for reconditioned raisins currently exists.

The record shows the addition of clarifying language to the Order would help to dispel the negative perception associated with reconditioned raisins, streamlining the sales of such fruit by reducing unnecessary friction points in the purchase of reconditioned raisins. Additionally, the USDA specifications for commodity purchases no longer distinguish between reconditioned and non-reconditioned raisins that meet minimum grade requirements. For the reasons stated above, §§ 989.24 "Standard raisins, off-grade raisins, other failing raisins, and raisin residual material" and 989.58 "Natural condition raisins" should be amended to add language clarifying the quality of successfully reconditioned raisins as standard raisins.

Material Issue No. 4—Contribution Authority and Patent/Trademark Authority

Sections §§ 989.63 "Contributions" and 989.64 "Patents, copyrights, trademarks, inventions, product formulations, and publications" should be added to establish authority to accept voluntary contributions and authority related to the ownership of, and rights to, intellectual property and the collection of rents/royalties from the same. This new authority would also provide directions for disposition of any intellectual property developed through funds received by the Committee should the Order be terminated.

This would allow the Committee to accept voluntary contributions that would be free from any encumbrances by the donor, and to develop intellectual property, including patents, copyrights, trademarks, inventions, product formulations, or publications, through the use of Order funds. Additionally, such funds, including funds received from the licensing or use of intellectual property developed, shall only be used to pay expenses authorized under the Order. Further, all intellectual property developed through the use of funds received by the Committee would be the property of the U.S. government. Ownership and related rights of

intellectual property developed through funds collected by the Committee and funds contributed by another organization or person, would be determined by agreement between the Committee and the person or organization contributing funds towards the development of such intellectual property stipulating the above. Similarly, should any intellectual property be licensed to the Committee, the related rights to such licensure would be determined by agreement between the Committee and the person or organization permitting licensure. The Committee believes the addition of authorities to receive voluntary contributions and to develop intellectual property under the Order would generate revenue for the industry through the marketing of California raisins and provide funding for additional research and promotion and other activities under the Order.

The evidence of record is that the Committee may soon enter into a sublicensing agreement with the California Department of Food and Agriculture (CDFA) for intellectual property rights to the California Dancing Raisins after film producers interested in remaking a movie about the characters contacted the Committee.

The CDFA is the owner of the intellectual property rights to the California Dancing Raisins. Witnesses testified that the characters were developed under the California State Marketing Order by the California Raisin Marketing Board (CRMB). The CRMB, however, was subsequently terminated and ownership of all intellectual property under the CRMB reverted to the State of California. The CDFA is currently seeking to sublicense, or transfer, the characters, and other intellectual property, to the Committee. Such arrangement would be by a separate agreement between the parties.

Witnesses testified that voluntary contribution authority would allow the Committee to receive funds if the characters were to be sublicensed in the future. Currently, the Order does not include provisions that enable the Committee to receive and use funds, such as donations, gifts, or contributions from individuals, businesses, or other entities. This proposed amendment would provide the authority to accept voluntary contributions, such as rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of intellectual property. Witnesses also testified that the amendments would solidify the authority to use the characters and avoid future litigation.

The record shows that the addition of voluntary contributions and intellectual property is not uncommon. Witnesses testified that most marketing orders have developed their own logos and sublicense them out for use. Further, many research and promotion programs include language pertaining to voluntary contributions. Witnesses also testified that the addition of voluntary contributions and intellectual property rights has the broadest of industry support with almost total unanimity.

Additionally, the proposed amendments would not only be used for the California Dancing Raisins specifically, but it would also create the opportunity for the industry to benefit from the development of intellectual property moving forward. The language related to the ownership and rights of intellectual property developed under the Order would provide that the Committee may develop intellectual property in the future. This may lead to brand recognition, increases in consumer demand, better returns, and greater market share, making California raisins more competitive worldwide.

For the reason stated above, §§ 989.63 “Contributions” and 989.64 “Patents, copyrights, trademarks, inventions, product formulations, and publications” should be added to establish authority to accept voluntary contributions and authority related to the ownership of, and rights to, intellectual property and the collection of rents/royalties from the same.

Material Issue No. 5—USDA Conforming Change

Based on record evidence, USDA is recommending the following conforming change to the Order; revise § 989.129 to replace the word “ballot” with “vote.” USDA is also recommending minor punctuation changes to § 989.64 for clarity and readability.

USDA proposes to revise § 989.129 to replace the word “ballot” with “vote.” The word “ballot” replaced “vote” as part of the Order amendment in 2018 that separated nomination procedures for independent producers. Material issue No. 2 proposes to undo the requirement for separate nomination procedures. This proposal would revert the text back to its original language before separate nominations were implemented in the 2018 amendment.

USDA proposes to make minor punctuation changes to § 989.64 for clarity and readability. These changes would not change the meaning of the section. USDA proposes to add a semicolon after the last reference to “Committee” in § 989.64(a) and delete

the comma after “publication” in § 989.64(d).

Small Business Considerations

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit.

According to the hearing transcript, there are approximately 1,500 producers of California raisins. According to NASS data presented at the hearing, the total value of production for the 2022/23 crop year of raisins was \$381,780,000. Taking the total value of production for raisins and dividing it by the total number of raisin producers provides a return per producer of \$254,520. Small agricultural producers of raisins are defined by the Small Business Administration (SBA) as those having annual receipts equal to or less than \$4.0 million (NAICS code 111332, Grape Vineyards) (13 CFR 121.201). Therefore, a majority of raisin producers would be considered small entities under SBA’s standards.

According to the record, there were 17 handlers for the 2022–2023 crop year. Small agricultural service firms are defined as those whose annual receipts are equal to or less than \$34.0 million (NAICS code 115114, Postharvest Crop Activities) (13 CFR 121.201). To make a similar computation for handlers, the first step is to estimate a representative handler price received per pound for packaged raisins. Recent USDA purchases under the Commodity Procurement Program provide such an estimate. For the most recent raisin crop year used by the Committee (August 2022–July 2023), the average price paid for packaged raisins purchased by the USDA for food assistance programs was \$1.56 per pound. The annual receipts for handlers can be calculated by taking the USDA average purchase price and multiplying it by the total number of shipments as reported by the Committee for the 2022–2023 crop year ($\$1.56 \times 414,898,000 \text{ LB}$) which equals \$647,240,880. Taking the calculation for the annual receipts by handlers and dividing by the number of handlers provides an estimated annual receipt per handler (\$647,240,880 divided by 17), which equals \$38,072,993. Based on

the SBA definition of an agricultural service firm having less than \$34 million in annual receipts, there is a mix of both large and small raisin handlers.

The production area regulated under the Order covers the State of California. Acreage devoted to raisin production in the production area has declined in recent years. According to data presented at the hearing, bearing acreage for raisins reached a high of 280,000 acres during the 2000–2001 crop year. Since then, bearing acreage for raisins has decreased almost 53 percent to 133,000 in 2021–2022. Total production of raisins reached a high during the 2000–2001 crop year of 2,921,000 tons (green tons) but has decreased 65 percent to a total production of raisins of 1,010,000 tons in 2021–2022.

During the hearing held February 13 and 14, 2024, interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments to the Order on small businesses. The evidence presented at the hearing shows that none of the proposed amendments would have any burdensome effects on small agricultural producers or firms.

Estimated Economic Impact of Amending Committee Membership Size and Composition

The proposal described under Material Issue No. 1 would amend § 989.26 by reducing Committee membership from 47 to 21 members. Corresponding changes would also be made to § 989.126. The proposal would also remove producer district representation in § 989.26(c) and add an unaffiliated independent producer member seat to § 989.126(a)(1). Corresponding changes would also remove §§ 989.22 and 989.122 and references to producer districts in §§ 989.29(b)(2), 989.126(a), and 989.129. In addition, Proposal No. 1 would eliminate the designated bargaining association seat in § 989.26. Corresponding changes would also remove the reference to the bargaining association position in § 989.30. Lastly, Proposal No. 1 would amend § 989.26 by lowering quorum requirements from 25 to 14.

Witnesses supported this proposal and stated that reducing the size of the Committee would make conducting business more efficient. These witnesses' statements are supported by the data collected by NASS showing that bearing acreage for raisins has decreased almost 53 percent since the 2000–2001 season.

Currently, the Committee is structured to have 47 members and 47 alternates, where quorum is met when at least 25 members attend. A witness testified that, from April 2019 through June 2023, Committee meeting participation averages only 33 out of the 47 members in attendance. Witnesses testified that the number of raisin producers has declined from approximately 3,500 during the 2000–2001 season to approximately 1,500 during the 2022–2023 season. Reducing the number of members on the Committee will bring representation into balance with the overall size of the industry.

For the reasons described above, it is determined that the proposed amendment would benefit industry participants and improve administration of the order. The costs of implementing this proposal would be minimal, if any, and may even create efficiencies that would reduce administrative costs.

Estimated Economic Impact of Removing Separate Nomination Procedures

The proposal described under Material Issue No. 2 would amend § 989.29 to eliminate the requirement for separate nominations for independent producers or producers affiliated with small cooperative marketing associations.

Currently, the Committee has difficulty filling Committee seats designated for independent producer members and independent producer alternate members. Independent producer alternate member seats have gone unfilled for several consecutive years.

According to witness testimony, the purpose of the proposal is to eliminate the requirements for separate nominations for independent producers and create greater competition for all Committee positions. When the raisin industry had more producers, the Committee believed designating separate nominations for independent producers ensured that independent producers' concerns were part of Committee discussions. As the raisin industry has evolved, separate nominations for independent producers have fueled low attendance rates and absenteeism at Committee meetings.

In conclusion, it is determined that the benefits of eliminating the requirements for separate nominations for independent producers would outweigh any costs associated with the implementation of the proposed amendment.

Estimated Economic Impact of Updating Marketing Policy and Quality Standards for Reconditioned Raisins

The proposal described under Material Issue No. 3 would, in § 989.54(a), remove factor number 4 “An estimated desirable carryout at the end of the crop year;” and the last part of factor number 5, “, considering the estimated world raisin supply and demand situation”. Proposal No. 3 would also amend §§ 989.24 and 989.58 by adding language to clarify the quality of reconditioned raisins as “standard raisins.”

Currently, many customers believe reconditioned raisins differ from raisins that were not reconditioned, even though both raisins have met the same quality standard. The Committee believes that there is an impression in the raisin market that the quality level of reconditioned raisins is lower than standard raisins. Clarifying standard raisins as any raisins that have been inspected and meet the Order's minimum requirements, regardless of whether the fruit has been reconditioned or not, would remove any negative quality impression that is associated with reconditioned raisins.

According to a witness, the proposed amendment would streamline the sales process and would have a positive impact for raisin handlers and producers. Currently, USDA does not distinguish between reconditioned or standard raisins when purchasing for feeding programs.

It is determined that the benefits gained from implementing this proposal would outweigh additional implementation costs incurred, if any.

Estimated Economic Impact for Adding Contribution Authority and Patent/Trademark Authority

The proposal described under Material Issue 4 would add § 989.63 to establish the authority to accept voluntary contributions and add § 989.64 to establish authority related to ownership of, and rights to, intellectual property and add authority for the collection of rents/royalties from the same.

The Order does not currently allow for the Committee to accept voluntary contributions or have ownership of, and rights to, intellectual property. This proposal would allow for the Committee to generate additional income outside the collection of handler assessments.

According to a witness, the Committee has been approached recently with the opportunity to generate revenue from the trademarked Dancing Raisins. Adding the authority

to own, and to exercise the rights of, intellectual property would allow the Committee to receive income from patents, copyrights, trademarks, inventions, publications, or product formulations. Such authority would allow the Committee to collect additional income from the Dancing Raisins and any other intellectual property owned or controlled by the Committee. The additional income could benefit the raisin industry by, for instance, supporting future research as determined by the Committee.

For the reasons described above, it is determined that any additional costs incurred for this proposal would be outweighed by the increased flexibility for the industry to respond to a changing global marketplace.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. These amendments are intended to improve the operation and administration of the Order and to assist in the marketing of California raisins.

Committee meetings regarding these proposals, as well as the hearing date and location, were widely publicized throughout the California raisin industry, and all interested persons were invited to attend the meetings and the hearing to participate in Committee deliberations on all issues. All Committee meetings, and the hearing, were public forums, and all entities, both large and small, were able to express views on these issues. Interested persons are invited to submit information on the regulatory impacts of this action on small businesses.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Paperwork Reduction Act

Current information collection requirements that are part of the Federal marketing order for California raisins (7 CFR part 984) are approved under OMB No. 0581–0178 Vegetables and Specialty Crops. Some changes in those requirements are anticipated as a result of this proceeding. Such changes would be submitted to OMB for approval.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

Civil Justice Reform

The amendments to the Order proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposal.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of entry of the ruling.

Rulings on Briefs of Interested Persons

No briefs were filed. Proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth in this recommended decision. To the extent that the suggested findings and conclusions filed by interested persons are inconsistent with the findings and conclusions of this recommended decision, the requests to make such findings or to reach such conclusions are denied.

General Findings

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing agreement and order and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(1) The marketing order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The marketing order, as amended, and as hereby proposed to be further amended, regulates the handling of

raisins produced from grapes grown in the production area (California) in the same manner as, and is applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing order upon which a hearing has been held;

(3) The marketing order, as amended, and as hereby proposed to be further amended, is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing order, as amended, and as hereby proposed to be further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of raisins grown in the production area; and

(5) All handling of raisins grown in the production area as defined in the marketing order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written exceptions received within the comment period will be considered, and a producer referendum may be conducted before any of these proposals are implemented.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

Recommended Further Amendment of the Marketing Order

For the reasons set out in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 989 as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

■ 1. The authority citation for part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 989.22 [Removed and Reserved]

■ 2. Remove and reserve § 989.22.

■ 3. Amend § 989.24 by revising paragraph (b) to read as follows:

§ 989.24 Standard raisins, off-grade raisins, other falling raisins, and raisin residual material.

* * * * *

(b) *Off-grade raisins* means raisins which do not meet the then effective minimum grade and condition standards for natural condition raisins: *Provided*, That raisins which are certified as off-grade raisins shall continue to be such until successfully reconditioned as standard raisins or become "other failing raisins."

* * * * *

■ 4. Revise § 989.26 to read as follows:

§ 989.26 Establishment and membership.

A Raisin Administrative Committee is hereby established consisting of 21 members of whom 12 shall represent producers, 8 shall represent handlers and 1 shall be a public member.

(a) The producer members shall be selected as follows:

(1) Producer members representing the cooperative marketing association(s) shall be members of such association(s) engaged in the handling of raisins, each of which acquired not less than 10 percent of the total raisin acquisitions during the preceding crop year, and those members shall be equal to the product, rounded to the nearest whole number, obtained by multiplying 12 by the ratio the cooperative marketing association(s) raisin acquisitions are to the acquisitions of all handlers during the preceding crop year. (2) Producer members representing cooperative bargaining association(s) shall be members of such association(s), and the number of those members shall be equal to the product, rounded to the nearest whole number, obtained by multiplying 12 by the ratio the raisins acquired by handlers from bargaining association members are to the total acquisitions of all handlers during the preceding crop year.

(3) All other producer members, who shall not be members of a cooperative bargaining association(s), cooperative marketing association(s) engaged in the handling of raisins which acquired 10 percent or more of the total acquisitions during the preceding crop year, nor sold for cash to cooperative marketing association(s), shall represent all producers not defined in paragraphs (a)(1) or (2) of this section and shall be selected as designated in the rules and regulations.

(b) The handler members shall be divided into two groups and include the following:

(1) Handler members shall be selected from and represent cooperative marketing association(s) engaged in the handling of raisins each of which acquired not less than 10 percent of the total raisin acquisitions during the preceding crop year, and the number of those members shall be equal to the

product, rounded to the nearest whole number, obtained by multiplying 8 by the ratio of the cooperative marketing association(s) raisin acquisitions are to the total acquisitions of all handlers during the preceding crop year.

(2) The remaining handler members shall be selected from and represent all other handlers, which would include all independent handlers and small cooperative marketing association(s) who acquired less than 10 percent of the total raisin acquisitions during the preceding crop year. Handler nominees for this group shall be nominated by all handlers in the group in a manner determined by the Committee, with the approval of the Secretary, and specified in the rules and regulations.

(c) The public member shall be nominated by the Committee and selected by the Secretary as public member.

(d) For each member of the Committee there shall be an alternate member who shall have the same qualifications as the member for whom they are an alternate.

■ 5. Amend § 989.29 by revising paragraphs (a) and (b)(1) and (2) to read as follows:

§ 989.29 Initial members and nomination of successor members.

(a) *Initial members.* Members and alternate members of the Committee serving immediately prior to the effective date of this amended subpart shall, if thereafter they are eligible, serve on the Committee until April 30, 2026, and until their respective successors have been selected and qualified.

(b) * * *

(1) The Committee shall notify the cooperative marketing association(s) engaged in handling not less than 10 percent of the total raisin acquisitions during the preceding crop year, and cooperative bargaining association(s), of the date by which nominations to fill member and alternate member positions shall be made. The Committee shall give reasonable publicity of a meeting or meetings of producers who are not members of cooperative bargaining association(s), or cooperative marketing association(s) which handled 10 percent or more of the total raisin acquisitions during the preceding crop year, and of independent handlers and cooperative marketing association(s) who handled less than 10 percent of the total raisin acquisitions during the preceding crop year, for the purpose of making nominations to fill the member and alternate member positions prescribed in § 989.26 (a)(3) and (b): *Provided*, That member and alternate member nominations by independent handlers and cooperative marketing

association(s) who acquired less than 10 percent of the total raisin acquisitions during the preceding crop year may be made to the Committee by mail in lieu of meetings.

(2)(i) Any producer representing independent producers and producers who are affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year must have produced grapes which were made into raisins.

(ii) Each such producer whose name is offered in nomination to represent on the Committee independent producers or producers who are affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year shall be given the opportunity to provide the Committee a short statement outlining qualifications and desire to serve if selected. These brief statements, together with a ballot and voting instructions, shall be mailed to all independent producers and producers who are affiliated with cooperative marketing associations handling less than 10 percent of the total raisin acquisitions during the preceding crop year of record with the Committee. The producer candidate receiving the highest number of votes shall be designated as the first member nominee for a member position in which they qualify, the second highest shall be designated as the second member nominee for a member position which they qualify, until nominees for all producer member positions have been filled. Similarly, after all producer member positions have been filled, the producer candidate receiving the highest number of votes shall be designated as the first alternate member nominee for a member position in which they qualify, the second highest shall be designated as the second alternate member nominee for a member position in which they qualify, until nominees for all alternate member positions have been filled.

(iii) In the event there are no qualified candidates for any designated producer member or alternate member positions, such positions may be filled by other producer candidates not otherwise nominated for a position.

(iv) Each independent producer or producer affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year shall cast only one vote with respect to each position for which nominations are to be made. Write-in candidates shall be accepted. The person receiving the most votes with

respect to each position to be filled, in accordance with paragraph (b)(2)(ii) and (iii) of this section, shall be the person to be certified to the Secretary as the nominee. The Committee may, subject to the approval of the Secretary, establish rules and regulations to effectuate this section.

* * * * *

■ 6. Revise § 989.30 to read as follows:

§ 989.30 Selection.

The Secretary shall select producer, handler, and public members and alternate members in the number specified in § 989.26, as applicable, and with the qualifications specified in § 989.27. Such selections may be made from nominations certified pursuant to § 989.29 or from other eligible producers, or handlers.

§ 989.38 [Amended]

■ 7. Amend § 989.38 by removing the numeral “25” and adding in its place the numeral “14”.

§ 989.54 [Amended]

■ 8. Amend § 989.54 by:

- a. Removing paragraph (a)(4);
- b. Redesignating paragraphs (a)(5) through (9) as paragraphs (a)(4) through (8), respectively; and
- c. Removing in newly redesignated paragraph (a)(4), the text “, considering the estimated world raisin supply and demand situation”.

■ 9. Amend § 989.58 by adding paragraph (g) to read as follows:

§ 989.58 Natural condition raisins.

* * * * *

(g) *Quality reconditioned raisins.* All raisins which have been inspected and certified as meeting the minimum grade, quality, and condition standards established pursuant to this section, whether upon incoming inspection or upon later inspection after reconditioning, shall be determined to be standard raisins, labelled accordingly, and shall be eligible for commercial disposition as natural condition raisins or packed raisins in normal outlets.

■ 10. Add § 989.63 to read as follows:

§ 989.63 Contributions.

The Committee may accept voluntary contributions: *Provided*, That such contributions shall only be used to pay expenses authorized under § 989.79. Furthermore, contributions shall be free from any encumbrances by the donor and the Committee shall retain complete control of their use.

■ 11. Add § 989.64 to read as follows:

§ 989.64 Patents, copyrights, trademarks, inventions, product formulations, and publications.

(a) Any patents, copyrights, trademarks, inventions, product formulations, and publications developed through the use of funds received by the Committee under this subpart shall be the property of the U.S. Government, as represented by the Committee, and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, inventions, product formulations, or publications, inure to the benefit of the Committee; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Committee; and may be licensed subject to approval by the Secretary.

(b) Upon termination of this subpart, § 989.92 shall apply to determine disposition of any property, including patents, copyrights, trademarks, inventions, product formulations, and publications developed through the use of funds received by the Committee under this subpart.

(c) Should patents, copyrights, trademarks, inventions, product formulations, or publications be developed through the use of funds collected by the Committee under this subpart and funds contributed by another organization or person, ownership and related rights to such patents, copyrights, trademarks, inventions, product formulations, or publications shall be determined by agreement between the Committee and the person or organization contributing funds towards the development of such patents, copyrights, inventions, trademarks, product formulations, or publications in a manner consistent with paragraph (a) of this section.

(d) Should any patents, copyrights, trademarks, inventions, product formulations, or publications be licensed to the Committee by another person or organization, the rights and obligations regarding such licensed patents, copyrights, trademarks, inventions, product formulations, or publications shall be determined by agreement between the Committee and the person or organization permitting licensure in a manner consistent with paragraph (a) of this section.

§ 989.122 [Removed and Reserved]

■ 12. Remove and reserve § 989.122.

■ 13. Revise § 989.126 to read as follows:

§ 989.126 Representation of the Committee.

(a) Pursuant to § 989.26(a)(3), and commencing with the term of office beginning May 1, 2026, apportionment of independent and small cooperative producers shall be:

(1) One producer member, selected from and representing all producers, who is unaffiliated with any handler (including, but not limited to, ownership, employment, or agent of any handler, and whose family members are similarly unaffiliated with any handler); and

(2) The remaining producer member(s) selected from and representing all other independent and small cooperative producers.

(b) Pursuant to section § 989.26(b)(2), and commencing with the term of office beginning May 1, 2026, apportionment of the independent and small cooperative marketing association handlers shall be:

(1) Two members selected from and representing the four handler(s) other than major cooperative marketing association handler(s) who acquired the largest percentage of the total raisin acquisitions during the preceding crop year; and

(2) The remaining member(s) selected from and representing all other handlers, including small cooperative marketing association handler(s) and all processors.

■ 14. Revise § 989.129 to read as follows:

§ 989.129 Voting at nomination meetings.

Any person (defined in § 989.3 as an individual, partnership, corporation, association, or any other business unit) who is engaged, in a proprietary capacity, in the production of grapes which are sun-dried or dehydrated by artificial means to produce raisins and who qualifies under the provisions of § 989.29(b)(2) shall be eligible to cast one vote for a nominee for each producer member position and one vote for a nominee for each producer alternate member position on the Committee which is to be filled. Such person must be the one who or which: Owns and farms land resulting in his or its ownership of such grapes produced thereon; rents and farms land, resulting in his or its ownership of all or a portion of such grapes produced thereon; or owns land which he or it does not farm and, as rental for such land, obtains the ownership of a portion of such grapes or the raisins. In this connection, a partnership shall be deemed to include two or more persons (including a husband and wife) with respect to land the title to which, or leasehold interest

in which, is vested in them as tenants in common, joint tenants, or under community property laws, as community property. In a landlord-tenant relationship, wherein each of the parties is a producer, each such producer shall be entitled to one vote for a nominee for each producer member position and one vote for each	producer alternate member position. Hence, where two persons operate land as landlord and tenant on a share-crop basis, each person is entitled to one vote for each such position to be filled. Where land is leased on a cash rental basis, only the person who is the tenant or cash renter (producer) is entitled to vote. A partnership or corporation,	when eligible, is entitled to cast only one vote for a nominee for each producer position to be filled. Erin Morris, <i>Associate Administrator, Agricultural Marketing Service.</i> [FR Doc. 2024–20079 Filed 9–12–24; 8:45 am] BILLING CODE P

Notices

Federal Register

Vol. 89, No. 178

Friday, September 13, 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.

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on the Social Status of Black Men and Boys (CSSBMB), U.S. Commission on Civil Rights (USCCR).

ACTION: Notice of CSSBMB public business meeting.

DATES: Monday, September 16 2:00 p.m.–3:30 p.m. EDT.

ADDRESSES: Meeting to take place virtually and is open to the public via livestream on USCCR's official YouTube channel.

FOR FURTHER INFORMATION CONTACT:

Diamond Newman, 202–339–2371, dnewman@usccr.gov.

SUPPLEMENTARY INFORMATION: In accordance with Public Law 116–156, 1134 Stat. 700 (2020), the U.S. Commission on the Social Status of Black Men and Boys (CSSBMB) will hold its fourth quarter business meeting exploring CSSBMB business items. This business meeting is open to the public via livestream on the U.S. Commission on Civil Rights' (USCCR) official YouTube channel. (*Streaming information subject to change.*) Public participation is available for the event with view access, along with an audio option for listening. Computer assisted real-time transcription (CART) will be provided. The web link to access CART (in English) on September 16 is <https://upload.youtube.com/closedcaption?cid=faem-bz2w-gq0r-btyz-64jw>. Please note that CART is text-only translation that occurs in real time during the meeting and is not an exact transcript.

* Date and meeting details are subject to change. For more information on the CSSBMB or the upcoming public briefing, please visit [CSSBMB.gov](https://cssbmb.gov) and CSSBMB's Instagram, Facebook, and X.

* Briefing Agenda

Theme: “Elevate to Educate: Empowering Black Male Education for a Brighter Future”

1. Welcome and Opening Remarks
 - Call to Order
 - Invocation
 - Acknowledgment of Attendees
2. Adoption of the Agenda
 - Review and Approval
3. Theme Highlight: Elevate to Educate
 - Keynote Address: “Elevate to Educate: The Power of Black Male Education”
 - Discussion on the Importance of Black Male Education
 - Focusing on how education is the cornerstone of empowerment and advancement for Black males.
4. Events Overview: CBC ALC Weekend
 - Recap of Key Events

Overview of significant events, panels, and sessions that align with our mission.

 - Panel Discussion Recap: “Don’t Build a Jail for Me: Prevention, Not Detention and Policing in the Black Community”
 - A summary of insights, strategies, and outcomes from the panel discussion focused on disrupting the school-to-prison pipeline.
5. Directors Report
 - Current Status and Achievements

Review of initiatives and progress made in the last quarter.

 - Challenges and Opportunities

Discussion of ongoing challenges and potential opportunities for growth.
6. Vision for 2025: Elevate to Educate
 - Strategic Plan Presentation: “Disrupting the School-to-Prison Pipeline”

Unveiling our comprehensive plan to focus on education as the primary tool to disrupt the school-to-prison pipeline in 2025.

 - Future Initiatives

Introduction of upcoming programs and collaborations aimed at enhancing educational opportunities for Black males.
7. Acknowledgments of Contributors and Partners
 - Special Recognition

Highlighting key individuals and organizations that have made a significant impact.
8. Open Floor
 - Commissioner Comments and Questions

Open discussion for Commissioners to share thoughts, feedback, and

suggestions.

9. Closing Remarks
 - Summary and Next Steps
 - Adjournment

Dated: September 11, 2024

Zakee Martin,

CSSBMB Deputy Director, Office of the Staff Director, USCCR.

[FR Doc. 2024–20977 Filed 9–11–24; 4:15 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–557–822]

Utility Scale Wind Towers From Malaysia: Preliminary Results and Preliminary Partial Rescission of Countervailing Duty Administrative Review, 2022

AGENCY: Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is conducting an administrative review of the countervailing duty order on utility scale wind towers (wind towers) from Malaysia. Commerce preliminarily finds that CS Wind Malaysia Sdn Bhd (CS Wind) received countervailable subsidies during the period of review (POR), January 1, 2022, through December 31, 2022. We are also preliminarily rescinding the review with respect to 11 producers/exporters. We invite interested parties to comment on these preliminary results.

DATES: Applicable September 13, 2024.

FOR FURTHER INFORMATION CONTACT:

Kelsie Hohenberger, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2517.

SUPPLEMENTARY INFORMATION:

Background

On October 18, 2023, Commerce initiated an administrative review of the countervailing duty order on wind towers from Malaysia,¹ in accordance

¹ See *Utility Scale Wind Towers from Malaysia: Countervailing Duty Order*, 86 FR 41950 (August 4, 2021) (*Order*).

with section 751(a) of the Tariff Act of 1930, as amended (the Act),² with respect to 12 companies. Commerce selected CS Wind for individual examination.³ On April 17, 2024, Commerce extended the deadline for the preliminary results of this administrative review until August 30, 2024.⁴ On July 22, 2024, Commerce tolled certain deadlines in this administrative review by seven days.⁵ The deadline for these preliminary results is now September 6, 2024.

For details regarding the events that followed the initiation of the review, *see* the Preliminary Decision Memorandum.⁶ A list of topics included in the Preliminary Decision Memorandum is included as an 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 the *Order* are wind towers from Malaysia. For a full description of the scope, *see* the Preliminary Decision Memorandum.

Preliminary Intent To Rescind Administrative Review, In Part

Based on our analysis of U.S. Customs and Border Protection (CBP) data, we preliminarily determine that there were no reviewable entries during the POR for the following companies: CS Wind Corporation; CS Wind China Co., Ltd; CS Wind Taiwan Ltd; CS Wind Turkey Kule Imaltati A.S; CS Wind UK Limited; CS Wind Vietnam Co., Ltd; CS Wind Portugal, S.A.; GE Renewable Energy; GE Renewable Malaysia Sdn. Bhd; Nordex SE; and Siemens Gamesa Renewable Energy. Therefore, pursuant

to 19 CFR 351.213(d)(3), we intend to rescind the administrative review of these companies in the final results of review.⁷

Methodology

We are conducting this review in accordance with section 751(a)(1)(A) of the Act. For each of the subsidy programs found countervailable, we preliminarily determine that there is a subsidy, *i.e.*, a financial contribution from an "authority" that confers a benefit to the recipient, and that the subsidy is specific.⁸ For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum.

Preliminary Results of Review

We preliminarily find the following net countervailable subsidy rate exists for the period January 1, 2022, through December 31, 2022:

Producer/exporter	Subsidy rate (percent ad valorem)
CS Wind Malaysia Sdn. Bhd	2.24

Disclosure and Public Comment

We intend to disclose to interested parties the calculations performed for these preliminary results within five days of the publication of this notice.⁹

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance.¹⁰ 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.¹¹ Interested parties that 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.¹²

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.¹³ 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).¹⁴

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.¹⁵ 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 and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. A hearing request must be filed electronically using ACCESS and received in its entirety by 5:00 p.m. Eastern Time within 30 days after publication of this notice.

Assessment Rates

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.

For CS Wind, we preliminarily assigned a subsidy rate in the amount shown above. For the companies for which this review is rescinded in the final 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

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 71829 (October 18, 2023).

³ See Memorandum "Respondent Selection," dated November 28, 2023.

⁴ See Memorandum, "Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review," dated April 17, 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 Countervailing Duty Administrative Review, 2021: Utility Scale Wind Towers from Malaysia," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁷ See Preliminary Decision Memorandum at section "Preliminary Intent to Rescind Administrative Review, in Part."

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 19 CFR 351.224(b).

¹⁰ See 19 CFR 351.309(c)(1)(ii); *see also* 19 CFR 351.303 for general filing requirements.

¹¹ 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*).

¹² See 19 CFR 351.309(c)(2) and (d)(2).

¹³ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹⁴ See *APO and Service Procedures*.

¹⁵ See 19 CFR 351.310(c).

consumption, during the period January 1, 2022, through December 31, 2022.

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).

Cash Deposit Requirements

In accordance with section 751(a)(1) of the Act, Commerce intends, upon publication of the final results, to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for the company listed above on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. For all non-reviewed firms or companies for which we rescind the review, we will instruct CBP to continue to collect cash deposits at the most recent company-specific or all-others rate applicable to the company. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Final Results of Review

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not 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 Interested Parties

We are issuing and publishing these 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. Period of Review
- IV. Preliminary Intent to Rescind Administrative Review, In Part
- V. Scope of the Order
- VI. Subsidies Valuation Information
- VII. Use of Facts Otherwise Available
- VIII. Analysis of Programs

IX. Recommendation

[FR Doc. 2024–20757 Filed 9–12–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–867]

Large Power Transformers From the Republic of Korea: Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review, 2022–2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that Iljin Electric Co., Ltd. (Iljin), and non-individually examined companies for which a review was requested, made sales of large power transformers from the Republic of Korea (Korea) at prices below normal value (NV) during the period of review (POR) of August 1, 2022, through July 31, 2023. Commerce also preliminarily finds that HD Hyundai Electric Co., Ltd. (Hyundai) did not make sales of large power transformers from Korea at prices below NV during the POR. Additionally, Commerce is rescinding this administrative review, in part, with respect to Hyosung Heavy Industries Corporation (Hyosung) because Hyosung had no entries of subject merchandise during the POR. We invite interested parties to comment on these preliminary results.

DATES: Applicable September 13, 2024.

FOR FURTHER INFORMATION CONTACT: John Drury at (202) 482–0195 or Jinny Ahn at (202) 482–0339, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the antidumping duty order on large power transformers on August 31, 2012.¹ Commerce provided an opportunity to request an administrative review on August 2, 2023.² On August 31, 2023, we received requests to conduct an

administrative review from Iljin,³ Hyundai,⁴ and Hitachi Energy USA, Inc. and Prolec-GE Waukesha, Inc. (the petitioners).⁵ Commerce initiated this review on October 18, 2023.⁶ We selected two mandatory respondents in this review, Hyundai and Iljin. For a more detailed description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.⁷

Scope of the Order

The scope of this *Order* covers large liquid dielectric power transformers having a top power handling capacity greater than or equal to 60,000 kilovolt amperes (60 megavolt amperes), whether assembled or unassembled, complete or incomplete.⁸

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(3), it is Commerce's practice to rescind an administrative review of an antidumping duty order when there are no reviewable entries of subject merchandise during the POR for which liquidation is suspended.⁹ Normally, upon completion of an administrative review, the suspended entries are liquidated at the antidumping duty assessment rate calculated for the review period.¹⁰ Therefore, for an administrative review to be conducted, there must be at least one reviewable, suspended entry that Commerce can instruct CBP to liquidate at the antidumping duty assessment rate calculated for the review period.¹¹ There were no entries of subject merchandise during the POR for

³ See Iljin's Letter, "Request for Administrative Review," dated August 31, 2023.

⁴ See Hyundai's Letter, "Administrative Review Request," dated August 31, 2023.

⁵ See Petitioners' Letter, "Request for Administrative Review," dated August 31, 2023.

⁶ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 71829, 71831 (October 18, 2023) (*Initiation Notice*).

⁷ See Memorandum, "Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review of Large Power Transformers from the Republic of Korea; 2022–2023," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁸ The full text of the scope of the *Order* is contained in Preliminary Decision Memorandum.

⁹ See, e.g., *Diocetyl Terephthalate from the Republic of Korea: Rescission of Antidumping Administrative Review; 2021–2022*, 88 FR 24758 (April 24, 2023); see also *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Federal Republic of Germany: Rescission of Antidumping Administrative Review; 2020–2021*, 88 FR 4157 (January 24, 2023).

¹⁰ See 19 CFR 351.212(b)(1).

¹¹ See 19 CFR 351.213(d)(3).

¹ See *Large Power Transformers from the Republic of Korea: Antidumping Duty Order*, 77 FR 53177 (August 31, 2012) (*Order*).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 88 FR 50840, (August 2, 2023).

Hyosung.¹² As a result, on August 22, 2024, Commerce notified all interested parties of its intent to rescind this review, in part, with respect to Hyosung and received no comments.¹³ Therefore, we are rescinding this administrative review with respect to Hyosung. The administrative review remains active with respect to the three other companies upon which we initiated this review.

Methodology

Commerce is conducting this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum. A list of the topics discussed in the Preliminary Decision Memorandum is included 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 can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Rate for Non-Selected Respondents

The statute 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, only one mandatory respondent (*i.e.*, Iljin) has received a weighted-average

dumping margin which is not that did not get a rate that is zero, *de minimis*, or determined entirely on the basis of facts available. Accordingly, we have applied the rate calculated for Iljin, 10.61 percent, to the non-selected companies.

Preliminary Results of Review

We preliminarily determine the following estimated weighted-average dumping margins exist during the period August 1, 2022, through July 31, 2023:

Producer/exporter	Weighted-average dumping margin (percent)
HD Hyundai Electric Co., Ltd.	0.00
Iljin Electric Co., Ltd. ¹⁴	10.61
LS Electric Co., Ltd.	10.61

Disclosure and Public Comment

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).

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs or other written comments to the Assistant Secretary for Enforcement and Compliance 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.¹⁵ Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table

¹⁴ For the first administrative review of the *Order*, Commerce initiated the administrative review on multiple companies, including Iljin Electric Co., Ltd. and ILJIN. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 78 FR 60834, 60836 (October 2, 2013). Commerce did not select either ILJIN or Iljin Electric Co., Ltd. for individual examination, but did assign margins for both entities. See *Large Power Transformers from the Republic of Korea: Amended Final Results of Antidumping Duty Administrative Review*; 2012–2013, 80 FR 26001 (May 6, 2015). The current administrative review is the first review in which either Iljin Electric Co., Ltd. or ILJIN was selected for individual examination. Record evidence indicates that Iljin Electric Co., Ltd. is the only entity in Korea with the Iljin name that produces LPTs. See Iljin's Letter, "Response to the Department's March 29 Supplemental Questionnaire," dated April 26, 2024 (Iljin SAQR), at page 2. Therefore, we preliminarily find that ILJIN and Iljin Electric Co., Ltd. are the same entity. Parties are invited to comment for the final results.

¹⁵ 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*).

of contents listing each issue; and (2) a table of authorities.¹⁶

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.¹⁷ Further, we request that interested parties limit their 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 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).¹⁸

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.

Assessment Rates

Upon issuing the final results, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries. For any individually examined respondent whose weighted-average dumping margin is not zero or *de minimis* (*i.e.*, less than 0.5 percent) in the final results of this review and the respondent reported entered values, we will calculate importer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of dumping calculated for the examined sales made during the POR to each

¹⁶ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁷ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹⁸ See *APO and Service Final Rule*.

¹² See Memorandum, "Release of U.S. Customs and Border Protection Import Data," dated November 14, 2023.

¹³ See Memorandum, "Notice of Intent To Rescind Review, In Part," dated August 22, 2024.

importer and the total entered value of those same sales, in accordance with 19 CFR 351.212(b)(1). If the respondent has not reported entered values, we will calculate a per unit assessment rate for each importer by dividing the total amount of dumping calculated for the examined sales made to that importer by the total quantity associated with those transactions. Where an importer-specific *ad valorem* assessment rate is zero or *de minimis* in the final results of review, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties in accordance with 19 CFR 351.106(c)(2). If a respondent's weighted-average dumping margin is zero or *de minimis* in the final results of review, we will instruct CBP not to assess duties on any of its entries in accordance with the *Final Modification for Reviews*, i.e., “[w]here the weighted-average margin of dumping for the exporter is determined to be zero or *de minimis*, no antidumping duties will be assessed.”¹⁹

In accordance with Commerce's “automatic assessment” practice,²⁰ for entries of subject merchandise during the review period produced by each respondent for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate of 22.00 percent established in the investigation.²¹

For the company which was not selected for individual review (i.e., LS Electric Co., Ltd.), we will assign an assessment rate based on the weighted average of the estimated dumping margins established for companies selected for mandatory review, excluding any zero and *de minimis* margins, and any margins determined based entirely on facts available.²² The final results of this 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.²³

With respect to the company for which we have rescinded this review in

part (i.e., Hyosung), Commerce intends to instruct CBP to assess antidumping duties on all appropriate entries at rates equal to the cash deposit rate of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the POR, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue these 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). The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise under review and for future cash deposits of estimated antidumping duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for Iljin, Hyundai and other companies listed above will be equal to the weighted-average dumping margin established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which they were reviewed; (3) if the exporter is not a firm covered in this review, a prior review, or in the investigation but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be the all-others rate of 22.00 percent, the rate established in the investigation

of this proceeding.²⁴ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Final Results of the Review

Unless the deadline is otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised by interested parties in the written briefs, no later than 120 days after the date of publication of this notice in the **Federal Register**, 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 review period. 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

Commerce is issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, 19 CFR 351.213(h)(2), 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. Deadline for Submission of Updated Sales and Cost Information
- IV. Scope of the Order
- V. Rescission of Review in Part
- VI. Rate for Non-Selected Companies
- VII. Discussion of the Methodology
- VIII. Currency Conversion
- IX. Recommendation

[FR Doc. 2024-20797 Filed 9-12-24; 8:45 am]

BILLING CODE 3510-DS-P

²⁴ See *Large Power Transformers from the Republic of Korea: Antidumping Duty Order*, 77 FR 53177 (August 31, 2012).

¹⁹ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification*, 77 FR 8101, 8103 (February 14, 2012) (*Final Modification for Reviews*).

²⁰ See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

²¹ See *Large Power Transformers from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 77 FR 40857 (July 11, 2012).

²² See section 735(c)(5)(A) of the Act; see also Preliminary Decision Memorandum at Section VIII, “Rate for Non-Selected Companies.”

²³ See section 751(a)(2)(C) of the Act.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-557-813]

Polyethylene Retail Carrier Bags From Malaysia: Preliminary Results of Antidumping Duty Administrative Review; 2022–2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that polyethylene retail carrier bags from Malaysia are not being sold in the United States at below normal value during the period of review (POR), August 1, 2022, through July 31, 2023. We invite interested parties to comment on these preliminary results.

DATES: Applicable September 13, 2024.

FOR FURTHER INFORMATION CONTACT: Charles Doss, 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) 482-4474.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 2004, Commerce published the antidumping duty order on polyethylene retail carrier bags from Malaysia.¹ On August 2, 2023, we published in the *Federal Register* a notice of opportunity to request an administrative review of the *Order*.² On October 18, 2023, pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), Commerce initiated an administrative review of the *Order* covering one entity.³ On April 12, 2024, Commerce extended the deadline for the preliminary results until August 30, 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 6, 2024.

¹ See *Antidumping Duty Order: Polyethylene Retail Carrier Bags from Malaysia*, 69 FR 48203 (August 9, 2004) (*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).

⁴ See Memorandum, “Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated April 12, 2024.

⁵ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,” dated July 22, 2024.

For a complete description of the events that followed the initiation of this review, see the Preliminary Decision Memorandum.⁶ A list of topics discussed in the Preliminary Decision Memorandum is attached as an 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>.

Scope of the Order

The products covered by this *Order* are polyethylene retail carrier bags. A full description of the scope of the *Order* is contained in the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of 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 our conclusions, see the Preliminary Decision Memorandum.

Preliminary Results of Review

As a result of this review, we preliminarily determine the following estimated weighted-average dumping margin exists for the period August 1, 2022, through July 31, 2023:

Producer/exporter	Weighted-average dumping margin (percent)
Euro SME Sdn. Bhd.; and Euro Nature Green Sdn. Bhd. ⁷	0.00

Disclosure and Public Comment

We intend to disclose the calculations used for these preliminary results to

⁶ See Memorandum, “Decision Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Polyethylene Retail Carrier Bags from Malaysia; 2022–2023,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁷ In the 2018–2019 review, Commerce treated Euro SME Sdn. Bhd. and Euro Nature Green Sdn. Bhd. as a single entity (collectively, Euro SME). See *Polyethylene Retail Carrier Bags from Malaysia: Preliminary Results of Antidumping Duty*

interested parties within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs no later than 30 days after the date of publication of this notice.⁸ 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.⁹ 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.¹⁰

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.¹¹ 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).¹²

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, using Enforcement and Compliance’s ACCESS system within 30 days of publication of this notice.¹³ Requests should contain

Administrative Review; 2018–2019, 85 FR 83515 (December 22, 2020), and accompanying Preliminary Decision Memorandum at 3–5, unchanged in *Polyethylene Retail Carrier Bags from Malaysia: Final Results of Antidumping Administrative Review; 2018–2019*, 86 FR 22019 (April 26, 2021). Our treatment of Euro SME Sdn. Bhd. and Euro Nature Green Sdn. Bhd. remains unchanged in this review.

⁸ See 19 CFR 351.309(c)(1)(ii).

⁹ 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*).

¹⁰ See 19 CFR 351.309(c)(2) and (d)(2).

¹¹ We use the term “issue” here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹² See *APO and Service Procedures*.

¹³ See 19 CFR 351.310(c).

the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. Issues raised in the hearing will be limited to those raised in the case and rebuttal briefs. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing at a time and location to be determined.¹⁴ Parties should confirm by telephone the date, time, and location of the hearing no fewer than two days before the scheduled date. Parties are reminded that all briefs and hearing requests must be filed electronically using ACCESS and received successfully in their entirety by 5:00 p.m. Eastern Time on the due date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1), Commerce will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their case briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties, where applicable.¹⁵ 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).

If the weighted-average dumping margin for Euro SME is above *de minimis* (*i.e.*, 0.50 percent) in the final results of this review, we will calculate importer-specific *ad valorem* antidumping duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).¹⁶ If the

respondent has not reported entered values, we will calculate a per-unit assessment rate for each importer by dividing the total amount of dumping calculated for the examined sales made to that importer by the total quantity associated with those sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.*, 0.50 percent). Where either the respondent's weighted-average dumping margin is zero or *de minimis*, or an importer-specific assessment rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.¹⁷

In accordance with Commerce's "automatic assessment" practice, for entries of subject merchandise during the POR produced by the respondent for which it did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate entries not reviewed at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.¹⁸

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of the final results of the administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results, as provided by section 751(a)(2) of the Act: (1) the cash deposit rate for Euro SME will be equal to the dumping margin established in the final results of this review, except if the ultimate rate is *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rates will be zero; (2) for merchandise exported by producers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the producer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than

Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification, 77 FR 8101 (February 14, 2012).

¹⁷ See 19 CFR 351.106(c)(2).

¹⁸ For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

fair value (LTFV) investigation but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of the proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 84.94 percent, the all-others rate established in the LTFV investigation of this proceeding.¹⁹ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also 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 duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties, and/or increase in the amount of antidumping duties by the amount of the countervailing duties.

Notification to Interested Parties

We are issuing and publishing these 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. Discussion of Methodology
- V. Currency Conversion
- VI. Recommendation

[FR Doc. 2024-20777 Filed 9-12-24; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-838]

Carbazole Violet Pigment 23 From India: Preliminary Results of Antidumping Duty Administrative Review; 2022-2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

¹⁹ See *Order*, 69 FR at 48204.

¹⁴ See 19 CFR 351.310.

¹⁵ See section 751(a)(2)(C) of the Act.

¹⁶ In these preliminary results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the*

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that producers/exporters subject to this review did not make sales of subject merchandise at prices below normal value. The period of review (POR) is December 1, 2022, through November 30, 2023. We invite interested parties to comment on these preliminary results.

DATES: Applicable September 13, 2024.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or Henry Wolfe, 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) 482-5973, and (202) 482-0574, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 8, 2024, based on a timely request for review, and in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), Commerce initiated this administrative review of the antidumping duty (AD) order on carbazole violet pigment 23 (CVP-23) from India covering three companies: Gharda Chemicals, Ltd. (Gharda), Meghmani Pigments (Meghmani), and Navpad Pigments Pvt. Ltd. (Navpad).¹ On March 1, 2024, we limited the number of respondents for individual examination in this administrative review to Meghmani and Navpad.² On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.³ The deadline for the preliminary results is now September 9, 2024. For a complete description of the events that followed the initiation of this review, see the Preliminary Decision Memorandum.⁴

Scope of the Order⁵

The product covered by the Order is CVP-23, in any form. 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(a) of the Act. Export price is 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 our conclusions, see the Preliminary Decision Memorandum. A list of topics included in the Preliminary Decision Memorandum is included as an appendix to this notice. The Preliminary Decision Memorandum 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, the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNotices/ListLayout.aspx>.

Rate for the Non-Examined Company

To determine the rate for non-selected companies in an administrative review, 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. 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.}”

Where the dumping margin for individually examined respondents are all zero, *de minimis*, or based entirely on facts available, section 735(c)(5)(B) of the Act provides that Commerce may use “any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.”

In this review, we calculated weighted-average dumping margins for Meghmani and Navpad that are zero and we did not calculate any margins which are not zero, *de minimis*, or determined entirely on the basis of facts available.

Therefore, consistent with section 735(c)(5)(B) of the Act, we are applying to Gharda, the company not selected for individual examination in this review, a margin of zero percent.

Preliminary Results of Review

As a result of our review, we preliminarily determine the following estimated weight-average dumping margins for the period December 1, 2022, through November 30, 2023:

Producer/exporter	Weighted-average dumping margin (percent)
Gharda Chemicals Limited	0.00
Meghmani Pigments/Meghmani LLC	0.00
Navpad Pigments Pvt. Ltd	0.00

Disclosure and Public Comment

Commerce intends to disclose the calculations used in our analysis to interested parties in this review within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice.⁶ 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.⁷ 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.⁸

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.⁹ 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

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 89 FR 8641 (February 8, 2024). Additionally, we collapsed Meghmani Pigments and its affiliated company, Meghmani LLC, into a single entity based on our affiliation and collapsing analysis. See Memorandum, “Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review: Carbazole Violet Pigment 23 from India; 2022–2023,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

² See Memorandum, “Respondent Selection,” dated March 1, 2024.

³ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,” dated July 22, 2024.

⁴ See Preliminary Decision Memorandum.

⁵ See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping*

Duty Order: Carbazole Violet Pigment 23 from India, 69 FR 77988 (December 29, 2004) (Order).

⁶ See 19 CFR 351.309(c)(1)(ii); see also 19 CFR 351.303 (for general filing requirements).

⁷ 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).

⁸ See 19 CFR 351.309(c)(2) and (d)(2).

⁹ We use the term “issue” here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

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).¹⁰

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.

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.¹¹ If the weighted-average dumping margin is not zero or *de minimis* (i.e., less than 0.5 percent), then Commerce will calculate importer-specific *ad valorem* antidumping duty assessment rates based on the ratio of the total amount of dumping calculated for each importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1). If the weighted-average dumping margin is zero or *de minimis* in the final results, or if an importer-specific assessment rate is zero or *de minimis* in the final results, Commerce will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

In accordance with Commerce's "automatic assessment" practice, for entries of subject merchandise that entered the United States during the POR that were produced by each respondent for which the respondent did not know that its merchandise was destined to the United States, Commerce will instruct CBP to liquidate unreviewed entries at the all-others rate, if there is no rate for the intermediate

company(ies) involved in the transaction.¹²

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 deposit requirements will be effective for all shipments of CVP-23 from India entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies under review will be the rate established in the final results of this review (except, if the rate is zero or *de minimis*, no cash deposit will be required); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 27.48 percent, the all-others rate established in the investigation.¹³ These cash deposit rates, when imposed, shall remain in effect until further notice.

Final Results of Review

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of our analysis of issues raised by the parties in any written 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).

Notification to Importers

This notice also 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 review period. 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 the countervailing duties.

Notification to Interested Parties

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: September 9, 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. Affiliation and Collapsing
- V. Discussion of the Methodology
- VI. Currency Conversion
- VII. Recommendation

[FR Doc. 2024–20860 Filed 9–12–24; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–914]

Light-Walled Rectangular Pipe and Tube From the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, and Preliminary Determination of No Shipments; 2022–2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is conducting the administrative review of the antidumping duty (AD) order on light-walled rectangular pipe and tube (LWRPT) from the People's Republic of China (China). The period of review (POR) is August 1, 2022, through July 31, 2023. Commerce preliminarily finds that Hoa Phat Steel Pipe Company Limited (Hoa Phat) had no subject shipments of LWRPT and that Hoa Phat will be eligible to participate in the

¹⁰ See APO and Service Procedures.

¹¹ See 19 CFR 351.212(b).

¹² For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

¹³ See Order.

certification program previously established with respect to the AD order on LWRPT from China. In addition, we are rescinding this review with respect to Hangzhou Ailong Metal Product Co., Ltd. (Ailong). We invite interested parties to comment on these preliminary results.

DATES: Applicable September 13, 2024.

FOR FURTHER INFORMATION CONTACT: Paul Kebker, 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) 482-2254.

SUPPLEMENTARY INFORMATION:

Background

On August 5, 2008, Commerce published in the **Federal Register** the AD order on LWRPT from China.¹ On August 2, 2023, Commerce notified interested parties of the opportunity to request an administrative review of the *Order*.² On August 30, 2023, Hoa Phat requested that Commerce conduct an administrative review of its exports to determine whether those exports are covered by the *Order*.³ In its review request, Hoa Phat elaborated that it sought an administrative review so that Commerce would permit it to submit certifications to U.S. Customs and Border Protection (CBP) to properly declare the origin of the hot-rolled steel (HRS) that it used to produce the LWRPT it exported.⁴ On August 31,

2023, GS Global USA, Inc. (GS Global) requested that Commerce conduct an administrative review of Hoa Phat's exports.⁵ On August 31, 2023, Ailong requested that Commerce conduct an administrative review of its exports.⁶

Subsequently, we initiated an administrative review of the *Order* with respect to Ailong and Hoa Phat.⁷ On December 14, 2023, Commerce received a timely withdrawal of review request with respect to Ailong.⁸

On November 9, 2023, we published in the **Federal Register** the *Final Circumvention Determination*, in which we: (1) determined that certain LWRPT exported from the Socialist Republic of Vietnam (Vietnam) and entered into the United States was circumventing the *Order* and, therefore, is now covered by the *Order*; and (2) established a certification program to allow eligible producers and exporters of LWRPT exported from Vietnam to certify that entries of LWRPT exported from Vietnam are not subject to the *Order*.⁹ We also indicated that during the upcoming anniversary month of the *Order* (i.e., August)¹⁰ we would allow interested parties to request reviews of LWRPT shipped from Vietnam and suspended under the *Order*.

On April 11, 2024, Commerce extended the deadline for these preliminary results to August 30, 2024.¹¹ On June 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.¹² The deadline for these preliminary results is now September 6, 2024. For details regarding the events that occurred subsequent to the initiation of the review, see the Preliminary Decision Memorandum.¹³

¹ See *Light-Walled Rectangular Pipe and Tube from Mexico, the People's Republic of China, and the Republic of Korea: Antidumping Duty Orders; Light-Walled Rectangular Pipe and Tube from the Republic of Korea: Notice of Amended Final Determination of Sales at Less Than Fair Value*, 73 FR 45403 (August 5, 2008) (*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 Hoa Phat Letter, "Request for Administrative Review," dated August 30, 2023.

⁴ *Id.* As background, in *Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Preliminary Affirmative Determination of Circumvention of the Antidumping Duty and Countervailing Duty Orders*, 88 FR 21985-21986 (April 12, 2023) (*Preliminary Circumvention Determination*), and accompanying Preliminary Decision Memorandum at 4-6, Commerce preliminarily determined that Hoa Phat had failed to cooperate in the circumvention proceeding and applied facts available with adverse inferences to determine that Hoa Phat was not eligible to participate in the certification regime established in the circumvention proceeding. In the final determination, Commerce continued to find that Hoa Phat was ineligible to participate in the certification regime. See *Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Final Affirmative Determination of Circumvention of the Antidumping Duty and Countervailing Duty Orders*, 88 FR 77283 (November 9, 2023) (*Final Circumvention Determination*), and accompanying Issues and Decision Memorandum (IDM) at Comment 3.

⁵ See GS Global Letter, "Request for Administrative Review" dated August 31, 2023.

⁶ See Ailong Letter, "Request for Administrative Review—Hangzhou Ailong Metal Product Co.," dated August 31, 2023.

⁷ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 71829 (October 18, 2023).

⁸ See Ailong Letter, "Withdraw of Request for Administrative Review—Hangzhou Ailong Metal Product Co.," dated December 14, 2023 (Ailong Withdrawal Request).

⁹ See *Final Circumvention Determination*, 88 FR at 77284.

¹⁰ *Id.* 88 FR at 77285.

¹¹ See Memorandum, "Extension of Deadline for Preliminary Results of the Antidumping Duty Administrative Review," dated April 11, 2024.

¹² See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated July 22, 2024.

¹³ See Memorandum, "Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review of Light-Walled Rectangular Pipe and Tube from the People's Republic of China: 2022-2023," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Scope of the Order

The merchandise subject to this *Order* is certain welded carbon quality light-walled steel pipe and tube. A complete description of the scope of the *Order* is contained in the Preliminary Decision 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 all parties that requested a review withdraw their requests within 90 days of the publication date of the notice of initiation of the requested review in the **Federal Register**. On December 14, 2023, Ailong timely withdrew its request for administrative review.¹⁴ Because no other party requested a review of Ailong, consistent with 19 CFR 351.213(d)(1), Commerce is rescinding this review, in part, with respect to Ailong.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.213. For a full description of the methodology underlying these preliminary results, see the Preliminary Decision Memorandum. A list of the topics discussed in the Preliminary Decision Memorandum is included 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 <http://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum is available at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Preliminary Determination of No Shipments

In this administrative review, we issued a questionnaire to Hoa Phat to gather information on the quantity and value (Q&V) of its shipments of LWRPT to the United States.¹⁵ We received a response to this questionnaire from Hoa Phat, in which it reported that its

¹⁴ See Ailong Withdrawal Request.

¹⁵ See Commerce's Letter, "Quantity and Value Questionnaire," dated November 20, 2023; see also Memorandum, "Clarification of Companies Required to Submit Responses to Q&V Questionnaire," dated November 28, 2023; and Commerce's Letters, "Request for Entry Information," dated February 5, 2024 (collectively, Q&V Questionnaire).

suspended entries consisted exclusively of non-subject merchandise.¹⁶ We issued supplemental questionnaires to Hoa Phat and received responses.¹⁷ We have analyzed the information in these responses and preliminarily find that Hoa Phat has provided information to support its claim that the LWRPT it exported to the United States is of non-subject LWRPT. Thus, if our preliminary finding is unchanged in the final results, Hao Phat Hoa will be eligible to participate in the certification program previously established with respect to the AD Order on LWRPT from China as of the publication date of the final results.

China-Wide Entity

Under Commerce's policy regarding the conditional review of the China-wide entity,¹⁸ the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity in this review, the entity is not under review, and the entity's rate (*i.e.*, 255.07 percent) is not subject to change.¹⁹

Verification

On January 26, 2024, Nucor Tubular Products Inc. requested that Commerce conduct verification of Hoa Phat pursuant to 19 CFR 351.307(b)(1)(v). Accordingly, Commerce intends to verify the information relied upon in making its final results for Hoa Phat.

Public Comment

Because Commerce intends to verify the questionnaire responses of Hoa Phat, the mandatory respondent in this

review, interested parties will be notified of the deadline for the submission of case briefs at a later date.²⁰ Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.²¹

Parties who submit case briefs or rebuttal briefs in this proceeding must submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.²² 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.²³ 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 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).²⁴

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the publication of this notice. Hearing requests should contain: (1) the party's name, address, telephone number; (2) the number of participants; and whether any participant is a foreign national; and (3) a list of the issues to be discussed. Issues raised in the hearing will be limited to issues raised in the case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be

determined and will notify the parties through ACCESS.²⁵ 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. 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 issuance of the final results of this review, Commerce will determine, and CBP will assess, antidumping duties on all appropriate entries covered by this review.²⁶ We intend to instruct CBP to liquidate entries of LWRPT exported by Hoa Phat without regard to antidumping duties if these preliminary results are unchanged for the final results. For Hoa Phat, 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).

For Ailong, we will instruct CBP to assess antidumping duties on all appropriate entries at a rate equal to the cash deposit of estimated antidumping duties required at the time of entry, in accordance with 19 CFR 351.212(c)(1)(i). For Ailong, Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of this notice 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 will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of review, as provided for by section 751(a)(2)(C) of the Act: (1) for Hoa Phat, the cash deposit rate will remain unchanged (*i.e.*,

¹⁶ See Hoa Phat's Letter, "Sections A, C, D Responses," dated January 10, 2024 (Hoa Phat Initial Response) and Hoa Phat's Letter, "CBP Data Comments," dated November 8, 2023 (CBP Data Comments).

¹⁷ See Commerce's Letter, "Supplemental Questionnaire," dated February 13, 2024; and Commerce's Letter, "Second Supplemental Questionnaire," dated March 29, 2024; *see also* Hoa Phat's Letter, "Supplemental Sections A, C, D Responses," dated March 12, 2024 (Hoa Phat First Supplemental Response); and Hoa Phat's Letter, "Second Supplemental Questionnaire Response," dated April 5, 2024 (Hoa Phat Second Supplemental Response).

¹⁸ See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963 (November 4, 2013).

¹⁹ See *Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act: Certain New Pneumatic Off-the-Road Tires; Circular Welded Carbon Quality Steel Pipe; Laminated Woven Sacks; and Light-Walled Rectangular Pipe and Tube from the People's Republic of China*, 77 FR 52683, 52688 (August 30, 2012); *see also* Order, 73 FR at 45403.

²⁰ See 19 CFR 351.309(c)(1)(ii); *see also* 19 CFR 351.303 (for general filing requirements).

²¹ 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*).

²² See 19 CFR 351.309(c)(2) and (d)(2).

²³ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the IDM.

²⁴ See *APO and Service Final Rule*.

²⁵ See 19 CFR 351.310(c).

²⁶ See 19 CFR 351.212(b)(1).

255.07 percent),²⁷ unless the company satisfies the certification requirements in the *Final Circumvention Determination*; ²⁸ (2) for previously investigated or reviewed Chinese and non-Chinese exporters who are not under review in this segment of the proceeding but who have separate rates, the cash deposit rate will continue to be the exporter specific rate published for the most recent period; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the China-wide rate of 255.07 percent; and (4) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to Chinese exporter(s) that supplied that non-Chinese exporter, or the rate for the China-wide entity (*i.e.*, 255.07), if no alternate rate is available. These deposit requirements, when imposed, shall remain in effect until further notice.

Final Results of Review

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs, within 120 days of publication of these preliminary results of review, pursuant to section 751(a)(3)(A) of the Act.

Notification to Importers

This notice also 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 review period. 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 the countervailing duties.

Notification to Interested Parties

This determination is issued and published 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. Partial Rescission of Administrative Review
- V. Discussion of Interested Party Comments
- VI. Analysis of the Sourcing of the Hot Rolled Steel Hoa Phat Used to Produce LWRPT Exported to the United States
- VII. Certification Program
- VIII. Recommendation

[FR Doc. 2024–20772 Filed 9–12–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–839]

Steel Propane Cylinders From Thailand: Preliminary Results of Antidumping Duty Administrative Review; 2022–2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that Sahamitr Pressure Container Plc. (also known as Sahamitr Pressure Container Public Company Limited) (SMPC) made sales of steel propane cylinders from Thailand at less than normal value (NV) during the period of review (POR), August 1, 2022, through July 31, 2023. We invite interested parties to comment on these preliminary results.

DATES: Applicable September 13, 2024.

FOR FURTHER INFORMATION CONTACT: Samuel Brummitt, 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) 482–7851.

SUPPLEMENTARY INFORMATION:

Background

On August 15, 2019, Commerce published the antidumping duty order on steel propane cylinders from Thailand.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 August 30, 2023, Commerce received a timely request to conduct an administrative review of the *Order* from SMPC, and on August 31, 2023, Worthington Industries (the petitioner) requested a review of SMPC.³ On October 18, 2023, based on timely requests for review and in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.221(c)(1)(i), Commerce initiated an administrative review of the *Order*.⁴ Pursuant to section 751(a)(3)(A) of the Act, Commerce extended the deadline for the preliminary results until 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 detailed description of the events that followed the initiation of this review, see the Preliminary Decision Memorandum.⁷ A list of the topics included in the Preliminary Decision Memorandum is included as 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/FRNoticesListLayout.aspx>.

Scope of the Order

The merchandise covered by this *Order* is steel propane cylinders from Thailand. For a complete description of

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 SMPC's Letter, "Request for Antidumping Duty Administrative Review," dated August 30, 2023; see also Petitioner's Letter, "Request for Fourth (2022–2023) Administrative Review of the Antidumping Duty Order," dated August 31, 2023.

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 71829, 71835 (October 18, 2023).

⁵ See Memorandum, "Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated April 3, 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 the Administrative Review of the Antidumping Duty Order on Steel Propane Cylinders from Thailand; 2022–2023," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

²⁷ See *Final Circumvention Determination*.

²⁸ *Id.* at Appendix II for the importer and exporter certifications.

¹ See *Steel Propane Cylinders from the People's Republic of China and Thailand: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Orders*, 84 FR 41703 (August 15, 2019) (*Order*).

the scope of the *Order*, see the Preliminary Decision Memorandum.⁸

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Act. Export price was calculated in accordance with section 772 of the Act. NV was 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.

Preliminary Results of the Review

We preliminarily determine that the following estimated weighted-average dumping margin exists for the period August 1, 2022, through July 31, 2023:

Exporter/producer	Weighted-average dumping margin (percent)
Sahamitr Pressure Container Plc	3.18

Disclosure and Public Comment

We intend to disclose the calculations used for these preliminary results to interested parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs not later than seven days after the date on which the verification report is issued in this administrative review.⁹ 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.¹⁰ 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.¹¹

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.¹² 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 determination in this investigation. 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).¹³

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically, using ACCESS, within 30 days after the date of publication of this notice in the **Federal Register**. Hearing requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; (3) whether any participant is a foreign national; and (4) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised by each party in their respective case and rebuttal briefs. An electronically filed request must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time, within 30 days of the publication date of this notice. If a request for a hearing is made, parties will be notified of the time and date of the hearing.¹⁴

Final Results of Review

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), Commerce intends to issue the final results of this administrative review, including the results of our analysis of the issues raised in any case briefs, not later than 120 days after the date of publication of this notice.

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Commerce intends to issue assessment instructions

in a comment of the Issues and Decision Memorandum.

¹³ See *APO and Service Procedures*.

¹⁴ See 19 CFR 351.310(d).

to CBP no earlier than 35 days after the date of publication of the final results of this administrative 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).

If SMPC's weighted-average dumping margin is not zero or *de minimis* (*i.e.*, less than 0.50 percent) in the final results of this review, Commerce intends to calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales to the total entered value of those sales. Where we do not have entered values for all U.S. sales to a particular importer, we will calculate an importer-specific, per-unit assessment rate on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales to the total quantity of those sales.¹⁵ To determine whether an importer-specific, per-unit assessment rate is *de minimis*, in accordance with 19 CFR 351.106(c)(2), we also will calculate an importer-specific *ad valorem* ratio based on estimated entered values. If SMPC's weighted-average dumping margin is zero or *de minimis* or where an importer-specific *ad valorem* assessment rate is zero or *de minimis*, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties.¹⁶

In accordance with Commerce's "automatic assessment" practice, for entries of subject merchandise during the POR produced by SMPC for which it did not know that the merchandise was destined for the United States, we intend to instruct CBP to liquidate those entries at the all-others rate in the original less-than-fair-value (LTFV) investigation (*i.e.*, 10.77 percent)¹⁷ if there is no rate for the intermediate company(ies) involved in the transaction.¹⁸

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise

¹⁵ See 19 CFR 351.212(b)(1).

¹⁶ See 19 CFR 351.106(c)(2); see also *Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification*, 77 FR 8101, 8103 (February 14, 2012).

¹⁷ See *Order*, 84 FR at 41704.

¹⁸ For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

⁸ See Preliminary Decision Memorandum at "Scope of the *Order*."

⁹ See 19 CFR 351.309(c)(1)(ii); see also 19 CFR 351.303 (for general filing requirements).

¹⁰ 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*).

¹¹ See 19 CFR 351.309(c)(2) and (d)(2).

¹² We use the term "issue" here to describe an argument that Commerce would normally address

entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the company-specific cash deposit rate for SMPC will be equal to the weighted-average dumping margin established in the final results of this administrative review, except if the rate is *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, a prior review, or in the LTFV investigation but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be the all-others rate of 10.77 percent, the rate established in the LTFV investigation of this proceeding.¹⁹ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also 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 duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213(h)(2) 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. Discussion of the Methodology
- V. Currency Conversion
- VI. Recommendation

[FR Doc. 2024–20750 Filed 9–12–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–902]

Utility Scale Wind Towers From the Republic of Korea: Preliminary Results and Rescission of Review, in Part, of Antidumping Duty Administrative Review; 2022–2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that sales of utility scale wind towers (wind towers) from the Republic of Korea (Korea) were not made at less than normal value (NV) during the period of review (POR) August 1, 2022, through July 31, 2023. Additionally, Commerce is rescinding this administrative review, in part, with respect to certain companies that had no entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results.

DATES: Applicable September 13, 2024.

FOR FURTHER INFORMATION CONTACT: Adam Simons, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6172.

SUPPLEMENTARY INFORMATION:

Background

On August 26, 2020, Commerce published the antidumping duty order on utility scale wind towers (wind towers) from the Republic of Korea (Korea) in the **Federal Register**.¹ On October 18, 2023, based on timely requests for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the *Order* on wind towers from Korea.² This review covers 16 producers/exporters of the subject merchandise. In April 2024, we extended the deadline for issuing 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 The deadline for the preliminary results is now September 6, 2024. For a complete description of the events that followed the initiation of this review, see the Preliminary Decision Memorandum.⁵

Scope of the Order

The merchandise subject to the *Order* is wind towers from Korea. For a full description of the scope of the *Order*, see the Preliminary Decision Memorandum.

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(3), Commerce will rescind an administrative review 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 antidumping duty assessment rate calculated for the review period.⁷ Therefore, for an administrative review to be conducted, there must be a suspended entry that Commerce can instruct CBP to liquidate at the antidumping duty assessment rate calculated for the POR.⁸

On December 20, 2023, we notified all interested parties of our intent to rescind this review, in part, with respect to the 15 companies listed in Appendix II because there were no suspended entries of subject merchandise produced or exported by these companies during the POR and we invited interested parties to comment.⁹ We received no

³ See Memorandum, “Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated April 12, 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 Antidumping Duty Order on Utility Scale Wind Towers from Korea; 2022–2023,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁶ See, e.g., *Diocetyl Terephthalate from the Republic of Korea: Rescission of Antidumping Administrative Review; 2021–2022*, 88 FR 24758 (April 24, 2023); see also *Certain Carbon and Alloy Steel Cut-to Length Plate from the Federal Republic of Germany: Rescission of Antidumping Administrative Review; 2020–2021*, 88 FR 4157 (January 24, 2023).

⁷ See 19 CFR 351.212(b)(1).

⁸ See 19 CFR 351.213(d)(3).

⁹ See Memorandum, “Notice of Intent to Rescind Review, in Part,” dated December 20, 2023 (Intent to Rescind Memorandum). We note that this memorandum incorrectly listed “Renewable Energy” as one of the companies for which Commerce intended to rescind this review. However, Commerce did not initiate a review with

¹⁹ See *Order*, 84 FR at 41704.

¹ See *Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Antidumping Duty Orders*, 85 FR 52546, 52547 (August 26, 2020) (*Order*).

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 71829 (October 18, 2023) (*Initiation Notice*).

comments on the Intent to Rescind Memorandum. Accordingly, Commerce is rescinding this review with respect to the companies listed in Appendix II, in accordance with 19 CFR 351.213(d)(3).

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Export price is calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum. 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>. A list of the topics discussed in the Preliminary Decision Memorandum is attached in Appendix I of this notice.

Preliminary Results of Review

As a result of this review, we preliminarily determine the following estimated weighted-average dumping margin for the period August 1, 2022, through July 31, 2023:

Producer/exporter	Weighted-average dumping margin (percent)
Dongkuk S&C Co., Ltd	0.00

Disclosure and Public Comment

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).

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs 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.¹⁰ Interested parties who submit

case briefs or rebuttal briefs in this administrative review must submit: (1) a table of contents listing each issue; and (2) a table of authorities.¹¹

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.¹² Further, we request that interested parties limit their 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 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).¹³

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.

Assessment Rates

Upon issuing the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), because Dongkuk reported the entered value of its U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of

dumping calculated for the examined sales to the total entered value of those sales. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce's "automatic assessment" practice will apply to entries of subject merchandise during the POR produced by Dongkuk for which Dongkuk did not know that the merchandise it sold to the intermediary (e.g., a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

For the companies listed in Appendix II for which we are rescinding the review, we will instruct CBP to assess antidumping duties on all appropriate entries at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue these rescission instructions to CBP no earlier than 35 days after the date of publication of this notice in the **Federal Register**.

In accordance with section 751(a)(2)(C) of the Act, the final results of this 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. Commerce intends to issue assessment instructions to CBP regarding Dongkuk 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 deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the company listed above will be that established in the

respect to this company. See *Initiation Notice*, 88 FR at 71831–71832.

¹⁰ See 19 CFR 351.309(d)(1); 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*).

¹¹ See 19 CFR 351.309(c)(2) and (d)(2).

¹² We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹³ See *APO and Service Final Rule*.

final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated or reviewed companies not covered in this review, the cash deposit rate will continue to be the company-specific cash deposit rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recent segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 5.41 percent, the all-others rate established in the LTFV investigation.¹⁴ These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 6, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Order*
- IV. Discussion of the Methodology
- V. Recommendation

Appendix II

Companies for Which Commerce Is Rescinding the Review

1. CS Wind China Co., Ltd.
2. CS Wind Corporation.
3. CS Wind Malaysia Sdn. Bhd.
4. CS Wind Taiwan Ltd.

5. CS Wind Turkey Kule Imalati A.S.
6. CS Wind UK Limited.
7. CS Wind Vietnam Co., Ltd.
8. CS Wind Portugal, S. A.
9. Enercon Korea Inc.
10. GE Renewable Energy
11. Hyosung Heavy Industries
12. Nordex SE
13. Siemens Gamesa Renewable Energy Limited
14. Vestas Korea
15. Vestas Korea Wind Technology Ltd.

[FR Doc. 2024–20778 Filed 9–12–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–909]

Certain Steel Nails From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent To Rescind, in Part; 2022–2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that Shanghai Yueda Nails Co., Ltd., a.k.a. Shanghai Yueda Nails Industry Co., Ltd. (Shanghai Yueda), an exporter of certain steel nails from the People's Republic of China (China), sold subject merchandise in the United States at prices below normal value (NV) during the period of review (POR) August 1, 2022, through July 31, 2023. Interested parties are invited to comment on these preliminary results.

DATES: Applicable September 13, 2024.

FOR FURTHER INFORMATION CONTACT: Bob Palmer or Hannah Lee, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–9068 or (202) 482–1216, respectively.

SUPPLEMENTARY INFORMATION:

Background

This administrative review is being conducted in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this administrative review on October 17, 2023.¹ In addition to the mandatory respondent, Shanghai Yueda, this review also covers nine other companies. On April 8, 2024, Commerce

extended the preliminary results deadline until August 30, 2024.² On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.³ The deadline for the preliminary results is now September 6, 2024.

Scope of the Order⁴

The products covered by the *Order* are nails from China. A full description of the scope of the *Order* is contained in the Preliminary Decision Memorandum.⁵

Intent To Rescind Administrative Review, in Part

Pursuant to 19 CFR 351.213(d)(3), it is Commerce's practice to rescind an administrative review of an antidumping duty order where it determines that there were no suspended entries of subject merchandise during the POR.⁶ Normally, upon completion of an administrative review, the suspended entries are liquidated at the antidumping duty assessment rate for the review period.⁷ Therefore, for an administrative review to be conducted, there must be a reviewable, suspended entry that Commerce can instruct Customs and Border Protection (CBP) to liquidate at the calculated antidumping duty assessment rate for the review period.⁸

² See Memorandum, "Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated April 8, 2024.

³ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated July 22, 2024.

⁴ See *Notice of Antidumping Duty Order: Certain Steel Nails from the People's Republic of China*, 73 FR 44961 (August 1, 2008) (*Order*).

⁵ For a complete description of the scope of the *Order*, see Memorandum, "Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Certain Steel Nails from the People's Republic of China; 2022–2023," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁶ See, e.g., *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Federal Republic of Germany: Rescission of Antidumping Administrative Review*; 2020–2021, 88 FR 4157 (January 24, 2023).

⁷ See 19 CFR 351.212(b)(1).

⁸ See, e.g., *Shanghai Sunbeauty Trading Co. v. United States*, 380 F. Supp. 3d 1328, 1335–36 (CIT 2019) (referencing section 751(a) of the Act, the U.S. Court of International Trade held that: "While the statute does not explicitly require that an entry be suspended as a prerequisite for establishing entitlement to a review, it does explicitly state the determined rate will be used as the liquidation rate for the reviewed entries. This result can only obtain if the liquidation of entries has been suspended . . ."); see also *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018–2019*, 86 FR 36102, and accompanying Issues and Decision Memorandum at Comment 4; and *Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation: Notice of Rescission of*

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 71829 (October 17, 2023).

¹⁴ See *Order*, 85 FR at 52547.

On November 8, 2023, Commerce placed CBP entry data on the record for U.S. imports of the subject merchandise during the POR for respondent selection purposes.⁹ Eight companies under review have existing separate rates but no suspended entries during the POR.¹⁰ In the absence of any reviewable, suspended entries of subject merchandise from these companies during the POR, Commerce hereby notifies all interested parties of its intent to rescind this administrative review with respect to these companies. Commerce is providing interested parties with an opportunity to submit comments on this preliminary decision, including factual information. Comments, including factual information, from interested parties are due to Commerce no later than seven days after the publication of these preliminary results. Rebuttal comments, including rebuttal factual information, are due seven days thereafter. All

submissions must be filed electronically at <http://access.trade.gov> in accordance with 19 CFR 351.303.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Act. We calculated export prices in accordance with section 772 of the Act. Because China is an NME country within the meaning of section 771(18) of the Act, NV has been calculated in accordance with section 773(c) of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of the topics discussed in the Preliminary Decision Memorandum is included as an 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>.

Separate Rates

We preliminarily determine that Shanghai Yueda is eligible for a separate rate in this administrative review. Because S-Mart (Tianjin) Technology Development Co., Ltd. (S-Mart) did not submit either a separate rate application or a separate rate certification, it is not eligible for a separate rate.

Preliminary Results of the Review

As a result of our analysis of the information on the record, Commerce preliminarily determines the following estimated weighted-average dumping margin exists for the POR:¹¹

Exporter	Weighted-average dumping margin (percent ad valorem)
Shanghai Yueda Nails Co., Ltd., a.k.a. Shanghai Yueda Nails Industry Co., Ltd	7.14

Disclosure and Public Comment

Commerce intends to disclose the calculations performed for these preliminary results to the parties no later than five days after the date of publication of this notice in accordance with 19 CFR 351.224(b).

Pursuant to 19 CFR 351.309(c)(ii), interested parties may submit a case brief 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 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 table of contents listing each 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 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 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).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 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.

Final Results of Review

Unless extended, we intend to issue the final results of this administrative review, which will include the results of our analysis of issues raised in the case and rebuttal briefs, within 120 days of the date of publication of this notice in the **Federal Register**.¹⁶

Antidumping Duty Administrative Review, 77 FR 65532 (October 29, 2012) (noting that "for an administrative review to be conducted, there must be a reviewable, suspended entry to be liquidated at the newly calculated assessment rate").

⁹ See Memorandum, "Release of Customs Entry Data for Respondent Selection," dated November 8, 2023.

¹⁰ See Appendix II for a list of these companies.

¹¹ Because no interested party requested a review of the China-wide entity and Commerce no longer considers the China-wide entity as an exporter

conditionally subject to administrative reviews, we did not conduct a review of the China-wide entity. Thus, the rate (*i.e.*, 118.04 percent) for the China-wide entity is not subject to change as a result of this review. *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963, 65969–70 (November 4, 2013).

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 Final Service Rule*).

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 Final Service Rule*.

¹⁶ See section 751(a)(3)(A) of the Act; *see also* 19 CFR 351.213(h)(1).

Assessment Rates

Upon issuance of the final results, Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.¹⁷ Commerce intends to issue assessment instructions to CBP 35 days after the publication date 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).

If Shanghai Yueda's *ad valorem* weighted-average dumping margin is not zero or *de minimis* (i.e., less than 0.50 percent) in the final results of this review, Commerce will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales and the total quantity of those sales, in accordance with 19 CFR 351.212(b)(1).¹⁸ Commerce will also calculate estimated *ad valorem* importer-specific assessment rates with which to assess whether the per-unit assessment rate is *de minimis*.¹⁹ We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate calculated in the final results of this review is not zero or *de minimis*. Where Shanghai Yueda's *ad valorem* weighted-average dumping margin is zero or *de minimis*, or an importer-specific *ad valorem* assessment rate is zero or *de minimis*,²⁰ we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. For entries that were not reported in the U.S. sales data submitted by Shanghai Yueda, Commerce will instruct CBP to liquidate such entries at the rate for the China-wide entity.²¹

For the final results, if we continue to treat S-Mart as part of the China-wide entity, we will instruct CBP to apply an

ad valorem assessment rate of 118.04 percent to all entries of subject merchandise during the POR which was exported by that company.

For the companies for which we intend to rescind the review in the final results based on no reviewable entries, provided we receive no contrary information, we intend to instruct CBP to assess antidumping duties on all appropriate entries at a rate equal to the cash deposit rate of estimated antidumping duties 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 assessment instructions to CBP for these companies no earlier than 35 days after the date of publication of the final results in the **Federal Register**.

In accordance with section 751(a)(2)(C) of the Act, the final results of this 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 antidumping duties, as applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) for Shanghai Yueda, the cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this review (except that if the *ad valorem* rate is *de minimis*, then the cash deposit rate will be zero); (2) for previously investigated or reviewed Chinese and non-Chinese exporters not listed above that have separate rates, the cash deposit rate will continue to be the existing exporter-specific cash deposit rate; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity; and (4) for all non-Chinese exporters of subject merchandise which have not received their own separate rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also 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 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 duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, 19 CFR 351.213, and 19 CFR 351.221(b)(4).

Dated: September 6, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Intent to Rescind Review, In Part
- V. Discussion of the Methodology
- VI. Recommendation

Appendix II

Non-Selected Companies Under Review

1. Hebei Minmetals Co., Ltd.
2. Nanjing Caiqing Hardware Co., Ltd.
3. Nanjing Yuechang Hardware Co., Ltd.
4. Shandong Qingyun Hongyi Hardware Products Co., Ltd.
5. Shanxi Hairui Trade Co., Ltd.
6. Suntec Industries Co., Ltd.
7. Tianjin Jinchi Metal Products Co., Ltd.
8. Xi'an Metals & Minerals Import & Export Co., Ltd.

[FR Doc. 2024–20760 Filed 9–12–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–871]

Finished Carbon Steel Flanges From India: Preliminary Results of Antidumping Duty Administrative Review, and Rescission, in Part; 2022–2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that producers and/or exporters subject to this administrative review made sales of subject merchandise at less than normal value (NV) during the period of review (POR) August 1, 2022, through July 31, 2023. We are also rescinding the review with respect to

¹⁷ See 19 CFR 351.212(b)(1).

¹⁸ 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 Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012).

¹⁹ For calculated (estimated) *ad valorem* importer-specific assessment rates used in determining whether the per-unit assessment rate is *de minimis*, see Memorandum, "Preliminary Results Margin Calculation for Shanghai Yueda Nails Co., Ltd.," dated concurrently with this notice, and accompanying Margin Calculation Program Logs and Outputs.

²⁰ See 19 CFR 351.106(c)(2).

²¹ See *NME Practice* for a full discussion.

certain companies. Interested parties are invited to comment on these preliminary results.

DATES: Applicable September 13, 2024.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Theodora Mattei, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-2924 or (202) 482-4834, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 24, 2017, Commerce published in the **Federal Register** the antidumping duty order on finished carbon steel flanges from India.¹ On August 2, 2023, Commerce published a notice of opportunity to request an administrative review of the *Order*.² On October 18, 2023, Commerce initiated an administrative review of the antidumping duty order on finished carbon steel flanges from India, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).³ On December 11, 2023, Commerce selected Norma Group⁴ and R. N. Gupta & Co., Ltd. (RNG) as mandatory respondents in this administrative review.⁵ On April 10, 2024, in accordance with section 751(a)(3)(A) of the Act and 19 CFR

351.213(h)(2), Commerce extended the time period for issuing these preliminary results until no later than August 30, 2024.⁶ On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.⁷ The deadline for these preliminary results is now September 6, 2024.

For a complete description of the events that followed the initiation of this review, see the Preliminary Decision Memorandum.⁸ A list of topics included in the Preliminary Decision Memorandum is included as 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 merchandise covered by the *Order* is finished carbon steel flanges. For a complete description of the scope of the *Order*, see the Preliminary Decision Memorandum.

Rescission, in Part, of Administrative Review

Pursuant to 19 CFR 351.213(d)(3), Commerce will rescind an administrative review when there are no entries of subject merchandise during the POR for which liquidation is suspended.⁹ Normally, upon completion of an administrative review, the suspended entries are liquidated at the assessment rate calculated for the review period.¹⁰ Therefore, for an administrative review of a company to be conducted, there must be a reviewable, suspended entry to be liquidated at the newly calculated assessment rate.¹¹

⁶ See Memorandum, "Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated April 10, 2024.

⁷ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated July 22, 2024.

⁸ See Memorandum, "Decision Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Finished Carbon Steel Flanges from India; 2022–2023," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁹ See, e.g., *Large Diameter Welded Pipe from Greece: Rescission of Antidumping Duty Administrative Review; 2022–2023*, 89 FR 4274 (January 23, 2024).

¹⁰ See 19 CFR 351.212(b)(2).

¹¹ See 19 CFR 351.212(d)(3).

Based on our analysis of Customs and Border Protection (CBP) information, we determined that 27 companies had no entries of subject merchandise during the POR.¹² On December 15, 2023, we notified parties that we intended to rescind this administrative review with respect to the 27 companies, because those companies had no reviewable, suspended entries of subject merchandise; and we invited parties to comment.¹³ No parties commented on the notification of intent to rescind the review, in part. Accordingly, pursuant to 19 CFR 351.213(d)(3) and (d)(4), we are rescinding the administrative review with respect to the 27 companies (listed in Appendix III of this notice) that had no reviewable, suspended entries of subject merchandise during the POR.

Additionally, Aditya Forge Limited (Aditya), withdrew its request for a review of its entries. Therefore, because Aditya was the only company that requested a review of Aditya's entries, and it timely withdrew its request, we are rescinding the review with respect to Aditya in accordance with 19 CFR 351.213(d)(1).¹⁴

Methodology

Commerce is conducting this review in accordance with sections 751(a)(1)(B) and (2) of the Act. Export price is calculated in accordance with section 772 of the Act. NV 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.

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

¹² See Appendix III (listing the 27 companies).

¹³ See Memorandum, "Intent to Rescind Administrative Review, in Part," dated December 15, 2023.

¹⁴ See Appendix III.

¹ See *Finished Carbon Steel Flanges from India and Italy: Antidumping Duty Orders*, 82 FR 40136 (August 24, 2017) (*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).

⁴ In prior segments of this proceeding, we determined that Norma (India) Limited, USK Exports Private Limited, Uma Shanker Khandelwal & Co., and Bansidhar Chiranjilal were affiliated and should be treated as a single entity (Norma Group). See, e.g., *Finished Carbon Steel Flanges from India: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 82 FR 9719 (February 8, 2017), and accompanying Preliminary Decision Memorandum, at 4–5, unchanged in *Finished Carbon Steel Flanges from India: Final Determination of Sales at Less Than Fair Value*, 82 FR 29483 (June 29, 2017). In this review, Norma (India) Limited and its affiliated entities have affirmed that the factual basis on which Commerce made its prior determinations has not changed. See Norma Group's Letter, "2nd Supplemental Response Section A, C and D of Antidumping duty Original Questionnaire," dated June 26, 2024, at S2–3. Therefore, Commerce continues to treat these four companies as a single entity.

⁵ See Memorandum, "Respondent Selection," dated December 11, 2023 (Respondent Selection Memorandum). The Respondent Selection Memorandum incorrectly identified the number of companies on which we initiated as 41; we initiated the review on 42 companies after collapsing the four Norma Group companies as described above.

zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.”

In this administrative review, we preliminarily calculated weighted-average dumping margins for Norma Group and RNG that are not zero, *de minimis* (i.e., less than 0.5 percent), or determined entirely on the basis of facts

available. Accordingly, consistent with guidance in section 735(c)(5)(A) of the Act, Commerce is preliminarily assigning to the companies not individually examined a margin of 2.89 percent, which is the weighted average of the dumping margins calculated for Norma Group margin and RNG based on publicly ranged U.S. sales values.¹⁵ The

companies not selected for individual examination are listed in Appendix II.

Preliminary Results of Review

Commerce preliminarily determines 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)
R. N. Gupta & Company Limited	4.00
Norma (India) Limited/USK Exports Private Limited/Uma Shanker Khandelwal & Co./Bansidhar Chiranjilal	1.14
Non-Selected Companies ¹⁶	2.89

Disclosure and Public Comment

Commerce intends to disclose to interested parties the calculations performed for these preliminary results within five days of the date of publication of this notice.¹⁷ Interested parties may submit case briefs no later than 30 days after the date of publication of this notice.¹⁸ Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than seven days after the date for filing case briefs.¹⁹ Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.²⁰

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.²¹ 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).²²

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, U.S. Department of Commerce, filed electronically via ACCESS, 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; (3) whether any participant is a foreign national; and (4) a list of the issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs.²³ If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined. Parties should confirm the date and time of the hearing two days before the scheduled date. All briefs and hearing requests must be filed electronically using ACCESS and received successfully in their entirety by 5:00 p.m. Eastern Time on the due date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), Commerce intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in any written briefs, no later than 120 days after the date of publication of these preliminary results.

Assessment Rates

Upon completion of this administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. If the weighted-average dumping margin for a mandatory respondent is not zero or *de minimis* in the final results of this review, we will calculate an importer-specific assessment rate on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of such sales in accordance with 19 CFR 351.212(b)(1).²⁴ If the weighted-average dumping margin is zero or *de minimis* in the final results of review, or if an importer-specific assessment rate is zero or *de minimis*, Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.²⁵ For entries of subject merchandise during the period of review produced by the respondents for which they did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries pursuant to the reseller policy, i.e., the assessment rate for such entries will be the all-others rate established in the investigation if there is no rate for the intermediate company(ies) involved in the transaction.²⁶

For the companies which were not selected for individual examination, we intend to assign an antidumping duty assessment rate equal to the weighted-average dumping margin determined for

¹⁵ See Memorandum, “Calculation of Margin for Respondents Not Selected for Individual Examination,” dated concurrently with this notice.

¹⁶ See Appendix II for a list of companies not selected for individual examination.

¹⁷ See 19 CFR 351.224(b).

¹⁸ See 19 CFR 351.309(c)(1)(ii).

¹⁹ See 19 CFR 351.309(d)(1) and (2).

²⁰ See 19 CFR 351.309(c)(2) and (d)(2).

²¹ We use the term “issue” here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

²² See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule*, 88 FR 67069 (September 29, 2023).

²³ See 19 CFR 351.310(c).

²⁴ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101, 8103 (February 14, 2012).

²⁵ *Id.*, 77 FR at 8102–03; see also 19 CFR 351.106(c)(2).

²⁶ See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

the non-examined companies in the final results of review.

For the companies for which the administrative review is rescinded, antidumping duties shall be assessed at a rate equal to the cash deposit of estimated antidumping duties 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 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). The final results of this 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 cash deposits of estimated antidumping duties, where applicable.²⁷

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication in the **Federal Register** of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for companies subject to this review will be equal to the company-specific weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by a company not covered in this review but covered in a prior segment of the 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 less-than-fair-value investigation, but the producer is, then the cash deposit rate will be the rate established in the most recently completed segment of the proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 8.91 percent, the all-others rate established in the less-than-fair-value investigation.²⁸ These cash deposit requirements, when imposed,

shall remain in effect until further notice.

Notification to Importers

This notice also 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 review period. 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 of review are issued and published 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 I

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Order*
- IV. Rescission of Review, In Part
- IV. Rates for Non-Examined Companies
- V. Discussion of the Methodology
- VI. Currency Conversion
- VII. Recommendation

Appendix II

List of Companies Not Selected for Individual Examination

1. Balkrishna Steel Forge Pvt. Ltd.
2. C.D. Industries
3. Cetus Engineering Private Limited
4. Echjay Industries Pvt. Ltd.
5. JAI Auto Private Limited
6. Jiten Steel Industries.
7. Munish Forge Private Limited
8. R. D. Forge
9. Renin Piping Products
10. Rollwell Forge Engineering Components and Flanges
11. Rollwell Forge Pvt. Ltd.
12. Tirupati Forge Pvt. Ltd.; Tirupati Forge

Appendix III

Companies for Which Commerce Is Rescinding This Review

1. Adinath International
2. Aditya Forge Limited
3. Allena Group
4. Alloyed Steel
5. Bebitz Flanges Works Private Limited
6. CHW Forge
7. CHW Forge Pvt. Ltd.

8. Citizen Metal Depot
9. Corum Flange
10. DN Forge Industries
11. Echjay Forgings Limited
12. Falcon Valves and Flanges Private Limited
13. Heubach International.
14. Hindon Forge Pvt. Ltd.
15. Kinnari Steel Corporation
16. M F Rings and Bearing Races Ltd
17. Mascot Metal Manufacturers
18. OM Exports
19. Punjab Steel Works
20. Raaj Sagar Steels
21. Ravi Ratan Metal Industries
22. Rolex Fittings India Pvt. Ltd
23. SHM (ShinHeung Machinery)
24. Siddhagiri Metal & Tubes
25. Sizer India
26. Steel Shape India
27. Sudhir Forgings Pvt. Ltd.
28. Umashanker Khandelwal Forging Limited

[FR Doc. 2024–20751 Filed 9–12–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–520–809]

Prestressed Concrete Steel Wire Strand From the United Arab Emirates: Initiation of Antidumping Duty New Shipper Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) has determined that a request for a new shipper review (NSR) of the antidumping duty order on prestressed concrete steel wire strand (PC strand) from the United Arab Emirates (UAE) meets the statutory and regulatory requirements for initiation. The period of review (POR) for the NSR is February 1, 2024, through July 31, 2024.

DATES: Applicable September 13, 2024,

FOR FURTHER INFORMATION CONTACT: Alexander Cipolla or Brendan Quinn, 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) 482–4956 or (202) 482–5848, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the order on PC Strand from the UAE on February 1, 2021.¹ On August 6, 2024, pursuant to

¹ See *Prestressed Concrete Steel Wire Strand from Argentina, Colombia, Egypt, the Netherlands, Saudi Arabia, Taiwan, the Republic of Turkey, and the*

Continued

²⁷ See section 751(a)(2)(C) of the Act.

²⁸ See *Order*, 82 FR at 40138.

section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(c), Commerce received a timely NSR request from Essen Steel Industry L.L.C. (Essen Steel).²

In its submission, Essen Steel certified that it is the producer and exporter of the subject merchandise subject to this NSR request.³ Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i), Essen Steel certified that it did not export PC strand to the United States during the period of investigation (POI).⁴ Additionally, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Essen Steel certified that, since the initiation of the investigation, it has not been affiliated with any producer or exporter that exported PC strand to the United States during the POI, including those not individually examined during the investigation.⁵

In its submission, pursuant to 19 CFR 351.214(b)(2)(iv), Essen Steel certified that it will provide necessary information related to the unaffiliated customer in the United States during the NSR.⁶ Essen Steel also provided a certification by its unaffiliated customer of its willingness to participate in the NSR.⁷

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(v), Essen Steel submitted documentation establishing the following: (1) the date on which the subject merchandise was first entered, or withdrawn from warehouse, for consumption; (2) the volume of its first shipment, including whether such shipment was made in a commercial quantity; and (3) the date of its first sale to an unaffiliated customer in the United States.⁸ Essen Steel stated that it has not made subsequent shipments of subject merchandise during the POR.⁹

Additionally, Essen Steel submitted documentation establishing the circumstances surrounding such sale, including: (1) the price of such sale; (2) any expenses arising from such sale; (3) whether the subject merchandise involved in such sale was resold in the

United States at a profit; and (4) whether such sale were made on an arms-length basis.¹⁰ Essen Steel also submitted documentation regarding its business activities, including: (1) its offers to sell merchandise in the United States; (2) an identification of the complete circumstance surrounding its sales to the United States, as well as any home market or third country sales; and (3) an identification of its relationship to the first unaffiliated U.S. purchaser.¹¹

Commerce conducted a query of U.S. Customs and Border Protection (CBP) data and confirmed that Essen Steel's subject merchandise entered the United States for consumption and that liquidation of such entries had been properly suspended for antidumping duties. The CBP data that Commerce examined are consistent with information provided by Essen Steel in its NSR request. In particular, the CBP data confirm the price and quantity reported by Essen Steel for the sale that forms the basis of its NSR request.¹²

Period of Review

In accordance with 19 CFR 351.214(g)(1)(i)(B), the POR for an NSR initiated in the month immediately following the semiannual anniversary month will be the six-month period immediately preceding the semiannual anniversary month. Therefore, the POR for this NSR is February 1, 2024, through July 31, 2024.

Initiation of NSR

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(b), and based on the information on the record, we find that Essen Steel's NSR request meets the threshold requirements for initiation of an NSR of its shipment of PC strand to the United States.¹³ However, if the information supplied by Essen Steel is later found to be incorrect or insufficient during the course of this NSR, Commerce may rescind the review or apply adverse facts available, pursuant to section 776 of the Act, as appropriate. Pursuant to 19 CFR 351.221(c)(1)(i), Commerce will publish the notice of initiation of an NSR no later than the last day of the month following the anniversary or semiannual anniversary month of the order. Commerce intends to issue the preliminary results of this review no later than 180 days from the date of initiation, and the final results of this review no later than 90 days after the

date the preliminary results are issued.¹⁴

We intend to conduct this NSR in accordance with section 751(a)(2)(B) of the Act.¹⁵ Because Essen Steel certified that it exported subject merchandise, the sale of which is the basis for its NSR request, Commerce will instruct CBP to continue to suspend liquidation of all entries of subject merchandise produced and exported by Essen Steel. To assist in its analysis of the *bona fide* nature of Essen Steel's sale, upon initiation of this NSR, Commerce will require Essen Steel to submit, on an ongoing basis, complete transaction information concerning any sales of subject merchandise to the United States that were made subsequent to the POR. Further, in accordance with section 751(a)(2)(B)(iv)(VII) of the Act and 19 CFR 351.214(k), Essen Steel will be required to provide information regarding the following factors for Commerce's consideration in determining whether the sales made by Essen Steel during the POR are *bona fide*: (1) whether the producer, exporter, or customer was established for purposes of the sale in question after the imposition of the relevant antidumping or countervailing duty order; (2) whether the producer, exporter, or customer has lines of business unrelated to the subject merchandise; (3) the quantity of sales; and (4) any other factor that Commerce determines to be relevant with respect to the future selling behavior of the producer or exporter, including any other indicia that the sale was not commercially viable.

Interested parties requiring access to proprietary information in this NSR should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306. This initiation notice is published in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: September 9, 2024.

Scot Fullerton,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2024–20801 Filed 9–12–24; 8:45 am]

BILLING CODE 3510–DS–P

United Arab Emirates: Antidumping Duty Orders, 86 FR 7703 (February 1, 2021) (*Order*).

² See Essen Steel's Letter, "Request for New Shipper Administrative Review of Antidumping Duty Order," dated August 5, 2024 (NSR Request). We note that this request was filed after close of business on August 5, 2024. As such, we treat August 6, 2024, as the official file date. See, generally, 19 CFR 351.303(b)(1).

³ *Id.* at 2.

⁴ *Id.* at Exhibit 1.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at Exhibit 2.

⁸ *Id.* at Exhibit 3.

⁹ *Id.* at 2.

¹⁰ *Id.* at Exhibit 5.

¹¹ *Id.* at Exhibit 4.

¹² *Id.* at Exhibit 3.; see also Memorandum, "Initiation of Antidumping Duty New Shipper Review," dated concurrently with this notice.

¹³ See, generally, NSR Request.

¹⁴ See section 751(a)(2)(B)(iii) of the Act.

¹⁵ The Act was amended by the Trade Facilitation and Trade Enforcement Act of 2015 which removed from section 751(a)(2)(B) of the Act the provision directing Commerce to instruct CBP to allow an importer the option of posting a bond or security in lieu of a cash deposit during the pendency of an NSR. This was also codified in Commerce's regulations at 19 CFR 351.214(e).

DEPARTMENT OF COMMERCE**International Trade Administration**

[C-533-927]

Certain Epoxy Resins From India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain epoxy resins (epoxy resins) from India for the period of investigation (POI) January 1, 2023, through December 31, 2023. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable September 13, 2024.

FOR FURTHER INFORMATION CONTACT: Eliza DeLong or Colin Thrasher, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-3878 or (202) 482-6458, respectively.

SUPPLEMENTARY INFORMATION:**Background**

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this countervailing duty (CVD) investigation on April 29, 2024.¹ On May 28, 2024, Commerce postponed the preliminary determination until September 3, 2024.² On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.³ The deadline for the preliminary determination is now September 9, 2024.

For a complete description of events that followed the initiation of this investigation, *see* the Preliminary

Decision Memorandum.⁴ A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II 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 Investigation

The products covered by this investigation are epoxy resins. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,⁵ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, (*i.e.*, scope).⁶

We received several comments concerning the scope of this investigation, as well as in the companion less-than-fair-value (LTFV) and CVD investigations of epoxy resins, as it appeared in the *Initiation Notice*. We are currently evaluating the scope comments filed by the interested parties. We intend to issue our preliminary decision regarding the scope of the LTFV and CVD investigations in the preliminary determinations of the companion LTFV investigations, the deadline for which is November 6, 2024.⁷ We will incorporate the scope decisions from the LTFV investigations into the scope of the final CVD determination for this investigation after considering any relevant comments submitted in scope case and rebuttal briefs.⁸

⁴ See Memorandum, "Decision Memorandum for the Preliminary Affirmative Determination in the Countervailing Duty Investigation of Certain Epoxy Resins from India," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁵ See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

⁶ See *Initiation Notice*.

⁷ See *Certain Epoxy Resins from the People's Republic of China, India, the Republic of Korea, Taiwan, and Thailand: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 89 FR 65583 (August 12, 2024) (*LTFV Prelim Postponement*).

⁸ The deadline for interested parties to submit scope case and rebuttal briefs will be established in the preliminary scope decision memorandum.

Methodology

Commerce is conducting this investigation in accordance with section 701 of 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 Commerce notes that, in making these findings, it relied, in part, on facts available and, because it finds that Champion Advanced Materials (Champion) did not act to the best of its ability to respond to Commerce's requests for information, Commerce has drawn an adverse inference where appropriate in selecting from among the facts otherwise available.¹⁰ For a full description of the methodology underlying our preliminary determination, *see* the Preliminary Decision Memorandum.

Alignment

As noted in the Preliminary Decision Memorandum, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final CVD determination with the final determination in the companion LTFV investigation of epoxy resins from India based on a request made by the petitioner.¹¹ Consequently, the final CVD determination will be issued on the same date as the final LTFV determination, which is currently scheduled to be issued no later than January 21, 2025, unless postponed.¹²

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that, in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any rates that are zero, *de minimis*, or based entirely under section 776 of the Act.

In this investigation, Commerce preliminarily assigned a rate based entirely on facts available to Champion.

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 sections 776(a) and (b) of the Act.

¹¹ See Petitioner's Letter, "Petitioner's Request to Align Countervailing Duty Investigation Final Determination with Antidumping Duty Investigation Final Determination," dated August 15, 2024. The petitioner is the U.S. Epoxy Resin Producers *Ad Hoc* Coalition.

¹² See *LTFV Prelim Postponement*.

¹ See *Certain Epoxy Resins from the People's Republic of China, India, the Republic of Korea, and Taiwan: Initiation of Countervailing Duty Investigations*, 89 FR 33319 (April 29, 2024) (*Initiation Notice*).

² See *Certain Epoxy Resins from the People's Republic of China, India, the Republic of Korea, and Taiwan: Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 89 FR 46016 (May 28, 2024).

³ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated July 22, 2024.

Therefore, the only rate that is not zero, *de minimis* or based entirely on facts otherwise available is the rate calculated for Atul Limited (Atul). Consequently, the rate calculated for Atul is also assigned as the rate for all-other producers and exporters.

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent <i>ad valorem</i>)
Atul Limited	1.55
Champion Advanced Materials	* 113.83
All Others	1.55

* Rate based on an adverse inference.

Suspension of Liquidation

In accordance with sections 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Disclosure

Commerce intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its 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).

Consistent with 19 CFR 351.224(e), Commerce will analyze and, if appropriate, correct any timely allegations of significant ministerial errors by amending the preliminary determination. However, consistent with 19 CFR 351.224(d), Commerce will not consider incomplete allegations that do not address the significance standard under 19 CFR 351.224(g) following the preliminary determination. Instead, Commerce will address such allegations in the final determination together with issues raised in the case briefs or other written comments.

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination for Atul. Because

Champion did not respond to Commerce's request for information in a timely manner, and Commerce preliminarily determines that Champion failed to cooperate by not acting to the best of its ability to respond to Commerce's request for information pursuant to section 776(b) of the Act, Commerce does not intend to conduct verification of Champion's information.

Public Comment

All interested parties will have the opportunity to submit scope case and rebuttal briefs on the preliminary decision regarding the scope of the LTFV and CVD investigations. The deadlines to submit scope case and rebuttal briefs will be provided in the preliminary scope decision memorandum. For all scope case and rebuttal briefs, parties must file identical documents simultaneously on the records of the ongoing LTFV and CVD epoxy resins investigations. No new factual information or business proprietary information may be included in either scope case or rebuttal briefs.

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. 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.¹³ 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.¹⁴

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 investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹⁵ Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We

¹³ 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*).

¹⁴ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁵ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

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 investigation. 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).¹⁶

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce via ACCESS within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the 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, parties will be notified of the time and date for the hearing.¹⁷ Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

U.S. International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of epoxy resins from India are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 703(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: September 9, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise subject to this investigation is fully or partially uncured epoxy resins, also known as epoxide resins, polyepoxides, oxirane resins, ethoxyline

¹⁶ See *APO and Service Final Rule*, 88 FR at 67069.

¹⁷ See 19 CFR 351.310(d).

resins, diglycidyl ether of bisphenol, (chloromethyl)oxirane, or aromatic diglycidyl, which are polymers or prepolymers containing epoxy groups (*i.e.*, three-membered ring structures comprised of two carbon atoms and one oxygen atom). Epoxy resins range in physical form from low viscosity liquids to solids. All epoxy resins are covered by the scope of this investigation irrespective of physical form, viscosity, grade, purity, molecular weight, or molecular structure, and packaging.

Epoxy resins may contain modifiers or additives, such as hardeners, curatives, colorants, pigments, diluents, solvents, thickeners, fillers, plasticizers, softeners, flame retardants, toughening agents, catalysts, Bisphenol F, and ultraviolet light inhibitors, so long as the modifier or additive has not chemically reacted so as to cure the epoxy resin or convert it into a different product no longer containing epoxy groups. Such epoxy resins with modifiers or additives are included in the scope where the epoxy resin component comprises no less than 30 percent of the total weight of the product. The scope also includes blends of epoxy resins with different types of epoxy resins, with or without the inclusion of modifiers and additives, so long as the combined epoxy resin component comprises at least 30 percent of the total weight of the blend.

Epoxy resins that enter as part of a system or kit with separately packaged co-reactants, such as hardeners or curing agents, are within the scope. The scope does not include any separately packaged co-reactants that would not fall within the scope if entered on their own.

The scope includes merchandise matching the above description that has been processed in a third country, including by commingling, diluting, introducing, or removing modifiers or additives, or performing any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the subject country.

The scope also includes epoxy resin that is commingled or blended with epoxy resin from sources not subject to these investigations. Only the subject component of such commingled products is covered by the scope of this investigation.

Excluded from the scope are phenoxy resins, which are polymers with a weight greater than 11,000 Daltons, a Melt Flow Index (MFI) at 200 °C (392 °F) no less than 4 grams and no greater than 70 grams per 10 min, Glass-Transition Temperatures (Tg) no less than 80 °C (176 °F) and no greater than 100 °C (212 °F), and which contain no epoxy groups other than at the terminal ends of the molecule.

Excluded from the scope are certain paint and coating products, which are blends, mixtures, or other formulations of epoxy resin, curing agent, and pigment, in any form, packaged in one or more containers, wherein (1) the pigment represents a minimum of 10 percent of the total weight of the product, (2) the epoxy resin represents a maximum of 80 percent of the total weight of the product, and (3) the curing agent represents 5 to 40 percent of the total weight of the product.

Excluded from the scope are preimpregnated fabrics or fibers, often referred to as “prepregs,” which are composite materials consisting of fabrics or fibers (typically carbon or glass) impregnated with epoxy resin.

This merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 3907.30.0000. Subject merchandise may also be entered under subheadings 3907.29.0000, 3824.99.9397, 3214.10.0020, 2910.90.9100, 2910.90.9000, 2910.90.2000, and 1518.00.4000. The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Injury Test
- IV. Diversification of India's Economy
- V. Subsidies Valuation
- VI. Use of Facts Otherwise Available and Adverse Inferences
- VII. Analysis of Programs
- VIII. Recommendation

[FR Doc. 2024–20887 Filed 9–12–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–167]

Certain Epoxy Resins From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Determination of Critical Circumstances, and Alignment of Final Determination With Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain epoxy resins (epoxy resins) from the People's Republic of China (China) for the period of investigation (POI) January 1, 2023, through December 31, 2023. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable September 13, 2024.

FOR FURTHER INFORMATION CONTACT: Nathan James, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5305.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this countervailing duty (CVD) investigation on April 29, 2024.¹ On May 28, 2024, Commerce postponed the preliminary determination until September 3, 2024.² On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.³ The deadline for the preliminary determination is now September 9, 2024.

For a complete description of events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.⁴ A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II 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 Investigation

The products covered by this investigation are epoxy resins. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,⁵ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product

¹ *See Certain Epoxy Resins from the People's Republic of China, India, the Republic of Korea, and Taiwan: Initiation of Countervailing Duty Investigations*, 89 FR 33319 (April 29, 2024) (*Initiation Notice*).

² *See Certain Epoxy Resins from the People's Republic of China, India, the Republic of Korea, and Taiwan: Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 89 FR 46061 (May 28, 2024).

³ *See Memorandum*, “Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,” dated July 22, 2024.

⁴ *See Memorandum*, “Decision Memorandum for the Preliminary Affirmative Determination of the Countervailing Duty Investigation of Certain Epoxy Resins from the People's Republic of China,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁵ *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

coverage (*i.e.*, scope).⁶ We received several comments concerning the scope of this investigation, as well as in the companion less-than-fair value (LTFV) and CVD investigations of epoxy resins, as it appeared in the *Initiation Notice*. We are currently evaluating the scope comments filed by the interested parties. We intend to issue our preliminary decision regarding the scope of the LTFV and CVD investigations in the preliminary determinations of the companion LTFV investigations, the deadline for which is November 6, 2024.⁷ We will incorporate the scope decisions from the LTFV investigations into the scope of the final CVD determination for this investigation after considering any relevant comments submitted in scope case and rebuttal briefs.⁸

Methodology

Commerce is conducting this investigation in accordance with section 701 of 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 Commerce notes that, in making these findings, it relied on facts available and, because it finds that the Government of China and both mandatory respondents did not act to the best of their abilities to respond to Commerce’s requests for information, Commerce has drawn an adverse inference where appropriate in selecting from among the facts otherwise available. For a full description of the methodology underlying our preliminary conclusions, see the Preliminary Decision Memorandum.

Preliminary Affirmative Determination of Critical Circumstances

In accordance with section 703(e)(1) of the Act, we preliminarily find that critical circumstances exist with respect to imports of subject merchandise for Jiangsu Sanmu Group Co., Ltd. (Sanmu), Shandong Bluestar Dongda Chemical (Bluestar), and all other producers and/

or exporters. For a full discussion of our preliminary critical circumstances determination, see the “Critical Circumstances” section of the Preliminary Decision Memorandum.

Alignment

As noted in the Preliminary Decision Memorandum, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final CVD determination with the final determination in the companion LTFV investigation of epoxy resins from China based on a request made by the petitioner.¹⁰ Consequently, the final CVD determination will be issued on the same date as the final LTFV determination, which is currently scheduled to be issued no later than January 21, 2025, unless postponed.¹¹

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that, in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any rates that are zero, *de minimis*, or based entirely under section 776 of the Act.

Pursuant to section 705(c)(5)(A)(ii) of the Act, if the individual estimated countervailable subsidy rates established for all exporters and producers individually examined are zero, *de minimis*, or determined based entirely on facts otherwise available, Commerce may use “any reasonable method” to establish the estimated subsidy rate for all other producers or exporters. In this investigation, Commerce preliminarily determined the individually estimated subsidy rate for each of the individually examined respondents based entirely on facts available under section 776 of the Act. This is the only rate available in this proceeding for deriving the all-others rate. Consequently, pursuant to sections 703(d) and 705(c)(5)(A)(ii) of the Act, Commerce established the all-others rate by applying the countervailable subsidy rate assigned to the mandatory respondents.

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent <i>ad valorem</i>)
Jiangsu Sanmu Group Co., Ltd	* 108.64
Shandong Bluestar Dongda Chemical	* 108.64
All Others	* 108.64

* Rate based on an adverse inference.

Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Section 703(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of: (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered; or (b) the date on which notice of initiation of the investigation was published. Commerce preliminarily finds that critical circumstances exist for imports of subject merchandise produced and/or exported by Bluestar, Sanmu, and all other producers and/or exporters. In accordance with section 703(e)(2)(A) of the Act, the suspension of liquidation shall apply to unliquidated entries of merchandise from the exporters/producers identified in this paragraph that were entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice.

Disclosure

Normally, Commerce discloses its calculations performed in connection with the preliminary determination to interested parties within five days of its public announcement, or if there is no public announcement, within five days of the date of publication of the notice, in accordance with 19 CFR 351.224(b). However, because Commerce preliminarily applied facts available

⁶ See *Initiation Notice*.

⁷ See *Certain Epoxy Resins from the People's Republic of China, India, the Republic of Korea, Taiwan, and Thailand: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 89 FR 65583 (August 12, 2024) (*LTFV Preliminary Postponement*).

⁸ The deadline for interested parties to submit scope case and rebuttal briefs will be established in the preliminary scope decision memorandum.

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 Petitioner's Letter, “Petitioner's Request to Align Countervailing Duty Investigation Final Determination with Antidumping Duty Investigation Final Determination,” dated August 15, 2024. The petitioner is the U.S. Epoxy Resin Producers Ad Hoc Coalition.

¹¹ *LTFV Preliminary Postponement*.

with adverse inferences in the assignment of a subsidy rate for Bluestar and Sanmu, there are no calculations to disclose.

Verification

Because the examined respondents in this investigation did not provide information Commerce requested and Commerce preliminarily determines that each of the examined respondents has been uncooperative, it will not conduct verification.

Public Comment

All interested parties will have the opportunity to submit scope case and rebuttal briefs on the preliminary decision regarding the scope of the LTFV and CVD investigations. The deadlines to submit scope case and rebuttal briefs will be provided in the preliminary scope decision memorandum. For all scope case and rebuttal briefs, parties must file identical documents simultaneously on the records of the ongoing LTFV and CVD epoxy resins investigations. No new factual information or business proprietary information may be included in either scope case or rebuttal briefs.

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance at a time to be determined.¹² Rebuttal briefs, limited to issues raised in the case briefs, may be submitted no later than five days after the deadline date for filing case briefs.¹³ 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.¹⁴

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 investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹⁵ Further, we request that interested parties limit their 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 investigation. 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).¹⁶

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, via ACCESS within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the 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, parties will be notified of the time and date for the hearing.¹⁷ Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

U.S. International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of epoxy resins from China are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 703(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: September 9, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise subject to this investigation is fully or partially uncured

epoxy resins, also known as epoxide resins, polyepoxides, oxirane resins, ethoxylene resins, diglycidyl ether of bisphenol, (chloromethyl)oxirane, or aromatic diglycidyl, which are polymers or prepolymers containing epoxy groups (*i.e.*, three-membered ring structures comprised of two carbon atoms and one oxygen atom). Epoxy resins range in physical form from low viscosity liquids to solids. All epoxy resins are covered by the scope of this investigation irrespective of physical form, viscosity, grade, purity, molecular weight, or molecular structure, and packaging.

Epoxy resins may contain modifiers or additives, such as hardeners, curatives, colorants, pigments, diluents, solvents, thickeners, fillers, plasticizers, softeners, flame retardants, toughening agents, catalysts, Bisphenol F, and ultraviolet light inhibitors, so long as the modifier or additive has not chemically reacted so as to cure the epoxy resin or convert it into a different product no longer containing epoxy groups. Such epoxy resins with modifiers or additives are included in the scope where the epoxy resin component comprises no less than 30 percent of the total weight of the product. The scope also includes blends of epoxy resins with different types of epoxy resins, with or without the inclusion of modifiers and additives, so long as the combined epoxy resin component comprises at least 30 percent of the total weight of the blend.

Epoxy resins that enter as part of a system or kit with separately packaged co-reactants, such as hardeners or curing agents, are within the scope. The scope does not include any separately packaged co-reactants that would not fall within the scope if entered on their own.

The scope includes merchandise matching the above description that has been processed in a third country, including by commingling, diluting, introducing, or removing modifiers or additives, or performing any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the subject country.

The scope also includes epoxy resin that is commingled or blended with epoxy resin from sources not subject to this investigation. Only the subject component of such commingled products is covered by the scope of this investigation.

Excluded from the scope are phenoxy resins, which are polymers with a weight greater than 11,000 Daltons, a Melt Flow Index (MFI) at 200 °C (392 °F) no less than 4 grams and no greater than 70 grams per 10 min, Glass-Transition Temperatures (Tg) no less than 80 °C (176 °F) and no greater than 100 °C (212 °F), and which contain no epoxy groups other than at the terminal ends of the molecule.

Excluded from the scope are certain paint and coating products, which are blends, mixtures, or other formulations of epoxy resin, curing agent, and pigment, in any form, packaged in one or more containers, wherein (1) the pigment represents a minimum of 10 percent of the total weight of the product, (2) the epoxy resin represents a maximum of 80 percent of the total weight of the product,

¹² See 19 CFR 351.309(c)(1)(i); *see also* 19 CFR 351.303 (for general filing requirements).

¹³ 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*).

¹⁴ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁵ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹⁶ See *APO and Service Final Rule*, 88 FR at 67069.

¹⁷ See 19 CFR 351.310(d).

and (3) the curing agent represents 5 to 40 percent of the total weight of the product.

Excluded from the scope are preimpregnated fabrics or fibers, often referred to as “pre-pregs,” which are composite materials consisting of fabrics or fibers (typically carbon or glass) impregnated with epoxy resin.

This merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 3907.30.0000. Subject merchandise may also be entered under subheadings 3907.29.0000, 3824.99.9397, 3214.10.0020, 2910.90.9100, 2910.90.9000, 2910.90.2000, and 1518.00.4000. The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Injury Test
- IV. Analysis of China’s Financial System
- V. Diversification of China’s Economy
- VI. Use of Facts Otherwise Available and Adverse Inferences
- VII. Critical Circumstances
- VIII. Recommendation

[FR Doc. 2024–20888 Filed 9–12–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Certain Cased Pencils From the People’s Republic of China: Rescission of Antidumping Duty Administrative Review; 2022–2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty order on certain cased pencils (pencils) from the People’s Republic of China (China) for the period of review (POR) December 1, 2022, through November 30, 2023.

DATES: Applicable September 13, 2024.

FOR FURTHER INFORMATION CONTACT: Robert Copyak, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3642.

SUPPLEMENTARY INFORMATION:

Background

On December 28, 1994, Commerce published in the **Federal Register** the antidumping duty order on pencils from

China.¹ On December 1, 2023, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order*.² Based on timely requests for review from Dixon Ticonderoga Company (the petitioner) and Aloha Pencil Co. (Aloha), in accordance with 351.221(c)(1)(i) and section 751(a) of the Tariff Act of 1930, as amended (the Act), Commerce published the initiation of this administrative review on February 8, 2024, with respect to 17 companies.³

On February 14, 2024, Commerce released the U.S. Customs and Border Protection (CBP) data to all interested parties under an administrative protective order and requested comments regarding the data and respondent selection.⁴ We received no comments from interested parties on the CBP data.

On March 7, 2024, the petitioner submitted an objection to Aloha’s request for administrative review alleging that Aloha did not qualify for producer, manufacturer, or wholesaler status during the POR.⁵ In the *Initiation Notice*, Commerce required that interested parties submit a separate rate application (SRA) or separate rate certification (SRC) within 30 days of publication of the *Initiation Notice*.⁶ Because of the petitioner’s objection to Aloha’s request for review, we extended the deadline for parties to file an SRA or SRC multiple times.⁷ However, no party submitted an SRA or SRC within the extended time frame.

On March 13, 2024, Commerce issued a questionnaire to Aloha to assess its standing as a domestic producer, manufacturer, or wholesaler of pencils

during the POR.⁸ On March 25, 2024, Aloha timely submitted its response.⁹ On March 29, 2024, the petitioner submitted rebuttal factual information regarding Aloha’s standing questionnaire response.¹⁰

On April 9, 2024, based on the information on the record, Commerce determined that Aloha was not a *bona fide* producer, manufacturer, or wholesaler of a domestic like product during the POR.¹¹ As a result, Commerce declined to find that Aloha is a domestic interested party and stated that it was: (1) treating Aloha’s review request as void; and (2) preliminarily rescinding this administrative review with respect to any company for which Aloha was the sole requestor.¹² Consequently, because Aloha’s request for review of 14 companies was void, and it was the sole party requesting a review of these companies, only three companies remained under review: (1) Shandong Wah Yuen Stationery Co. Ltd.; Wah Yuen Stationery Co. Ltd.; (2) Tianjin Tonghe Stationery Co., Ltd.; and (3) Ningbo Homey Union Co., Ltd.¹³

On May 2, 2024, we received comments from Aloha on the Standing Determination, arguing that Aloha had provided sufficient information to support its claims that it was a *bona fide* producer or manufacturer, and requesting that Commerce expedite its final decision.¹⁴ On May 9, 2024, the petitioner submitted rebuttal comments supporting the Standing Determination and requesting that Commerce reject Aloha’s request to expedite its final decision.¹⁵

On June 7, 2024, Commerce notified all interested parties of its intent to rescind this review in full because there were no reviewable, suspended entries of subject merchandise from the three remaining companies under review and invited comments from interested

¹ See *Antidumping Duty Order: Certain Cased Pencils from the People’s Republic of China*, 59 FR 66909 (December 28, 1994) (*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 83917 (December 1, 2023).

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 89 FR 8641, 8643 (February 8, 2024) (*Initiation Notice*).

⁴ See Memorandum, “Release of Customs Entry Data,” dated February 14, 2024.

⁵ See Petitioner’s Letter, “Refiled Dixon’s Objection to Aloha Pencil Co.’s Request for Administrative Review of the Antidumping Duty Order on Cased Pencils from the People’s Republic of China,” dated March 7, 2024.

⁶ See *Initiation Notice*, 89 FR at 8642 (“Exporters and producers must file a timely Separate Rate Application or Certification if they want to be considered for individual examination.”).

⁷ See Commerce’s Letters, “Extension for Separate Rate Application or Certification,” dated March 6, 2024; “Extension for Separate Rate Application or Certification,” dated March 21, 2024; and “Extension for Separate Rate Application or Certification,” dated April 3, 2024.

⁸ See Commerce’s Letter, “Standing Questionnaire,” dated March 13, 2024.

⁹ See Aloha’s Letter, “Standing Questionnaire Response,” dated March 25, 2024 (Standing Questionnaire Response).

¹⁰ See Petitioner’s Letter, “Dixon’s Rebuttal to Aloha Pencil Co.’s Standing Questionnaire Responses,” dated March 29, 2024.

¹¹ See Memorandum, “Aloha Pencil Company’s Standing to Request Review,” dated April 9, 2024 (Standing Determination).

¹² *Id.*

¹³ See Petitioner’s Letter, “Request for Administrative Review,” dated January 2, 2024.

¹⁴ See Aloha’s Letter, “Request for Reconsideration and Alternative Request to Expedite Final Decision on Domestic Party Standing and Publish Final Partial Rescission in the **Federal Register**,” dated May 2, 2024.

¹⁵ See Petitioner’s Letter, “Dixon’s Response to Aloha Pencil Co.’s Request for Reconsideration,” dated May 9, 2024.

parties.¹⁶ On June 14, 2024, we received comments from Aloha, again arguing that Commerce should reconsider its standing as a domestic interested party.¹⁷

On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days. The deadline for the preliminary results is now September 9, 2024.¹⁸

Aloha's Reconsideration Request

We continue to determine that Aloha is not a *bona fide* producer or manufacturer.¹⁹ Thus, we do not find that Aloha has the requisite standing to be considered a domestic interested party and, therefore, its review request continues to be void. We disagree with Aloha's contention that Commerce overlooked record information and drew unsupported inferences in making its Standing Determination.²⁰ We note that Aloha's Reconsideration Request primarily summarizes information that Commerce already considered in its Standing Determination and Commerce reasonably drew its conclusions concerning Aloha's standing based on that record information.²¹ Further, nothing in Aloha's Reconsideration Request warrants a reversal of that decision. For instance, Aloha summarizes its corporate history, which Commerce already considered in its Standing Determination, and as explained in that determination, Aloha's corporate history throughout the POR is extremely limited to an extent that undermines its *bona fides* claim.²²

Aloha also contends that Commerce failed to seek clarification of any ambiguities in Aloha's questionnaire response.²³ However, Commerce did not find Aloha's submission ambiguous or deficient, as there were no gaps in the record and the evidence Aloha submitted was adequate for Commerce to make a standing determination.²⁴

Aloha itself also notes that a number of documents did not even exist at either the time it requested this administrative review or when it received the questionnaire, and indicates that Aloha possibly possessed additional documents that it chose not to submit.²⁵

Aloha's Reconsideration Request also does not specify where such supposed deficiencies exist. Ultimately, the burden of creating an adequate record lies with the interested party.²⁶ Further, the requirements under section 782(d) of the Act concerning deficient submissions are not applicable here, as Aloha complied with Commerce's requests for information, even stating where information and documentation Commerce requested simply did not exist.²⁷ Commerce in its Standing Determination examined Aloha's status as a domestic interested party during the POR. Aloha's Reconsideration Request primarily refers to facts and documents that do not affect Aloha's standing as an interested party during the POR.²⁸ Lastly, each standing determination is a case-by-case, fact intensive analysis, and Commerce's determination is consistent with its practice with respect to its prior standing determinations.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(3), it is Commerce's practice to rescind an administrative review of an antidumping duty order when there are no reviewable entries of subject merchandise during the POR for which liquidation is suspended.²⁹ Normally, upon completion of an administrative review, the suspended entries are liquidated at the antidumping duty assessment rate calculated for the

review period.³⁰ Therefore, for an administrative review to be conducted, there must be a reviewable, suspended entry that Commerce can instruct CBP to liquidate at the antidumping duty assessment rate calculated for the review period.³¹ As explained above, because Commerce declined to find that Aloha is a domestic interested party, its request for review of 14 companies is void and there were no reviewable, suspended entries of subject merchandise in the CBP data for the three companies remaining companies under review during the POR. Accordingly, in the absence of suspended entries of subject merchandise during the POR, we are hereby rescinding this administrative review, in its entirety, in accordance with 19 CFR 351.213(d)(3).

Assessment

Commerce will instruct CBP to assess antidumping duties on all appropriate entries.

Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties 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 assessment instructions to CBP no earlier than 35 days after the date of publication of this rescission notice in the **Federal Register**.

Administrative Protective Order

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written 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 subject to sanction.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: September 6, 2024.

Scot Fullerton,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2024-20798 Filed 9-12-24; 8:45 am]

BILLING CODE 3510-DS-P

³⁰ See 19 CFR 351.212(b)(1).

³¹ See 19 CFR 351.213(d)(3).

¹⁶ See Memorandum, "Notice of Intent to Rescind Review," dated June 7, 2024.

¹⁷ See Aloha's Letter, "Comments on Commerce Intent to Rescind," dated June 14, 2024 (Aloha's Reconsideration Request).

¹⁸ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated July 22, 2024.

¹⁹ The U.S. Court of International Trade (CIT) has noted that parties requesting standing pursuant to section 771(9)(C) of the Act must have a "stake" in the result of an investigation. See *Brother Indus. (USA) v. United States*, 801 F. Supp. 751, 757 (CIT 1992) ("The language in the legislative history is broad and unqualified. It contrasts industries suffering adverse affect with those having no stake: the former have standing; the latter do not.") (italics in original).

²⁰ See Aloha's Reconsideration Request at 2-7.

²¹ See Standing Determination.

²² *Id.* at 3-4.

²³ Aloha's Reconsideration Request at 7-11.

²⁴ See, generally, Standing Determination.

²⁵ Aloha's Reconsideration Request at 9, 10.

²⁶ See *Qingdao Sea-Line Trading Co. v. United States*, 766 F.3d 1378, 1386 (Fed. Cir. 2014).

²⁷ See Standing Questionnaire Response at 6-8, stating, e.g., that "Aloha Pencil incorporated as an LLC in the state of Hawai'i in November 2023, and does not have any business documents prior to that time." The CIT has found that, where a party responding to a questionnaire states such documentation does not exist, Commerce need not issue a deficiency notice and an opportunity to remedy. See *Jiangsu Senmao Bamboo & Wood Indus. Co. v. United States*, 651 F. Supp. 1348, 1368 (CIT 2023).

²⁸ See Aloha's Reconsideration Request, generally.

²⁹ See, e.g., *Dioctyl Terephthalate from the Republic of Korea: Rescission of Antidumping Administrative Review; 2021-2022*, 88 FR 24758 (April 24, 2023); see also *Certain Carbon and Alloy Steel Cut-to Length Plate from the Federal Republic of Germany: Rescission of Antidumping Administrative Review; 2020-2021*, 88 FR 4157 (January 24, 2023); and *Lightweight Thermal Paper from Japan: Rescission of Antidumping Administrative Review; 2022-2023*, 89 FR 18373 (March 13, 2024).

DEPARTMENT OF COMMERCE

International Trade Administration

[C-583-877]

Certain Epoxy Resins From Taiwan: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain epoxy resins (epoxy resins) from Taiwan for the period of investigation (POI) January 1, 2023, through December 31, 2023. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable September 13, 2024.

FOR FURTHER INFORMATION CONTACT: Ian Riggs, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-3810.

SUPPLEMENTARY INFORMATION:**Background**

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this countervailing duty (CVD) investigation on April 29, 2024.¹ On May 28, 2024, Commerce postponed the preliminary determination until September 3, 2024.² On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.³ The deadline for the preliminary determination is now September 9, 2024.

For a complete description of the events that followed the initiation of this investigation, see the Preliminary Decision Memorandum.⁴ A list of topics

discussed in the Preliminary Decision Memorandum is included as Appendix II 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>.

Scope of the Investigation

The products covered by this investigation are epoxy resins. For a complete description of the scope of this investigation, see Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,⁵ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, (*i.e.*, scope).⁶ We received several comments concerning the scope of this investigation, as well as in the companion less-than-fair-value (LTFV) and CVD investigations of epoxy resins, as it appeared in the *Initiation Notice*. We are currently evaluating the scope comments filed by the interested parties. We intend to issue our preliminary decision regarding the scope of the LTFV and CVD investigations in the preliminary determinations of the companion LTFV investigations, the deadline for which is November 6, 2024.⁷ We will incorporate the scope decisions from the LTFV investigations into the scope of the final CVD determination for this investigation after considering any relevant comments submitted in scope case and rebuttal briefs.⁸

Methodology

Commerce is conducting this investigation in accordance with section 701 of 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

Alignment

As noted in the Preliminary Decision Memorandum, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final CVD determination in this investigation with the final determination in the companion LTFV investigation of epoxy resins from Taiwan based on a request made by the petitioner.¹⁰ Consequently, the final CVD determination will be issued on the same date as the final LTFV determination, which is currently scheduled to be issued no later than January 21, 2025, unless postponed.

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

In this investigation, Commerce calculated individual estimated countervailable subsidy rates for Chang Chun Plastics Co. Ltd. (CCPC) and Nan Ya Plastics Corp. (Nan Ya) that are not zero, *de minimis*, or based entirely on facts otherwise available. Commerce calculated the all-others rate using a weighted average of the individual estimated subsidy rates calculated for the examined respondents using each company's publicly-ranged values for the merchandise under consideration.¹¹

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 Petitioner's Letter, "Petitioner's Request to Align Countervailing Duty Investigation Final Determination with Antidumping Duty Investigation Final Determination," dated August 15, 2024.

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. sale 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*

¹ See *Certain Epoxy Resins from the People's Republic of China, India, the Republic of Korea, and Taiwan: Initiation of Countervailing Duty Investigations*, 89 FR 33319 (April 29, 2024) (*Initiation Notice*).

² See *Certain Epoxy Resins From the People's Republic of China, India, the Republic of Korea, and Taiwan: Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 89 FR 46061 (May 28, 2024).

³ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated July 22, 2024.

⁴ See Memorandum, "Decision Memorandum for the Preliminary Determination of the

Countervailing Duty Investigation of Certain Epoxy Resins from Taiwan," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁵ See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

⁶ See *Initiation Notice*.

⁷ See *Certain Epoxy Resins from the People's Republic of China, India, the Republic of Korea, Taiwan, and Thailand: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 89 FR 65583 (August 12, 2024).

⁸ The deadline for interested parties to submit scope case and rebuttal briefs will be established in the preliminary scope decision memorandum.

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent <i>ad valorem</i>)
Chang Chun Plastics Co. Ltd. ¹²	3.32
Nan Ya Plastics Corp.	1.32
All Others	2.33

Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of this notice in accordance with 19 CFR 351.224(b).

Consistent with 19 CFR 351.224(e), Commerce will analyze and, if appropriate, correct any timely allegations of significant ministerial errors by amending the preliminary determination. However, consistent with 19 CFR 351.224(d), Commerce will not consider incomplete allegations that do not address the significance standard under 19 CFR 351.224(g) following the preliminary determination. Instead, Commerce will address such allegations in the final determination together with issues raised in the case briefs or other written comments.

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 available, Commerce based the all-others rate on the publicly ranged sales data of the mandatory respondents. For a complete analysis of the data, see Memorandum, "Calculation of the Subsidy Rate for All Other Companies," dated concurrently with this notice.

¹² As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with Chang Chun Plastics Co. Ltd.: Chang Chun Petrochemical Co., Ltd.; Dairen Chemical Corporation; Jinzhou Technology Co., Ltd.; and Taiwan Prosperity Chemical Corporation.

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

All interested parties will have the opportunity to submit scope case and rebuttal briefs on the preliminary decision regarding the scope of the LTFV and CVD investigations. The deadlines to submit scope case and rebuttal briefs will be provided in the preliminary scope decision memorandum. For all scope case and rebuttal briefs, parties must file identical documents simultaneously on the records of the ongoing LTFV and CVD epoxy resins investigations. No new factual information or business proprietary information may be included in either scope case or rebuttal briefs.

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. 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.¹³ 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.¹⁴

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 investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹⁵ Further, we request that interested parties limit their 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 investigation.

¹³ 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*).

¹⁴ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁵ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

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).¹⁶

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

U.S. International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of epoxy resins from Taiwan are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: September 9, 2024.

Abdelali Elouaradia,
Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise subject to this investigation is fully or partially uncured epoxy resins, also known as epoxide resins, polyepoxides, oxirane resins, ethoxyline resins, diglycidyl ether of bisphenol, (chloromethyl)oxirane, or aromatic diglycidyl, which are polymers or prepolymers containing epoxy groups (*i.e.*, three-membered ring structures comprised of two carbon atoms and one oxygen atom). Epoxy resins range in physical form from low viscosity liquids to solids. All epoxy resins are covered by the scope of this investigation

¹⁶ See *APO and Service Final Rule*.

irrespective of physical form, viscosity, grade, purity, molecular weight, or molecular structure, and packaging.

Epoxy resins may contain modifiers or additives, such as hardeners, curatives, colorants, pigments, diluents, solvents, thickeners, fillers, plasticizers, softeners, flame retardants, toughening agents, catalysts, Bisphenol F, and ultraviolet light inhibitors, so long as the modifier or additive has not chemically reacted so as to cure the epoxy resin or convert it into a different product no longer containing epoxy groups. Such epoxy resins with modifiers or additives are included in the scope where the epoxy resin component comprises no less than 30 percent of the total weight of the product. The scope also includes blends of epoxy resins with different types of epoxy resins, with or without the inclusion of modifiers and additives, so long as the combined epoxy resin component comprises at least 30 percent of the total weight of the blend.

Epoxy resins that enter as part of a system or kit with separately packaged co-reactants, such as hardeners or curing agents, are within the scope. The scope does not include any separately packaged co-reactants that would not fall within the scope if entered on their own.

The scope includes merchandise matching the above description that has been processed in a third country, including by commingling, diluting, introducing, or removing modifiers or additives, or performing any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the subject country.

The scope also includes epoxy resin that is commingled or blended with epoxy resin from sources not subject to this investigation. Only the subject component of such commingled products is covered by the scope of this investigation.

Excluded from the scope are phenoxyl resins, which are polymers with a weight greater than 11,000 Daltons, a Melt Flow Index (MFI) at 200 °C (392 °F) no less than 4 grams and no greater than 70 grams per 10 min, Glass-Transition Temperatures (T_g) no less than 80 °C (176 °F) and no greater than 100 °C (212 °F), and which contain no epoxy groups other than at the terminal ends of the molecule.

Excluded from the scope are certain paint and coating products, which are blends, mixtures, or other formulations of epoxy resin, curing agent, and pigment, in any form, packaged in one or more containers, wherein (1) the pigment represents a minimum of 10 percent of the total weight of the product, (2) the epoxy resin represents a maximum of 80 percent of the total weight of the product, and (3) the curing agent represents 5 to 40 percent of the total weight of the product.

Excluded from the scope are preimpregnated fabrics or fibers, often referred to as “pre-pregs,” which are composite materials consisting of fabrics or fibers (typically carbon or glass) impregnated with epoxy resin.

This merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading

3907.30.0000. Subject merchandise may also be entered under subheadings 3907.29.0000, 3824.99.9397, 3214.10.0020, 2910.90.9100, 2910.90.9000, 2910.90.2000, and 1518.00.4000. The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Injury Test
- IV. Subsidies Valuation
- V. Analysis of Programs
- VI. Recommendation

[FR Doc. 2024–20885 Filed 9–12–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–884, C–570–081]

Glycine From India and the People’s Republic of China: Final Results of the Expedited First Sunset Reviews of the Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) finds that revocation of the countervailing duty orders on glycine from India and the People’s Republic of China (China) would be likely to lead to continuation or recurrence of countervailable subsidies at the levels as indicated in the “Final Results of Sunset Reviews” section of this notice.

DATES: Applicable September 13, 2024.

FOR FURTHER INFORMATION CONTACT: Theodora Mattei or Tyler Weinhold, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4834 and (202) 482–3362 respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 21, 2019, Commerce published the *Orders* in the **Federal Register**.¹ On May 1, 2024, Commerce published the notice of initiation of the first sunset reviews of the *Orders*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).² On

May 13, 2024, Commerce received a timely notice of intent to participate in the sunset reviews of both *Orders* from Deer Park Glycine and Chatterm Chemicals, Inc. (collectively, domestic interested parties) within the 15-day deadline specified in 19 CFR 351.218(d)(1)(i).³ Each claimed interested party status under section 771(9)(C) of the Act as a domestic producer engaged in the production in the United States of glycine.

On May 20, 2024, Commerce received adequate substantive responses from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).⁴ Commerce did not receive a substantive response from any other interested party in these proceedings, and no party requested a hearing. In accordance with section 751(c)(3)(B) of the Act, because Commerce did not receive a substantive response from any respondent party, pursuant to 19 CFR 351.218(e)(1)(ii)(B) and (e)(1)(ii)(C), respectively, respectively, we determined that the respondent interested parties did not provide an adequate response to the *Initiation Notice*. Therefore, on July 21, 2024, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties at that it would conduct expedited (120-day) sunset reviews of the *Orders*, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2).⁵ On July 22, 2024, Commerce tolled certain deadlines in these administrative proceedings by seven days.⁶ The deadline for the final results of these sunset reviews is now September 5, 2024.

Scope of the Orders

The product covered by these *Orders* is glycine at any purity level or grade from India and China. For a complete description of the scope of these *Orders*, see the Issues and Decision Memorandum.⁷

³ See Domestic Interested Parties’ Letter, “Notice of Intent to Participate,” dated May 13, 2024.

⁴ See the Domestic Interested Parties’ Letters, “Sunset Review (1st Review) of the Countervailing Duty Order on Glycine from India; Substantive Response to the Notice of Initiation,” dated May 20, 2024; and “Sunset Review (1st Review) of the Countervailing Duty Order on Glycine from the People’s Republic of China: Substantive Response to the Notice of Initiation,” dated May 20, 2024.

⁵ See Commerce’s Letter, “Sunset Reviews Initiated on May 1, 2024,” dated June 21, 2024.

⁶ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,” dated July 22, 2024.

⁷ See Memorandum, “Decision Memorandum for the Final Results of the Expedited First Sunset Reviews of the Countervailing Duty Orders on

¹ See *Glycine from India and the People’s Republic of China: Countervailing Duty Orders*, 84 FR 29173 (June 21, 2019) (collectively, the *Orders*).

² See *Initiation of Five-Year (Sunset) Reviews*, 89 FR 35073 (May 1, 2024).

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review, including the likelihood of continuation or recurrence of countervailable subsidies and the net countervailable subsidy likely to prevail if the *Orders* were revoked, is provided in the accompanying Issues and Decision Memorandum.⁸ A list of the topics discussed in the Issues and Decision Memorandum is attached 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 Services 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 accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Final Results of Sunset Reviews

Pursuant to sections 751(c)(1) and 752(b) of the Act, Commerce determines that revocation of the *Orders* would be likely to lead to the continuation or recurrence of countervailable subsidies at the following rates:

Producer/exporter	Subsidy rate (percent ad valorem)
Glycine from India	
Kumar Industries, India	15.13
Avid Organics Pvt Ltd	8.01
Paras Intermediates Pvt Ltd ...	3.03
All Others	5.01
Glycine from China	
JC Chemicals Limited	144.01
Simagchem Corp	144.01
All-Others	144.01

Administrative Protective Order

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations

Glycine from India and the People's Republic of China," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

⁸ *Id.*

and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

Commerce is issuing and publishing this notice in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act and 19 CFR 351.218.

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 a Countervailable Subsidy
 2. Net Countervailable Subsidy Rates Likely to Prevail
 3. Nature of the Subsidies
- VII. Final Results of Sunset Reviews
- VIII. Recommendation

[FR Doc. 2024–20754 Filed 9–12–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–872]

Finished Carbon Steel Flanges From India: Preliminary Results of Countervailing Duty Administrative Review and Preliminary Intent To Rescind, in Part; 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 certain producers and/or exporters of finished carbon steel flanges (steel flanges) from India. The period of review (POR) is January 1, 2022, through December 31, 2022. In addition, we are notifying parties of our intent to rescind the review with respect to 30 companies. Interested parties are invited to comment on these preliminary results.

DATES: Applicable September 13, 2024.

FOR FURTHER INFORMATION CONTACT: Preston N. Cox or Amber Hodak, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5041 or (202) 842–8034, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 18, 2023, Commerce published in the **Federal Register** a notice of initiation of an administrative review of the countervailing duty (CVD) order on steel flanges from India.¹ On November 28, 2023, Commerce selected Norma (India) Ltd. (Norma) and R.N. Gupta & Company Limited (RNG) as mandatory respondents in this review.² On April 5, 2024, Commerce extended the time period for issuing these preliminary results, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), to August 30, 2024.³ On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.⁴ The deadline for the preliminary results is now 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 discussed in the Preliminary Decision Memorandum is provided as 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 product covered by the *Order* is steel flanges from India. For a complete description of the scope of the *Order*, *see* the Preliminary Decision Memorandum.

¹ *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 71829, 71836–71837 (October 18, 2023); *see also Finished Carbon Steel Flanges from India: Countervailing Duty Order*, 82 FR 40138 (August 24, 2017) (*Order*).

² *See* Memorandum, "Respondent Selection," dated November 28, 2023.

³ *See* Memorandum, "Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review," dated April 5, 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 Countervailing Duty Administrative Review of Finished Carbon Steel Flanges from India; 2022," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Preliminary Intent To Rescind Administrative Review, in Part

It is Commerce's practice to rescind an administrative review of a CVD 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 data on the record, the companies listed in Appendix III did not have reviewable entries of subject merchandise during the POR for which liquidation is suspended. Accordingly, in the absence of reviewable, suspended entries of subject merchandise during the POR, we intend to rescind this review with respect to these companies, in accordance with 19 CFR 351.213(d)(3). Parties are invited to comment on the intent to rescind for these companies.

Methodology

Commerce is conducting this administrative review in accordance

with section 751(a)(1)(A) of the Act. For each of the subsidy programs found to be countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.*, a financial contribution by an "authority" that give 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.

Companies Not Selected for Individual 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) 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 solely on the 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 We preliminarily find that Norma and RNG received countervailable subsidies at above *de minimis* rates and not based entirely on facts available. Therefore, we preliminarily determine to assign to the companies not selected for individual review a weighted average of the subsidy rates calculated for Norma and RNG using each company's publicly ranged data for the value of its exports of subject merchandise to the United States.¹¹ The companies for which a review was requested, which were not selected as mandatory respondents or found to be cross-owned with a mandatory respondent, are listed in Appendix II.

Preliminary Results of Review

As a result of this review, Commerce preliminarily determines the following net countervailable subsidy rates exist for the period January 1, 2022, through December 31, 2022:

Company	Subsidy rate (percent ad valorem)
Norma (India) Ltd. ¹²	2.58
R.N. Gupta & Company Limited	2.28
Non-Selected Companies Under Review ¹³	2.38

Disclosure

Commerce intends to disclose its calculations and analysis performed in connection with the preliminary results to interested parties 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).

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) 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

⁶ See, e.g., *Lightweight Thermal Paper from the People's Republic of China: Notice of Rescission of 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).

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 See Memorandum, "Preliminary Results Calculation of Subsidy Rate for Non-Selected Companies Under Review," dated concurrently with this notice.

¹² As discussed in the Preliminary Decision Memorandum, Commerce has found the following

companies to be cross-owned with Norma (India) Ltd.: USK Export Private Limited; Uma Shanker Khandelwal and Co.; and Bansidhar Chiranjilal. This rate applies to all cross-owned companies.

¹³ See Appendix II for a list of companies not selected for individual examination.

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 351.309(d)(2).

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 limited their 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 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, limited to issues raised in the case and rebuttal briefs, 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 schedule 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. 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.*, without 90 days of publication).

Cash Deposit Requirements

Pursuant to section 751(a)(2)(C) of the Act, upon publication of the final results, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties for each of the companies listed above on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, except where the rate calculated in the final results is zero or *de minimis*. For all non-reviewed firms, we will instruct CBP to 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 instructions, when imposed, shall remain in effect until further notice.

Final Results

Unless the deadline is extended pursuant to section 751(a)(3)(a) of the Act and 19 CFR 351.213(h)(2), Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues by the parties in any written briefs, no later than 120 days after the date of publication of these preliminary results.

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 I

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Order*
- IV. Diversification of India's Economy
- V. Use of Facts Otherwise Available and Application of Adverse Inferences
- VI. Benchmarks and Interest Rates
- VII. Subsidies Valuation
- VIII. Analysis of Programs
- IX. Recommendation

Appendix II

Companies Not Selected for Individual Examination

1. Balkrishna Steel Forge Pvt. Ltd.

2. C. D. Industries
3. Cetus Engineering Private Limited
4. Echjay Industries Pvt. Ltd.
5. Jai Auto Pvt. Ltd.
6. Jiten Steel Industries
7. Munish Forge Private Limited
8. R.D. Forge
9. Rollwell Forge Pvt. Ltd.
10. Tirupati Forge

Appendix III

Companies for Which Commerce Intends To Rescind the Review

1. Adinath International
2. Aditya Forge Limited
3. Allena Group
4. Alloyed Steel
5. Bebitz Flanges Works Private Limited
6. CHW Forge
7. CHW Forge Pvt. Ltd.
8. Citizen Metal Depot
9. Corum Flange
10. DN Forge Industries
11. Echjay Forgings Limited
12. Falcon Valves and Flanges Private Limited
13. Heubach International
14. Hindon Forge Pvt. Ltd.
15. Kinnari Steel Corporation
16. M F Rings and Bearing Races Ltd.
17. Mascot Metal Manufacturers
18. OM Exports
19. Punjab Steel Works (PSW)
20. Raaj Sagar Steel
21. Ravi Ratan Metal Industries
22. Renin Piping Products
23. Rolex Fittings India Pvt. Ltd.
24. Rollwell Forge Engineering Components and Flanges
25. SHM (ShinHeung Machinery)
26. Siddhagiri Metal & Tubes
27. Sizer India
28. Steel Shape India
29. Sudhir Forgings Pvt. Ltd.
30. Umashanker Khandelwal Forging Limited

[FR Doc. 2024–20753 Filed 9–12–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–133]

Certain Metal Lockers and Parts Thereof From the People's Republic of China: Preliminary Results, Preliminary Determination of No Shipments, and Partial Rescission of Antidumping Duty Administrative Review; 2022–2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that certain exporters made sales of certain metal lockers and parts thereof (metal lockers) from the People's Republic of China (China) and that certain companies had no shipments of metal lockers from China during the

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).

period of review during the period of review (POR), August 1, 2022, through July 31, 2023. Additionally, Commerce is rescinding this review with respect to certain companies. Interested parties are invited to comment on these preliminary results.

DATES: Applicable September 13, 2024.

FOR FURTHER INFORMATION CONTACT:

Deborah Cohen or Matthew Palmer, 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) 482-4521 or (202) 482-1678, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 20, 2021, Commerce published in the **Federal Register** the antidumping duty *Order* on metal lockers from China.¹ On August 2, 2023, Commerce published a notice of opportunity to request an administrative review of the *Order* for the POR in the **Federal Register**.² On October 18, 2023, in accordance with 19 CFR 351.221(c)(1)(i), Commerce published a notice of initiation for this administrative review in response to requests to review by interested parties.³ On April 9, 2024, we extended the deadline for these preliminary results, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(h)(2), until August 30, 2024.⁴ On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.⁵ As a result, the deadline for these preliminary results is now September 6, 2024.

For a complete description of the events that followed the initiation of this administrative review, see the Preliminary Decision Memorandum.⁶ A

list of topics included in the Preliminary Decision Memorandum is included as an 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 found at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Order

The products covered by the *Order* are metal lockers from China. For a complete description of the *Order*, see the Preliminary Decision Memorandum.

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), based on the timely withdrawal of the requests for review, we are rescinding this administrative review with respect to: (1) Zhejiang Safewell Security Technology Co., Ltd. (Zhejiang Safewell); (2) Ningbo Safewell Group Smart Security Products Co., Ltd. (Ningbo Safewell); (3) Ningbo Safewell Safes; (4) Xpedition LLC (doing business as (DBA) Safewell Gr.) (Xpedition); and (5) Safewell Group Holdings, Ltd. (Safewell Group).⁷ Furthermore, on April 15, 2024, Commerce notified interested parties of its intent to rescind the review with respect to the companies which had no reviewable suspended entries of subject merchandise during the POR, specifically with respect to: (1) Kunshan Dongchu Precision Machinery Co., Ltd. (Kunshan Dongchu); and (2) Tianjin Jia Mei Metal Furniture Ltd. (Tianjin Jia Mei).⁸ Commerce did not receive comments regarding its intent to rescind the review, in part, and as a result, pursuant to 19 CFR 351.213(d)(3), in the absence of any suspended entries during the POR from certain companies subject to the review, Commerce is rescinding the review with respect to Kunshan Dongchu and Tianjin Jia Mei.⁹

Preliminary Determination of No Shipments

Based on the no-shipment certification provided by Zhejiang Xingyi Metal Products Co., Ltd.

(ZXM),¹⁰ as corroborated by the comments provided by mandatory respondent Xingyi Metalworking Technology (Zhejiang) Co., Ltd. (XMT) in response to our release of U.S. Customs and Border Protection (CBP) entry data for the purpose of respondent selection,¹¹ we preliminarily determine that ZXM did not have any shipments of subject merchandise to the United States during the POR. However, we intend to request information from CBP to confirm that there were no entries attributable to ZXM in the POR.¹²

Further, on April 2, 2024, Commerce notified parties that, as a result of its final results of changed circumstances review,¹³ Commerce determined it necessary to deselect and not examine Jiangsu Wanlong Special Containers Co., Ltd. (Jiangsu Wanlong) as a mandatory respondent, specifically because the record demonstrates that its entries during the POR are not subject to the *Orders*.¹⁴ Accordingly, we also preliminarily determine that Jiangsu Wanlong did not have any shipments of subject merchandise to the United States during the POR. Consistent with Commerce's practice in non-market economy (NME) cases, we have not rescinded the review with respect to Jiangsu Wanlong and ZXM, but we will continue the review of these companies and issue instructions to CBP based on the final results of the review.¹⁵

The China-Wide Entity

Under Commerce's policy regarding the conditional review of the China-wide entity,¹⁶ the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity in this review, the entity is not under review, and the

¹⁰ See ZXM's Letter, "ZXM's Company Certification for Notice of No Sales," dated November 17, 2023.

¹¹ See XMT's Letter, "Comments on CBP Data," dated November 24, 2023.

¹² See Preliminary Decision Memorandum for further discussion.

¹³ See *Certain Metal Lockers and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Reviews, and Revocation of the Antidumping and Countervailing Duty Orders, in Part*, 89 FR 22377 (April 1, 2024).

¹⁴ See Memorandum, "Respondent Deselection and Selection of Replacement Mandatory Respondent," dated April 2, 2024.

¹⁵ See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).

¹⁶ See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963 (November 4, 2013).

¹ 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 *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, "Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated April 9, 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 Antidumping Duty Order on Certain Metal Lockers and Parts Thereof from the People's Republic of China, 2022-2023," dated concurrently with this notice (Preliminary Decision Memorandum).

⁷ See Zhejiang Safewell et al.'s Letters, "No Shipment Certifications," dated October 31, 2023; and "Withdrawal of Request for Administrative Review," dated October 31, 2023.

⁸ See Memorandum, "Notice of Intent to Rescind Review, In Part," dated April 15, 2024.

⁹ *Id.*

entity's rate (*i.e.*, 322.25 percent) is not subject to change. For additional information, *see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Act. Commerce has calculated export prices in accordance with section

772(a) of the Act and constructed export prices in accordance with section 772(b) of the Act. Because China is an NME, within the meaning of section 771(18) of the Act, Commerce has calculated normal value (NV) in accordance with section 773(c) of the Act. For a full description of the methodology underlying Commerce's preliminary

results, *see* the Preliminary Decision Memorandum.

Preliminary Results of Review

We preliminarily determine that the following estimated weighted-average dumping margins exist for the period February 11, 2021, through July 31, 2022:

Exporter	Weighted-average dumping margin (percent)
Xingyi Metalworking Technology (Zhejiang) Co., Ltd	61.44
Hangzhou Evernew Machinery & Equipment Company Limited	22.67

Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice, in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review.¹⁷ Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.¹⁸ 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.¹⁹ 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. Case and rebuttal briefs should be filed using ACCESS.²⁰ Note that Commerce has amended certain of its requirements

pertaining to the service of documents in 19 CFR 351.303(f).²¹

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically via Commerce's electric records system, ACCESS. An electronically-filed request must be received successfully in its entirety by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.²² Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined.²³ Parties should confirm by telephone the date and time of the hearing two days before the scheduled date.

Assessment Rates

Upon issuance of the final results, Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review, in accordance with 19 CFR 351.212(b)(1). Commerce intends to issue assessment instructions to CBP 35 days after the publication of the final results of this review. 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).

We will calculate importer/customer-specific assessment rates equal to the

ratio of the total amount of dumping calculated for examined sales to a particular importer/customer to the total entered value of those sales, in accordance with 19 CFR 351.212(b)(1).²⁴ Where the respondents reported reliable entered values, Commerce intends to calculate importer/customer-specific *ad valorem* assessment rates by dividing the total amount of dumping calculated for all reviewed U.S. sales to the importer/customer by the total entered value of the merchandise sold to the importer/customer.²⁵ Where the respondents did not report entered values, Commerce will calculate importer/customer-specific assessment rates by dividing the total amount of dumping calculated for all reviewed U.S. sales to the importer/customer by the total quantity of those sales. Commerce will calculate an estimated *ad valorem* importer/customer-specific assessment rate to determine whether the per-unit assessment rate is *de minimis*; however, Commerce will use the per-unit assessment rate where entered values were not reported.²⁶ Where an importer/customer-specific *ad valorem* assessment rate is not zero or *de minimis*, Commerce will instruct CBP to collect the appropriate duties at the time of liquidation. Where either the respondents' *ad valorem* weighted-average dumping margin is zero or *de minimis*, or an importer/customer-specific *ad valorem* assessment rate is zero or *de minimis*,²⁷ Commerce will instruct CBP to liquidate the appropriate

¹⁷ See 19 CFR 351.309(c)(1)(ii).

¹⁸ 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*).

¹⁹ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

²⁰ See, generally, 19 CFR 351.303.

²¹ See *APO and Service Final Rule*.

²² See 19 CFR 351.310(c).

²³ See 19 CFR 351.310(d).

²⁴ 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 Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012).

²⁵ See 19 CFR 351.212(b)(1).

²⁶ *Id.*

²⁷ See 19 CFR 351.106(c)(2).

entries without regard to antidumping duties.

Pursuant to Commerce's refinement to its practice, for sales that were not reported in the U.S. sales database submitted by a respondent individually examined during this review, Commerce will instruct CBP to liquidate the entry of such merchandise at the dumping margin assigned to the China-wide entity.²⁸ Additionally, where Commerce determines that an exporter under review had no shipments of subject merchandise during the POR, any suspended entries of subject merchandise that entered under that exporter's CBP case number during the POR will be liquidated at the antidumping duty assessment rate for the China-wide entity.

For the companies for which this review is rescinded with these preliminary results, we will instruct CBP to assess antidumping duties on all appropriate entries at a rate equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the POR, in accordance with 19 CFR 351.212(c)(1)(i). For the companies rescinded from review, Commerce intends to issue assessment instructions to CBP 35 days after the publication of this notice in the **Federal Register**.

In accordance with section 751(a)(2)(C) of the Act, the final results of this 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 ADs, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for all shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the final results of administrative review in the **Federal Register**, as provided for by section 751(a)(2)(C) of the Act: (1) for the companies that have a separate rate, the cash deposit rate will be that rate established in the final results of this review (except, if the rate is *de minimis*, then a cash deposit rate of zero will be required); (2) for previously investigated or reviewed Chinese and non-Chinese exporters for which a review was not

requested and that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity (*i.e.*, 322.25 percent); and (4) for all non-Chinese exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Final Results of Review

Unless otherwise 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 and rebuttal 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).

Notification to Importers

This notice also 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 review period. 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 the countervailing duties.

Notification to Interested Parties

We are issuing and publishing the preliminary results of this review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, 19 CFR 351.213(d)(4), 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. Preliminary Determination of No Shipments
- V. Partial Rescission of Administrative Review
- VI. Discussion of the Methodology
- VII. Adjustment Under Section 777(A)(f) of the Act
- VIII. Currency Conversion
- IX. Recommendation

VI. Discussion of the Methodology
VII. Adjustment Under Section 777(A)(f) of the Act
VIII. Currency Conversion
IX. Recommendation

[FR Doc. 2024–20780 Filed 9–12–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–915]

Light-Walled Rectangular Pipe and Tube From the People's Republic of China: Preliminary Results and Preliminary Determination of No Shipments; 2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is conducting the administrative review of the countervailing duty (CVD) order on light-walled rectangular pipe and tube (LWRPT) from the People's Republic of China (China). The period of review (POR) is January 1, 2022, through December 31, 2022. Commerce preliminarily finds that Hoa Phat Steel Pipe Company Limited (Hoa Phat) had no subject shipments of LWRPT and that Hoa Phat will be eligible to participate in the certification program previously established with respect to the CVD order on LWRPT from China. We invite interested parties to comment on these preliminary results.

DATES: Applicable September 13, 2024.

FOR FURTHER INFORMATION CONTACT: Christopher Hargett, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4161.

SUPPLEMENTARY INFORMATION:

Background

On August 5, 2008, Commerce published in the **Federal Register** the CVD order on LWRPT from China.¹ On August 2, 2023, Commerce notified interested parties of the opportunity to request an administrative review of the Order.² On August 30, 2023, Hoa Phat requested that Commerce conduct an administrative review of its exports to

¹ See *Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Countervailing Duty Order*, 73 FR 45405 (August 5, 2008) (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).

²⁸ For a full discussion of this practice, see *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).

determine whether those exports are covered by the CVD *Order* on LWRPT from China.³ In its review request, Hoa Phat further explained that it sought an administrative review so that Commerce would permit it to submit certifications to U.S. Customs and Border Protection (CBP) to properly declare the origin of the hot-rolled steel (HRS) that it used to produce the LWRPT it exported.⁴ On August 31, 2023, GS Global USA, Inc. (GS Global) requested that Commerce conduct an administrative review of Hoa Phat's exports.⁵

Subsequently, we initiated an administrative review of the *Order* with respect to Hoa Phat.⁶

On November 9, 2023, we published in the **Federal Register** the *Circumvention Final Determination*, in which we: (1) determined that certain LWRPT exported from the Socialist Republic of Vietnam (Vietnam) and entered into the United States was circumventing the *Order* and therefore is now covered by the *Order*; and (2) established a certification program to allow eligible producers and exporters of LWRPT exported from Vietnam to certify that entries of LWRPT exported from Vietnam are not subject to the *Order*.⁷ We also indicated that we would allow interested parties to request reviews of LWRPT shipped from Vietnam and suspended under the *Order* that entered during the upcoming anniversary month of the *Order* (i.e., August).⁸

Due to the common prerequisite issues in the concurrent administrative

reviews of the antidumping duty (AD) and CVD orders, i.e., the origin of the HRS used in Hoa Phat's production and/or export of LWRPT and whether Hoa Phat is eligible to certify that origin with CBP, on March 11, 2024, Commerce notified all interested parties of its intent to address Hoa Phat's certification eligibility in the CVD administrative review in the context of the concurrent AD review of Hoa Phat and adopt the AD findings in the CVD review.⁹ Commerce also instructed all interested parties to file any future submissions that related to this issue on the record of both proceedings. Additionally, regarding previously filed submissions related to these issues that were only on the record of the AD administrative review, Commerce instructed all interested parties who filed such submissions to file those submissions on the record of the CVD administrative review.¹⁰

On April 12, 2024, Commerce extended the deadline for these preliminary results to August 30, 2024.¹¹ On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.¹² The deadline for the preliminary results is now September 6, 2024.

Scope of the Order

The merchandise subject to this *Order* is certain welded carbon quality light-walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm. The term carbon-quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon-quality includes products in which none of the elements listed below exceeds the quantity by weight respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent vanadium, or 0.15 percent of zirconium. The description of carbon-quality is

intended to identify carbon-quality products within the scope. The welded carbon-quality rectangular pipe and tube subject to this *Order* is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.61.50.00 and 7306.61.70.60. While HTSUS subheadings are provided for convenience and CBP's customs purposes, our written description of the scope of the *Order* is dispositive.

Methodology

For the preliminary results of this CVD review, Commerce is hereby adopting the preliminary finding and Preliminary Decision Memorandum issued in the concurrent AD administrative review only with respect to Hoa Phat. For a full description of the methodology underlying the results, see the Preliminary Decision Memorandum adopted by reference, in this CVD review.¹³ Commerce preliminarily found that Hoa Phat had no subject shipments of LWRPT and is eligible to participate in the previously established certification program.¹⁴ The AD 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 <http://access.trade.gov>. In addition, a complete version of the AD Preliminary Decision Memorandum is available at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Thus, if our preliminary finding in the concurrent AD administrative review is unchanged in the final results, we will determine in the final results of this CVD review that Hoa Phat will be eligible to participate in the certification program previously established with respect to the CVD *Order* on LWRPT from China as of the publication date of the final results.

Public Comment

Because Commerce intends to conduct verification of the questionnaire responses of Hoa Phat in the concurrent AD review, the results of which will be adopted in this CVD review, interested parties will be notified of the deadline for the

³ See Hoa Phat Letter, "Request for Administrative Review," dated August 30, 2023.

⁴ *Id.* As background, in *Light-Walled Rectangular Pipe and Tube From the People's Republic of China: Preliminary Affirmative Determination of Circumvention of the Antidumping Duty and Countervailing Duty Orders*, 88 FR 21985–21986 (April 12, 2023) (*Preliminary Circumvention Determination*), and accompanying Preliminary Decision Memorandum (PDM) at 4–6, Commerce preliminarily determined that Hoa Phat had failed to cooperate in the circumvention proceeding and applied facts available with adverse inferences to determine that Hoa Phat was not eligible to participate in the certification regime established in the circumvention proceeding. In the final determination, Commerce continued to find that Hoa Phat was ineligible to participate in the certification regime. See *Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Final Affirmative Determination of Circumvention of the Antidumping Duty and Countervailing Duty Orders*, 88 FR 77283 (November 9, 2023) (*Circumvention Final Determination*), and accompanying Issues and Decision Memorandum (IDM) at Comment 3.

⁵ See GS Global Letter, "Request for Administrative Review" dated August 31, 2023.

⁶ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 71829 (October 18, 2023) (*Initiation Notice*).

⁷ See *Circumvention Final Determination*, 88 FR at 77284.

⁸ *Id.*, 88 FR at 77285.

⁹ See Memorandum, "Notification of Procedure for Determining Certification Eligibility in Administrative Reviews of the Antidumping and Countervailing Duty Orders," dated March 11, 2024 (*Notification of Procedure Memorandum*).

¹⁰ *Id.*

¹¹ See Memorandum, "Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review," dated April 12, 2024.

¹² See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated July 22, 2024.

¹³ See unpublished **Federal Register** Notice entitled, "Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, and Preliminary Determination of No Shipments; 2022–2023," dated concurrently with this notice, and accompanying PDM.

¹⁴ *Id.*

submission of case briefs at a later date.¹⁵ The case briefs submitted in the AD and CVD reviews must be identical, and Commerce will consider all case brief arguments in the concurrent AD review. As noted above, Commerce intends to adopt the final findings in the concurrent AD proceeding in the final results of this CVD administrative review.

Assessment Rates

Upon issuance of the final results of this review, Commerce will determine, and CBP will assess, CVD duties on all appropriate entries covered by this review.¹⁶ We intend to instruct CBP to liquidate entries of LWRPT exported by Hoa Phat without regard to countervailing duties if these preliminary results are unchanged for the final results.

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 will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of review, as provided for by section 751(a)(2)(C) of the Act: (1) for Hoa Phat, the cash deposit rate will remain unchanged (*i.e.*, 255.07 percent),¹⁷ unless the company satisfies the certification requirements in the *Final Circumvention Determination*; and (2) for all companies not subject to this review, 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 deposit requirements, when imposed, shall remain in effect until further notice.

Final Results of Review

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, by

adopting the findings in the concurrent AD review, within 120 days of publication of these preliminary results of review, pursuant to section 751(a)(3)(A) of the Act.

Notification to Interested Parties

This determination is issued and published 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.

[FR Doc. 2024–20773 Filed 9–12–24; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–161]

2,4-Dichlorophenoxyacetic Acid From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of 2,4-dichlorophenoxyacetic acid (2,4-D) from the People's Republic of China (China). The period of investigation (POI) is January 1, 2023, through December 31, 2023. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable September 13, 2024.

FOR FURTHER INFORMATION CONTACT: Claudia Cott or Thomas Schauer, 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) 482–4270 or (202) 482–0410, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this countervailing duty (CVD) investigation on April 30,

2024.¹ On June 10, 2024, Commerce postponed the preliminary determination until September 3, 2024.² On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.³ The deadline for the preliminary determination is now September 9, 2024.

For a complete description of events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.⁴ A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II 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 Investigation

The product covered by this investigation is 2,4-D from China. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,⁵ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).⁶ Commerce issued a supplemental questionnaire on June 4, 2024, requesting clarification regarding two of the Harmonized Tariff Schedule of the United States (HTSUS) subheadings under which the subject merchandise may also be classified.⁷ On

¹ See *2,4-Dichlorophenoxyacetic Acid from the People's Republic of China and India: Initiation of Countervailing Duty Investigations*, 89 FR 34205 (April 30, 2024) (*Initiation Notice*).

² See *2,4-Dichlorophenoxyacetic Acid from the People's Republic of China and India: Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 89 FR 48891 (June 10, 2024).

³ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated July 22, 2024.

⁴ See Memorandum, "Decision Memorandum for the Preliminary Affirmative Determination of the Countervailing Duty Investigation of 2,4-Dichlorophenoxyacetic Acid from the People's Republic of China," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁵ See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

⁶ See *Initiation Notice*, 89 FR at 34206.

⁷ See Commerce's Letter, "Scope Supplemental Questions," dated June 4, 2024.

¹⁵ See 19 CFR 351.303 (for general filing requirements).

¹⁶ See 19 CFR 351.212(b)(1).

¹⁷ See *Final Circumvention Determination*.

June 11, 2024, Corteva Agriscience LLC (the petitioner) confirmed that the HTSUS subheadings petitioner intended to include were as follows:

3808.93.0500 and 3808.93.1500.⁸ As a result, Commerce is preliminarily modifying the scope language. The scope as described in Appendix I incorporates the modified language.

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found to be 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 preliminary determination, *see* the Preliminary Decision Memorandum.

Commerce notes that, in making these findings, it relied, in part, on facts available, and, because it finds that certain respondents and the Government of China did not act to the best of their ability to respond to Commerce’s requests for information, it drew an adverse inference where appropriate in selecting from among the facts otherwise available.¹⁰ For further information, *see* the “Use of Facts Otherwise Available and Adverse Inferences” section in the Preliminary Decision Memorandum.

Alignment

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final CVD determination in this investigation with the final determination in the concurrent less-than-fair-value (LTFV) investigation of 2,4-D from China, based on a request made by the petitioner.¹¹ Consequently, the final CVD determination will be issued on the same date as the final LTFV determination, which is currently scheduled to be issued no later than January 21, 2025, unless postponed.¹²

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that, in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any rates that are zero, *de minimis*, or based entirely under section 776 of the Act.

In this investigation, Commerce preliminarily calculated individual estimated countervailable subsidy rates for Jiangxi Tianyu Chemical Co., Ltd. (Tianyu) and Shandong Rainbow Agrosiences Co., Ltd. (Rainbow Agrosiences) that are not zero, *de minimis*, or based entirely on the facts otherwise available. Commerce calculated the all-others rate using a weighted-average of the individual estimated subsidy rates calculated for the examined respondents using each company’s publicly ranged values for the merchandise under consideration.¹³

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent ad valorem)
Jiangxi Tianyu Chemical Co., Ltd. ¹⁴	27.68
Shandong Rainbow Agrosiences Co., Ltd. ¹⁵ ..	3.10
All Others	27.34

Disclosure

Commerce intends to disclose to interested parties the calculations performed to interested parties in this preliminary determination within five days of its 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).

Consistent with 19 CFR 351.224(e), Commerce will analyze and, if appropriate, correct any timely allegations of significant ministerial errors by amending the preliminary determination. However, consistent with 19 CFR 351.224(d), Commerce will not consider incomplete allegations that do not address the significance standard under 19 CFR 351.224(g) following the preliminary determination. Instead, Commerce will address such allegations in the final determination together with issues raised in the case briefs or other written comments.

Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. 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 investigation, we instead request that interested parties provide at the

⁸ See Petitioner’s Letter, “Response to Scope Supplemental Questions,” dated June 11, 2024.

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 sections 776(a) and (b) of the Act.

¹¹ See Petitioner’s Letter, “Petitioner’s Request for Alignment of Final Determinations with Deadline in Concurrent CVD Investigations,” dated July 24, 2024.

¹² See 2,4-Dichlorophenoxyacetic Acid from India and the People’s Republic of China: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations, 89 FR 67420 (August 20, 2024).

¹³ See Memorandum, “Calculation of Subsidy Rate for All Others,” dated concurrently with this notice.

¹⁴ As discussed in the Preliminary Decision Memorandum, Commerce preliminarily finds Jiangxi Tianyu Chemical Co., Ltd., to be cross-owned with the following companies: Thai Harvest Ltd., CAC Nantong Chemical Co., Ltd., and CAC Shanghai International Trading Co., Ltd.

¹⁵ As discussed in the Preliminary Decision Memorandum, Commerce preliminarily finds Shandong Rainbow Agrosiences Co., Ltd., to be cross-owned with the following companies: Shandong Weifang Rainbow Chemical Co., Ltd., Ningxia Rainbow Chemical Co., Ltd., Shandong Rainbow Investment Co., Ltd., and Shandong Runnong Investment Co., Ltd.

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).

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 determination in this investigation. 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).¹⁹

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce via ACCESS within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants and whether any participant is a foreign national, and a list of the 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, parties will be notified of the time and date for the hearing.²⁰ Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

U.S. International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of 2,4-D from China are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 703(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

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*.

²⁰ See 19 CFR 351.310(d).

Dated: September 9, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is 2,4-dichlorophenoxyacetic acid (2,4-D) and its derivative products, including salt and ester forms of 2,4-D. 2,4-D has the Chemical Abstracts Service (CAS) registry number of 94-75-7 and the chemical formula C₈H₆Cl₂O₃.

Salt and ester forms of 2,4-D include 2,4-D sodium salt (CAS 2702-72-9), 2,4-D diethanolamine salt (CAS 5742-19-8), 2,4-D dimethyl amine salt (CAS 2008-39-1), 2,4-D isopropylamine salt (CAS 5742-17-6), 2,4-D tri-isopropanolamine salt (CAS 3234180-3), 2,4-D choline salt (CAS 1048373-72-3), 2,4-D butoxyethyl ester (CAS 1929-733), 2,4-D 2-ethylhexylester (CAS 1928-43-4), and 2,4-D isopropylester (CAS 94-11-1). All 2,4-D, as well as the salt and ester forms of 2,4-D, is covered by the scope irrespective of purity, particle size, or physical form.

The conversion of a 2,4-D salt or ester from 2,4-D acid, or the formulation of nonsubject merchandise with the subject 2,4-D, its salts, and its esters in the country of manufacture or in a third country does not remove the subject 2,4-D, its salts, or its esters from the scope. For any such formulations, only the 2,4-D, 2,4-D salt, and 2,4-D ester components of the mixture is covered by the scope of the investigation. Formulations of 2,4-D are products that are registered for end-use applications with the Environmental Protection Agency and contain a dispersion agent.

The country of origin of any 2,4-D derivative salt or ester is determined by the country in which the underlying 2,4-D acid is produced. 2,4-D, its salts, and its esters are classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2918.99.2010. Subject merchandise, including the aforementioned formulations, may also be classified under HTSUS subheadings 2922.12.0001, 2921.11.0000, 2921.19.6195, 2922.19.9690, 3808.93.0500, and 3808.93.1500. The HTSUS subheadings and CAS registry numbers are provided for convenience and customs purposes. The written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Injury Test
- IV. Analysis of China's Financial System
- V. Diversification of China's Economy
- VI. Use of Facts Otherwise Available and Adverse Inferences
- VII. Subsidies Valuation
- VIII. Benchmarks and Interest Rates
- IX. Analysis of Programs
- X. Recommendation

[FR Doc. 2024-20862 Filed 9-12-24; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-533-923]

2,4-Dichlorophenoxyacetic Acid From India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of 2,4-Dichlorophenoxyacetic Acid (2,4-D) from India. The period of investigation is January 1, 2023, through December 31, 2023. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable September 13, 2024.

FOR FURTHER INFORMATION CONTACT: Harrison Tanchuck or George McMahon, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-7421 or (202) 482-1167, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this countervailing duty (CVD) investigation on April 30, 2024.¹ On June 10, 2024, Commerce postponed the preliminary determination of this investigation until September 3, 2024.² On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.³ The deadline for the preliminary determination is now September 9, 2024.

For a complete description of the events that followed the initiation of this investigation, see the Preliminary

¹ See *2,4-Dichlorophenoxyacetic Acid from the People's Republic of China and India: Initiation of Countervailing Duty Investigations*, 89 FR 34205 (April 30, 2024) (Initiation Notice).

² See *2,4-Dichlorophenoxyacetic Acid from the People's Republic of China and India: Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 89 FR 48891 (June 10, 2024).

³ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated July 22, 2024.

Decision Memorandum.⁴ A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II 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 Investigation

The product covered by this investigation is 2,4-D from India. For a complete description of the scope of this investigation, see Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,⁵ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).⁶ Commerce issued a supplemental questionnaire on June 4, 2024, requesting clarification regarding two of the Harmonized Tariff Schedule of the United States (HTSUS) subheadings under which the subject merchandise may also be classified.⁷ On June 11, 2024, Corteva Agriscience LLC (the petitioner) confirmed that the HTSUS subheadings petitioner intended to include were as follows: 3808.93.0500 and 3808.93.1500.⁸ As a result, Commerce is preliminarily modifying the scope language. The scope as described in Appendix I incorporates the modified language.

Methodology

Commerce is conducting this investigation in accordance with section 701 of 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 preliminary determination, see the Preliminary Decision Memorandum.

Commerce notes that, in making these findings, it relied, in part, on facts available and, because it finds that the Government of India did not act to the best of its ability to respond to Commerce's requests for information, it drew an adverse inference where appropriate in selecting from among the facts otherwise available.¹⁰ For further information, see the "Use of Facts Otherwise Available and Adverse Inferences" section in the Preliminary Decision Memorandum.

Alignment

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final CVD determination in this investigation with the final determination in the companion less-than-fair-value (LTFV) investigation of 2,4-D from India based on a request made by the petitioner.¹¹ Consequently, the final CVD determination will be issued on the same date as the final LTFV determination, which is currently scheduled to be issued no later than January 21, 2025, unless postponed.¹²

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

In this investigation, Commerce calculated individual estimated countervailable subsidy rates for Atul Limited and Meghmani Organics Limited that are not zero, *de minimis*, or based entirely on facts otherwise available. Commerce calculated the all-others rate using a weighted average of the individual estimated subsidy rates calculated for the examined respondents using each company's publicly ranged

values for the merchandise under consideration.¹³

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent ad valorem)
Atul Limited	5.29
Meghmani Organics Limited ¹⁴	3.28
All Others	4.13

Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of this notice in accordance with 19 CFR 351.224(b).

¹³ 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. sale 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 available, Commerce based the all-others rate on the publicly ranged sales data of the mandatory respondents. For a complete analysis of the data, see Memorandum "Preliminary Determination Calculation of Subsidy Rate for Non-Selected Companies Under Review," dated concurrently with this notice.

¹⁴ As discussed in the Preliminary Decision Memorandum, Commerce preliminarily finds the following companies to be cross owned with Meghmani Organics Limited: Epigral Limited; and Matangi Industries LLP.

⁴ See Memorandum, "Decision Memorandum for the Preliminary Affirmative Determination in the Countervailing Duty Investigation of 2,4-Dichlorophenoxyacetic Acid from India," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁵ See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

⁶ See *Initiation Notice*, 89 FR at 34206.

⁷ See Commerce's Letter, "Scope Supplemental Questions," dated June 4, 2024.

⁸ See Petitioner's Letter, "Response to Scope Supplemental Questions," dated June 11, 2024.

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 sections 776(a) and (b) of the Act.

¹¹ See Petitioner's Letter, "Petitioner's Request for Alignment of Final Determinations with Deadline in Concurrent CVD Investigations," dated July 24, 2024.

¹² See *2,4-Dichlorophenoxyacetic Acid from India and the People's Republic of China: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 89 FR 67420 (August 20, 2024).

Consistent with 19 CFR 351.224(e), Commerce will analyze and, if appropriate, correct any timely allegations of significant ministerial errors by amending the preliminary determination. However, consistent with 19 CFR 351.224(d), Commerce will not consider incomplete allegations that do not address the significance standard under 19 CFR 351.224(g) following the preliminary determination. Instead, Commerce will address such allegations in the final determination together with issues raised in the case briefs or other written comments.

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. 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.¹⁵ 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.¹⁶

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 investigation, we instead request that interested parties provide at the beginning of their briefs a public executive summary for each issue raised in their briefs.¹⁷ 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 determination in this investigation. 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).¹⁸

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce via ACCESS within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants and whether any participant is a foreign national, and a list of the 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, parties will be notified of the time and date for the hearing.¹⁹ Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

U.S. International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of 2, 4-D from India are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: September 9, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is 2,4-dichlorophenoxyacetic acid (2,4-D) and its derivative products, including salt and ester forms of 2,4-D. 2,4-D has the Chemical Abstracts Service (CAS) registry number of 94-75-7 and the chemical formula C₈H₆Cl₂O₃.

Salt and ester forms of 2,4-D include 2,4-D sodium salt (CAS 2702-72-9), 2,4-D diethanolamine salt (CAS 5742-19-8), 2,4-D dimethyl amine salt (CAS 2008-39-1), 2,4-D isopropylamine salt (CAS 5742-17-6), 2,4-D tri-isopropanolamine salt (CAS 3234180-3), 2,4-D choline salt (CAS 1048373-72-3), 2,4-D butoxyethyl ester (CAS 1929-733), 2,4-D 2-ethylhexylester (CAS 1928-43-4), and 2,4-D isopropylester (CAS 94-11-1). All 2,4-D, as well as the salt and ester forms of 2,4-D, is covered by the scope irrespective of purity, particle size, or physical form.

The conversion of a 2,4-D salt or ester from 2,4-D acid, or the formulation of nonsubject merchandise with the subject 2,4-D, its salts, and its esters in the country of manufacture or in a third country does not remove the subject 2,4-D, its salts, or its esters from the scope. For any such formulations, only the 2,4-D, 2,4-D salt, and 2,4-D ester components of the mixture is covered by the scope of the investigation. Formulations of 2,4-D are products that are registered for end-use applications with the Environmental Protection Agency and contain a dispersion agent.

The country of origin of any 2,4-D derivative salt or ester is determined by the country in which the underlying 2,4-D acid is produced. 2,4-D, its salts, and its esters are classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2918.99.2010. Subject merchandise, including the abovementioned formulations, may also be classified under HTSUS subheadings 2922.12.0001, 2921.11.0000, 2921.19.6195, 2922.19.9690, 3808.93.0500, and 3808.93.1500. The HTSUS subheadings and CAS registry numbers are provided for convenience and customs purposes. The written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Injury Test
- IV. Diversification of India's Economy
- V. Use of Facts Otherwise Available and Adverse Inferences
- VI. Subsidies Valuation
- VII. Benchmarks and Interest Rates
- VIII. Analysis of Programs
- IX. Recommendation

[FR Doc. 2024-20861 Filed 9-12-24; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-557-820]

Silicon Metal From Malaysia: Preliminary Results of Antidumping Duty Administrative Review, 2022-2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

¹⁵ 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).

¹⁶ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁷ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹⁸ See APO and Service Final Rule.

¹⁹ See 19 CFR 351.310(d).

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that sales of silicon metal from Malaysia were not sold in the United States at less than normal value (NV) during the period of review (POR), August 1, 2022, through July 31, 2023. Interested parties are invited to comment on these preliminary results.

DATES: Applicable September 13, 2024.

FOR FURTHER INFORMATION CONTACT:

Kabir Archuleta, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202-482-2593.

SUPPLEMENTARY INFORMATION:

Background

On August 19, 2021, Commerce published in the **Federal Register** an antidumping duty order on silicon metal from Malaysia.¹ On August 2, 2023, we published in the **Federal Register** a notice of opportunity to request an administrative review of the Order.² On October 18, 2023, based on a timely request for an administrative review, Commerce initiated an administrative review with respect to PMB Silicon Sdn. Bhd (PMB Silicon).³

On April 8, 2024, Commerce extended the deadline for completing the preliminary results of this review until August 30, 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 6, 2024. For a complete description of the events between the initiation of this review and these preliminary results, see the Preliminary Decision Memorandum.⁶

Scope of the Order

The merchandise covered by the scope of this Order is silicon metal from Malaysia. For a complete description of

the scope of the Order, see the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Export price is calculated in accordance with section 772 of the Act. NV 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 for a complete list of topics discussed in the Preliminary Decision Memorandum see 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 can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Preliminary Results of the Review

Commerce preliminarily determines that the following estimated weighted-average dumping margin exists during the period August 1, 2022, through July 31, 2023:

Exporter/producer	Estimated weighted-average dumping margin (percent)
PMB Silicon Sdn. Bhd	0.00

Disclosure and Public Comment

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).

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.⁷ 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.⁸

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.⁹ 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).¹⁰

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.

Assessment Rates

Upon issuance of the final results of this administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.¹¹ If PMB Silicon'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 will calculate importer-specific assessment rates based on the ratio of the total amount of dumping calculated for the importer's

⁸ See 19 CFR 351.309(c)(2) and (d)(2).

⁹ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹⁰ See APO and Service Final Rule.

¹¹ See 19 CFR 351.212(b)(1).

¹ See *Silicon Metal from Malaysia: Antidumping Duty Order*, 86 FR 46677 (August 19, 2021) (Order).

² See *Antidumping and 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, "Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated April 8, 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 Antidumping Duty Order on Silicon Metal from Malaysia: 2022–2023," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁷ 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).

examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1). We intend to instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is not zero or *de minimis*. Where either PMB Silicon's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c), or an importer-specific assessment rate is zero or *de minimis* in the final results of this review, we intend to instruct CBP to liquidate the appropriate entries without regard to antidumping duties in accordance with 19 CFR 351.106(c)(2). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties, where applicable.¹²

In accordance with Commerce's "automatic assessment" practice, for entries of subject merchandise during the POR produced by PMB Silicon for which PMB Silicon did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate those entries at the all-others rate established in the original less-than-fair-value (LTFV) investigation (*i.e.*, 12.27 percent),¹³ if there is no rate for the intermediate company(ies) involved in the transaction.¹⁴

Commerce intends to issue instructions to CBP no earlier than 35 days after the publication date 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 will be effective upon publication in the **Federal Register** of the notice of final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for PMB Silicon will be equal to the weighted-average dumping

margin established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment of this proceeding in which they were reviewed; (3) if the exporter is not a firm covered in this review, or the original investigation, but the producer is, then the cash deposit rate will be the rate established for the most recently-completed segment of this proceeding for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 12.27 percent, the all-others rate established in the LTFV investigation.¹⁵ The 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 in any written briefs, not 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 duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

Commerce is issuing and publishing these 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. Discussion of the Methodology
- V. Currency Conversion

VI. Recommendation

[FR Doc. 2024–20774 Filed 9–12–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–920]

Certain Epoxy Resins From the Republic of Korea: Preliminary Negative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination and Alignment of Final Determination With Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are not being provided to producers and exporters of Certain Epoxy Resins (epoxy resins) from the Republic of Korea (Korea). The period of investigation is January 1, 2023, through December 31, 2023. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable September 13, 2024.

FOR FURTHER INFORMATION CONTACT: Thomas Martin or Benjamin Blythe, 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) 482–3936 or (202) 482–3457, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this countervailing duty (CVD) investigation on April 29, 2024.¹ On May 28, 2024, Commerce postponed the preliminary determination until September 3, 2024.² On July 22, 2024, Commerce tolled certain deadlines in this administrative

¹ See Certain Epoxy Resins from the People's Republic of China, India, the Republic of Korea, and Taiwan: Initiation of Countervailing Duty Investigations, 89 FR 33319 (April 29, 2024) (Initiation Notice).

² See Certain Epoxy Resins from the People's Republic of China, India, the Republic of Korea, and Taiwan: Postponement of Preliminary Determinations in the Countervailing Duty Investigations, 89 FR 46016 (May 28, 2024).

¹² See section 751(a)(2)(C) of the Act.

¹³ See Order, 86 FR at 46678.

¹⁴ For a full description of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

¹⁵ See Order, 86 FR at 46678.

proceeding by seven days.³ The deadline for the preliminary determination is now September 9, 2024.

For a complete description of the events that followed the initiation of this investigation, see the Preliminary Decision Memorandum.⁴ A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II 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 Investigation

The products covered by this investigation are epoxy resins. For a complete description of the scope of this investigation, see Appendix I.

Scope Comments

In accordance with the Preamble to Commerce's regulations,⁵ the Initiation Notice set aside a period of time for parties to raise issues regarding product coverage, (*i.e.*, scope).⁶ We received several comments concerning the scope of this investigation, as well as in the companion less-than-fair-value (LTFV) and other CVD investigations of epoxy resins, as it appeared in the Initiation Notice. We are currently evaluating the scope comments filed by the interested parties. We intend to issue our preliminary decision regarding the scope of the LTFV and CVD investigations in the preliminary determinations of the companion LTFV investigations, the deadline for which is November 6, 2024.⁷ We will incorporate the scope decisions from the LTFV investigations into the scope of the final CVD determination for this investigation

after considering any relevant comments submitted in scope case and rebuttal briefs.⁸

Methodology

Commerce is conducting this investigation in accordance with section 701 of 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

Preliminary Negative Determination of Critical Circumstances

In accordance with section 703(e)(1) of the Act, Commerce preliminarily determines that critical circumstances do not exist with respect to imports of epoxy resins from Korea for Kukdo Chemical Co., Ltd. (Kukdo), Kumho P&B Chemicals Inc. (Kumho), all other exporters or producers not individually examined. For a full description of the methodology and results of Commerce's analysis, see the Preliminary Decision Memorandum.

Alignment

As noted in the Preliminary Decision Memorandum, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final CVD determination with the final determination in the companion LTFV investigation of epoxy resins from Korea based on a request made by the petitioner.¹⁰ Consequently, the final CVD determination will be issued on the same date as the final LTFV determination, which is currently scheduled to be issued no later than January 21, 2025, unless postponed.¹¹

Preliminary Determination

For this preliminary determination, Commerce calculated *de minimis* estimated countervailable subsidies for all individually examined producers/exporters of the subject merchandise. Consistent with section 703(b)(4)(A) of the Act, Commerce has disregarded the *de minimis* rates. Commerce preliminarily determines that the

following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent <i>ad valorem</i>)
Kukdo Chemical Co., Ltd. ¹²	* 0.74
Kumho P&B Chemicals Inc. ¹³ ..	* 0.89

* *De minimis*.

Consistent with section 703(d) of the Act, Commerce has not calculated an estimated weighted-average subsidy rate for all other producers/exporters because it has not made an affirmative preliminary determination

Suspension of Liquidation

Because Commerce preliminarily determines that no countervailable subsidies are being provided to the production or exportation of subject merchandise, Commerce will not direct U.S. Customs and Border Protection to suspend liquidation of any such entries.

Disclosure

Commerce intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its 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).

Consistent with 19 CFR 351.224(e), Commerce will analyze and, if appropriate, correct any timely allegations of significant ministerial errors by amending the preliminary determination. However, consistent with 19 CFR 351.224(d), Commerce will not consider incomplete allegations that do not address the significance standard under 19 CFR 351.224(g) following the preliminary determination. Instead, Commerce will address such allegations in the final determination together with issues raised in the case briefs or other written comments.

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

All interested parties will have the opportunity to submit scope case and

³ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated July 22, 2024.

⁴ See Memorandum, "Decision Memorandum for the Preliminary Negative Determination in the Countervailing Duty Investigation of Certain Epoxy Resins from the Republic of Korea," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁵ See Antidumping Duties; Countervailing Duties, Final Rule, 62 FR 27296, 27323 (May 19, 1997).

⁶ See Initiation Notice.

⁷ See Certain Epoxy Resins from the People's Republic of China, India, the Republic of Korea, Taiwan, and Thailand: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations, 89 FR 65583 (August 12, 2024) (LTFV Prelim Postponement).

⁸ The deadline for interested parties to submit scope case and rebuttal briefs will be established in the preliminary scope decision memorandum.

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 Petitioner's Letter, "Petitioner's Request to Align Countervailing Duty Investigation Final Determination with Antidumping Duty Investigation Final Determination," dated August 15, 2024. The petitioner is the U.S. Epoxy Resin Producers Ad Hoc Coalition.

¹¹ See LTFV Prelim Postponement.

¹² As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with Kukdo Chemical Co., Ltd.: Kukdo Finechem Co., Ltd.

¹³ As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with Kumho P&B Chemicals Inc.: Kumho Petrochemical Co. Ltd. and Chemoil Corporation.

rebuttal briefs on the preliminary decision regarding the scope of the LTFV and CVD investigations. The deadlines to submit scope case and rebuttal briefs will be provided in the preliminary scope decision memorandum. For all scope case and rebuttal briefs, parties must file identical documents simultaneously on the records of the ongoing LTFV and CVD epoxy resins investigations. No new factual information or business proprietary information may be included in either scope case or rebuttal briefs.

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. 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

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 investigation, 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 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 investigation. 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).¹⁷

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a

hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

U.S. International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 75 days after the final determination whether imports of epoxy resins from Korea are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: September 9, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise subject to this investigation is fully or partially uncured epoxy resins, also known as epoxide resins, polyepoxides, oxirane resins, ethoxylene resins, diglycidyl ether of bisphenol, (chloromethyl)oxirane, or aromatic diglycidyl, which are polymers or prepolymers containing epoxy groups (*i.e.*, three-membered ring structures comprised of two carbon atoms and one oxygen atom). Epoxy resins range in physical form from low viscosity liquids to solids. All epoxy resins are covered by the scope of these investigations irrespective of physical form, viscosity, grade, purity, molecular weight, or molecular structure, and packaging.

Epoxy resins may contain modifiers or additives, such as hardeners, curatives, colorants, pigments, diluents, solvents, thickeners, fillers, plasticizers, softeners, flame retardants, toughening agents, catalysts, Bisphenol F, and ultraviolet light inhibitors, so long as the modifier or additive has not chemically reacted so as to cure the epoxy resin or convert it into a different

product no longer containing epoxy groups. Such epoxy resins with modifiers or additives are included in the scope where the epoxy resin component comprises no less than 30 percent of the total weight of the product. The scope also includes blends of epoxy resins with different types of epoxy resins, with or without the inclusion of modifiers and additives, so long as the combined epoxy resin component comprises at least 30 percent of the total weight of the blend.

Epoxy resins that enter as part of a system or kit with separately packaged co-reactants, such as hardeners or curing agents, are within the scope. The scope does not include any separately packaged co-reactants that would not fall within the scope if entered on their own.

The scope includes merchandise matching the above description that has been processed in a third country, including by commingling, diluting, introducing, or removing modifiers or additives, or performing any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the subject country.

The scope also includes epoxy resin that is commingled or blended with epoxy resin from sources not subject to this investigation. Only the subject component of such commingled products is covered by the scope of this investigation.

Excluded from the scope are phenoxy resins, which are polymers with a weight greater than 11,000 Daltons, a Melt Flow Index (MFI) at 200 °C (392 °F) no less than 4 grams and no greater than 70 grams per 10 min, Glass-Transition Temperatures (Tg) no less than 80 °C (176 °F) and no greater than 100 °C (212 °F), and which contain no epoxy groups other than at the terminal ends of the molecule.

Excluded from the scope are certain paint and coating products, which are blends, mixtures, or other formulations of epoxy resin, curing agent, and pigment, in any form, packaged in one or more containers, wherein (1) the pigment represents a minimum of 10 percent of the total weight of the product, (2) the epoxy resin represents a maximum of 80 percent of the total weight of the product, and (3) the curing agent represents 5 to 40 percent of the total weight of the product. Excluded from the scope are preimpregnated fabrics or fibers, often referred to as "pre-pregs," which are composite materials consisting of fabrics or fibers (typically carbon or glass) impregnated with epoxy resin.

This merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 3907.30.0000. Subject merchandise may also be entered under subheadings 3907.29.0000, 3824.99.9397, 3214.10.0020, 2910.90.9100, 2910.90.9000, 2910.90.2000, and 1518.00.4000. The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope is dispositive.

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 Final Rule).

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 Final Rule.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Injury Test
- IV. Preliminary Negative Determination of Critical Circumstances
- V. Subsidies Valuation
- VI. Diversification of Korea's Economy
- VII. Analysis of Programs
- VIII. Recommendation

[FR Doc. 2024–20886 Filed 9–12–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–835]

Stainless Steel Sheet and Strip in Coils From the Republic of Korea: 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 certain exporters/producers of stainless steel sheet and strip in coils (SSSS in coils) from the Republic of Korea (Korea) received countervailable subsidies during the period of review (POR) January 1, 2022, through December 31, 2022. We invite interested parties to comment on these preliminary results.

DATES: Applicable September 13, 2024.

FOR FURTHER INFORMATION CONTACT: Patrick Barton, 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) 482–0012.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 1999, Commerce published in the **Federal Register** the countervailing duty (CVD) order on SSSS in coils from Korea.¹ On October 18, 2023, Commerce published in the **Federal Register** its initiation of the CVD administrative review of the *Order* for the period of January 1, 2022, to

December 31, 2022.² On January 18, 2024, Commerce selected Geumok Tech. Co., Ltd. (Geumok Tech) and Hyundai Steel Company (Hyundai Steel), as the mandatory respondents in this administrative review.³ Because Geumok Tech failed to respond to the initial questionnaire, on February 8, 2024, Commerce selected Hyundai BNG Steel Co. (Hyundai BNG) as an additional mandatory respondent in this administrative review.⁴

On April 17, 2024, Commerce extended the deadline for issuance of the preliminary results of this review until August 30, 2024, in accordance with 19 CFR 351.213(h)(2).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 that followed the initiation of this review, *see* the Preliminary Decision Memorandum.⁷ A list of topics discussed in the Preliminary Decision Memorandum is included in an 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/FRNoticesListLayout.aspx>.

Scope of the Order

The product covered by this *Order* is SSSS in coils. For a complete description of the scope of the *Order*, *see* the Preliminary Decision Memorandum.

² *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 71829 (October 18, 2023).

³ *See* Memorandum, “Respondent Selection,” dated January 18, 2024.

⁴ *See* Memorandum, “Selection of Additional Mandatory Respondent for Individual Examination,” dated February 8, 2024.

⁵ *See* Memorandum, “Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review,” dated April 17, 2024.

⁶ *See* Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,” dated July 22, 2024.

⁷ *See* Memorandum, “Decision Memorandum for the Preliminary Results of the Administrative Review of the Countervailing Duty Order on Stainless Steel Sheet and Strip in Coils from the Republic of Korea; 2022,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Methodology

Commerce is conducting this CVD administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we preliminarily determine that there is a subsidy, *i.e.*, a financial contribution by an “authority” that confers 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 upon adverse facts available (AFA) in determining a countervailing duty rate for Geumok Tech, pursuant to sections 776(a) and (b) of the Act, *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.⁹ Normally, upon completion of an administrative review, the suspended entries are liquidated at the countervailing duty assessment rate calculated for the review period.¹⁰ 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.¹¹

According to the CBP import data on the record, there is one company subject to this review (*i.e.*, Samsung STS Co., Ltd.) that did not have reviewable entries of subject merchandise during the POR for which liquidation is suspended. Accordingly, in the absence of reviewable, suspended entries of subject merchandise during the POR, we intend to rescind this administrative review with respect to this company, in accordance with 19 CFR 351.213(d)(3).

Preliminary Results of Review

As a result of this review, we preliminarily determine the following net countervailable subsidy rates for the period January 1, 2022, through December 31, 2022:

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 “Intent to Rescind Administrative Review, in Part.”

¹⁰ *See* 19 CFR 351.212(b)(2).

¹¹ *See* 19 CFR 351.213(d)(3).

¹ *See Amended Final Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea; and Notice of Countervailing Duty Orders: Stainless Steel Sheet and Strip in Coils from France, Italy, and the Republic of Korea*, 64 FR 42923 (August 6, 1999) (*Order*).

Company	Net countervailable subsidy rate (percent)
Hyundai BNG Steel Co	*0.05
Hyundai Steel Company ¹²	0.76
Geumok Tech. Co., Ltd. ¹³	15.57

*De minimis.

Assessment Rate

In accordance with 19 CFR 351.221(b)(4)(i), Commerce has preliminarily assigned subsidy rates as indicated above. Consistent with section 751(a)(2)(C) of the Act, upon issuance of the final results, Commerce shall determine, and CBP shall assess, countervailing duties on all appropriate entries covered by this review. For the company 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.

¹² Commerce preliminarily finds Hyundai ISC to be cross-owned with Hyundai Steel. *See* the Preliminary Decision Memorandum at 14.
¹³ This rate is based upon AFA. *See* Preliminary Decision Memorandum at 6–11.

Disclosure and Public Comment

We intend to disclose the calculations performed to parties within five days after public announcement of the preliminary results.¹⁴ Interested parties will be notified of the timeline for the submission of case briefs and written comments 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.¹⁵ 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.¹⁶

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.¹⁷ 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).¹⁸

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

¹⁴ *See* 19 CFR 351.224(b).
¹⁵ *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*).
¹⁶ *See* 19 CFR 351.309(c)(2) and (d)(2).
¹⁷ We use the term “issue” here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.
¹⁸ *See* *APO and Service Procedures*.

Commerce’s electronic records system, ACCESS, by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.

Final Results of Review

Unless the deadline is 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.

Notification to Interested Parties

These preliminary results and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213 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. Diversification of Korea’s Economy
- V. Intent To Rescind Administrative Review, In Part
- VI. Use of Facts Otherwise Available and Adverse Inferences
- VII. Subsidies Valuation Information
- VIII. Benchmarks and Discount Rates
- IX. Analysis of Programs
- X. Recommendation

[FR Doc. 2024–20756 Filed 9–12–24; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration
[A–201–836]

Light-Walled Rectangular Pipe and Tube From Mexico: Preliminary Results and Intent To Rescind, in Part, of Antidumping Duty Administrative Review; 2022–2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.
SUMMARY: The U.S. Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty order on light-walled rectangular pipe and tube (LWRPT) from Mexico. We preliminarily determine that Maquilacero S.A. de C.V. (Maquilacero)/Tecnicas de Fluidos S.A. de C.V. (TEFLU) and Perfiles LM, S.A. de C.V. (Perfiles) made sales of subject merchandise at less than normal value

during the period of review (POR) August 1, 2022, through July 31, 2023. Interested parties are invited to comment on these preliminary results.

DATES: Applicable September 13, 2024.

FOR FURTHER INFORMATION CONTACT: John Conniff or Charles Doss, 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) 482-1009 or (202) 482-4474, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 5, 2008, Commerce published in the **Federal Register** the antidumping duty order on LWRPT from Mexico.¹ On October 18, 2023, in accordance with 19 CFR 351.221(c)(1)(i), Commerce published a notice of initiation for this administrative review.² On April 16, 2024, we extended the deadline for the preliminary results to August 30, 2024.³ On July 22, 2024, Commerce tolled the deadline in this administrative proceeding by seven days.⁴ The deadline for the preliminary results is now September 6, 2024. For a complete description of the events that followed the initiation of this administrative review, see the Preliminary Decision Memorandum.⁵

Scope of the Order

The products covered by the *Order* are light-walled rectangular pipe and tube from Mexico. For a complete description of the scope, see the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the

Act). We calculated export price in accordance with section 772 of the Act. We calculated normal value in accordance with section 773 of the Act. For a full description of the methodology underlying these preliminary results, see the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is included as an 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/FRNoticesListLayout.aspx>.

Intent To Rescind, In Part

Pursuant to 19 CFR 351.213(d)(3), it is Commerce's practice to rescind an administrative review of an antidumping duty order where it determines that there were no suspended entries of subject merchandise during the POR.⁶ Normally, upon completion of an administrative review, the suspended entries are liquidated at the antidumping duty assessment rate for the review period.⁷ Therefore, for an administrative review to be conducted, there must be a suspended entry that Commerce can instruct U.S. Customs and Border Protection (CBP) to liquidate at the calculated antidumping duty assessment rate for the review period.⁸

As discussed in greater detail in the Preliminary Decision Memorandum, the

POR entry totals reflected in the data query provided by U.S. Customs Border Protection (CBP) in the Attachment of the CBP Data Memorandum reflected no POR entries of subject merchandise from: (1) Arco Metal S.A. de C.V.; (2) Fabricaciones y Servicios de Mexico; (3) Galvak, S.A. de C.V.; (4) Grupo Estructuras y Perfiles; (5) Industrias Monterrey S.A. de C.V.; (6) Internacional de Aceros, S.A. de C.V.; (7) PEASA-Productos Especializados de Acero; (8) Talleres Acero Rey S.A. de C.V.; (9) Tuberias Aspe S.A. de C.V.; (10) Tuberia Laguna, S.A. de C.V.; and (11) Tuberias y Derivados S.A. de C.V.⁹

In the absence of any suspended entries of subject merchandise from these companies during the POR, Commerce hereby notifies all interested parties of its intent to rescind this administrative review with respect to these companies. Commerce is providing interested parties with an opportunity to submit comments on this preliminary decision, including factual information. Comments, including factual information, from interested parties are due to Commerce no later than 5:00 p.m. Eastern Time (ET) on September 13, 2024. Rebuttal comments, including rebuttal factual information, are due seven days thereafter, by 5:00 p.m. ET on September 20, 2024. All submissions must be filed electronically at <https://access.trade.gov> in accordance with 19 CFR 351.303.

Rate for Non-Examined Companies

For the rate for companies not selected for individual examination in an administrative review, generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a less-than-fair-value investigation. 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 administrative review, we calculated weighted-average dumping margins for Perfiles and Maquilacero/TEFLU that are not zero, *de minimis*, or based entirely on total facts available. For the respondents that were not selected for individual examination in this administrative review, we have assigned to them the

¹ See *Light-Walled Rectangular Pipe and Tube from Mexico, the People's Republic of China and Republic of Korea: Antidumping Duty Orders; Light-Walled Rectangular Pipe and Tube from the Republic of Korea: Notice of Amended Final Determination of Sales at Less Than Fair Value*, 73 FR 45403 (August 5, 2008) (*Order*).

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 71829 (October 18, 2023) (*Initiation Notice*).

³ See Memorandum, "Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated April 16, 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 Antidumping Duty Order on Light-Walled Rectangular Pipe and Tube from Mexico; 2022-2023," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁶ See, e.g., *Certain Carbon and Alloy Steel Cut-to Length Plate from the Federal Republic of Germany: Rescission of Antidumping Administrative Review; 2020-2021*, 88 FR 4157 (January 24, 2023).

⁷ See 19 CFR 351.212(b)(1).

⁸ See, e.g., *Shanghai Sunbeauty Trading Co. v. United States*, 380 F. Supp. 3d 1328, 1335-36 (CIT 2019), at 12 (referring to section 751(a) of the Act, the U.S. Court of International Trade (CIT) held that: "While the statute does not explicitly require that an entry be suspended as a prerequisite for establishing entitlement to a review, it does explicitly state the determined rate will be used as the liquidation rate for the reviewed entries. This result can only obtain if the liquidation of entries has been suspended. . . ." see also *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018-2019*, 86 FR 36102 (July 8, 2021), and accompanying IDM at Comment 4; and *Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation: Notice of Rescission of Antidumping Duty Administrative Review*, 77 FR 65532 (October 29, 2012) (noting that "for an administrative review to be conducted, there must be a reviewable, suspended entry to be liquidated at the newly calculated assessment rate").

⁹ See Memorandum, "Release of Customs and Border Protection Data," dated October 20, 2023 (CBP Data Memorandum).

simple average of the weighted-average dumping margins calculated for Perfiles and Maquilacero/TEFLU, consistent with the guidance in section 735(c)(5)(B) of the Act.¹⁰

Preliminary Results of the Review

Commerce preliminarily determines the following estimated weighted-

average dumping margins exist for the POR:

Producer/exporter	Weighted-average dumping margin (percent)
Maquilacero S.A. de C.V./Técnicas de Fluidos S.A. de C.V. ¹¹	20.30
Perfiles LM, S.A. de C.V.	6.66
Aceros Cuatro Caminos S.A. de C.V./Productos Laminados de Monterrey S.A. de C.V. ¹²	13.73
Nacional de Acero S.A. de C.V.	13.73
Regiomontana de Perfiles y Tubos S. de R.L. de C.V.	13.73
Ternium Mexico S.A. de C.V.	13.73

Disclosure and Public Comment

Commerce intends to disclose its calculations and analysis performed to interested parties for these preliminary results within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

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.¹³ 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.¹⁴

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.¹⁵ 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).¹⁶

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 5:00 p.m. ET within 30 days after the date of publication of this notice.

Assessment Rates

Upon issuance of the final results, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. Commerce intends to issue assessment instructions to CBP no earlier than 41 days after the date of publication of the final results of this review in the **Federal Register** in accordance with 19 CFR 356.8(a). If a

timely summons is filed at the CIT, 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).

If the weighted-average dumping margin for Maquilacero/TEFLU or Perfiles is not zero or *de minimis* (*i.e.*, less than 0.5 percent) in the final results of this review, we will calculate importer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of dumping calculated for the examined sales made during the POR to each importer and the total entered value of those same sales, in accordance with 19 CFR 351.212(b)(1). Where we do not have entered values for all U.S. sales to a particular importer, we will calculate an importer-specific, per-unit assessment rate on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales to the total quantity of those sales.¹⁷ To determine whether an importer-specific, per-unit assessment rate is *de minimis*, in accordance with 19 CFR 351.106(c)(2), we also will calculate an importer-specific *ad valorem* ratio based on estimated entered values. Where an importer-specific *ad valorem* assessment rate is zero or *de minimis* in the final results of review, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties,

¹⁰ See Preliminary Decision Memorandum at "Companies Not Selected For Individual Examination;" *see also* Memorandum, "Calculation of Non-Selected Rate in Preliminary Results," dated concurrently with this notice; and *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).

¹¹ Commerce has previously found Maquilacero and TEFLU to comprise a single entity. *See, e.g.*,

Light-Walled Rectangular Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review; 2018–2019, 86 FR 33646 (June 25, 2021), and accompanying Issues and Decision Memorandum (IDM) at Comment 9.

¹² Commerce has previously found Aceros Cuatro Caminos S.A. de C.V./Productos Laminados de Monterrey S.A. de C.V. to comprise a single entity. *See, e.g.*, *Light-Walled Rectangular Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review; 2015–2016*, 83 FR 10664 (March 12, 2018).

¹³ 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*).

¹⁴ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁵ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹⁶ See *APO and Service Final Rule*.

¹⁷ See 19 CFR 351.212(b)(1).

in accordance with 19 CFR 351.106(c)(2). If a respondent's weighted-average dumping margin is zero or *de minimis* in the final results of review, we will instruct CBP not to assess duties on any of its entries in accordance with the *Final Modification for Reviews*, i.e., “{w}here the weighted-average margin of dumping for the exporter is determined to be zero or *de minimis*, no antidumping duties will be assessed.”¹⁸ For entries of subject merchandise during the POR produced by Maquilacero/TEFLU or Perfiles for which the producer did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company (or companies) involved in the transaction.¹⁹

For the companies which were not selected for individual examination, we will instruct CBP to assess antidumping duties at an *ad valorem* assessment rate equal to the company-specific weighted-average dumping margin determined in these final results. For the companies for which we intend to rescind the administrative review, upon issuance of the final results, antidumping duties shall be assessed at a rate equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for each company listed above will be that established in the final results of this administrative review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the

company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, a prior review, or in the investigation but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be the all-others rate of 3.76 percent, the rate established in the investigation of this proceeding.²⁰ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Final Results of Review

Unless extended, we intend to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in the case and rebuttal briefs, within 120 days of publication of these preliminary results in the **Federal Register**.²¹

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 duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

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.

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 Review, In Part
- V. Companies Not Selected for Individual Examination
- VI. Discussion of the Methodology
- VII. Currency Conversion
- VIII. Recommendation

[FR Doc. 2024–20795 Filed 9–12–24; 8:45 am]

BILLING CODE 3510-DS-P

²⁰ See *Order*, 85 FR at 37423.

²¹ See section 751(a)(3)(A) of the Act; and 19 CFR 351.213(h).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–819]

Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From Ukraine: Preliminary Results of Antidumping Duty Administrative Review; 2022–2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that the sole respondent under review sold subject merchandise at less than normal value during the period of review (POR) August 1, 2022, through July 31, 2023. We invite interested parties to comment on the preliminary results of this review.

DATES: Applicable September 13, 2024.

FOR FURTHER INFORMATION CONTACT: Reginald Anadio, 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) 482–3166.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 2021, Commerce published the antidumping duty (AD) order on seamless carbon and alloy steel standard, line, and pressure pipe (seamless pipe) from Ukraine.¹ On August 2, 2023, Commerce notified interested parties of the opportunity to request an administrative review of the *Order* covering the POR.²

On October 18, 2023, based on a timely request for review,³ Commerce initiated an administrative review of the *Order* with respect to Interpipe.⁴ On

¹ See *Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea, the Russian Federation, and Ukraine: Antidumping Duty Orders*, 86 FR 47055 (August 23, 2021) (*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 Interpipe's Letter, “Request for Review—2022–2023 Antidumping Duty Administrative Review Period,” dated August 31, 2023.

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 71829 (October 18, 2023). Interpipe refers to the collapsed entity, Interpipe Ukraine LLC, PJSC Interpipe Nizhnedneprovsky Tube Rolling Plant, LLC Interpipe Niko Tube, Interpipe Europe S.A., and JSC Interpipe Novomoskovsk Pipe Production Plant. See Memorandum, “Decision Memorandum for Preliminary Results of the 2022–2023 Administrative Review of the Antidumping Duty Order on Seamless Carbon and Alloy Steel

Continued

¹⁸ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification*, 77 FR 8101, 8102 (February 14, 2012) (*Final Modification for Reviews*).

¹⁹ See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

April 18, 2024, Commerce extended the deadline for issuing the preliminary results of this review until August 30, 2024, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.213(h)(2).⁵ On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.⁶ The deadline for these preliminary results are now September 6, 2024. For a complete description of the events that occurred subsequent to initiation of the review, *see* the Preliminary Decision Memorandum.

Scope of the Order

The merchandise covered by the Order is seamless pipe from Ukraine.

For a full description of the scope, *see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Act. We calculated constructed export prices in accordance with section 772 of the Act and normal value in accordance with section 773 of the Act.

For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is in the appendix to this notice. The Preliminary Decision Memorandum is a public document that 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>.

Preliminary Results of Review

We are assigning the following estimated weighted-average dumping margin to the firm listed below for the period August 1, 2022, through July 31, 2023:

Producer and/or exporter	Weighted-average dumping margin (percent)
Interpipe Ukraine LLC/PJSC Interpipe Nizhnedneprovsky Tube Rolling Plant/LLC Interpipe Niko Tube/Interpipe Europe S.A./JSC Interpipe Novomoskovsk Pipe Production Plant	2.89

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties for these preliminary results of review 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 the **Federal Register** in accordance with 19 CFR 351.224(b).

Public Comment

Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs to Commerce via ACCESS no later than 30 days after the date of publication of these preliminary results of review in the **Federal Register**.⁷ Rebuttal briefs, limited to issues raised in the case briefs, may be filed in ACCESS not later than five days after the date for filing case briefs.⁸ 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.⁹

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.¹⁰ Further, we request that interested parties limit their 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 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).¹¹

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request for a hearing to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS, by no later than 5 p.m. Eastern Time within 30 days after the date of publication of this notice in the **Federal Register**. Hearing requests should contain: (1) the party’s name, address, and telephone number; (2) the number of persons from the party attending the hearing; and (3) a list of

issues to be discussed. Issues raised in the hearing will be limited to those issues raised in the respective case briefs. If a hearing is requested, Commerce will announce the date and time of the hearing. Parties should confirm the date and time of the hearing two days before the scheduled hearing date.

All submissions to Commerce must be filed electronically via ACCESS. An electronically filed document must be received successfully in its entirety via ACCESS by 5:00 p.m. Eastern Time on the due date.¹² Note that Commerce has amended certain of its requirements pertaining to the service of documents in section 351.303(f) of our regulations.¹³

Final Results of Review

Commerce intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any written briefs, within 120 days of publication of these preliminary results of review in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act, unless extended.

Standard, Line, and Pressure Pipe from Ukraine,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum)

⁵ See Memorandum, “Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated April 18, 2024.

⁶ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,” dated July 22, 2024.

⁷ See 19 CFR 351.309(c)(1)(ii).

⁸ 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).

⁹ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁰ We use the term “issue” here to describe an argument that Commerce would normally address

in a comment of the Issues and Decision Memorandum.

¹¹ See APO and Service Final Rule.

¹² See 19 CFR 351.310(c).

¹³ See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule*, 88 FR 67069 (September 29, 2023).

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), upon completion of this administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise covered by this review.¹⁴ If Interpipe's weighted-average dumping margin in the final results of this review is not zero or *de minimis* (i.e., greater than or equal to 0.5 percent), we will calculate importer-specific *ad valorem* assessment rates for the merchandise by dividing the total amount of dumping calculated for all reviewed sales to the importer by the total entered value of the merchandise sold to the importer.¹⁵ Where either Interpipe's *ad valorem* weighted-average dumping margin is zero or *de minimis*, or an importer-specific *ad valorem* assessment rate is zero or *de minimis* in the final results of review, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.¹⁶

In accordance with Commerce's "automatic assessment" practice, for entries of subject merchandise during the POR produced by Interpipe for which it did not know was destined for the United States, we intend to instruct CBP to liquidate those entries at the all-others rate (i.e., 23.75 percent)¹⁷ in the original less-than-fair-value (LTFV) investigation if there is no rate for the intermediate company(ies) involved in the transaction.¹⁸

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, Commerce 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 will be in effect for all shipments of subject merchandise

entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the final results of this administrative review in the **Federal Register**, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for Interpipe will be equal to the weighted-average dumping margin established for Interpipe in the final results of this administrative review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), then the cash deposit rate will be zero; (2) for producers or exporters not covered in this review but that were previously reviewed or investigated in a prior segment of this proceeding, the cash deposit rate will continue to be the rate assigned to the company in the most recently-completed segment of this proceeding in which the producer or exporter was examined; (3) if the exporter of the subject merchandise does not have a company-specific rate but the producer of the subject merchandise does, then the cash deposit rate will be the rate assigned to the producer of the subject merchandise in the most recently completed segment of this proceeding in which the producer was examined; and (4) the cash deposit rate for all other producers or exporters will continue to be the all-others rate of 23.75 percent that was established in the investigation in this proceeding.¹⁹ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213(h)(2) and 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. Affiliation/Single Entity
- V. Discussion of the Methodology
- VI. Currency Conversion
- VII. Recommendation

[FR Doc. 2024–20749 Filed 9–12–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE234]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico, notification is hereby given that NMFS has issued a Letter of Authorization (LOA) to bp Exploration and Production, Inc., (bp) for the take of marine mammals incidental to geophysical survey activity in the Gulf of Mexico (GOM).

DATES: The LOA is effective from September 9, 2024, through February 14, 2025.

ADDRESSES: The LOA, LOA request, and supporting documentation are available online at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico>. In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT** section).

FOR FURTHER INFORMATION CONTACT: Rachel Wachtendonk, Office of Protected Resources, NMFS, (301) 427–8401.

¹⁴ See 19 CFR 351.212(b)(1).

¹⁵ *Id.*

¹⁶ See 19 CFR 351.106(c)(2); see also *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification*, 77 FR 8101, 8102 (February 14, 2012) (*Final Modification for Reviews*).

¹⁷ See *Order*, 86 FR at 35273.

¹⁸ See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

¹⁹ See *Order*, 86 FR at 35272.

SUPPLEMENTARY INFORMATION:**Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breaching, nursing, breeding, feeding, or sheltering (Level B harassment).

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities on their behalf (collectively “industry operators”), in U.S. waters of the GOM over the course of 5 years (86 FR 5322, January 19, 2021). The rule was based on our findings that the total taking from the specified activities over the 5-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses, and became effective on April 19, 2021.

The regulations at 50 CFR 217.180 *et seq.* allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during geophysical survey activities and prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat (often referred to as mitigation), as well as requirements pertaining to the monitoring and reporting of such taking. Under 50 CFR 217.186(e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take authorized under the LOA is of no more than small numbers.

NMFS subsequently discovered that the 2021 rule was based on erroneous take estimates. We conducted another rulemaking using correct take estimates and other newly available and pertinent information relevant to the analyses supporting some of the findings in the 2021 final rule and the taking allowable under the regulations. We issued a final rule in April 2024, effective May 24, 2024 (89 FR 31488, April 24, 2024).

The 2024 final rule made no changes to the specified activities or the specified geographical region in which those activities would be conducted, nor to the original 5-year period of effectiveness. In consideration of the new information, the 2024 rule presented new analyses supporting affirmance of the negligible impact determinations for all species, and affirmed that the existing regulations, which contain mitigation, monitoring, and reporting requirements, are consistent with the “least practicable adverse impact” standard of the MMPA.

Summary of Request and Analysis

Bp plans to conduct a three-dimensional (3D) ocean bottom node (OBN) survey over 325 lease blocks in the Alaminos Canyon, Garden Banks, Keathley Canyon, and East Breaks areas, with water depths ranging from approximately 1,000 to 2,500 m. See section F of the LOA application for a map of the area.

Bp anticipates using two dual-source vessels, and would preferentially use the low-frequency airgun source known as Gemini (also referred to as a dual barbell source). Alternatively, bp may use conventional airgun sources, with each source configured as an array consisting of 28 elements with a total volume of 4,430 cubic inches (in³). Please see bp’s application for additional detail.

The Gemini source was not included in the acoustic exposure modeling developed in support of the rules. However, the Gemini was previously described and evaluated in support of a previous LOA and we rely on that analysis here (88 FR 72739, October 23, 2023). For additional detail regarding sources, see section C of the LOA application. Based on this information we have determined there will be no effects of a magnitude or intensity different from those evaluated in support of the rules. NMFS therefore expects that use of modeling results supporting the final rule relating to use of the 32 element, 5,110 in³ airgun array are expected to be conservative as a proxy for use in evaluating potential impacts of use of the Gemini.

The survey effort proposed by bp in its LOA request was used to develop LOA-specific take estimates based on the acoustic exposure modeling results described in our rule preamble (89 FR 31488, April 24, 2024). In order to generate the appropriate take number for authorization, the following information was considered: (1) survey type; (2) location (by modeling zone¹); (3) number of days; (4) source; and (5) month.² In this case, the 5,110 in³ airgun array was selected, as discussed above. The acoustic exposure modeling performed in support of the rule provides 24-hour exposure estimates for each species, specific to each modeled source and survey type in each zone and month.

No 3D OBN surveys were included in the modeled survey types, and use of existing proxies (*i.e.*, two-dimensional (2D), 3D (narrow-azimuth) NAZ, 3D (wide-azimuth) WAZ, Coil) is generally conservative for use in evaluation of 3D OBN survey effort, largely due to the greater area covered by the modeled proxies. Summary descriptions of these modeled survey geometries are available in the preamble to the proposed rule (83 FR 29212, 29220, June 22, 2018). Coil was selected as the best available proxy survey type in this case because the spatial coverage of the planned survey is most similar to the coil survey pattern. The planned OBN survey will involve two source vessels sailing along closely spaced survey lines, with daily survey area coverage of approximately 114 kilometers squared per day, similar

¹ For purposes of acoustic exposure modeling, the GOM was divided into seven zones. Zone 1 is not included in the geographic scope of the rule.

² Acoustic propagation modeling was performed for two seasons: winter (December–March) and summer (April–November). Marine mammal density data is generally available on a monthly basis, and therefore further refines take estimates temporally.

to that assumed for the coil survey proxy. Among the different parameters of the modeled survey patterns (e.g., area covered, line spacing, number of sources, shot interval, total simulated pulses), NMFS considers area covered per day to be most influential on daily modeled exposures exceeding Level B harassment criteria. Although bp is not proposing to perform a survey using the coil geometry, the coil proxy is most representative of the effort planned by bp in terms of predicted Level B harassment exposures.

The survey will take place over approximately 142 days with 66 days of sound source operation (12 days planned in zone 5 and 54 days planned in zone 7). The monthly distribution of survey days is not known in advance, so take estimates for each species are based on the time period that produces the greatest value.

Based on the results of our analysis, NMFS has determined that the level of taking expected for this survey and authorized through the LOA is consistent with the findings made for the total taking allowable under the regulations. See table 1 in this notice

and table 6 of the rule (89 FR 31488, April 24, 2024).

Small Numbers Determination

Under the GOM rule, NMFS may not authorize incidental take of marine mammals in an LOA if it will exceed “small numbers.” In short, when an acceptable estimate of the individual marine mammals taken is available, if the estimated number of individual animals taken is up to, but not greater than, one-third of the best available abundance estimate, NMFS will determine that the numbers of marine mammals taken of a species or stock are small (89 FR 31535, May 24, 2024). For more information please see NMFS’ discussion of small numbers in the 2021 final rule (86 FR 5438, January 19, 2021).

The take numbers for authorization are determined as described above in the Summary of Request and Analysis section. Subsequently, the total incidents of harassment for each species are multiplied by scalar ratios to produce a derived product that better reflects the number of individuals likely to be taken within a survey (as

compared to the total number of instances of take), accounting for the likelihood that some individual marine mammals may be taken on more than 1 day (86 FR 5404, January 19, 2021; 89 FR 31535, May 24, 2024). The output of this scaling, where appropriate, is incorporated into adjusted total take estimates that are the basis for NMFS’ small numbers determinations, as depicted in table 1.

This product is used by NMFS in making the necessary small numbers determinations through comparison with the best available abundance estimates (see discussion at 86 FR 5391, January 19, 2021). For this comparison, NMFS’ approach is to use the maximum theoretical population, determined through review of current stock assessment reports (SAR; <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>) and model-predicted abundance information (<https://seamap.env.duke.edu/models/Duke/GOM/>). Information supporting the small numbers determinations is provided in table 1.

TABLE 1—TAKE ANALYSIS

Species	Authorized take	Scaled take ¹	Abundance ²	Percent abundance
Rice’s whale	0	n/a	51	n/a
Sperm whale	408	172.5	3,007	5.7
<i>Kogia</i> spp.	³ 287	85.3	980	10.8
Beaked whales	547	55.2	803	6.9
Rough-toothed dolphin	1,017	292.0	4,853	6.0
Bottlenose dolphin	363	103.4	165,125	0.1
Clymene dolphin	1,713	491.7	4,619	10.6
Atlantic spotted dolphin	108	30.9	21,506	0.1
Pantropical spotted dolphin	13,612	3,906.5	67,225	5.8
Spinner dolphin	185	52.8	5,548	1.0
Striped dolphin	4,849	1,391.6	5,634	24.7
Fraser’s dolphin	444	127.3	1,665	7.6
Risso’s dolphin	210	62.0	1,974	3.1
Blackfish ⁴	3,384	998.4	6,113	16.3
Short-finned pilot whale	142	42.0	2,741	1.5

¹ Scalar ratios were applied to “Authorized Take” values as described at 86 FR 5322, 5404 (January 19, 2021) to derive scaled take numbers shown here.

² Best abundance estimate. For most taxa, the best abundance estimate for purposes of comparison with take estimates is considered here to be the model-predicted abundance (Garrison *et al.*, 2023). For Rice’s whale, Atlantic spotted dolphin, and Risso’s dolphin, the larger estimated SAR abundance estimate is used.

³ Includes 19 takes by Level A harassment and 268 takes by Level B harassment. Scalar ratio is applied to takes by Level B harassment only; small numbers determination made on basis of scaled Level B harassment take plus authorized Level A harassment take.

⁴ The “blackfish” guild includes melon-headed whales, false killer whales, pygmy killer whales, and killer whales.

Based on the analysis contained herein of bp’s proposed survey activity described in its LOA application and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the affected species or stock sizes (*i.e.*, less than one-third of the best available abundance estimate) and therefore the taking is of no more than small numbers.

Authorization

NMFS has determined that the level of taking for this LOA request is consistent with the findings made for the total taking allowable under the incidental take regulations and that the amount of take authorized under the LOA is of no more than small numbers. Accordingly, we have issued an LOA to bp authorizing the take of marine

mammals incidental to its geophysical survey activity, as described above.

Dated: September 9, 2024.

Kimberly Damon-Randall,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 2024–20776 Filed 9–12–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648-XE283]

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold six in-person port meetings to gather input on Atlantic king mackerel and Atlantic Spanish mackerel as managed by the Fishery Management Plan for Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region.

DATES: The port meetings will take place September 30, 2024–October 8, 2024. The port meetings will begin at 6 p.m., local time. For specific dates and times, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES:

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

Meeting addresses: The port meetings will be held in Saint Augustine, FL; Cocoa Beach, FL; Stuart, FL; Lake Worth, FL; Murrells Inlet, SC; and Charleston, SC. For specific locations, see **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT:

Christina Wiegand, Fishery Social Scientist, SAFMC; phone: (843) 571-4366 or toll free: (866) SAFMC-10; fax: (843) 769-4520; email: christina.wiegand@safmc.net.

Additional information about the port meetings is available from the Council's website at <https://safmc.net/king-and-spanish-mackerel-port-meetings/>.

SUPPLEMENTARY INFORMATION: The Council is hosting a series of port meetings along the Atlantic coast throughout 2024 to take a focused look at the Atlantic king mackerel and Atlantic Spanish mackerel fisheries. The agenda for in-person port meetings is as follows: Council staff will briefly introduce port meetings and the Council's goals and objectives. Attendees will then have the opportunity, through a series of discussion-based breakout groups, to provide input on a variety of issues related to the Atlantic king mackerel and Spanish mackerel fisheries including changing environmental conditions, needed management

changes, commercial and recreational fishery dynamics, and the goals and objectives of the Coastal Migratory Pelagics Fishery Management Plan. Information provided during port meetings will be summarized and presented to the Council for use in management decision-making. Additional port meetings will be scheduled along the Atlantic coast throughout the remainder of 2024.

In-Person Locations

- *Monday, September 30, 2024:* Willie Galimore Community Center, 399 Riberia Street, St. Augustine, FL 32084; phone: (904) 825-1004;
- *Tuesday, October 1, 2024:* Cocoa Civic Center, 430 Delannoy Avenue, Cocoa, FL 32922; phone: (321) 639-3500 x4;
- *Wednesday, October 2, 2024:* The Banyan Room (Women's Club of Stuart), 729 SE Ocean Blvd., Stuart, FL 34994; phone: (772) 291-8820;
- *Thursday, October 3, 2024:* Palm Beach County Lantana Road Branch Library, 4020 Lantana Road, Lake Worth, FL 33462; phone: (531) 304-4500;
- *Monday, October 7, 2024:* Murrells Inlet Community Center, 4462 Murrells Inlet Road, Murrells Inlet, SC 29576; phone: (843) 545-3651; and
- *Tuesday, October 8, 2024:* South Carolina Department of Natural Resources Outdoor Classroom, 217 Fort Johnson Road, Charleston, SC 29412; phone: (843) 953-9300.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aid 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 10, 2024.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024-20822 Filed 9-12-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0048-XE284]

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of hybrid conference.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will meet September 30, 2024 through October 8, 2024.

DATES: The Council's Scientific and Statistical Committee (SSC) will begin at 8 a.m. on Monday, September 30, 2024, and continue through Wednesday, October 2, 2024. The Council's Advisory Panel (AP) will begin at 8 a.m. on Tuesday, October 1, 2024, and continue through Friday, October 4, 2024. The Council will begin at 8 a.m. on Thursday, October 3, 2024, and continue through Tuesday, October 8, 2024. The Legislative Committee will meet Wednesday, October 2, 2024, from 1 p.m. to 5 p.m. at the North Pacific Fishery Management Council's Conference Room; 1007 W 3rd Ave., Suite 400, Anchorage, AK 99501-2252. All times listed are Alaska Time.

ADDRESSES: The meetings will be a hybrid conference. The in-person component of the meeting will be held at the Egan Center, 555 W 5th Ave., Anchorage, AK 99501, or join the meeting online through the links at <https://www.npfmc.org/current-or-next-council-meeting/>.

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave., Suite 400, Anchorage, AK 99501-2252; telephone: (907) 271-2809. Instructions for attending the meeting via web conference are given under Connection Information, below.

FOR FURTHER INFORMATION CONTACT:

Diana Evans, Council staff; email: diana.evans@noaa.gov; telephone: (907) 271-2809. For technical support, please contact our Council administrative staff, email: npfmc.admin@noaa.gov.

SUPPLEMENTARY INFORMATION:**Agenda**

Monday, September 30, 2024 Through Wednesday, October 2, 2024

The SSC agenda will include the following issues:

1. Administrative Issues
2. Bering Sea Aleutian Islands (BSAI) Crab Specifications—review Stock Assessment and Fishery Evaluation (SAFE) report; adopt Acceptable Biological Catch (ABC)/Over Fishing Limits (OFLs) for Bristol Bay red king crab (BBRKC), Tanner crab, snow crab, St. Matthew Blue King Crab (SMBKC); Ecosystem Status Report; BSAI Crab Plan Team Report

3. Groundfish harvest specifications: (a) BSAI Groundfish—Proposed specifications, Joint and BSAI Plan Team reports; (b) Gulf of Alaska (GOA) Groundfish—Proposed specifications, GOA Plan Team report; (c) Ecological and Socioeconomic Profile (ESP) updates for sablefish
 4. Crew data collection—Initial review
 5. Climate funding: review: (a) Climate Scenario Workshop Report, (b) Climate science and harvest specifications adjustments discussion paper/SCS8 report
 6. IFQ Program Review Report—review (T)
 7. AFSC Report (T)
- The agenda is subject to change, and the latest version will be posted at <https://meetings.npfmc.org/Meeting/Details/3054> prior to the meeting, along with meeting materials.
- In addition to providing ongoing scientific advice for fishery management decisions, the SSC functions as the Council's primary peer review panel for scientific information, as described by the Magnuson-Stevens Act section 302(g)(1)(e), and the National Standard 2 guidelines (78 FR 43066). The peer-review process is also deemed to satisfy the requirements of the Information Quality Act, including the OMB Peer Review Bulletin guidelines.

Wednesday, October 2, 2024

Legislative Committee Agenda:
The Legislative Committee agenda will include approval of a terms of reference, a review of recently introduced federal legislation regarding fisheries management, and an evaluation of potential impacts of legislation on the Council's ability to perform the functions specified in its grant, fulfill its responsibilities under the MSA, or affect the Council's ability to conserve and manage marine resources and resource users. The agenda is subject to change, and the latest version will be posted at <https://meetings.npfmc.org/Meeting/Details/3052> prior to the meeting, along with meeting materials.

Tuesday, October 1, 2024 Through Friday, October 4, 2024

The Advisory Panel agenda will include the following issues:

1. Administrative Issues
2. Crew data collection—Initial review
3. BSAI Crab Specifications—review SAFE report; adopt ABC/OFLs for BBRKC, Tanner crab, snow crab, SMBKC; Ecosystem Status Report; BSAI Crab Plan Team Report
4. Pelagic trawl gear definition—Initial review
5. Observer 2025 Annual Deployment Plan—Review; Partial Coverage Fishery Monitoring Advisory Committee (PCFMAC) report
6. Observer availability discussion paper—review, Fishery Monitoring Advisory Committee (FMAC) report
7. Groundfish harvest specifications: (a) BSAI Groundfish—Proposed specifications, Joint and BSAI Plan Team reports; (b) GOA Groundfish—Proposed specifications, GOA Plan Team report; (c) Discard Mortality Rate (DMR) Working Group report on marine mammal interactions; (d) GOA rockfish spatial management—Discussion paper
8. Climate funding: review (a) Climate Scenario Workshop Report, (b) Climate science and harvest specifications adjustments discussion paper/SCS8 report BSAI Crab Program Review—review workplan
9. Individual Fishing Quota (IFQ) Program Review Report—review, IFQ Committee report
10. Staff Tasking

Thursday, October 3, 2024 Through Tuesday, October 8, 2024

The Council agenda will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Swear in new members, election of officers
2. B Reports (Executive Director including Legislative Committee report, NMFS Management (including consultation on an exempted fishing permit for adjusting the pelagic trawl footrope), NOAA General Counsel (GC), Alaska Fishery Science Center (AFSC), Alaska Department of Fish and Game (ADF&G), United States Coast Guard (USCG), United States Fish and Wildlife Service (USFWS), Advisory Panel, SSC report)
3. BSAI Crab Specifications—review SAFE report; adopt ABC/OFLs for BBRKC, Tanner crab, snow crab, SMBKC; Ecosystem Status Report; BSAI Crab Plan Team Report
4. Recreational Quota Entity implementation—approve proposed modifications to fee collection process
5. Groundfish harvest specifications: (a) BSAI Groundfish—Proposed specifications, Joint and BSAI Plan Team reports; (b) GOA Groundfish—Proposed specifications, GOA Plan Team report; (c) DMR Working Group report on marine mammal interactions; (d) GOA rockfish

6. Observer 2025 Annual Deployment Plan—Review; PCFMAC report
7. Observer availability discussion paper—review, FMAC report
8. C5 Crew data collection—Initial review
9. Pelagic trawl gear definition—Initial review
10. Climate funding: review (a) Climate Scenario Workshop Report, (b) Climate science and harvest specifications adjustments discussion paper/SCS8 report
11. IFQ Program Review Report—review, IFQ Committee report
12. Staff Tasking (including programmatic/chum bycatch engagement discussion)

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone; or by phone only. Connection information will be posted online at: <https://www.npfmc.org/upcoming-council-meetings>. For technical support, please contact our administrative staff, email: npfmc.admin@noaa.gov.

If you are attending the meeting in-person, please refer to the COVID avoidance protocols on our website, <https://www.npfmc.org/current-or-next-council-meeting/>.

Public Comment

Public comment letters will be accepted and should be submitted electronically through the links at <https://www.npfmc.org/current-or-next-council-meeting/>. The Council strongly encourages written public comment for this meeting, to avoid any potential for technical difficulties to compromise oral testimony. The written comment period is open from September 9, 2024 to September 27, 2024, and closes at 12 p.m. Alaska Time on Friday, September 27, 2024.

Although other non-emergency issues not on the agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Actions 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 Council's intent to take final action to address the emergency.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 10, 2024.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024-20823 Filed 9-12-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Patent Reexaminations, Supplemental Examinations, and Post Patent Submissions

The United States Patent and Trademark Office (USPTO) 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. The USPTO invites comments on this information collection renewal, which helps the USPTO assess the impact of its information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on July 8, 2024 during a 60-day comment period (89 FR 55927). This notice allows for an additional 30 days for public comment.

Agency: United States Patent and Trademark Office, Department of Commerce.

Title: Patent Reexaminations, Supplemental Examinations, and Post Patent Submissions.

OMB Control Number: 0651-0064.

Needs and Uses: The United States Patent and Trademark Office (USPTO) is required by 35 U.S.C. 131 and 151 to examine applications and, when appropriate, allow applications and issue them as patents. Chapter 30 of title 35 U.S.C. provides that any person at any time may file a request for reexamination by the USPTO of any claim of a patent on the basis of prior art cited under the provisions of 35 U.S.C. 301. Once initiated, the reexamination proceedings under Chapter 30 are substantially *ex parte* and do not permit input from third parties. The regulations outlining *ex parte* reexaminations are found at 37 CFR 1.510-1.570. The purpose of this information collection is to facilitate requests for *ex parte* reexamination and supplemental examination, to facilitate prosecution of reexamination and to ensure that the associated

documentation is submitted to the USPTO, and to permit relevant post-patent prior art and claim scope information to be entered into a patent file.

35 U.S.C. 257 permits a patent owner to request supplemental examination of a patent by the USPTO to consider, reconsider, or correct information believed to be relevant to the patent. The regulations outlining supplemental examination are found at 37 CFR 1.601-1.625.

The Leahy-Smith America Invents Act terminated *inter partes* reexamination effective September 16, 2012. However, *inter partes* reexamination proceedings based on *inter partes* reexamination requests filed before September 16, 2012, continue to be prosecuted. Therefore, this collection continues to include items related to the prosecution of *inter partes* reexamination proceedings. The regulations outlining *inter partes* reexaminations are found at 37 CFR 1.902-1.959.

The provisions of 35 U.S.C. 301 and 37 CFR 1.501 govern the ability of a person to submit into the file of an issued patent (1) prior art consisting of patents or printed publications which the person making the submission believes to have a bearing on the patentability of any claim of the issued patent and (2) statements of the owner of the issued patent filed in a proceeding before a federal court or the USPTO in which the owner of the issued patent took a position on the scope of any claim of the issued patent.

Thus, the items included in this collection cover (1) requests for *ex parte* reexamination, (2) requests for supplemental examination, (3) information that may be submitted by patent owners and third-party requesters in relation to the prosecution of an *ex parte* or *inter partes* reexamination proceeding, (4) information submitted by the public to aid in ascertaining the patentability and/or scope of the claims of the issued patent, and (5) information submitted by patent owners regarding a position taken before the USPTO or a federal court regarding the scope of any claim in their issued patent. The USPTO's use of the statements of the patent owners ((5) above) will be limited to determining the meaning of a patent claim in *ex parte* reexamination proceedings that already have been ordered and in *inter partes* review and post grant review proceedings that already have been instituted.

Forms: (SB = Specimen Book):

- PTO/SB/42 (37 CFR 1.501 Information Disclosure Citation in a Patent)

- PTO/SB/57 (Request for *Ex Parte* Reexamination Transmittal Form)
- PTO/SB/59 (Request for Supplemental Examination Transmittal Form)

Type of Review: Extension and revision of a currently approved information collection.

Affected Public: Private sector.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Estimated Number of Annual Respondents: 874 respondents.

Estimated Number of Annual Responses: 890 responses.

Estimated Time per Response: The USPTO estimates that the responses in this information collection will take the public approximately between 30 minutes (0.5 hours) and 55 hours to complete. This includes the time to gather the necessary information, create the document, and submit the completed request to the USPTO.

Estimated Total Annual Respondent Burden Hours: 25,714 hours.

Estimated Total Annual Respondent Non-hourly Cost Burden: \$3,680,879.

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view Department of Commerce, USPTO information collections currently under review by OMB.

Written comments and recommendations for this 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 information collection or the OMB Control Number, 0651-0064.

Further information can be obtained by:

- *Email:* InformationCollection@uspto.gov. Include "0651-0064 information request" in the subject line of the message.

- *Mail:* Justin Isaac, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.

Justin Isaac,

Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

[FR Doc. 2024-20807 Filed 9-12-24; 8:45 am]

BILLING CODE 3510-16-P

DEPARTMENT OF COMMERCE**Patent and Trademark Office****Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Third-Party Submissions and Protests**

The United States Patent and Trademark Office (USPTO) 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. The USPTO invites comments on this information collection renewal, which helps the USPTO assess the impact of its information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal**

Register on July 8, 2024 during a 60-day comment period (89 FR 55924). This notice allows for an additional 30 days for public comment.

Agency: United States Patent and Trademark Office, Department of Commerce.

Title: Third-Party Submissions and Protests.

OMB Control Number: 0651-0062.

Needs and Uses: The United States Patent and Trademark Office (USPTO) is required by 35 U.S.C. 131 *et seq.* to examine an application for patent and, when appropriate, issue a patent. The provisions of 35 U.S.C. 122(c), 122(e), 131, and 151, as well as 37 CFR 1.290 and 1.291, limit the ability of a third-party to have information entered and considered in, or to protest, a patent application pending before the USPTO.

37 CFR 1.290 provides a mechanism for third parties to submit to the USPTO for consideration and inclusion in the record of a patent application, any

patents, published patent applications, or other printed publications of potential relevance to the examination of the application.

A third-party submission under 37 CFR 1.290 may be made in any nonprovisional utility, design, and plant application, including any continuing application. A third-party submission under 37 CFR 1.290 must include a concise description of the asserted relevance of each document submitted, and must be submitted within a certain statutorily specified time period.

37 CFR 1.291 permits a member of the public to file a protest against a pending application. Protests pursuant to 37 CFR 1.291 are supported by a separate statutory provision from third-party submissions under 37 CFR 1.290. As a result, there are several differences between protests and third-party submissions, as explained in the table below.

TABLE 1—COMPARISON OF THIRD-PARTY SUBMISSIONS AND PROTESTS

Comparison	Third-party submission	Protest
Statute/Regulation	35 U.S.C. 122(e), 37 CFR 1.290	35 U.S.C. 122(c), 37 CFR 1.291.
Content	Printed publications	Printed publications and any facts or information adverse to patentability.
Remarks	Concise description of relevance (limited to a concise description of each document's relevance).	Concise explanation of the relevance (allows for arguments against patentability).
Timing	The earlier of— (A) the date of a notice of allowance; or (B) the later of— (i) 6 months after the date of Pre-Grant Publication, or (ii) the date of the first rejection of any claim during the examination of the application for patent.	(1) Prior to the date of Pre-Grant Publication or the date of a notice of allowance, whichever occurs first, or (2) accompanied by written consent of the applicant and prior to the date of a notice of allowance.

For example, 37 CFR 1.291 permits the submission of information that is not permitted in a third-party submission under 37 CFR 1.290. Specifically, 37 CFR 1.291 provides for the submission of information other than publications, including any facts or information adverse to patentability. Unlike the concise explanation of the relevance required for a preissuance submission under 37 CFR 1.290, which is limited to a description of a document's relevance, the concise explanation for a protest under 37 CFR 1.291 allows for arguments against patentability. Additionally, the specified time period for submitting a protest differs from the time period for submitting third-party submissions and is impacted by whether the protest is accompanied by the written consent of the applicant.

This information collection covers the items used by the public to submit information and protests regarding patent applications to the USPTO. This information collection is necessary so that the public can contribute to the quality of issued patents. The USPTO

will use this information, as appropriate, to assist in evaluating the patent application as it moves through the patent examination process.

Forms: (SB = Specimen Book).

- PTO/SB/429 (Third-Party Submission Under 37 CFR 1.290)

Type of Review: Extension and revision of a currently approved information collection.

Affected Public: Private sector.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Estimated Number of Annual Respondents: 1,033 respondents.

Estimated Number of Annual Responses: 1,033 responses.

Estimated Time per Response: The USPTO estimates that the responses in this information collection will take the public approximately 10 hours to complete. This includes the time to gather the necessary information, create the document, and submit the completed item to the USPTO.

Estimated Total Annual Respondent Burden Hours: 10,330 hours.

Estimated Total Annual Respondent Non-hourly Cost Burden: \$153,686.

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view Department of Commerce, USPTO information collections currently under review by OMB.

Written comments and recommendations for this 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 information collection or the OMB Control Number, 0651-0062.

Further information can be obtained by:

- *Email:* InformationCollection@uspto.gov. Include "0651-0062 information request" in the subject line of the message.
- *Mail:* Justin Isaac, Office of the Chief Administrative Officer, United

States Patent and Trademark Office,
P.O. Box 1450, Alexandria, VA 22313–
1450.

Justin Isaac,

*Information Collections Officer, Office of the
Chief Administrative Officer, United States
Patent and Trademark Office.*

[FR Doc. 2024–20813 Filed 9–12–24; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From
People Who Are Blind or Severely
Disabled.

ACTION: Proposed additions to and
deletions from the Procurement List.

SUMMARY: The Committee is proposing
to add product(s) to the Procurement
List that will be furnished by nonprofit
agencies employing persons who are
blind or have other severe disabilities
and deletes product(s) and service(s)
previously furnished by such agencies.
DATES: Comments must be received on
or before: October 13, 2024.

ADDRESSES: Committee for Purchase
From People Who Are Blind or Severely
Disabled, 355 E Street SW, Suite 325,
Washington DC 20024.

FOR FURTHER INFORMATION CONTACT: For
further information or to submit
comments contact: Michael R.
Jurkowski, Telephone: (703) 489–1322,
or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION: This
notice is published pursuant to 41
U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its
purpose is to provide interested persons
an opportunity to submit comments on
the proposed actions.

Additions

If the Committee approves the
proposed additions, the entities of the
Federal Government identified in this
notice will be required to procure the
product(s) listed below from nonprofit
agencies employing persons who are
blind or have other severe disabilities.

The following product(s) are proposed
for addition to the Procurement List for
production by the nonprofit agencies
listed:

Product(s)

NSN(s)—Product Name(s): 8520–01–490–
7365—Advanced Instant Hand Sanitizer,
Green Certified Gel, 12 fl oz, Pump
Bottle

Authorized Source of Supply: Travis

Association for the Blind, Austin, TX

Contracting Activity: FEDERAL
ACQUISITION SERVICE, GSA/FSS
GREATER SOUTHWEST ACQUISITI

Distribution: A-List

Mandatory for: Total Government
Requirement

NSN(s)—Product Name(s):

7490–01–490–7262—Kit, Label Maker, TZe

Label Tapes, USB, Bluetooth, Color

Display, QWERTY Keyboard, Carry Case

7510–01–630–2385—Label Tape, Cartridge
for P-touch Labeler, Laminated, Black on
White, 0.35" W x 26.2' L

7510–01–490–7265—Label Tape, Cartridge
for P-touch Labeler, Laminated, Black on
White, 0.47" W x 26.2' L

7510–01–490–7266—Label Tape, Cartridge
for P-touch Labeler, Laminated, Black on
White, 0.71" W x 26.2' L

7690–01–563–2817—Label Tape, Cartridge
for P-touch Labeler, Laminated, Black on
White, 0.94" W x 26.2' L

Authorized Source of Supply: Goodwill
Vision Enterprises, Rochester, NY

Contracting Activity: FEDERAL
ACQUISITION SERVICE, GSA/FAS
ADMIN SVCS ACQUISITION BR(2

Distribution: A-List

Mandatory for: Total Government
Requirement

Deletions

The following product(s) and
service(s) are proposed for deletion from
the Procurement List:

Product(s)

NSN(s)—Product Name(s): 8010–01–505–
1968—Enamel, Aerosol, Interior/
Exterior, Gloss White

Authorized Source of Supply: The
Lighthouse for the Blind, St. Louis, MO

Contracting Activity: DLA TROOP SUPPORT,
PHILADELPHIA, PA

NSN(s)—Product Name(s):

3030–00–844–4456—Belt, V-shaped,
EPDM Rubber, HC50 Cross Section,
Notched/A2 Cog, Neoprene, 38.3"

3030–01–271–3754—Belt, V-shaped,
Micro, EPDM Rubber, 8 Ribs, 68"

3030–01–293–8544—Belt, V-shaped,
Micro, EPDM Rubber, 8 Ribs, 60.59"

3030–01–387–5679—Belt, V-shaped,
EPDM Rubber, HC41 Cross Section,
Notched/A2 Cog, Neoprene, 30.58"

Authorized Source of Supply: Northeastern
Association of the Blind at Albany, Inc.,
Albany, NY

Contracting Activity: DLA LAND AND
MARITIME, COLUMBUS, OH

Service(s)

Service Type: Mailing Service

Mandatory for: US Army Corp of Engineers,
Patrick V. McNamara Federal Building,
Detroit, MI

Authorized Source of Supply: Geshner Human
Services, Southfield, MI

Contracting Activity: DEPT OF THE ARMY,
W072 ENDIST DETROIT

Service Type: Administrative Services

Mandatory for: Post Wide, Fort Campbell, KY

Authorized Source of Supply: Huntsville
Rehabilitation Foundation, Inc.,

Huntsville, AL

Contracting Activity: DEPT OF THE ARMY,
W6QM MICC–FT CAMPBELL

Service Type: Custodial Service

Mandatory for: US Army, Asymmetric
Warfare Training Center, Fort A.P. Hill,
VA

Authorized Source of Supply: Rappahannock
Goodwill Industries, Inc.,
Fredericksburg, VA

Contracting Activity: DEPT OF THE ARMY,
W6QK ACC–APG

Service Type: Military Environment Support

Mandatory for: US Army, Program Executive
Office for Simulation, Training and
Instrumentation, Orlando, FL

Authorized Source of Supply: Global
Connections to Employment, Inc.,
Pensacola, FL

Contracting Activity: DEPT OF THE ARMY,
W6QK ACC–ORLANDO

Service Type: Hospital Housekeeping

Mandatory for: Department of Veterans
Affairs, VA Maryland Health Care
System, Baltimore, MD

Authorized Source of Supply: Global
Connections to Employment, Inc.,
Pensacola, FL

Contracting Activity: VETERANS AFFAIRS,
DEPARTMENT OF, 613–
MARTINSBURG (00613)

Service Type: Custodial Service

Mandatory for: Department of Veterans
Affairs, Veteran Affairs Outpatient
Clinic, Charlotte, NC

Authorized Source of Supply: OE Enterprises,
Inc., Hillsborough, NC

Contracting Activity: VETERANS AFFAIRS,
DEPARTMENT OF, 246–NETWORK
CONTRACTING OFFICE 6

Service Type: Custodial & Grounds
Maintenance

Mandatory for: US Army Reserve, CPT Alden
D. Allen Armed Forces Reserve Center,
Horseheads, NY

Authorized Source of Supply: Mozaic
Chapter, NYSARC, Inc., Waterloo, NY

Contracting Activity: DEPT OF THE ARMY,
W6QK ACC–PICA

Service Type: Administrative Support
Service

Mandatory for: Department of Veterans
Affairs, Atlanta VA Medical Center,
Health Administrative Services Office,
Decatur, GA

Authorized Source of Supply: Bobby Dodd
Institute, Inc., Atlanta, GA

Contracting Activity: VETERANS AFFAIRS,
DEPARTMENT OF, 247–NETWORK
CONTRACT OFC 7(00247)

Service Type: Custodial Services

Mandatory for: Department of Veterans
Affairs, York Community Based
Outpatient Clinic, York, PA

Authorized Source of Supply: Goodwill
Services, Inc., Harrisburg, PA

Contracting Activity: VETERANS AFFAIRS,
DEPARTMENT OF, 595–LEBANON

Service Type: Grounds & Cemetery Facilities
Maintenance

Mandatory for: US Army, Fort McClellan
Veterans and Prisoner of War
Cemeteries, Fort McClellan, AL

Authorized Source of Supply: The

Opportunity Center Easter Seal
Facility—The Ala ES Soc, Inc., Anniston,
AL
Contracting Activity: DEPT OF THE ARMY,
WOLX ANNISTON DEPOT PROP DIV
Service Type: Custodial Services
Mandatory for: Department of Veterans
Affairs, Mid-South Consolidated Mail
Outpatient Pharmacy, Murfreesboro, TN
Authorized Source of Supply: Bobby Dodd
Institute, Inc., Atlanta, GA
Contracting Activity: VETERANS AFFAIRS,
DEPARTMENT OF, NATIONAL CMOP
OFFICE (NCO)
Service Type: Laundry Service
Mandatory for: US Air force, Hazardous
Waste Recycling Facility, Hill Air Force
Base, Hill AFB, UT
Authorized Source of Supply: Enable Utah,
Ogden, UT
Contracting Activity: DEPT OF THE AIR
FORCE, FA8224 OL H PZI PZIM
Service Type: Administrative Services
Mandatory for: U.S. Army Corps of
Engineers, Nashville District: Estes
Kefauver Building & Adjacent Buildings,
Nashville, TN
Contracting Activity: DEPT OF THE ARMY,
W072 ENDIST NASHVILLE

Michael R. Jurkowski,

Director, Business Operations.

[FR Doc. 2024–20842 Filed 9–12–24; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From
People Who Are Blind or Severely
Disabled.

ACTION: Additions to and deletions from
the Procurement List.

SUMMARY: This action adds service(s) to
the Procurement List that will be
furnished by nonprofit agencies
employing persons who are blind or
have other severe disabilities and
deletes product(s) from the Procurement
List previously furnished by such
agencies.

DATES: *Date added to and deleted from
the Procurement List:* October 13, 2024.

ADDRESSES: Committee for Purchase
From People Who Are Blind or Severely
Disabled, 355 E Street SW, Suite 325,
Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT:
Michael R. Jurkowski, Telephone: (703)
785–6404, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION:

Additions

On 6/30/2024, the Committee for
Purchase From People Who Are Blind
or Severely Disabled (operating as the
U.S. AbilityOne Commission) published
an initial notice of proposed additions
to the Procurement List. (89 FR 53965).
The Committee determined that the
service listed below is suitable for
procurement by the Federal Government
and has added this service to the
Procurement List as a mandatory
purchase for the contracting activity
listed. In accordance with 41 CFR 51–
5.3(b), the mandatory purchase
requirement is limited to the contracting
activity at location listed, and in
accordance with 41 CFR 51–5.2, the
Committee has authorized nonprofit
agency listed as the authorized source of
supply.

After consideration of the material
presented to it concerning capability of
qualified nonprofit agencies to provide
the service(s) and impact of the
additions on the current or most recent
contractors, the Committee has
determined that the product(s) and
service(s) listed below are suitable for
procurement by the Federal Government
under 41 U.S.C. 8501–8506 and 41 CFR
51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will
not have a significant impact on a
substantial number of small entities.
The major factors considered for this
certification were:

1. The action will not result in any
additional reporting, recordkeeping or
other compliance requirements for small
entities other than the small
organizations that will furnish the
service(s) to the Government.

2. The action will result in
authorizing small entities to furnish the
product(s) and service(s) to the
Government.

3. There are no known regulatory
alternatives which would accomplish
the objectives of the Javits-Wagner-
O'Day Act (41 U.S.C. 8501–8506) in
connection with the service(s) proposed
for addition to the Procurement List.

End of Certification

Accordingly, the following service(s)
are added to the Procurement List:

Service(s)

Service Type: Official Mail Center

Mandatory for: US Air Force, Official Mail
Center, Little Rock Air Force Base, AR

Service Type: Operation of a Postal Service
Center

Mandatory for: US Air Force, Postal Service
Center, Little Rock Air Force Base, AR

Authorized Source of Supply: VersAbility

Resources, Inc., Hampton, VA
Contracting Activity: DEPT OF THE AIR
FORCE, FA4460 19 CONS LGC

The Committee finds good cause to
dispense with the 30-day delay in the
effective date normally required by the
Administrative Procedure Act. See 5
U.S.C. 553(d). This addition to the
Committee's Procurement List is
effectuated because of the expiration of
the Department of the Air Force, Mail
Service, USAF, Official Mail Center and
Postal Service Center, Little Rock AFB,
AR contract. The Federal customer
contacted and has worked diligently
with the AbilityOne Program to fulfill
this service need under the AbilityOne
Program. To avoid performance
disruption, and the possibility that the
Air Force will refer its business
elsewhere, this addition must be
effective on 9/29/2024, ensuring timely
execution for a 10/1/2024 start date. The
Committee published an initial notice of
proposed Procurement List addition in
the **Federal Register** on 6/28/2024 (89
FR 53965) but did not receive any
comments. This addition will not create
a public hardship and has limited effect
on the public at large. Rather, this
addition will create new jobs for other
affected parties—people with significant
disabilities in the AbilityOne program
who otherwise face challenges locating
employment. Moreover, this addition
enables the Federal customer to
continue operations without
interruption.

Deletions

On 8/9/2024 (89 FR 53965), the
Committee for Purchase From People
Who Are Blind or Severely Disabled
published notice of proposed deletions
from the Procurement List. This notice
is published pursuant to 41 U.S.C. 8503
(a)(2) and 41 CFR 51–2.3.

After consideration of the relevant
matter presented, the Committee has
determined that the product(s) listed
below are no longer suitable for
procurement by the Federal Government
under 41 U.S.C. 8501–8506 and 41 CFR
51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will
not have a significant impact on a
substantial number of small entities.
The major factors considered for this
certification were:

1. The action will not result in
additional reporting, recordkeeping or
other compliance requirements for small
entities.

2. The action may result in
authorizing small entities to furnish the
product(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) deleted from the Procurement List.

End of Certification

Accordingly, the following product(s) are deleted from the Procurement List:

Product(s)

NSN(s)—Product Name(s): 7530–01–346–4295—Folder, File, Admin Record, “Counselling/Evaluation/Rehabilitation”, Heavy Duty, Kraft Brown, Letter

Authorized Source of Supply: LC Industries, Inc., Durham, NC

Contracting Activity: Strategic Acquisition Center, Fredericksburg, VA

NSN(s)—Product Name(s): 7530–01–346–4295—Folder, File, Admin Record, “Counselling/Evaluation/Rehabilitation”, Heavy Duty, Kraft Brown, Letter

Authorized Source of Supply: Clovernook Center for the Blind and Visually Impaired, Cincinnati, OH

Contracting Activity: Strategic Acquisition Center, Fredericksburg, VA

NSN(s)—Product Name(s):

8415–00–NIB–1374—Face Covering/Mask, Universally Sized, Olive Green, PG/5

8415–00–NIB–1375—Face Covering/Mask, Universally Sized, Brown, PG/5

8415–00–NIB–1376—Face Covering/Mask, Universally Sized, Tan, PG/5

8415–00–NIB–1378—Face Covering/Mask, Universally Sized, Camo, PG/5

8415–00–NIB–1379—Face Covering/Mask, Universally Sized, Black, PG/5

8415–00–NIB–1380—Face Covering/Mask, Universally Sized, Olive Green, PG/50

8415–00–NIB–1381—Face Covering/Mask, Universally Sized, Brown, PG/50

8415–00–NIB–1382—Face Covering/Mask, Universally Sized, Tan, PG/50

8415–00–NIB–1383—Face Covering/Mask, Universally Sized, Camo, PG/50

8415–00–NIB–1384—Face Covering/Mask, Universally Sized, Black, PG/50

Designated Source of Supply: Southeastern Kentucky Rehabilitation Industries, Inc., Corbin, KY

Designated Source of Supply: Blind Industries & Services of Maryland, Baltimore, MD

Designated Source of Supply: Alphapointe, Kansas City, MO

Designated Source of Supply: Industries of the Blind, Inc., Greensboro, NC

Designated Source of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC

Contracting Activity: Committee For Purchase From People Who Are Blind or Severely Disabled, Arlington, VA

Michael R. Jurkowski,

Director, Business Operations.

[FR Doc. 2024–20841 Filed 9–12–24; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0033, Notification of Pending Legal Proceedings

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (“CFTC” or “Commission”) is announcing an opportunity for public comments on the proposed extension of a collection of certain information by the agency. Under the Paperwork Reduction Act (“PRA”), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on the information collection requirements in the Commission regulation concerning notification of pending legal proceedings.

DATES: Comments must be submitted on or before November 12, 2024.

ADDRESSES: You may submit comments, identified by OMB Control No. 3038–0033 by any of the following methods:

- The Agency’s website, at <http://comments.cftc.gov/>. Follow the instructions for submitting comments through the website.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <http://www.cftc.gov>.

FOR FURTHER INFORMATION CONTACT:

Lynn Bulan, Managing Counsel, Office of the General Counsel, Commodity Futures Trading Commission, (202) 418–5143; email: lbulan@cftc.gov.

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501 *et seq.*, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information that they conduct or sponsor. “Collection of Information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the

public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.¹ To comply with this requirement, the CFTC is publishing notice of the proposed extension of an existing collection of information listed below.

Title: Notification of Pending Legal Proceedings Pursuant to 17 CFR 1.60 (OMB Control Number 3038–0033). This is a request for extension of a currently approved information collection.

Abstract: The rule is designed to assist the Commission in monitoring legal proceedings involving the responsibilities imposed on designated contract markets (DCMs) and their officials and futures commission merchants (FCMs) and their principals by the Commodity Exchange Act, and is applicable to swap execution facilities (SEFs) through 17 CFR 37.2. This renewal updates the total requested burden based on available reported data.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition

¹ 44 U.S.C. 3512, 5 CFR 1320.5(b)(2)(i) and 1320.5(b)(3)(vi). See also 46 FR 63035 (Dec. 30, 1981).

for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.²

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <http://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the Information Collection Request will be retained in the public comment file and will be considered as required under the Administrative Procedures Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: The annual respondent burden for this collection during the renewal period is estimated to be as follows:

Estimated Number of Annual Respondents: 101.

Estimated Average Annual Burden Hours per Respondent: 0.25.

Estimated Total Annual Burden Hours: 25.25.

Frequency of Collection: As needed.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: September 10, 2024.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2024–20819 Filed 9–12–24; 8:45 am]

BILLING CODE 6351–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, September 18, 2024—10 a.m.

PLACE: The meeting will be held remotely, and in person at 4330 East West Highway, Bethesda, Maryland 20814.

STATUS: Commission Meeting—Open to the Public.

MATTERS TO BE CONSIDERED:

Decisional Matter: Draft Final Rule: Safety Standard for Nursing Pillows.

To attend remotely, please use the following link: <https://cpsc.webex.com/cpsc/j.php?MTID=m863d810f294e55ed141d1299d5758495>.

CONTACT PERSON FOR MORE INFORMATION: Alberta E. Mills, Office of the Secretary, U.S. Consumer Product Safety

Commission, 4330 East West Highway, Bethesda, MD 20814, 301–504–7479 (Office) or 240–863–8938 (Cell).

Dated: September 11, 2024.

Alberta E. Mills,

Commission Secretary.

[FR Doc. 2024–21037 Filed 9–11–24; 4:15 pm]

BILLING CODE P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an in-person/virtual hybrid meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, October 9, 2024; 6–8 p.m. EDT.

ADDRESSES: Department of Energy (DOE) Information Center, Office of Science and Technical Information, 1 Science.gov Way, Oak Ridge, Tennessee 37831. This hybrid meeting will be in-person at the DOE Information Center and virtually via Zoom. To attend virtually or to register for in-person attendance, please send an email to: orssab@orem.doe.gov by 5 p.m. EDT on Wednesday, October 2, 2024.

FOR FURTHER INFORMATION CONTACT: Melyssa P. Noe, Deputy Designated Federal Officer, U.S. Department of Energy, Oak Ridge Office of Environmental Management (OREM), P.O. Box 2001, EM–942, Oak Ridge, TN 37831; Phone (865) 241–3315; or Email: Melyssa.Noe@orem.doe.gov or visit the website at www.energy.gov/orssab.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to provide advice and recommendations concerning the following EM site-specific issues: clean-up activities and environmental restoration; waste and nuclear materials management and disposition; excess facilities; future land use and long-term stewardship. The Board may also be asked to provide advice and recommendations on any EM program components.

Tentative Agenda:

- OREM Presentation
- Discussion
- Public Comment Period
- Board Business

Public Participation: This meeting is open to the public. The EM SSAB, Oak Ridge, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Melyssa P. Noe at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board via email either before or after the meeting. Public comments received by no later than 5 p.m. EDT on Wednesday, October 2, 2024, will be read aloud during the meeting. Comments will be accepted after the meeting by no later than 5 p.m. EDT on Tuesday, October 15, 2024. Please submit comments to orssab@orem.doe.gov. Please put “Public Comment” in the subject line. Individuals who wish to make oral statements should contact Melyssa P. Noe at the email address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to submit written public comments should email them as directed above. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by emailing or calling Melyssa P. Noe at the email address and telephone number listed above. Minutes will also be available at the following website: <https://www.energy.gov/orem/listings/oak-ridge-site-specific-advisory-board-meetings>.

Signing Authority: This document of the Department of Energy was signed on September 9, 2024, by David Borak, Committee Management Officer, 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**.

² 17 CFR 145.9.

Signed in Washington, DC, on September 9, 2024.
Jennifer Hartzell,
Alternate Federal Register Liaison Officer,
U.S. Department of Energy.
[FR Doc. 2024–20784 Filed 9–12–24; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Project No. 2302–101]

**Brookfield White Pine Hydro LLC;
Notice of Application Tendered for
Filing With the Commission and
Soliciting Additional Study Requests
and Establishing Procedural Schedule
for Relicensing and a Deadline for
Submission of Final Amendments**

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* P–2302–101.

c. *Date Filed:* August 28, 2024.

d. *Applicant:* Brookfield White Pine Hydro LLC.

e. *Name of Project:* Lewiston Falls Hydroelectric Project.

f. *Location:* On the Androscoggin River in the cities of Auburn and Lewiston and the town of Durham, in Androscoggin County, Maine.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Luke T. Anderson, Senior Manager, Licensing, Brookfield White Pine Hydro LLC, 150 Main Street, Lewiston, ME 04240; Telephone: (207) 755–5600.

i. *FERC Contact:* Ryan Hansen at (202) 502–8074 or email at ryan.hansen@ferc.gov.

j. *Cooperating Agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission’s policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See*, 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission’s regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis

for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* October 28, 2024.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission’s eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. For assistance, please contact FERC Online Support at FERCOnlineSupport@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: Lewiston Falls Hydroelectric Project (P–2302–101).

m. The application is not ready for environmental analysis at this time.

n. *Project Description:* The existing Lewiston Falls Hydroelectric Project consists of: (1) a dam consisting of 5 distinct sections: (a) a 154-foot-long stone masonry section topped with a single rubber dam for a total elevation of 169.07 feet,¹ (b) a 279-foot-long stone masonry section topped with a single rubber dam for a total elevation of 169.07 feet, (c) a 161-foot-long stone masonry section topped with a single rubber dam for a total elevation of 168.60 feet, (d) a 162-foot-long stone masonry section topped with a single rubber dam for a total elevation of 168.60 feet, and (e) a 57-foot-long concrete section topped with a 1.34-foot-high flashboards for a total elevation of 168.17 feet; (2) a 2.5-mile-long, 169-acre impoundment at a full pond elevation of 168.17 feet; (3) an 85-foot-long, 2-inch-wide, 40-foot-high reinforced concrete intake with a trashrack; (4) a reinforced concrete powerhouse containing two vertical Kaplan turbine generators for a total installed capacity of 28.44 megawatts;

¹ All elevations are referenced to a vertical datum of National Geodetic Vertical Datum of 1929.

(5) a 400-foot-long, 75-foot-wide excavated tailrace; (6) a 111.6-foot-long, 26.3-foot-wide masonry gatehouse located at the southeast corner of the impoundment diverting flow to a canal system; (7) a 12.5 to 34.5-kV, 30 megavolt-ampere transformer; (8) a primary transmission line connected to Central Maine Power’s distribution system; and (8) appurtenant facilities.

The project is operated as run-of-river with daily impoundment fluctuations of one foot or less but is licensed to operate with up to four feet of impoundment fluctuation to allow for adjustments between inflow and a minimum flow requirement of 1,430 cubic feet per second or in response to operating emergencies. The estimated annual generation is 157,614 megawatt-hours.

The project recreation facilities include: (1) the Lewiston Falls Impoundment Boat Launch (also known as Haggins Boat Launch), (2) the West Pitch Park Overlook, and (3) the Durham Boat Launch.

o. A copy of the application is available for review on the Commission’s website at <http://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 (P–2302). For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or call tollfree, (866) 208–3676 or (202) 502–8659 (TTY).

You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

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. *Procedural Schedule and Final Amendments:* The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Issue Deficiency Letter (if necessary).	November 2024.

Milestone	Target date
Request Additional Information ..	November 2024.
Issue Acceptance Letter	February 2025.
Issue Scoping Document 1 for	March 2025.
Comments.	
Issue Scoping Document 2 (if	June 2025.
necessary).	

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: September 9, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024–20832 Filed 9–12–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 77–316, 96–050, 137–216, 175–030, 233–245, 606–041, 619–175, 803–119, 1061–105, 1121–137, 1354–133, 1962–221, 1988–102, 2105–129, 2106–077, 2107–051, 2130–125, 2310–252, 2661–094, 2687–189, 2735–102, and 14531–002]

Pacific Gas and Electric Company, Pacific Generation LLC; Notice of Effectiveness of Withdrawal of Joint Application for Approval of Transfer of Licenses

On December 13, 2022, Pacific Gas and Electric Company and Pacific Generation LLC (applicants) filed a joint application for approval to transfer the following licenses:

Potter Valley Project No. 77,
Kerckhoff Project No. 96,
Mokelumne River Project No. 137,
Balch Project No. 175,
Pit 3, 4, and 5 Project No. 233,
Kilarc-Cow Creek Project No. 606,
Bucks Creek Project No. 619,
DeSabra-Centerville Project No. 803,
Phoenix Project No. 1061,
Battle Creek Project No. 1121,
Crane Valley Project No. 1354,
Rock Creek-Cresta Project No. 1962,
Haas-Kings River Project No. 1988,
Upper North Fork Feather River Project No. 2105,
McCloud-Pit Project No. 2106,
Poe Project No. 2107,
Spring Gap-Stanislaus Project No. 2130,
Upper Drum-Spaulding Project No. 2310,
Hat Creek Project No. 2661,
Pit No. 1 Project No. 2687,
Helms Pumped Storage Project No. 2735, and
Lower Drum Project No. 14531

On August 12, 2024, applicants filed a notice of withdrawal of their application.

No motion in opposition to the notice of withdrawal has been filed, and the Commission has taken no action to disallow the withdrawal. Pursuant to Rule 216(b) of the Commission's Rules of Practice and Procedure,¹ the withdrawal of the application became effective on August 27, 2024, and this proceeding is hereby terminated.

Dated: September 6, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024–20766 Filed 9–12–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01–5–000]

Electronic Tariff Filings; Notice of Change to Implementation Date for Revisions to eTariff

Take notice that based on requests at the meeting on July 23, 2024, hosted by the North American Energy Standards Board (NAESB), the implementation of a revised version of eTariff will be delayed until November 25, 2024. As requested at the meeting, this delay will permit a single deployment of the revisions to eTariff to include the lead applicant name, as detailed in the June 11, 2024, Notice, along with additional revisions to the Type of Filing and Validation Error Codes. The Type of Filing and Validation Error Codes revisions will ensure that parties differentiate between (1) compliance filings in a current proceeding for which the filer has a filing identifier, which are assigned a subdocket, and (2) compliance filings, such as compliance with complaint orders and rulemakings, where the filer has no existing filing identifier and therefore must establish a new docket. New filing codes also will be assigned to allow utilities to distinguish baseline rate change filings from baseline initial rate filings.

Starting on September 30, 2024, the currently deployed test sandbox will include the revised filing type and validation error codes. A subsequent notice will be issued with the revised filing type and validation codes to be used in the sandbox testing.

Questions on these changes should be directed to: Michael Goldenberg at Michael.Goldenberg@ferc.gov or James Sarikas at James.Sarikas@ferc.gov.

¹ 18 CFR 385.216(b) (2023).

Dated: September 6, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024–20771 Filed 9–12–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR24–95–000.

Applicants: ONEOK WesTex

Transmission, L.L.C.

Description: § 284.123(g) Rate Filing:

2024 Updated Statement of Current Effective Rates to be effective 11/1/2024.

Filed Date: 9/6/24.

Accession Number: 20240906–5097.

Comment Date: 5 p.m. ET 9/27/24.

§ 284.123(g) Protest: 5 p.m. ET 11/5/24.

Docket Numbers: PR24–96–000.

Applicants: DCP Raptor Pipeline, LLC.

Description: § 284.123(g) Rate Filing:

2024 Rate Case to be effective 9/1/2024.

Filed Date: 9/6/24.

Accession Number: 20240906–5152.

Comment Date: 5 p.m. ET 9/27/24.

§ 284.123(g) Protest: 5 p.m. ET 11/5/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP24–514–003.

Applicants: Great Basin Gas Transmission Company.

Description: Compliance filing: 2024 Rate Case Motion Rates to be effective 9/6/2024.

Filed Date: 9/6/24.

Accession Number: 20240906–5149.

Comment Date: 5 p.m. ET 9/18/24.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (<https://www.ferc.gov>)

elibrary.ferc.gov/idmws/search/fercgensearch.asp) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

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.

Dated: September 9, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024-20830 Filed 9-12-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PH24-12-000]

Unison Energy, LLC; Tiger Infrastructure Partners Fund III AIV U LP; Notice Tolling 60-Day Period for Action To Allow for Further Consideration

To afford additional time for further consideration of the matters at issue in the above-captioned proceeding, the 60-day period for action is hereby tolled. See 18 CFR 366.4(b)(1) (2023).

Dated: September 6, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024-20770 Filed 9-12-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP24-516-000]

Florida Gas Transmission Company, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on August 30, 2024, Florida Gas Transmission Company, LLC (FGT), 1300 Main St., Houston, Texas 77002, filed in the above referenced docket, a prior notice request pursuant to sections 157.205, 157.208, 157.210, and 157.211 of the Commission's regulations under the Natural Gas Act (NGA), and FGT's blanket certificate issued in Docket No. CP82-553-000, for authorization to: (1) complete minor auxiliary facility modifications at its existing Compressor Station 13 in Washington County, Florida; (2) construct 2.57 miles of 12-inch-diameter lateral loop pipeline in Putnam County, Florida; (3) modify the existing Palatka—CertainTeed Gypsum Meter and Regulation Station in Putnam County, Florida; and (4) construct appurtenant facilities under section 2.55(a) of the Commission's regulations (Palatka Project or Project). The Project will allow FGT to add up to 12,000 million British thermal units per day of additional firm capacity to serve the CertainTeed Gypsum Palatka, LLC's gypsum plant in Palatka, Florida. The estimated cost for the Project is \$19,300,000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

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 (<http://www.ferc.gov>). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-

8371, TTY (202) 502-8659. Email the Public Reference Room at public.reference@ferc.gov.

Any questions concerning this request should be directed to Blair Lichtenwalter, Senior Director of Certificates, Florida Gas Transmission Company, LLC, 1300 Main St., Houston, Texas 77002, or phone (713) 989-2605, or fax (713) 989-1205, or by email blair.lichtenwalter@energytransfer.com.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on November 8, 2024. How to file protests, motions to intervene, and comments is explained below.

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.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,¹ any person² or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,³ and must be submitted by

¹ 18 CFR 157.205.

² Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

³ 18 CFR 157.205(e).

the protest deadline, which is November 8, 2024. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure⁴ and the regulations under the NGA⁵ by the intervention deadline for the project, which is November 8, 2024. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at <https://www.ferc.gov/resources/guides/how-to-intervene.asp>.

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before November 8, 2024. The filing of a comment alone

will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP24–516–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (www.ferc.gov) under the link to Documents and Filings. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; first select "General" and then select "Protest", "Intervention", or "Comment on a Filing"; or⁶

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP24–516–000.

To file via USPS: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other method: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or FercOnlineSupport@ferc.gov.

Protests and motions to intervene must be served on the applicant either by mail at Blair Lichtenwalter, Senior Director of Certificates, Florida Gas Transmission Company, LLC, 1300 Main St., Houston, Texas 77002, or by email (with a link to the document) at blair.lichtenwalter@energytransfer.com. Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's

⁶ Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at www.ferc.gov under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

Office of External Affairs, at (866) 208–FERC, or on the FERC website at www.ferc.gov using the "eLibrary" link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to www.ferc.gov/docs-filing/esubscription.asp.

Dated: September 9, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–20831 Filed 9–12–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC24–118–000.

Applicants: Shady Hills Power Company, L.L.C.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Shady Hills Power Company, L.L.C.

Filed Date: 9/6/24.

Accession Number: 20240906–5223.

Comment Date: 5 p.m. ET 9/27/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23–1851–009.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Third Status Report—Amended ISA–CSA, SA Nos. 6917–6918; Queue No. AD1–031 to be effective 10/26/2023.

Filed Date: 9/9/24.

Accession Number: 20240909–5077.

Comment Date: 5 p.m. ET 9/30/24.

Docket Numbers: ER23–2764–003.

Applicants: Northeastern Power & Gas, LLC.

Description: Response to 07/02/2024 Deficiency Letter of Northeastern Power & Gas, LLC.

Filed Date: 8/30/24.

Accession Number: 20240830–5357.

⁴ 18 CFR 385.214.

⁵ 18 CFR 157.10.

Comment Date: 5 p.m. ET 9/19/24.
Docket Numbers: ER24–965–003.
Applicants: Versant Power.
Description: Tariff Amendment: Request to Un-Pause Action on Notice of Cancellation ER24–965 to be effective 11/20/2023.

Filed Date: 9/9/24.
Accession Number: 20240909–5070.
Comment Date: 5 p.m. ET 9/30/24.
Docket Numbers: ER24–1431–002.
Applicants: Southwestern Public Service Company.
Description: Southwestern Public Service Company submits a compliance filing to the 08/02/2024 Commission order.

Filed Date: 8/30/24.
Accession Number: 20240830–5349.
Comment Date: 5 p.m. ET 9/20/24.
Docket Numbers: ER24–2144–001.
Applicants: PPL Electric Utilities Corporation, PJM Interconnection, L.L.C.

Description: PPL Electric Utilities Corporation submits this compliance filing with respect to its request for authorization to recover 100% of the prudently incurred costs pursuant to the Commission's 07/29/2024 Order.

Filed Date: 9/5/24.
Accession Number: 20240905–5192.
Comment Date: 5 p.m. ET 9/26/24.
Docket Numbers: ER24–2999–000.
Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original NSA, Service Agreement No. 7345; AE1–113/AE2–255 to be effective 11/6/2024.

Filed Date: 9/6/24.
Accession Number: 20240906–5174.
Comment Date: 5 p.m. ET 9/27/24.
Docket Numbers: ER24–3000–000.
Applicants: Northern States Power Company, a Minnesota corporation.
Description: § 205(d) Rate Filing: 2024–09–06 CapX2020 MURA–686 0.0.0 to be effective 8/8/2024.

Filed Date: 9/6/24.
Accession Number: 20240906–5180.
Comment Date: 5 p.m. ET 9/27/24.
Docket Numbers: ER24–3001–000.
Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3870R1 White Rock Wind West GIA to be effective 8/29/2024.

Filed Date: 9/9/24.
Accession Number: 20240909–5007.
Comment Date: 5 p.m. ET 9/30/24.
Docket Numbers: ER24–3002–000.
Applicants: North Rosamond Solar, LLC.

Description: § 205(d) Rate Filing: Certificates of Concurrence for Shared Facilities Common Ownership Agreements to be effective 9/10/2024.

Filed Date: 9/9/24.
Accession Number: 20240909–5055.
Comment Date: 5 p.m. ET 9/30/24.
Docket Numbers: ER24–3003–000.
Applicants: North Rosamond Solar, LLC.
Description: Tariff Amendment: Notice of Cancellation to be effective 9/10/2024.

Filed Date: 9/9/24.
Accession Number: 20240909–5064.
Comment Date: 5 p.m. ET 9/30/24.
Docket Numbers: ER24–3004–000.
Applicants: Nevada Power Company.
Description: § 205(d) Rate Filing: First Amended and Restated Reid Gardner BESS LGIA and PLGIA to be effective 8/1/2024.

Filed Date: 9/9/24.
Accession Number: 20240909–5074.
Comment Date: 5 p.m. ET 9/30/24.
Docket Numbers: ER24–3005–000.
Applicants: Eldorado Solar Project, LLC.

Description: Baseline eTariff Filing: Eldorado Solar Application for Market-Based Rate Authority to be effective 10/28/2024.

Filed Date: 9/9/24.
Accession Number: 20240909–5093.
Comment Date: 5 p.m. ET 9/30/24.
Docket Numbers: ER24–3006–000.
Applicants: Hummingbird Energy LLC.

Description: Hummingbird Energy LLC submits request for a one-time, limited waiver of the deadlines set forth in Section 309(A)(1)(h) of the PJM Interconnection, L.L.C. Open Access Transmission Tariff.

Filed Date: 9/6/24.
Accession Number: 20240906–5221.
Comment Date: 5 p.m. ET 9/27/24.
Docket Numbers: ER24–3007–000.
Applicants: Nevada Power Company.
Description: § 205(d) Rate Filing: NPC—First Amended and Restated Reid Gardner BESS LGIA and PLGIA to be effective 9/10/2024.

Filed Date: 9/9/24.
Accession Number: 20240909–5135.
Comment Date: 5 p.m. ET 9/30/24.
Docket Numbers: ER24–3008–000.
Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original GIA Service Agreement No. 7342, AF2–187 to be effective 8/8/2024.

Filed Date: 9/9/24.
Accession Number: 20240909–5141.
Comment Date: 5 p.m. ET 9/30/24.
Docket Numbers: ER24–3009–000.
Applicants: Duke Energy Florida, LLC.

Description: § 205(d) Rate Filing: DEF–FPL Revised Contract for Interchange Service RS No. 81 to be effective 11/9/2024.

Filed Date: 9/9/24.
Accession Number: 20240909–5147.
Comment Date: 5 p.m. ET 9/30/24.
Docket Numbers: ER24–3010–000.
Applicants: Northern Indiana Public Service Company LLC.
Description: § 205(d) Rate Filing: Certificate of Concurrence to be effective 8/21/2024.

Filed Date: 9/9/24.
Accession Number: 20240909–5169.
Comment Date: 5 p.m. ET 9/30/24.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

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.

Dated: September 9, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024–20829 Filed 9–12–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP24–1054–000.
Applicants: Eastern Shore Natural Gas Company.

Description: § 4(d) Rate Filing: Negotiated Rate Filing—CUC—MD to be effective 9/20/2024.

Filed Date: 9/5/24.

Accession Number: 20240905–5125.

Comment Date: 5 p.m. ET 9/17/24.

Docket Numbers: RP24–1055–000.
Applicants: Southern Star Central Gas Pipeline, Inc.

Description: § 4(d) Rate Filing: Correction to Tariff Sheet No. 245 to be effective 10/7/2024.

Filed Date: 9/5/24.

Accession Number: 20240905–5129.

Comment Date: 5 p.m. ET 9/17/24.

Docket Numbers: RP24–1056–000.
Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: Negotiated Rates—Total K911051 and K911252 eff 9–1–24 to be effective 9/1/2024.

Filed Date: 9/5/24.

Accession Number: 20240905–5172.

Comment Date: 5 p.m. ET 9/17/24.

Docket Numbers: RP24–1057–000.
Applicants: MountainWest Pipeline, LLC.

Description: § 4(d) Rate Filing: System Map Update to be effective 10/7/2024.

Filed Date: 9/6/24.

Accession Number: 20240906–5079.

Comment Date: 5 p.m. ET 9/18/24.

Docket Numbers: RP24–1058–000.
Applicants: MountainWest Overthrust Pipeline, LLC.

Description: § 4(d) Rate Filing: System Map Link to be effective 10/7/2024.

Filed Date: 9/6/24.

Accession Number: 20240906–5082.

Comment Date: 5 p.m. ET 9/18/24.

Docket Numbers: RP24–1059–000.
Applicants: White River Hub, LLC.

Description: § 4(d) Rate Filing: System Map Update to be effective 10/7/2024.

Filed Date: 9/6/24.

Accession Number: 20240906–5083.

Comment Date: 5 p.m. ET 9/18/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: PR24–86–001.
Applicants: Ameren Illinois Company.

Description: Amendment Filing: Amendment of Five-Year Review and Amended Statement of Operating Conditions to be effective 9/1/2024.

Filed Date: 9/5/24.

Accession Number: 20240905–5174.

Comment Date: 5 p.m. ET 9/26/24.

Protest Date: 5 p.m. ET 9/26/24.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

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.

Dated: September 6, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–20765 Filed 9–12–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Project No. 2628–066]

Alabama Power Company; Notice of Revised Procedural Schedule for Environmental Impact Statement for the Proposed Project Relicenses

On November 23, 2021, as supplemented,¹ the Alabama Power Company filed an application for a new major license for the 135-megawatt R.L. Harris Hydroelectric Project No. 2628

¹ The final license application filed November 23, 2021, was supplemented on March 23, 2022, June 15, 2022, and December 27, 2022.

(Harris Project or project). On March 31, 2023, Commission staff issued a notice of intent to prepare an Environmental Impact Statement (EIS) to evaluate the effects of relicensing the Harris Project. The notice included an anticipated schedule for issuing the draft and final EIS. On April 18, 2024, staff issued a notice of revised procedural schedule for preparing a draft and final EIS.

By this notice, Commission staff is updating the procedural schedule for completing the draft EIS. The revised schedule is shown below. Further revisions to the schedule may be made as appropriate.

Milestone	Target date
Issue draft EIS	November 2024.

Any questions regarding this notice may be directed to Sarah Salazar at (202) 502–6863 or sarah.salazar@ferc.gov.

Dated: September 9, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–20833 Filed 9–12–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Combined Notice of Filings #1**

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG24–273–000.

Applicants: BRP Avila BESS LLC.

Description: BRP Avila BESS LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/5/24.

Accession Number: 20240905–5156.

Comment Date: 5 p.m. ET 9/26/24.

Docket Numbers: EG24–274–000.

Applicants: BRP Cachi BESS LLC.

Description: BRP Cachi BESS LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/5/24.

Accession Number: 20240905–5159.

Comment Date: 5 p.m. ET 9/26/24.

Docket Numbers: EG24–275–000.

Applicants: BRP Castor BESS LLC.

Description: BRP Castor BESS LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/5/24.

Accession Number: 20240905–5160.

Comment Date: 5 p.m. ET 9/26/24.

Docket Numbers: EG24–276–000.

Applicants: BRP Desna BESS LLC.

Description: BRP Desna BESS LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/5/24.

Accession Number: 20240905–5166.

Comment Date: 5 p.m. ET 9/26/24.

Docket Numbers: EG24–277–000.

Applicants: BRP Zeya BESS LLC.

Description: BRP Zeya BESS LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/5/24.

Accession Number: 20240905–5167.

Comment Date: 5 p.m. ET 9/26/24.

Docket Numbers: EG24–278–000.

Applicants: Platinum Energy Storage LLC.

Description: Platinum Energy Storage LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/5/24.

Accession Number: 20240905–5168.

Comment Date: 5 p.m. ET 9/26/24.

Docket Numbers: EG24–279–000.

Applicants: Tanzanite Energy Storage, LLC.

Description: Tanzanite Energy Storage, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/5/24.

Accession Number: 20240905–5171.

Comment Date: 5 p.m. ET 9/26/24.

Docket Numbers: EG24–280–000.

Applicants: Ridgely Energy Farm, LLC.

Description: Ridgely Energy Farm, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/6/24.

Accession Number: 20240906–5041.

Comment Date: 5 p.m. ET 9/27/24.

Docket Numbers: EG24–281–000.

Applicants: Long Lake Solar, LLC.

Description: Long Lake Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/6/24.

Accession Number: 20240906–5064.

Comment Date: 5 p.m. ET 9/27/24.

Docket Numbers: EG24–282–000.

Applicants: Limewood Bell Renewables LLC.

Description: Limewood Bell Renewables LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/6/24.

Accession Number: 20240906–5065.

Comment Date: 5 p.m. ET 9/27/24.

Docket Numbers: EG24–283–000.

Applicants: Eldorado Solar Project, LLC.

Description: Eldorado Solar Project, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/6/24.

Accession Number: 20240906–5145.

Comment Date: 5 p.m. ET 9/27/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23–973–004.

Applicants: New York Independent System Operator, Inc., Niagara Mohawk Power Corporation.

Description: Compliance filing: Niagara Mohawk Power Corporation submits tariff filing per 35: NMPC Compliance: SPC Settlement to be effective 4/1/2023.

Filed Date: 9/6/24.

Accession Number: 20240906–5071.

Comment Date: 5 p.m. ET 9/27/24.

Docket Numbers: ER23–2764–003.

Applicants: Northeastern Power & Gas, LLC.

Description: Response to 07/02/2024 Deficiency Letter of Northeastern Power & Gas, LLC.

Filed Date: 8/30/24.

Accession Number: 20240830–5357.

Comment Date: 5 p.m. ET 9/9/24.

Docket Numbers: ER24–2516–002.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Amendment of GIA, SA No. 7303; Queue No. AE2–051 in Docket er24–2516–000 to be effective 6/12/2024.

Filed Date: 9/5/24.

Accession Number: 20240905–5162.

Comment Date: 5 p.m. ET 9/26/24.

Docket Numbers: ER24–2982–000.

Applicants: Versant Power.

Description: § 205(d) Rate Filing: Non-Conforming Interconnection Agreement with Eagle Point to be effective 8/8/2024.

Filed Date: 9/6/24.

Accession Number: 20240906–5028

Comment Date: 5 p.m. ET 9/27/24.

Docket Numbers: ER24–2983–000.

Applicants: Versant Power.

Description: § 205(d) Rate Filing: Eagle Point Legacy Charge Agreement to be effective 8/8/2024.

Filed Date: 9/6/24.

Accession Number: 20240906–5031.

Comment Date: 5 p.m. ET 9/27/24.

Docket Numbers: ER24–2984–000.

Applicants: Ridgely Energy Farm, LLC.

Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 11/6/2024.

Filed Date: 9/6/24.

Accession Number: 20240906–5040.

Comment Date: 5 p.m. ET 9/27/24.

Docket Numbers: ER24–2985–000.

Applicants: Canal Marketing LLC.

Description: Canal Marketing LLC submits revised rate schedule under Schedule 17 of the ISO-NE OATT with

respect to Interconnection Reliability Operating Limits, critical infrastructure protection costs incurred 04/01/2023 to 03/31/2024.

Filed Date: 8/30/24.

Accession Number: 20240830–5355.

Comment Date: 5 p.m. ET 9/20/24.

Docket Numbers: ER24–2986–000.

Applicants: Long Lake Solar, LLC.

Description: Baseline eTariff Filing: Application for Market-Based Rate Authority to be effective 10/9/2024.

Filed Date: 9/6/24.

Accession Number: 20240906–5056.

Comment Date: 5 p.m. ET 9/27/24.

Docket Numbers: ER24–2987–000.

Applicants: Louisville Gas and Electric Company.

Description: § 205(d) Rate Filing: TVA Interconnection FERC No. 527 and Termination Notice to be effective 11/7/2024.

Filed Date: 9/6/24.

Accession Number: 20240906–5060.

Comment Date: 5 p.m. ET 9/27/24.

Docket Numbers: ER24–2988–000.

Applicants: Kentucky Utilities Company.

Description: § 205(d) Rate Filing: KU Concurrence LGE KU TVA Joint IA FERC No. 527 to be effective 11/7/2024.

Filed Date: 9/6/24.

Accession Number: 20240906–5066.

Comment Date: 5 p.m. ET 9/27/24.

Docket Numbers: ER24–2989–000.

Applicants: Pacific Gas and Electric Company.

Description: § 205(d) Rate Filing: Amendment to Calpine Greenleaf Holdings (SA 174) to be effective 9/15/2024.

Filed Date: 9/6/24.

Accession Number: 20240906–5074.

Comment Date: 5 p.m. ET 9/27/24.

Docket Numbers: ER24–2990–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Revisions to Sch. 12-Appx A: August 2024 RTEP, 30-Day Comment Period Requested to be effective 12/5/2024.

Filed Date: 9/6/24.

Accession Number: 20240906–5103.

Comment Date: 5 p.m. ET 10/7/24.

Docket Numbers: ER24–2991–000.

Applicants: Navajo Tribal Utility Authority.

Description: Petition for Limited Waiver and Request for Shortened Comment Period and Expedited Treatment of Navajo Tribal Utility Authority.

Filed Date: 9/5/24.

Accession Number: 20240905–5185.

Comment Date: 5 p.m. ET 9/26/24.

Docket Numbers: ER24–2992–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii): Beaver Creek Solar LGIA Filing to be effective 8/27/2024.

Filed Date: 9/6/24.

Accession Number: 20240906–5111.

Comment Date: 5 p.m. ET 9/27/24.

Docket Numbers: ER24–2993–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii): Wild Hog Solar LGIA Filing to be effective 8/27/2024.

Filed Date: 9/6/24.

Accession Number: 20240906–5112.

Comment Date: 5 p.m. ET 9/27/24.

Docket Numbers: ER24–2994–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to WMPA No. 5997; AF1–249 to be effective 11/6/2024.

Filed Date: 9/6/24.

Accession Number: 20240906–5118.

Comment Date: 5 p.m. ET 9/27/24.

Docket Numbers: ER24–2995–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Proposal Regarding Energy Efficiency Participation in PJM's Capacity Market to be effective 11/6/2024.

Filed Date: 9/6/24.

Accession Number: 20240906–5122.

Comment Date: 5 p.m. ET 9/27/24.

Docket Numbers: ER24–2996–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to WMPA, Service Agreement No. 6760; AF1–134 to be effective 11/6/2024.

Filed Date: 9/6/24.

Accession Number: 20240906–5126.

Comment Date: 5 p.m. ET 9/27/24.

Docket Numbers: ER24–2997–000.

Applicants: Puget Sound Energy, Inc.
Description: § 205(d) Rate Filing: BP Products North America—NITSA, NOA, IA to be effective 9/1/2024.

Filed Date: 9/6/24.

Accession Number: 20240906–5135.

Comment Date: 5 p.m. ET 9/27/24.

Docket Numbers: ER24–2998–000.

Applicants: Mountain Wind Power, LLC.

Description: Initial rate filing: Amended and Restated Shared Facilities Agreement and Request for Waivers to be effective 9/7/2024.

Filed Date: 9/6/24.

Accession Number: 20240906–5147.

Comment Date: 5 p.m. ET 9/27/24.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

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.

Dated: September 6, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–20764 Filed 9–12–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2905–035]

Village of Enosburg Falls, Vermont; Notice of Revised Procedural Schedule for Environmental Assessment for the Proposed Project Relicense

On April 30, 2021, the Village of Enosburg Falls, Vermont (Village) filed a relicense application for the 975-kilowatt Enosburg Falls Hydroelectric Project No. 2905. On August 9, 2022, Commission staff issued a notice of intent to prepare an Environmental Assessment (EA) to evaluate the effects

of relicensing the project. The notice included an anticipated schedule for issuing the EA.

By this notice, Commission staff is updating the procedural schedule for completing the EA. The revised schedule is shown below. Further revisions to the schedule may be made as appropriate.

Milestone	Target date
Issue EA	January 2025.

Any questions regarding this notice may be directed to Arash Barsari at (202) 502–6207, or by email at Arash.JalaliBarsari@ferc.gov.

Dated: September 6, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–20767 Filed 9–12–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14867–003]

Scott's Mill Hydro, LLC; Notice of Technical Conference

On Friday, September 27, 2024, Commission staff will hold a technical conference to seek clarification from Scott's Mill Hydro, LLC regarding its responses to additional information requests filed from February 26, 2024 through May 3, 2024 for the proposed Scott's Mill Hydroelectric Project No. 14867.

The conference will be held via teleconference beginning at 1:00 p.m. Eastern Daylight Time. Discussion topics for the technical conference are included in Appendix A.

All local, state, and federal agencies, Indian tribes, and other interested parties are invited to participate. There will be no transcript of the conference, but a summary of the meeting will be prepared for the project record. If you are interested in participating in the meeting you must contact Jody Callihan at (202) 502–8278 or jody.callihan@ferc.gov by September 25, 2024 to receive specific instructions on how to participate.

Dated: September 6, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–20769 Filed 9–12–24; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY**[FRL OP-OFA-143]****Environmental Impact Statements; Notice of Availability**

Responsible Agency: Office of Federal Activities, General Information 202-564-5632 or <https://www.epa.gov/nepa>.

Weekly receipt of Environmental Impact Statements (EIS)

Filed August 30, 2024 10 a.m. EST

Through September 9, 2024 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: <https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search>.

EIS No. 20240162, Draft, BLM, NV, Greenlink North Transmission Project, Comment Period Ends: 12/11/2024, Contact: Brian L. Buttazoni 775-861-6491.

Dated: September 9, 2024.

Timothy Witman,

Acting Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2024-20825 Filed 9-12-24; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**[EPA-HQ-OPPT-2022-0835; FRL-10293-02-OCSPP]****Update to EPA's Recommendations of Specifications, Standards and Ecolabels for Federal Purchasing; Notice of Availability and Request for Comment**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In November 2022, the Environmental Protection Agency (EPA or Agency) announced the expansion of the Recommendations of Specifications, Standards and Ecolabels for Federal Purchasing (Recommendations) and invited managers of standards development organizations, ecolabel programs, and associated conformity assessment bodies to apply for potential assessment against EPA's Framework for the Assessment of Environmental Performance Standards and Ecolabels. In August 2023, EPA announced the first five purchase categories chosen for

assessment. With this document, EPA is announcing the availability of and seeking feedback on the proposed additions to the Recommendations based on assessments against the Framework, as well as the proposed removals of standards/ecolabels already included in the Recommendations based on implementation of new eligibility criteria.

DATES: Comments must be received on or before October 15, 2024.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2022-0835, through the *Federal eRulemaking Portal* at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Jenna Larkin, Environmental Protection Specialist, Environmentally Preferable Purchasing Program (7409M), Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 564-3395; email address: larkin.jenna@epa.gov.

SUPPLEMENTARY INFORMATION:**I. Executive Summary***A. Does this action apply to me?*

These updates may be of specific interest to those who represent or use sustainability standards and ecolabels, including institutional or governmental purchasers, manufacturers seeking certification, and standards development organizations.

B. What action is the Agency taking?

EPA has completed the assessment of the standards and ecolabels that volunteered to be assessed in November 2022 against the Framework for the Assessment of Environmental Performance Standards and Ecolabels in the following product and service categories:

- Healthcare;
- Laboratories;
- Uniforms & Clothing;
- Food Service Ware (e.g., containers, cutlery and dishware); and
- Professional Services.

Based on these assessments, EPA is now seeking feedback on the proposed additions of specifications, standards, and ecolabels in the above categories.

EPA is also seeking feedback on the proposed removals of standards and ecolabels in already existing purchase categories.

C. What is the Agency's authority for taking this action?

Executive Order 14057, entitled "Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability" (86 FR 70935, December 13, 2021), and associated implementing instructions direct EPA to consider expanding the Recommendations to facilitate net-zero emissions procurement and other related sustainable purchasing goals. In addition, Executive Order 14057 directs Federal purchasers to prioritize products and services that address multiple environmental impacts. After meeting applicable statutory mandates (BioPreferred, SNAP, CPG, ENERGY STAR/FEMP), agencies are directed to buy products and services that meet one or more of the applicable EPA purchasing programs, including those meeting the specifications, standards, and ecolabels included in the Recommendations.

Executive Order 14008, entitled "Tackling the Climate Crisis at Home and Abroad" (86 FR 7619, February 1, 2021), directs the Federal Government to lead by example and leverage its buying power to "catalyze private sector investment into, and accelerate the advancement of America's industrial capacity to supply domestic clean energy, buildings, vehicles, and other necessary products and materials." The expansion of the Recommendations will help to spur this market demand for more sustainable products and services.

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), 15 U.S.C. 272 note, as well as mandates from the Office of Management and Budget (OMB) identified as Circular A-119, entitled "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities," direct Federal agencies to use voluntary consensus standards (VCS) in lieu of government-unique standards as a means to carry out policy and procurement objectives, except where inconsistent with applicable law or otherwise impractical.

Section 6604(b)(11) of the Pollution Prevention Act (PPA), 42 U.S.C. 13103(b)(11), directs EPA to identify opportunities to use Federal procurement to encourage pollution prevention.

D. What should I consider as I prepare my comments?

1. *Submitting CBI.* Do not submit CBI to EPA through email or <https://www.regulations.gov>. If you wish to include CBI in your comment, please follow the applicable instructions at <https://www.epa.gov/dockets/commenting-epa-dockets#rules> and clearly mark the information that you claim to be CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR parts 2 and 703, as applicable.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <https://www.epa.gov/dockets/commenting-epa-dockets>.

II. Background

The Recommendations of Specifications, Standards, and Ecolabels help Federal purchasers identify and procure environmentally preferable products and services. Federal purchasers are directed in the implementing instructions issued by the Council on Environmental Quality, entitled “Implementing Instructions for Executive Order 14057, Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability” (2022) and 48 CFR 23.108 of the Federal Acquisition Regulation to procure products and services meeting the Recommendations to meet net-zero emissions procurement and other sustainability goals. In November 2022, EPA announced the expansion of the Recommendations and invited managers of standards development organizations, ecolabel programs, and associated conformity assessment bodies to apply for potential assessment against the Framework (87 FR 66176, November 2, 2022 (FRL-10293-01-OCSPP)). In August 2023, EPA announced the first five purchase categories chosen for assessment via a listserv announcement available at <https://www.epa.gov/chemicals-under-tsca/epa-announces-first-product-categories-expansion-ecolabel-recommendations>. EPA then began the process to assess the standards and ecolabels that volunteered to be assessed in those five categories and is now seeking feedback on proposed additions to the Recommendations, along with other updates.

In April 2022, the standard/ecolabel organizations included in the Recommendations were notified of new eligibility criteria to be implemented in 2023. These criteria ensure consistency with U.S. Federal Government standards policy and assists with

implementation into General Services Administration (GSA) procurement tools and contracts. Standards/ecolabels were given until December 31, 2023, to demonstrate that they meet the eligibility criteria. Those that were not able to meet the criteria, are being proposed for removal from the Recommendations.

- There must be a publicly available and current (*i.e.*, updated in the last 3 months) directory/registry of products/services conformant to the standard or ecolabel.
- All standards and ecolabels are required to demonstrate that they have a competent certification program—either via accreditation or the alternative pathway provided in Section III of EPA’s Framework for the Assessment of Environmental Performance Standards and Ecolabels.

A. What are the recommendations of specifications, standards, and ecolabels for Federal purchasing?

The Recommendations help purchasers easily identify credible and effective environmental performance standards/ecolabels/certifications by product/service category for incorporation into Federal procurement activities (*e.g.*, contracts and e-procurement systems). They currently include over 30 product and service categories and more than 40 private sector environmental performance standards and ecolabels. The Recommendations give preference to multi-attribute/lifecycle-based standards and ecolabels that address key impact areas (AKA hotspots) and where product conformance is determined by a competent third-party certification body.

B. What is the framework for the assessment of environmental performance standards and ecolabels?

The Framework, available at <https://www.epa.gov/greenerproducts/framework-assessment-environmental-performance-standards-and-ecolabels-federal>, provides a transparent, fair, and consistent approach to evaluate product and service environmental performance standards and ecolabels for inclusion in EPA’s Recommendations. EPA began developing the Framework (formerly known as the Guidelines) in 2011 via a multi-stakeholder process, including several public comment opportunities. The Framework was then piloted in 2015–2016 in three product categories: Furniture, flooring (includes carpet), and paints/coatings. Based on lessons learned from the pilot, additional minor edits were made to clarify and streamline the criteria within the

Framework and make it applicable to services. An updated version of the Framework was announced and posted to the EPA website in February 2022. That announcement also included details about EPA’s intentions to use the Framework to expand the Recommendations into additional product and service categories. More details on the Framework development process are available at <https://www.epa.gov/greenerproducts/framework-development-overview>.

The Framework includes:

- *Scoping Questions:* Assist EPA in planning and budgeting; confirm eligibility and scope before proceeding with full assessment against applicable sections of the Framework.

The four sections of Assessment Criteria include:

- *Section I: Process for Developing the Standard*—Assesses the procedures used to develop, maintain, and update an environmental performance standard, including whether a standard is considered a voluntary consensus standard.
- *Section II: Environmental Effectiveness of the Standard*—Assesses the criteria in the environmental performance standard or ecolabel that support the claim of environmental preferability.
- *Section III: Conformity Assessment*—Assesses the procedures and practices by which products or services are assessed for conformity to the requirements specified by standards and ecolabeling programs.
- *Section IV: Management of Ecolabeling Programs*—Assesses the organizational and management practices of an ecolabeling program.

III. Request for Public Comment

A. What feedback is sought on the addition of certain standards and ecolabels?

EPA is seeking public input on the addition of the following standards and ecolabels in the following product categories. Standards and ecolabels listed below meet all applicable baseline criteria in the Framework and are being proposed to be added to the Recommendations.

1. Healthcare

- *Medical Devices [Food and Drug Administration (FDA) Class I and II]:*—Greenscreen Certified® Standard for Medical Supplies and Devices
- Greenhealth Approved for Medical Equipment
- *Medical Supplies:*—Greenscreen Certified® Standard for Medical Supplies and Devices

- Greenhealth Approved for Medical Equipment
- Nordic Ecolabelling for Sanitary Products

2. Laboratories

- *Laboratory Operations:*
- My Green Lab Certification
- *Laboratory Equipment & Supplies:*
- ACT Ecolabel from My Green Lab

3. Clothing and Uniforms

- *Finished Clothing:*
- Nordic Ecolabelling for Textiles, Hides/Skins, and Leathers
- Cradle to Cradle Certified Product Standard
- Global Organic Textile Standard
- European Union (EU) Ecolabel for Textile Products [*Pending*]. *Note:* EPA designed the Framework principally for the assessment of standards and ecolabels developed by the private sector. Because the EU Ecolabel has been developed and is operated by the European Union, the U.S. and the European Commission Services are discussing whether and how to include it in the Recommendations. EPA has marked the ecolabel as “pending” while those deliberations continue.
- *Clothing Textiles/Fabrics:*
- Nordic Ecolabelling for Textiles, Hides/Skins, and Leathers
- Cradle to Cradle Certified Product Standard
- OEKO—TEX Made in Green
- OEKO—TEX Standard 100
- Global Organic Textile Standard
- GreenScreen Certified® Standard for Furniture and Fabrics

4. Cafeteria and Food Service

- *Reusable Food Service Ware:*
- GreenScreen Certified® Standard for Reusable Food Packaging, Food Service Ware, & Cookware
- Cradle to Cradle Certified Product Standard
- *Certified Compostable Food Service Ware:*
- GreenScreen Certified® Standard for Single-Use Food Service Ware & Thermal Paper
- Cradle to Cradle Certified Product Standard (Platinum Level in Product Circularity)
- BPI Commercial Compostability Certification Scheme
- *Certified Recyclable Food Service Ware:*
- GreenScreen Certified® Standard for Single-Use Food Service Ware & Thermal Paper
- Cradle to Cradle Certified Product Standard (Platinum Level in Product

Circularity). *Note:* The environmental benefits associated with these standards and ecolabels are contingent upon the availability and use of applicable end-of-life/waste management services. EPA provides current best practices for the procurement of Food Service Ware sub-categories available at <https://www.epa.gov/greenerproducts/identifying-greener-food-service-and-food-service-ware>.

5. Professional Services

- None.

B. What feedback is sought on the removal of certain standards and ecolabels?

EPA is also seeking public input on the removal of the following standards and ecolabels in the following categories, including the reason for removal.

1. Ecologo/UL 2771 Standard for Sustainable Paper Products

- *Product Category: Copy Paper*—Reason for removal: standard retired in 2023.

2. Sustainable Furnishings Council Exemplary

- *Product Category: Furniture*—Reason for removal: ecolabel discontinued in 2021.

3. Sustainable Materials Rating Technology (SMaRT)

- *Product Category: Carpet, Flooring, Furniture, Interior Latex Paint*—Reason for removal: Product registry has not been updated within the past 3 months; Unable to demonstrate the existence of a competent third-party certification program.

4. Clear Roads Qualified Products

- *Product Category: De-icer*—Reason for removal: Unable to demonstrate the existence of a competent third-party certification program.

5. International Living Futures Institute: Declare

- *Product Category: Carpet, Flooring, Furniture, Interior Latex Paint, Other Miscellaneous Building Finishes*—Reason for removal: Unable to demonstrate the existence of a competent third-party certification program.

6. International Living Futures Institute: Living Product Challenge

- *Product Category: Carpet, Flooring, Furniture, Interior Latex Paint, Other Miscellaneous Building Finishes*—

Reason for removal: Unable to demonstrate the existence of a competent third-party certification program.

7. EPEAT Registered (Criteria for the Sustainability Assessment of Network Equipment for the Global Electronics Council EPEAT® Ecolabel and the TÜV Rheinland Green Product Mark)

- *Product Category: Network Equipment and Cloud Services*—Reason for removal: This ecolabel was originally added to the Recommendations based on a previous requirement in the Federal Acquisition Regulation (FAR) that required Federal agencies to procure EPEAT registered electronic products. The FAR was recently updated and no longer contains that requirement.

C. What information should be included in your comment?

EPA is particularly interested in receiving comments that include the following:

- Name of person or organization submitting the comments;
- Product or service category that pertains to your comments;
- Reasons for the support or opposition of the proposed updates;
- Impacts the updates may have on your organization;
- Input on new product category naming and sub-product category naming; and
- Product or service categories you would like EPA to consider performing assessments in during the next update cycle. This may include product/service categories already included in the Recommendations.
- If your standard or ecolabel organization is interested in being assessed in the next update cycle, please provide the name of the standard or ecolabel, the product or service category(ies) that it covers, and a link to the publicly available website.

EPA is not seeking comments on the Framework tool used to assess standards and ecolabels. The Framework went through a separate multi-stakeholder development process that included several public comment opportunities. See <https://www.epa.gov/greenerproducts/framework-development-overview>.

Authority: 42 U.S.C. 1310.

Dated: September 9, 2024.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2024–20820 Filed 9–12–24; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK**Receipt of Request(s) To Increase the Amount of the Long-Term General Guarantee on the Interest of Secured Notes Issued by the Private Export Funding Corporation (PEFCO)****AGENCY:** Export-Import Bank of the United States**ACTION:** Notice

SUMMARY: This Notice is to inform the public that Export-Import Bank of the United States (“EXIM”) is expected to consider one or more requests to increase the amount of the long-term general guarantee on the interest of Secured Notes issued by the Private Export Funding Corporation (PEFCO). Comments received within the comment period specified below will be presented to the EXIM Board of Directors prior to any final action during the fiscal year ending on September 30, 2025.

DATES: Comments must be received on or before October 8, 2024 to be assured of consideration before any final decision on one or more additional guarantees during the course of fiscal year 2025.

ADDRESSES: Comments may be submitted through *Regulations.gov* at *www.regulations.gov*. To submit a comment, enter Export-Import under the heading “Enter” and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any), and on any attached document.

SUPPLEMENTARY INFORMATION:

Reference: AP003048AA.

Brief Description of Nature and Purpose of the Facility: EXIM may consider one or more general guarantees on the interest of Secured Notes issued by the Private Export Funding Corporation (PEFCO), in accordance with both the Guarantee and Credit Agreement, as Amended, and the Guarantee Agreement between EXIM and PEFCO. The purpose of the guarantees of interest on the Secured Notes is to facilitate private funding from the U.S. capital markets for EXIM-guaranteed export finance transactions.

Total Amount of Guarantees: The exact number is not determinable due to market-determined pricing and uncertainty as to the amount and timing of Secured Notes to be issued; however, it could potentially be in excess of \$100 million for Secured Notes issued during the course of fiscal year 2025.

Reasons for the Facility and Methods of Operation: The general guarantee serves to guarantee interest on PEFCO’s issuance of Secured Notes. The

principal amount of the Secured Notes is secured by a collateral pool of U.S. Government-risk debt and securities, including EXIM-guaranteed loans. The proceeds from the Secured Notes are used to fund additional EXIM-guaranteed loans and provide a liquid secondary market for EXIM-guaranteed loans.

Party Requesting Guarantee: Private Export Funding Corporation (PEFCO).

Information on Decision: Information on the final decision for this transaction will be available in the “Summary Minutes of Meetings of Board of Directors” on <https://www.exim.gov/news/meeting-minutes>.

Deidre Hodge,

Assistant Corporate Secretary.

[FR Doc. 2024–20858 Filed 9–12–24; 8:45 am]

BILLING CODE 6690–01–P**FEDERAL COMMUNICATIONS COMMISSION****[FR ID: 243633]****Privacy Act of 1974; System of Records****AGENCY:** Federal Communications Commission.**ACTION:** Notice of a modified system of records.

SUMMARY: The Federal Communications Commission (FCC, Commission, or Agency) proposes to modify an existing system of records, FCC/MB–1, Ownership Reports for Commercial and Noncommercial Broadcast Stations, subject to the Privacy Act of 1974, as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the agency. The FCC’s Media Bureau (MB) uses the information contained in this system to administer the Commission’s regulatory responsibilities that relate (1) to ownership of commercial broadcast stations, including AM and FM radio and television (full power, Class A, and low power); and (2) to ownership of noncommercial broadcast stations, including AM and FM radio and full-power television. The FCC Enforcement Bureau (EB) also uses the information contained in this system to review the Equal Employment Opportunity (EEO) programs of both commercial and non-commercial AM and FM radio and television stations (full power, Class A, and low power) and Satellite Digital Audio Radio Services (SDARS) licensees. And for cable operators and “Direct Broadcast Satellite” (DBS)

providers, EB similarly reviews their compliance with the FCC’s Equal Employment Opportunity (EEO) rules in this system, in part, via the Cable Operations and Licensing System (COALS) database.

DATES: This modified system of records will become effective on September 13, 2024. Written comments on the routine uses are due by October 15, 2024. The routine uses in this action will become effective on October 15, 2024 unless comments are received that require a contrary determination.

ADDRESSES: Send comments to Brendan McTaggart, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, or *privacy@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: Brendan McTaggart, (202) 418–1738, or *privacy@fcc.gov*.

SUPPLEMENTARY INFORMATION: This notice serves to update and modify FCC/MB–1 as a result of the various necessary changes and updates. The substantive changes and modifications to the previously published version of the FCC/MB–1 system of records include:

1. Renaming the SORN “MB–1, Media Ownership and Equal Employment Opportunity Forms and Reports,” and updating the Purposes, Categories of Records, Categories of Individuals, and Record Source Categories to reflect the collection of Equal Employment Opportunity (EEO) data through FCC Form 2100, Schedule 396–B, the Broadcast Equal Employment Opportunity Program Report (Form 396–B), through Form 396–C, the Multi-Channel Video Program Distributors EEO Program Annual Report (Form 396–C); and through any related attachments or supporting documentation; and adding the Enforcement Bureau to System Location and System Manager, to reflect the Bureau’s role in enforcing the Commission’s EEO requirements;

2. Updating the language in the Security Classification and Authority for Maintenance of the System to follow OMB guidance;

3. Otherwise modifying the language in the Categories of Individuals and Categories of Records to be consistent with the language and phrasing now used in FCC SORNs;

4. Adding one new routine use (listed by the routine use number provided in this SORN): (9) Assistance to Federal Agencies and Entities Related to Breaches, the addition of which is required by OMB M–17–12;

5. Updating and/or revising language in eight routine uses (listed by the

routine use number provided in this SORN): (1) Public Access; (2) Litigation and (3) Adjudication (now two separate routine uses); (4) Law Enforcement and Investigation; (5) Congressional Inquiries; (6) Government-wide Program Management and Oversight; (7) Breach Notification, the modification of which is required by OMB M-17-12; and (9) Nonfederal Personnel;

6. Deleting one routine use: former routine use (3) Financial Obligations under the Debt Collection Acts, which is no longer applicable;

7. Updating language in the Purposes of the System to reflect changes to the Commission's media ownership rules.

The system of records is also updated to reflect various administrative changes related to the system managers and system addresses; policy and practices for storage, retention, disposal and retrieval of the information; administrative, technical, and physical safeguards; and updated notification, records access, and contesting records procedures.

SYSTEM NAME AND NUMBER:

FCC/MB-1, Media Ownership and Equal Employment Opportunity Forms and Reports

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Media Bureau (MB) and Enforcement Bureau (EB), Federal Communications Commission (FCC), 45 L Street NE, Washington, DC 20554.

SYSTEM MANAGER(S):

MB and EB, FCC, 45 L Street NE, Washington, DC 20554.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

47 U.S.C. 151, 152(a), 154(i), 257, 303(r), 307, 308, 309, 310, 554(e).

PURPOSE(S) OF THE SYSTEM:

The Commission uses the records in this system:

(1) To assess the data contained in responses to Form 323, and/or Form 323-E, which the Commission uses to evaluate licensees' or permittees' compliance with the Commission's rules applicable to owners of commercial broadcast stations, including AM and FM radio and television (full power, Class A, and low power); and noncommercial broadcast stations, including AM and FM radio and full-power television. These forms are filed: (a) To satisfy the biennial filing requirement (Biennial Ownership Report); (b) As a validation and resubmission of a previously filed Biennial Ownership Report; (c) In

connection with the transfer of control or assignment of a broadcast station; (d) By a permittee within 30 days after the grant of a construction permit and on the date that the permittee files its license application; (e) As a certification of accuracy of the initial or post-consummation Ownership Report filed by the permittee in conjunction with its application for a station license; or (f) As an amendment of a previously filed Ownership Report.

(2) To undertake studies of minority and female ownership in responses to Form 323, and/or Form 323-E that include studies that support the Commission's diversity policy goals and other ownership studies to support its statutory requirement to review the media ownership goals quadrennially to determine whether they are necessary in the public interest as the result of competition.

(3) To assess the data contained in Form 396-B and annual EEO Public File Reports attached to both the Form 396-B and the Form 396-C Supplemental Investigation Sheet (SIS). The FCC uses the Form 396-B to evaluate licensees' EEO compliance under applicable FCC requirements at the time they apply for license renewal. The Form 396-C SIS is filed no less than once every five years to provide supplemental data on the EEO compliance of a cable operator or DBS provider.

(4) To otherwise utilize Form 323, Form 323-E, Form 396-B, Form 396-C and annual EEO Public File Reports for other lawful purposes, including analyzing effectiveness and efficiency of related FCC programs, informing future rule and policy-making activity, and improving staff efficiency.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals covered by this system include: (1) Licensees, permittees, and respondents, and other individuals or entities with interests therein that are required to file or have their interests reported on: (a) Form 323, "Ownership Report for Commercial Broadcast Stations" pursuant to 47 CFR 73.3615, 73.6026, and 74.797; and/or (b) Form 323-E, "Ownership Report for Noncommercial Broadcast Stations" pursuant to 47 CFR 73.3615; (2) Contact individuals reported on: (a) Form 323, *e.g.*, representatives, relating to commercial AM, FM, and television (full power, Class A, and low power) broadcast stations; and/or (b) Form 323-E, *e.g.*, representatives, relating to noncommercial AM, FM, and full-power television broadcast stations; (3) Individuals, pursuant to 47 CFR 73.3555, with ownership or attributable

interests in broadcast stations subject to the Commission's ownership rules or otherwise required to be reported on Form 323, and/or Form 323-E; and (4) (a) Individuals filing Form 396-B pursuant to 47 CFR 73.2080 on behalf of broadcast stations and SDARS licensees as well as individuals who have filed discrimination complaints involving those licensees and are named in attachments to Form 396-B; and (b) Individuals filing Form 396-C SIS pursuant to 47 CFR 76.77(c); and (c) Individuals (including recruitment sources and referral sources) included in the annual EEO Public File Report associated with a broadcast station or SDARS licensee and who are identified in the last two annual EEO Public File Reports attached to Form 396-B or, with regards to cable operators or DBS providers, the last EEO Public File Report, which is attached to the Form 396-C SIS.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in this system include: (1) Information that is required to be submitted on Form 323, and/or Form 323-E, including the ownership or other interests of the licensee/permittee/respondent, mailing address, telephone number, email address, FCC Registration Number (FRN), Restricted Use FRN (RUFN), listing type, relationship to licensee/permittee/respondent/other interest holder, positional interest, joint interest status, Tribal Nation/entity status, marital/familial relationship, and gender, ethnicity, race, and citizenship, etc.; (2) All exhibits, organizational charts, supporting documentation, and any other materials included with the report (*e.g.*, correspondence, letters, etc.), which are associated with processing Form 323, Form 323-E, or Form 396-B submissions; (3) identifying information in Form 396-B or its attachments, such as the names of individuals associated with discrimination complaints and identifying information included in EEO Public File Reports—an annual report summarizing various recruitment activities of the licensee—such as the names of recruitment contacts at various entities; and (4) identifying information included the EEO Public File Reports attached to the Form 396-C SIS; and (5) Any other records that are submitted in connection with or created as the result of the filing of Form 323, Form 323-E, Form 396-B, Form 396-C SIS or EEO Public File Reports.

RECORD SOURCE CATEGORIES:

The sources for the information in this system are all broadcast stations,

SDARS licensees, cable operators and DBS providers and other entities that are required to file an ownership or EEO form or report, either biennially, upon license renewal or at other occasions, under 47 CFR 73.3615, 73.6026, 74.797, 73.20280, and 76.77 of the Commission's rules, including information submitted on Form 323, Form 323-E, Form 396-B, Form 396-C SIS or EEO Public File Reports, as described above.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside of the FCC as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. Public Access—Ownership and EEO Information submitted in Form 323, Form 323-E, Form 396-B, Form 396-C SIS and EEO Public File Reports in the Consolidated Database System (CDBS), the Licensing and Management System (LMS), and the Cable Operations and Licensing System (COALS), as applicable, can be viewed by the public on the Commission's website.

2. Litigation—Records may be disclosed to the Department of Justice (DOJ) when: (a) the FCC or any component thereof; (b) any employee of the FCC in his or her official capacity; (c) any employee of the FCC in his or her individual capacity where the DOJ or the FCC has agreed to represent the employee; or (d) the United States Government is a party to litigation or has an interest in such litigation, and by careful review, the FCC determines that the records are both relevant and necessary to the litigation, and the use of such records by the Department of Justice is for a purpose that is compatible with the purpose for which the FCC collected the records.

3. Adjudication—Records may be disclosed in a proceeding before a court or adjudicative body, when: (a) the FCC or any component thereof; or (b) any employee of the FCC in his or her official capacity; or (c) any employee of the FCC in his or her individual capacity; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the FCC determines that the records are both relevant and necessary to the litigation, and that the use of such records is for a purpose that

is compatible with the purpose for which the agency collected the records.

4. Law Enforcement and Investigation—When the FCC investigates any violation or potential violation of a civil or criminal law, regulation, policy, executed consent decree, order, or any other type of compulsory obligation, and determines that a record in this system, either alone or in conjunction with other information, indicates a violation or potential violation of law, regulation, policy, consent decree, order, or other compulsory obligation, the FCC may disclose pertinent information as it deems necessary to the target of an investigation, as well as with the appropriate Federal, State, local, Tribal, international, or multinational agencies, or a component of such an agency, responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order.

5. Congressional Inquiries—Information may be provided to a Congressional office in response to an inquiry from that Congressional office made at the written request of the individual to whom the information pertains.

6. Government-wide Program Management and Oversight—Information may be disclosed to the DOJ to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act (FOIA); or to the Office of Management and Budget (OMB) to obtain that office's advice regarding obligations under the Privacy Act.

7. Breach Notification—Records may be disclosed to appropriate agencies, entities, and persons when: (a) the Commission suspects or has confirmed that there has been a breach of the system of records; (b) the Commission has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Commission (including its information system, programs, and operations), the Federal Government, or national security; and; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

8. Assistance to Federal Agencies and Entities Related to Breaches—Records may be disclosed to another Federal agency or Federal entity, when the Commission determines that information from this system 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, program, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

9. Non-Federal Personnel—Information may be disclosed to non-Federal personnel, including contractors, other vendors (e.g., identity verification services), grantees, and volunteers who have been engaged to assist the FCC in the performance of a service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform their activity.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

This an electronic system of records that resides on the FCC's network or on an FCC vendor's network.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system of records can be retrieved by an authorized FCC user by any category field, e.g., first name or email address.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The information in this system is limited to electronic files, records, and data, which includes: (1) The information that pertains to current filing requirements; and (2) the information that pertains to historical records, which is used for archival purposes. National Archives and Records Administration (NARA) Records Schedule N1-173-86-2, authorizes permanent retention of original documents of information reported pursuant to Sections 73.3613 and 73.3615 of the Commission's rules, including ownership reports (FCC Form 323). In the absence of a more specific NARA-approved records schedule, any information in this system that is not covered by the agency records control schedule N1-173-86-2 will also be treated as permanent.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to the records (i.e., the electronic records, files, and data) housed in the COALS, CDBS, and LMS databases—distinct from the public's ability to view the ownership information that is available on the FCC's website—is restricted to authorized MB and EB supervisory and staff and IT staff and contractors, who maintain the COALS, CDBS, and LMS

network computer databases. Other FCC staff and contractors may be granted access to this information, only on a “need-to-know” basis. The COALS, CDBS, and LMS databases are part of the FCC’s computer network databases. The records are stored within FCC or a vendor’s accreditation boundaries and maintained in a database housed in the FCC’s or vendor’s computer network databases. The electronic files and records are protected by the FCC and third-party privacy safeguards, a comprehensive and dynamic set of IT safety and security protocols and features that are designed to meet all Federal privacy standards, including those required by the Federal Information Security Modernization Act of 2014 (FISMA), the Office of Management and Budget (OMB), and the National Institute of Standards and Technology (NIST).

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to and/or amendment of records about themselves should follow the Notification Procedures below.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request access to and/or amendment of records about themselves should follow the Notification Procedures below.

NOTIFICATION PROCEDURES:

Individuals wishing to determine whether this system of records contains information about themselves may do so by writing to privacy@fcc.gov. Individuals requesting access must also comply with the FCC’s Privacy Act regulations regarding verification of identity to gain access to records as required under 47 CFR part 0, subpart E.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

81 FR 72047 (October 19, 2016)

Federal Communications Commission.

Marlene Dortch,
Secretary.

[FR Doc. 2024–20847 Filed 9–12–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID: 243635]

Privacy Act of 1974; System of Records

AGENCY: Federal Communications Commission.

ACTION: Notice of a modified system of records.

SUMMARY: The Federal Communications Commission (FCC, Commission, or Agency) proposes to modify an existing system of records, FCC/MB–2, Broadcast Station Public Inspection Files, which has been renamed FCC/MB–2, Online Public Inspection File. The Commission requires television broadcasters to submit their public filing information to the FCC to be posted in an online public inspection file. In 2016, the Commission expanded its Online Public Inspection File (OPIF) requirements to cable operators, satellite TV (also referred to as “Direct Broadcast Satellite” or “DBS”) providers, broadcast radio licensees, and satellite radio (also referred to as “Satellite Digital Audio Radio Services” or “SDARS”) licensees. This system of records covers the personally identifiable information (PII) that may be contained in an OPIF.

DATES: This modified system of records will become effective on September 13, 2024. Written comments on the routine uses are due by October 15, 2024. The routine uses in this action will become effective on October 15, 2024 unless comments are received that require a contrary determination.

ADDRESSES: Send comments to Brendan McTaggart, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, or privacy@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Brendan McTaggart, (202) 418–1738, or privacy@fcc.gov.

SUPPLEMENTARY INFORMATION: This notice serves to update and modify FCC/MB–2 as a result of various necessary changes and updates. The substantive changes and modifications to the previously published version of the FCC/MB–2 system of records include:

1. Updating the SORN to reflect the addition of cable operators, DBS providers, broadcast radio licensees, and SDARS licensees, and changing the name of the system to “Online Public Inspection File;”

2. Updating the Purposes, Categories of Records, Categories of Individuals, and Record Source Categories to reflect the collection of Equal Employment Opportunity (EEO) and related data through FCC Form 2100 Schedule 396 Broadcast Equal Employment Opportunity Program Report (Form 396–B), annual EEO Public File Reports (certain years of which can also be attached to Form 396–B, attached to the Multichannel Video Program Distributor EEO Program Report (Form 396–C), or

submitted in response to an EEO audit), and audit responses related to the administration of the Commission’s responsibilities under 47 CFR 73.2080; and adding the Enforcement Bureau to System Location and System Manager, to reflect the Bureau’s role in enforcing the Commission’s EEO requirements;

3. Updating the language in the Security Classification to follow OMB guidance;

4. Otherwise modifying the language in the Categories of Individuals and Categories of Records to be consistent with the language and phrasing now used in FCC SORNs;

5. Deleting three former routine uses (listed by the routine use number in the previous iteration of this SORN: (9) FCC Enforcement Actions, which is duplicative of the expanded Law Enforcement and Investigation routine use in this notice; and (10) Due Diligence Inquiries and (11) Financial Obligations under the Debt Collection Acts, both of which are no longer applicable.

6. Adding one new routine use (listed by the routine use number provided in this SORN): (8) Assistance to Federal Agencies and Entities Related to Breaches, the addition of which is required by OMB M–17–12;

7. Updating and/or revising language in seven routine uses (listed by the routine use number provided in this SORN): (2) Law Enforcement and Investigation; (3) Litigation and (4) Adjudication (now two separate routine uses); (5) Congressional Inquiries; (6) Government-wide Program Management and Oversight; (7) Breach Notification, the modification of which is required by OMB M–17–12; and (9) Nonfederal Personnel.

8. Updating the SORN to include the National Archives and Records Administration (NARA) records schedule DAA–0173–2020–0003, EEO Audits.

The system of records is also updated to reflect various administrative changes related to the system managers and system addresses; policy and practices for storage, retention, disposal and retrieval of the information; administrative, technical, and physical safeguards; and updated notification, records access, and contesting records procedures.

SYSTEM NAME AND NUMBER:

FCC/MB–2, Online Public Inspection File.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Media Bureau (MB) and Enforcement Bureau (EB), Federal Communications Commission (FCC), 45 L Street NE, Washington, DC 20554.

SYSTEM MANAGER(S):

MB and EB, FCC, 45 L Street NE, Washington, DC 20554.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

47 U.S.C. 151, 152, 154(i), 154(j), 303, 307, 315, and 335.

PURPOSE(S) OF THE SYSTEM:

The Commission requires television broadcasters to submit their public filing information to the FCC to be posted in an online public inspection file. In 2016, the Commission expanded its OPIF requirements to cable operators, DBS providers, broadcast radio licensees, and SDARS licensees. This system of records covers the PII that may be contained in an OPIF. This includes information related to individuals associated with broadcast entities and SDARS licensees as well as individuals identified in EEO data (including the name of any EEO complainants) collected through Form 396–B pursuant to 47 CFR 73.2080 as well as in audit responses. EEO data are also provided in EEO Public File Reports (including PII related to recruitment and referral sources), which are uploaded to OPIF annually and, in certain years, are attached to Form 396–B and/or an EEO audit response. Further, this system of records also includes information related to individuals associated with cable operators and DBS providers identified in EEO data provided in annual EEO Public File Reports (including PII related to recruitment and referral sources), which are required to be uploaded to OPIF annually, and, every fifth year, the most recent report must be attached by cable operators and DBS providers to the Supplemental Investigation Sheet (SIS) of the Form 396–C, under 47 CFR 76.77. The Commission hosts OPIF in an online, publicly available database for the purpose of making the files more accessible to the public.

This system also includes information about individuals who are required to file personal information pertaining to their political campaigns, including requests for broadcast time made by or on behalf of a candidate and the disposition of those requests, information regarding other appearances by candidates (excluding those in certain news programming exempt from the equal opportunities provision), and information about issue advertising that

communicates a message relating to any political matter of national importance. Requiring these entities to maintain complete and up to date political files is critical because the information in these files directly affects, among other things, the statutory rights of opposing candidates to request equal opportunities under Section 315(a) of the Communications Act and present their positions to the public prior to an election. In addition, the political files allow the public to verify that Commission licensees and regulatees have complied with their obligations relating to use of their facilities by candidates for political office and to obtain information about entities sponsoring candidate and issue advertisements.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals in this system include: (1) Individuals who are required to file personal information pertaining to their political campaigns, as described above; (2) Individuals who are associated with a television or radio broadcast station licensee, cable operator, DBS provider, or SDARS licensee and are required to submit information under 47 CFR 73.3526, 73.3527, 25.701, 25.702, and 76.1700; and (3) Individuals filing Form 396–B on behalf of broadcast stations and SDARS licensees and individuals who have filed discrimination complaints involving those licensees and are named in attachments to Form 396–B, which is required under 47 CFR 73.2080, and individuals identified in audit responses and EEO Public File Reports; (4) Individuals associated with EEO data provided by cable operators and DBS providers in annual EEO Public File Reports, including the year subject to SIS which is attached to the Form 396–C.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in this system may include an individual's name, home address, home telephone number, personal cell phone number, personal email address(es), personal fax number, and other personal information that stations may include in their public files, and which may be included in the documents, files, and records (including Form 396) that television and radio broadcast stations, cable operators, DBS providers, SDARS licensees, and certain individuals are required to either submit to the FCC or to post in the FCC's Online Public Inspection File.

RECORD SOURCE CATEGORIES:

The sources for the information in the Online Public Inspection File include the documents, files, and records (including Form 396, EEO Public File Reports, and, as applicable, responses to audit letters) that television and radio broadcasters, cable operators, DBS providers, and SDARS licensees are required to make available for public inspection in OPIF, as well as information imported from the FCC Licensing and Management System (LMS).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about individuals in this system of records may routinely be disclosed under the following conditions:

1. Public Access—Under the rules of the Commission, documents in the Online Public Inspection File are available for public inspection on the FCC's website.

2. Law Enforcement and Investigation—When the FCC investigates any violation or potential violation of a civil or criminal law, regulation, policy, executed consent decree, order, or any other type of compulsory obligation and determines that a record in this system, either alone or in conjunction with other information, indicates a violation or potential violation of law, regulation, policy, consent decree, order, or other compulsory obligation, the FCC may disclose pertinent information as it deems necessary to the target of an investigation, as well as with the appropriate Federal, State, local, Tribal, international, or multinational agencies, or a component of such an agency, responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order.

3. Litigation—Records may be disclosed to the Department of Justice (DOJ) when: (a) the FCC or any component thereof; (b) any employee of the FCC in his or her official capacity; (c) any employee of the FCC in his or her individual capacity where the DOJ or the FCC has agreed to represent the employee; or (d) the United States Government is a party to litigation or has an interest in such litigation, and by careful review, the FCC determines that the records are both relevant and necessary to the litigation, and the use of such records by the Department of Justice is for a purpose that is compatible with the purpose for which the FCC collected the records.

4. Adjudication—Records may be disclosed in a proceeding before a court

or adjudicative body, when: (a) the FCC or any component thereof; or (b) any employee of the FCC in his or her official capacity; or (c) any employee of the FCC in his or her individual capacity; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the FCC determines that the records are both relevant and necessary to the litigation, and that the use of such records is for a purpose that is compatible with the purpose for which the agency collected the records.

5. Congressional Inquiries—Information may be provided to a Congressional office in response to an inquiry from that Congressional office made at the written request of the individual to whom the information pertains.

6. Government-wide Program Management and Oversight—Information may be disclosed to DOJ to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act (FOIA); or to the Office of Management and Budget (OMB) to obtain that office's advice regarding obligations under the Privacy Act.

7. Breach Notification—Records may be disclosed to appropriate agencies, entities, and persons when: (a) the Commission suspects or has confirmed that there has been a breach of the system of records; (b) the Commission has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Commission (including its information system, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

8. Assistance to Federal Agencies and Entities Related to Breaches—Records may be disclosed to another Federal agency or Federal entity, when the Commission determines that information from this system 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, program, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

9. Non-Federal Personnel—Records may be disclosed to non-Federal

personnel, including contractors, other vendors (e.g., identity verification services), grantees, and volunteers who have been engaged to assist the FCC in the performance of a service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform their activity.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

This an electronic system of records that resides on the FCC's network or on an FCC vendor's network.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system of records can be retrieved by any category field, e.g., first name or email address.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The information in this system is limited to electronic files, records, and data, which includes: (1) The information that pertains to current filing requirements; and (2) the information that pertains to historical records, which is used for archival purposes. National Archives and Records Administration (NARA) Records Schedule N1-173-86-2, authorizes permanent retention of original documents of information reported pursuant to 47 CFR 73.3526, 73.3527, 25.701, 25.702, and 76.1700 of the Commission's rules. EEO audit records are retained in accordance with NARA records schedule DAA-0173-2020-0003, EEO Audits. In the absence of a more specific NARA-approved records schedule, such as the schedule for EEO audits, any information in this system that is not covered by the agency records control schedule N1-173-86-2 will also be treated as permanent.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to the information, e.g., electronic records, files, and data, in the Online Public Inspection File, which is housed in the FCC computer network databases, is posted on the internet to be publicly accessible. Only the entities that upload information into the files can alter their information. The electronic records, files, and data are stored within FCC or a vendor's accreditation boundaries and maintained in a database housed in the FCC's or vendor's computer network databases. Access to the electronic files is restricted to authorized employees and contractors; and to IT staff, contractors, and vendors who maintain the IT networks and services. Other employees and contractors may be

granted access on a need-to-know basis. The electronic files and records are protected by the FCC and third-party privacy safeguards, a comprehensive and dynamic set of IT safety and security protocols and features that are designed to meet all Federal privacy standards, including those required by the Federal Information Security Modernization Act of 2014 (FISMA), the Office of Management and Budget (OMB), and the National Institute of Standards and Technology (NIST).

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to and/or amendment of records about themselves should follow the Notification Procedures below.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request access to and/or amendment of records about themselves should follow the Notification Procedures below.

NOTIFICATION PROCEDURES:

Individuals wishing to determine whether this system of records contains information about themselves may do so by writing to privacy@fcc.gov. Individuals requesting access must also comply with the FCC's Privacy Act regulations regarding verification of identity to gain access to records as required under 47 CFR part 0, subpart E.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

77 FR 32111 (May 31, 2012).

Federal Communications Commission.

Marlene Dortch,
Secretary.

[FR Doc. 2024-20848 Filed 9-12-24; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-1044; FR ID 244093]

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

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: 3060-1044.

Title: Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338 and WC Docket No. 04-313, Order on Remand.

Form Number: N/A.

Type of Review: Extension of a currently-approved collection.

Respondents: Business or other for-profit entities, Not-for-profit institutions and State, Local or Tribal government.

Number of Respondents and

Reponses: 161 respondents; 161 responses.

Estimated Time per Response: 8 hours.

Frequency of Response:

Recordkeeping requirement, third party disclosure requirement and on occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 251 of the Communications Act of 1934, as amended.

Total Annual Burden: 1,288 hours.

Total Annual Cost: No cost.

Needs and Uses: In the Order on Remand, the Commission imposed unbundling obligations in a more targeted manner where requesting carriers have undertaken their own facilities-based investments and will be using UNEs (unbundled network elements) in conjunction with self-provisioned facilities. The Commission also eliminated the subdelegation of authority to state commissions adopted in the previous order. Prior to the issuance of the Order, the Commission sought comment on issues relating to combinations of UNEs, called "enhanced extended links" (EELs), in order to effectively tailor access to EELs to those carriers seeking to provide significant local usage to end users. In the Order, the Commission adopted three specific service eligibility criteria for access to EELs in accordance with Commission rules. Subsequently, in 2019 and 2020, the Commission granted forbearance from the majority of the then-existing UNE loop and transport requirements, significantly reducing the availability of EELs, though not completely eliminating them.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024-20849 Filed 9-12-24; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meetings

TIME AND DATE: 10 a.m. on September 17, 2024.

PLACE: This Board meeting will be open to public observation only by webcast. Visit <https://www.fdic.gov/news/board-matters/video.html> for a link to the webcast. FDIC Board Members and staff will participate from FDIC Headquarters, 550 17th Street NW, Washington, DC.

Observers requiring auxiliary aids (e.g., sign language interpretation) for this meeting should email DisabilityProgram@fdic.gov to make necessary arrangements.

STATUS: Open to public observation via webcast.

MATTERS TO BE CONSIDERED: The Federal Deposit Insurance Corporation's Board

of Directors will meet to consider the following matters:

Discussion Agenda: Notice of Proposed Rulemaking on Custodial Deposit Accounts with Transaction Features and Prompt Payment of Deposit Insurance to Depositors.

Final Statement of Policy on Bank Merger Transactions.

Summary Agenda: No substantive discussion of the following items is anticipated. The Board will resolve these matters with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Minutes of a Board of Directors' Meeting Previously Distributed.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

CONTACT PERSON FOR MORE INFORMATION:

Direct requests for further information concerning the meeting to Debra A. Decker, Executive Secretary of the Corporation, at 202-898-8748.

(Authority: 5 U.S.C. 552b)

Dated at Washington, DC, on September 10, 2024.

Federal Deposit Insurance Corporation.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2024-20921 Filed 9-11-24; 11:15 am]

BILLING CODE 6714-01-P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association.

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 whether the proposed transaction complies with the standards enumerated in the HOLA (12 U.S.C. 1467a(e)).

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 Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to Applications.Comments@atl.frb.org:

1. *Magnolia Bancorp, Inc., Metairie, Louisiana*; to become a savings and loan holding company by acquiring Mutual Savings and Loan Association, also of Metairie, Louisiana, in connection with the mutual-to-stock conversion of Mutual Savings and Loan Association.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Associate Secretary of the Board.

[FR Doc. 2024–20892 Filed 9–12–24; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

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 paragraph 7 of the Act.

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 September 30, 2024.

A. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to Applications.Comments@atl.frb.org:

1. *Oliver Beaman Triplett, IV, George Beaman Triplett, and Olivia Triplett Harrell, all of Forest, Mississippi*; as a group acting in concert, to retain voting shares of First Forest Corporation, and thereby indirectly retain voting shares of Bank of Forest, both of Forest, Mississippi.

B. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001. Comments can also be sent electronically to KCAApplicationComments@kc.frb.org:

1. *Danielle M. Wheeler, Pine Island, Minnesota; Parker C. Ayres, Olathe, Kansas; and Madisyn L. Matthews, Lincoln, Nebraska*; to become members of the Ayres Family Control Group, a group acting in concert, to acquire voting shares of First of Minden Financial Corporation, and thereby indirectly acquire voting shares of First Bank and Trust Company, both of Minden, Nebraska.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Associate Secretary of the Board.

[FR Doc. 2024–20863 Filed 9–12–24; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

[Docket No. C–4374]

Petition of Coopharma To Reopen and Set Aside or Modify Order

AGENCY: Federal Trade Commission.

ACTION: Announcement of petition; request for comment.

SUMMARY: Cooperativa de Farmacias Puertorriqueñas (“Coopharma” or “the company”) has requested that the Federal Trade Commission (“FTC” or “Commission”) reopen and set aside or modify the Commission's Decision and Order entered on November 6, 2012 (the “Order”), concerning allegations of agreements among Coopharma's member pharmacies to fix prices with insurers and PBMs. The company requests that the FTC either modify or rescind the order given changes in both the applicable law as well as competitive conditions in the relevant marketplace. Publication of the petition from Coopharma is not intended to affect the legal status of the petition or its final disposition.

DATES: Comments must be received on or before October 15, 2024.

ADDRESSES: Interested parties may file comments online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write: “Coopharma Petition to Reopen; Docket No. C–4374” on your comment and file your comment online at www.regulations.gov by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H–144 (Annex P), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Maribeth Petrizzi (202–326–2564), Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(g) of the Federal Trade Commission Act, 15 U.S.C. 46(g), and FTC Rule 2.51, 16 CFR 2.51, notice is hereby given that the above-captioned petition has been filed with the Secretary of the Commission and is being placed on the public record for a period of 30 days. After the period for public comments has expired and no later than one hundred and twenty (120) days after the date of the filing of the request, the Commission shall determine whether to reopen the proceeding and modify or set aside the

Order as requested. In making its determination, the Commission will consider, among other information, all timely and responsive comments submitted in connection with this notice.

The text of petition is provided below. An electronic copy of the filed petition and the exhibits attached to it can be obtained from the FTC website at this web address: https://www.ftc.gov/system/files/ftc_gov/pdf/c4374petitionto_reopenmodify.pdf.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before October 15, 2024. Write "Coopharma Petition to Reopen; Docket No. C-4374" on your comment. Your comment—including your name and your State—will be placed on the public record of this proceeding, including, to the extent practicable, on the www.regulations.gov website.

Because of the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the www.regulations.gov website. If you prefer to file your comment on paper, write "Coopharma Petition to Reopen; Docket No. C-4374" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H-144 (Annex P), Washington, DC 20580. If possible, submit your paper comment to the Commission by overnight service.

Because your comment will be placed on the publicly accessible website at www.regulations.gov, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other State identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential"—as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—

including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on www.regulations.gov—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at <https://www.ftc.gov> to read this document and the news release describing this matter. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before October 15, 2024. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Authority: 15 U.S.C. 46, 5 U.S.C. 552.

April J. Tabor,
Secretary.

Text of Petition of Coopharma To Reopen and Set Aside or Modify the Decision and Order

Concise Statement of the Case

I. Introduction

Cooperativa de Farmacias Puertorriqueñas ("Coopharma") is currently a party to a Decision and Order, dated November 6, 2012 (the "Order"). We write to petition the Commission to reopen and set aside or modify the Order. As set forth below, there has been a significant change in the law. The Puerto Rico Legislature passed Act 228, which was signed into law by the Governor on December 15, 2015. Act 228 directly impacts the

underlying conduct on which the Federal Trade Commission ("the Commission") based its Complaint against, and Order directed to, Coopharma. The Commission has previously recognized that Act 228 is the appropriate vehicle pursuant to which health care provider cooperatives can conduct collective negotiations with third party payors, and there is now State oversight of such negotiations in place by a designated government body that has issued relevant regulations. Accordingly, in light of the change of law, factual and market changes and their impact on the public interest, and the Commission's own rescission of prior guidance as to Pharmacy Benefit Managers ("PBMs"), the Order is unnecessary and inequitable. We, thus hereby, request that the Commission grant this Petition and reopen and set aside the Coopharma Order.

II. Statement of Facts

A. Cooperatives in Puerto Rico and the Legal Framework

It is important to understand the backdrop in which Coopharma operates, which is unique from other pharmacy groups or associations in the United States. Because Puerto Rico is a small economy, the Commonwealth encourages the development of non-profit business cooperatives. The Puerto Rican Cooperative Movement is a "socioeconomic system which pursues the enfranchisement of human beings and their integrated betterment through economic justice and social cooperation. A cooperative is an autonomous association of persons who have united voluntarily to address their common economic, social and cultural needs and aspirations through a jointly-owned and democratically controlled enterprise."¹ Cooperatives are vital to fostering economic opportunity and the availability of services to consumers.² Since the first adoption of legislation governing the cooperative movement in 1946 in Puerto Rico, there have been hundreds of cooperatives created across the Island in almost every sector of the economy.³ And more recently, "[b]etween 2018 and 2022, the number of members in the Puerto Rican cooperative system increased by roughly 12 percent to more than 1.1 million individuals, and total assets, capital, deposits, and loans have risen by an even greater pace during that same period."⁴

Puerto Rico has a rich history of creating small business cooperatives and the government has taken numerous actions to foster their development. In 1994, Puerto Rico enacted Act No. 50

(“Act 50”) known as the “General Cooperative Associations Act,” which the Legislature promulgated “to stimulate activities such as production and services through the cooperative structure and to govern . . . cooperatives.”⁵ Subsequently, in 2004, the Legislature enacted the 2004 General Cooperative Associations Act of Puerto Rico, 5 L.P.R.A. § 4381 *et seq.* (“Act 239”) repealing and replacing Act 50.

Act 239 articulates an unambiguous legislative intent to create and improve the legal framework in support of continued development of Puerto Rican cooperatives: “the Cooperative Movement constitutes an integral piece and a stronghold for the economic and social development of the Island, for which reason, the growth and the strengthening of the cooperative movement in Puerto Rico is highly invested with public interest.”⁶ In its efforts to further the growth of cooperative businesses, Act 239 allows for substantial contracting freedom and provides immunity from business conduct being viewed as restraints of trade.⁷

Puerto Rican law also provides a comprehensive framework for the regulation and oversight of cooperatives in Puerto Rico. Act 239, as amended by Act 247,⁸ provides the Corporación para la Supervisión y Seguro de Cooperativas de Puerto Rico (“COSSEC”),⁹ a regulatory body, with the authority to oversee, supervise and otherwise regulate the creation and operations of cooperatives. COSSEC is the main governmental entity created by the Legislature to regulate Puerto Rican cooperatives. COSSEC’s mission is to ensure “the integrity and financial strength of the Cooperative Movement of Puerto Rico, through monitoring and oversight . . . of all Cooperatives”¹⁰ and to “promote the safety, soundness and global competitiveness addressed to the socio-economic development of [Puerto Rico], through . . . ensuring balance and fairness . . . [in] the development of cooperation.”¹¹

B. Coopharma Background

Coopharma was formed in 2002 as a cooperative regulated under Act 239.¹² Coopharma was created for the purpose of fostering the growth of independent pharmacies.¹³ It enables small independent pharmacies to compete more effectively by achieving economies of scale and scope that the large chain pharmacies enjoy.¹⁴ Coopharma’s collaborative efforts provide for very efficient group purchasing, joint advertising, negotiation for goods and services, and provision of education services to members in order to improve

pharmacy services to patients.¹⁵ Coopharma’s membership consists of approximately 500 independent pharmacies/independent pharmacy owners who typically employ approximately 5–10 individuals in their stores.¹⁶ Coopharma members are dispersed throughout 75 different towns across Puerto Rico. In most of these towns, large or chain pharmacies are not present, thus, the independent, local pharmacy is the only alternative for patients to be able to obtain their prescription medication and receive proper and timely counsel as to their medications.¹⁷

Coopharma is a cooperative in every sense of the word. It is a non-profit organization whose membership is entirely composed of community pharmacy owners.¹⁸ Unlike private entities in other Commission enforcement actions, Coopharma’s concern is for the collective good, providing pharmacy access and lowering prices to patients.¹⁹ Coopharma was formed to address systemic problems in the Puerto Rican health care system, including expanding ready access to pharmaceutical care to thousands of individual across the Island, through collaboration and collective commitment, and pronounces this stated goal publically: “This Cooperative is organized with the following aims and purposes . . . Promote, use and maintain positive attitudes conducive to resolving together adverse situations that may arise in the purchase-sale of medicines, products, articles and services in the market.”²⁰ Coopharma’s activities have streamlined pharmacy integration services and provided collective vendor purchasing opportunities, thereby lowering operating and purchasing costs, which translates to more choice, more services and lower prices for consumers.²¹

C. Coopharma’s Role in Helping To Alleviate Oppressive Conduct by Pharmacy Benefit Managers

The Consent Order has limited the ability of many independent pharmacies across the Island to obtain favorable contracting terms, leading to many pharmacies being forced out of business.²² There are only a few pharmacy providers left.²³ As the Commission has recently recognized, PBMs often employ an arsenal of unfair tactics toward independent pharmacies.²⁴ *See also*, U.S. Federal Trade Commission, Pharmacy Benefit Managers: The Powerful Middlemen Inflating Drug Costs and Squeezing Main Street Pharmacies, Interim Staff Report at 1 (July 2024) (the “Interim

FTC Report”) (“PBMs also exert substantial influence over independent pharmacies, who struggle to navigate contractual terms imposed by PBMs that they find confusing, unfair, arbitrary, and harmful to their businesses.”). PBMs are much larger, more sophisticated business entities, which can overpower much smaller, independent pharmacies.²⁵ PBMs unfairly diminish reimbursement rates, reimburse below agreed upon rates, steer patients to affiliated pharmacies or mail order pharmacies located outside of Puerto Rico, marginalize the impact of pharmacy services, and impose onerous terms outside the context of negotiated contracts.²⁶ The Puerto Rican pharmacists who comprise Coopharma’s membership are working pharmacists and not sophisticated businessmen/women.²⁷ Often their knowledge of English is limited or rudimentary.²⁸ PBM contracts are long—often 50–60 pages (with accompanying provider manuals continuing over 100 page of additional requirements for pharmacies to adhere to for participation in the PBM’s network)—and are presented on a take it or leave it basis (as classic contracts of adhesion).²⁹ PBMs also often impose amendments on the same unilateral basis.³⁰ *See also*, Interim FTC Report at 3–4 (“Independent pharmacies generally lack the leverage to negotiate terms and rates when enrolling in PBMs’ pharmacy networks, and subsequently may face effectively unilateral changes in contract terms without meaningful choice and alternatives. The proliferation of complex and opaque contract terms and adjustments has increased uncertainty in pharmacy reimbursements, which can make it difficult for smaller pharmacies to manage basic business operations. For instance, the rates in PBM contracts with independent pharmacies often do not clearly reflect the amount the pharmacy will ultimately be paid.”)

The majority of Puerto Rican pharmacies, including Coopharma members, are set in rural locations with relatively unsophisticated sole proprietors who lack the knowledge and time to decipher these complex agreements.³¹ This makes Coopharma members, as independent pharmacies primarily located in rural areas of Puerto Rico, particularly vulnerable to PBMs’ deceptive conduct and attempts to drive reimbursement rates below competitive levels.³²

Unfortunately, the Order has limited the ability of many of Coopharma’s independent pharmacy members across the Island to obtain just contracting terms, leading to many pharmacies

being forced out of business and the artificial inflation of prices for consumers.³³ Between 2016 and 2022, the approximate number of pharmacies in Puerto Rico decreased from 1,250 to approximately 900, a decrease of 28%.³⁴ As independent pharmacies located in rural areas make up the majority of Coopharma members, this should be quite alarming to the Commission, which recognizes that “[c]losures of local pharmacies affect not only small business owners and their employees, but also their patients. In some rural and medically underserved areas, local community pharmacies are the main healthcare option for Americans, who depend on them to get a flu shot, an EpiPen, or other lifesaving medicines.” Interim FTC Report at 1. Setting aside the Order would allow pro-competitive activity by Coopharma in the form of negotiations with PBMs overseen by COSSEC, pursuant to regulations that that body issues.³⁵

Moreover, the Commission is very familiar with the tactics that PBMs use to undermine the competitiveness of independent pharmacies. The Commission’s on-going 6(b) study of PBMs explicitly recognizes that:

The largest PBMs are now vertically integrated with the largest health insurance companies and wholly owned mail order and specialty pharmacies. Those who own competing pharmacies have complained that PBMs impose unfair fees and clawbacks, impose byzantine contracts that often reimburse pharmacies less than their costs of acquisition, and steer patients to PBM-owned pharmacies. PBMs have also been accused of harming patients by extracting rebates and fees in exchange for refusing to cover generic and biosimilar drug products, ultimately raising the price that consumers pay for medicines. Doctors have also complained that PBMs impose unnecessary and burdensome prior authorization and other administrative requirements.³⁶

The Complaint in this matter was based on assertions that the Commission believed to be true at the time that, because Coopharma described itself as the “biggest chain of pharmacies in all of Puerto Rico,” it therefore had significant market power to “force Humana to maintain rates.”³⁷ These market forces, whether true at the time of the Complaint or not, have since shifted with the significant vertical consolidation of the PBM industry. PBM’s consolidation and increase in market power has been very publicly noted by the Commission and is described herein.

A 2023 health market study commissioned by the Office of the Insurance Commissioner of Puerto Rico showed that the Herfindahl–Hirschman index (HHI)³⁸ for private insurance

companies was deemed highly concentrated in Puerto Rico and ranged from 6,207 to 9,201 based on the different types of companies in that market.³⁹ It is important to note that over ninety percent (approximately 94.9%)⁴⁰ of the population of Puerto Rico is insured. The Island also has the highest Medicare Advantage plan penetration of U.S. and its jurisdictions, with 60% of Puerto Rican Medicare beneficiaries enrolled in Medicare Advantage plans.⁴¹

Since October 2022, only one PBM, Abarca Health (“Abarca”), provides services to the majority of this vast insured population in the Island under the Medicare health insurance plan called Plan Vital, which is managed by the Puerto Rico Health Insurance Administration (“PRHIA”), commonly referred to as Administración de Seguros de Salud (“ASES”) in Spanish).^{42,43} This means that Abarca is the middleman between pharmacies, insurers, and customers/beneficiaries for the entire Puerto Rican Medicaid market, which is comprised of over 1.6 million of beneficiaries, or about 50% of the insured population in the Island.⁴⁴

Through Plan Vital, the same PBM provides management services for the second largest Medicare Advantage Organization (“MAO”).⁴⁵ Separately, Abarca has contracted with the largest private health insurance company^{46,47} and manages the commercial plans for a third health insurer to the Island.⁴⁸ The Office of Monopolistic Affairs of the Puerto Rico Department of Justice is currently investigating Abarca for deceptive practices in its contract negotiations with independent pharmacies in Puerto Rico.⁴⁹

D. Consent Order

By way of brief background, in August 2012, the Commission, via a Complaint against Coopharma, alleged a violation of section 5 of the Federal Trade Commission Act, as amended 15 U.S.C. 45. More specifically, the Commission alleged that Coopharma acted to fix prices in negotiations with certain third-party payors, including collectively negotiating contracts and contracting jointly. In order to save the time, expense and burden of an Adjudicative Proceeding, Coopharma elected to enter into the Order.⁵⁰

The Order, in pertinent part, requires Coopharma to refrain from engaging in the following activities:

A. Entering into, adhering to, participating in, maintaining, organizing, implementing, enforcing, or otherwise facilitating any combination, conspiracy, agreement, or understanding between or among any

Pharmacies with respect to the provision of Pharmacy services:

1. To negotiate on behalf of any Pharmacy with any Payer;

2. To refuse to deal or threaten to refuse to deal with any Payer, in furtherance of any conduct or agreement that is prohibited by any other provision of Paragraph II of this Order;

3. Regarding any term, condition, or requirement upon which any Pharmacy deals, or is willing to deal, with any Payer, including, but not limited to, price terms; or

4. Not to deal individually with any Payer, or not to deal with any Payer other than through Respondent;

B. Exchanging or facilitating in any manner the exchange or transfer of information among Pharmacies concerning any Pharmacy’s willingness to deal with a Payer, or the terms or conditions, including price terms, on which the Pharmacy is willing to deal with a Payer;

C. Attempting to engage in any action prohibited by Paragraphs II.A through II.B above; and

D. Encouraging, suggesting, advising, pressuring, inducing, or attempting to induce any Person to engage in any action that would be prohibited by Paragraphs II.A through II.C above.⁵¹

The provisions of this Order prevent the above-listed actions for twenty (20) years, terminating on November 6, 2032.⁵²

III. Overview

Relief Requested

For the reasons described below, Coopharma requests the following relief:

1. That the Order be set aside in its entirety;

2. Or, in the alternative, that the Order be amended to permit Coopharma to collectively negotiate contracts with PBMs and other third party payors consistent with Act 228.

If the preceding relief is not granted, Coopharma requests in the alternative such relief as the Commission may deem fitting and just.

Commission Standard of Review

According to the FTC Act section 5(b), 15 U.S.C. 45(b), the Commission may at any time “reopen and alter, modify, or set aside, in whole or in part any report or order made or issued by it under this section, whenever in the opinion of the Commission conditions of fact or of law have so changed as to require such action or if the public interest shall so require.” *Id.* In other words, under the FTC Act, the standard is that there must be a “significant change in law or fact” that makes the order “unnecessary, inequitable, or harmful to the competition.”⁵³ Upon a petition or by the Commission’s own action, an order can be reopened and modified or set aside for: (1) changes in fact that matter

to competition; (2) changes in law; and (3) the public interest.⁵⁴ Pursuant to FTC Rule 2.51(b), the necessary showing must include affidavits or declarations setting forth admissible facts.⁵⁵

To show that public interest requires a change to an existing Order, “the burden is on the petitioner to make a ‘satisfactory showing’ of a prima facie case that modification is in the public interest.”⁵⁶ Like modifications based on changed conditions, “this showing must be supported by evidence that is credible and reliable.”⁵⁷

Argument

I. The Consent Order Should Be Set Aside

A. Change in the Law Warrants Reopening and Setting Aside the Order

1. Act 228—State Action Doctrine

In 2015, three (3) years after the entry of the Order, the Puerto Rico Legislature passed Act 228, which became law on December 15, 2015, and is codified at 26 P.R. Laws §§ 3101–3108 (“Act 228”). The Legislature’s desire to pass Act 228 was heightened by its recognition that it was becoming increasingly more difficult for Health Care Provider Cooperatives across Puerto Rico, such as Coopharma, to obtain fair contracting terms with, often much larger, and more sophisticated payors.⁵⁸ Prior to the enactment of Act 228, certain activity conducted by Health Care Provider Cooperatives, such as Coopharma, was interpreted to fall under the jurisdiction of the Puerto Rico Insurance Code (“Act 203”).⁵⁹ Act 203 prohibits groups of health care competitors representing greater than 20% of said competitors across Puerto Rico from jointly negotiating for health care service contracts.⁶⁰ It is important to stress that Coopharma believed that it was acting under then-Article 20.5 of Act 239 when it engaged in conduct that allegedly violated section 5 of the FTC Act and which activity is subject to the Order.⁶¹ Act 228 was enacted to clarify this and other issues of misinterpretation of existing laws regulating both health care providers and Health Service Provider Cooperatives and to set the record straight that the Puerto Rican Legislature intended for Act 239 to control negotiations by Health Service Provider Cooperatives.⁶²

According to the Preamble of Act 228, Health Service Provider Cooperatives, which include cooperatives of pharmacies, such as Coopharma, were never meant to be “considered as an organized instrument to reduce competition of any kind, but rather to carry out lawful activities for the benefit

of customers and other entities in the market.”⁶³ Thus, Act 228 explicitly called for such cooperatives to no longer be interpreted to be “included under the term of person in [Law 203], so [Health Service Provider Cooperatives] are specifically excluded from” Act 203.⁶⁴

Act 228 specifically recognized the need to amend Act 239 to implement additional language to “fully comply with the Doctrine of State Immunity” (also referred to as the State Action Doctrine), established in *Parker v. Brown*, 317 US 341 (1943) and its progeny.⁶⁵ Accordingly, Act 228 creates a specific State Action Doctrine framework that: (1) “allows health services providers to bargain collectively with [third-party payors]” by expressly articulating the antitrust exemption for Health Service Provider Cooperatives to collectively negotiate and (2) provides active supervision by Puerto Rico’s government agency in charge of cooperatives, COSSEC.⁶⁶

2. The COSSEC Letter

As explained above, Act 239, as amended by Act 247, provides the Corporación para la Supervisión y Seguro de Cooperativas de Puerto Rico (“COSSEC”), a regulatory body, with the authority to oversee, supervise and otherwise regulate the creation and operations of cooperatives.⁶⁷ COSSEC is the main governmental entity created by the Legislature to regulate Puerto Rican cooperatives.⁶⁸ COSSEC’s mission is to ensure “the integrity and financial strength of the Cooperative Movement of Puerto Rico, through monitoring and oversight . . . of all Cooperatives” and to “promote the safety, soundness and global competitiveness addressed to the socio-economic development of [Puerto Rico], through . . . ensuring balance and fairness . . . [in] the development of cooperation.”⁶⁹

In support of its role in setting regulations and engaging in oversight of Coopharma and all other cooperatives in Puerto Rico, in particular after the change in law, COSSEC Executive President, Mabel Jiménez Miranda, signed an affidavit, dated April 4, 2024, which explains the role of COSSEC (referred to internally as the Corporation).⁷⁰ It states in pertinent part:

For the purpose of complying with the public policy of the Government of Puerto Rico, striking a balance in the negotiations between the HPCs, TAs and HSOs, and improving access and the quality of health care services to the patients of the Government of Puerto Rico, as well as exercising the oversight and supervision powers granted by Act No. 239, on February 5, 2020, the Board of Directors of THE

CORPORATION approved the Regulation for the Supervision and Oversight of Collective Negotiations between Health Care Provider Cooperatives (HPCs) Third-party Administrators (TAs) and Health Care Services Organizations (HSOs), Regulation No. 9161, in order to establish the supervision and oversight procedures of THE CORPORATION on the activities and actions of HPCs during any negotiation process with HSOs and TAs.⁷¹

As shown by this affidavit, COSSEC’s oversight over Coopharma is established and it has issued Regulation No. 9161 for the governance of the cooperative’s actions in negotiating with PBMs. This change in law is a significant deviation from the legal scheme under which the Order was issued, and warrants reopening and review of the Order.

3. Regulation No. 9161 Demonstrates That There Is a Regulatory Scheme in Place for COSSEC’s Active Oversight of Coopharma

The Order was based in part on the Commission’s concerns that there was a lack of oversight such that the State Action Doctrine could not apply.⁷² The Order states that “[u]nder Law⁷³ 203, Puerto Rico has not clearly articulated a policy to displace competition with respect to Coopharma’s challenged conduct. Moreover, Puerto Rico has not actively supervised that conduct under the state action doctrine.”⁷⁴

The “Purpose and Scope” of Regulation 9161 now in place provides that:

In the exercise of its functions, COSSEC will ensure that, in and during the negotiation process, a balance permeates the negotiations between the parties, in such a way as to improve access and quality of health services to patients in the Government of Puerto Rico. Specifically, that the [Cooperatives of Health Service Providers] fully comply with all the requirements of the cooperative order and that promote the public policy of the Government of Puerto Rico for the benefit of the orderly development of cooperativism as a business model.⁷⁵

Moreover, the regulation provides for “controls and procedures to avoid” and provides COSSEC with the authority to “investigate and prosecute illicit practices under collective bargaining authorized by the Subchapter 20A of Act No. 239–2004, as amended.”⁷⁶ This language demonstrates the ways in which the promulgation of the regulation has shifted the analysis of the Commission when it initially brought the Complaint against Coopharma, and more recently, the analysis in which the Commission engaged in regard to a previous matter, In the Matter of Cooperativa de Médicos Oftalmólogos de Puerto Rico, File No. 141–014. In that

“Analysis of Agreement Containing Consent Order to Aid Public Comment,” the Commission acknowledged the passage of Act 228 in Puerto Rico, but stated that “Puerto Rico has neither issued any regulations nor do we have any record to evaluate how Puerto Rico will supervise negotiations. Therefore, the Commission is unable to assess to whether Act 228 complies with state action requirements.”⁷⁷

Here, it is clear from the language of the regulation that, not only is there a specific scheme and procedures in place for COSSEC to actively monitor and be engaged in the process of collective negotiations between Health Care Provider Cooperatives and third party payors, but also that COSSEC is actively overseeing such negotiations—namely, the type of negotiations in which Coopharma would engage with PBMs and third party payors. This comports with the standard set forth by the Supreme Court in *Federal Trade Commission v. Ticor Title Insurance Company*, to meet the active supervision prong (and, indeed, both prongs) of the Midcal test to qualify for State immunity from the Antitrust Act under the State Action Doctrine.⁷⁸ There is sufficient, active oversight because “a detailed structure governs the challenged anticompetitive conduct here.”⁷⁹

That detailed structure of COSSEC’s active oversight of all negotiations by healthcare cooperatives is clear from the language of Regulation No. 9161. Under the regulation, healthcare cooperatives must follow strict procedures and notify COSSEC of their intention to negotiate. See Reg. No. 9161 § 8.04. There are certain criteria for negotiations, including specific terms and conditions which may be negotiated and those which may not. *Id.* § 8.01. Just as in *Morgan v. Div. of Liquor Control, Dep’t of Bus. Regul., State of Conn. and Ports Auth. of Puerto Rico v. Compania Panamena de Aviacion (Copa), S.A.*, see notes 77 and 78, *supra*, this mandatory fee is set between \$3000.00 and \$10,000.00 and funds the State supervisory process, thereby promoting State public policy goals. *Id.* § 8.02.

In addition to laying out this formula for fees, which alone could satisfy the active supervision prong of the Midcal test, the regulation creates a seven-member Supervisory Committee, which is comprised of representatives from the Department of Health, the Patient Ombudsman, health insurance companies, third-party administrators, cooperatives, an economist who is a certified actuary, and a COSSEC representative. *Id.* § 6.03. The committee is “activated” as soon as the healthcare

cooperative notifies it that it intends to collectively negotiate. *Id.* The Supervisory Committee then oversees every single negotiation by being present when any negotiation is held and requiring the negotiating parties to write a detailed initial report, progress reports, and a final report. *Id.* § 8.07. The Supervisory Committee must approve each report at all stages before the next meeting to negotiate may be held. *Id.* § 8.08.

The regulation also outlines how the Supervisory Committee must evaluate the reports and how it should assess the final report to accept, deny, or request amendments to it. *Id.* § 8.08–8.09. The parties may be referred to COSSEC or the Department of Justice’s Office of Monopolistic Affairs if they violate the regulation or engage in an unreasonable restriction on trade, to be prosecuted under Puerto Rico’s Antitrust law, Act No. 77–1964. *Id.* § 6.01, 9.01–9.02. The regulation outlines the sanctions and penalties that a cooperative which is prosecuted could suffer for violations of the regulation. *Id.* § 9.04.

It is clear from the foregoing that the change in the law has altered the analysis of Coopharma’s collective negotiation activity in a substantial and legally significant way. Any concerns that the Commission had about a lack of oversight are clearly addressed by Act 228 and Regulation No. 9161. Moreover, absent the relief requested, Coopharma will be left in the proverbial “competitive dust” of other similar entities across Puerto Rico. Those entities unaffiliated with Coopharma and, therefore, unbound by the Commission Order, can take advantage of the ability to collectively negotiate contracts with the same payors that Coopharma cannot. This inequity should now be rectified by further Commission action to set aside the Order.

4. Change to Commission Policy—Withdrawal of Previous Guidance on PBMs

In addition to the change in law described above, the market dynamics concerning PBMs have shifted significantly since twelve (12) years ago when the Order was imposed. In 2012, there was a host of guidance, reports, studies and letters authored by the Commission in support of the supposed “procompetitive” impact of PBMs. The policy of such support for PBMs has since been overturned.⁸⁰ In her statement on the matter, Chair Khan said the following:

The FTC is now pursuing an inquiry into the PBM industry, one that is designed to capture and detail the current realities on the

ground in this complex marketplace. While we finalize our market study, we urge the public not to continue to cite or rely on these outdated comments, reports, and studies. It is important that the FTC’s work reflect current market dynamics. I am pleased that the FTC is alerting the public to the risks of relying on earlier work based on outdated market conditions and assumptions.⁸¹

This inquiry into the PBM industry by the Commission is in conjunction with increased State and Federal government investigation into PBMs, spurred by independent reporting on the fact that there has been a substantial change in the healthcare/pharmaceutical and health insurance marketplace in the last 10 years.⁸² Such inquiries into the role of PBMs focus on PBM price-fixing schemes and their domineering position over independent pharmacies, which allow PBMs to force independent pharmacies into take-it-or-leave-it contracts designed to depress the competitive ability of independent pharmacies in comparison to PBM-affiliated pharmacies.^{83 84}

B. The Order Should Be Modified or Set Aside in the Public Interest

The “public interest” presumptively favors competition, and restraints on competition harm the public interest by depriving consumers of the benefits of competition including for example, lower prices, better products and increased innovation. A Commission order that restrains competition will be in the public interest only if, and to the extent that, the benefits of preventing or deterring relevant anticompetitive activity outweigh the losses to competition and consumers cause by the restraint.⁸⁵ The Commission will set aside orders which “unnecessarily inhibit[] respondent[s] from engaging in conduct which, in and of itself . . . may, in certain circumstances, be procompetitive.”⁸⁶ For example, in *Nestlé Holdings*, the Commission granted a petition to modify an order, explaining:

holding [the petitioner] to the [strict terms of the order, as issued], with the resulting disruption to its operations and ability to compete, would likely diminish [its] competitive effectiveness. It is therefore in the public interest to make the change to enable [the petitioner] to continue to compete in the market without disruption of its operations.⁸⁷

And in *Readers’ Digest Association*, the Commission eliminated an order provision when “the costs that the [provision] imposes on respondent appear to outweigh any consumer benefits [that it] may confer.”⁸⁸ Similar logic compels modifying or setting aside the Order in this matter.

1. Puerto Rico's Historical/Ubiquitous Use of Cooperatives Renders the Setting Aside or Modifying of the Order a Matter of Public Interest

The public interest dictates that the Order be reopened and set aside. The Preamble to Act 228 states that its purpose is to authorize Health Service Provider Cooperatives to negotiate collectively with [third-party payors] to prevent the current system of imbalanced negotiations, resulting in contracts of adhesion. The Legislature stated that this was intended to "improve access and quality of health services to patients in the Commonwealth of Puerto Rico."⁸⁹

Puerto Rico suffers from poor health care infrastructure and a rapidly declining health care workforce, rendering the delivery of health care in Puerto Rico severely compromised.⁹⁰ Between 2014 and 2015, approximately 900 physicians left the Island, reducing the number of critical care providers by nearly 36%.⁹¹ And, as a result, Puerto Ricans have fewer physicians than ever before and long wait-times when access health care.⁹² In fact, the Health Resources and Services Administration has deemed 72 of Puerto Rico's 78 municipalities as medically underserved areas.⁹³ Clearly, the ability to negotiate fair contracts "to improve access and quality of health services to" Puerto Rico patients is vital to the Commonwealth of Puerto Rico. The current Order prevents Coopharma from negotiating lower costs for consumers with PBMs as well being able to provide improved quality pharmacy services desperately needed by the residents of Puerto Rico, which can only be gained through equitable reimbursement and fair treatment under contracts with PBMs.

2. The Existence of Independent Pharmacies Is Threatened as PBMs Have Become More Dominant in the Last 10 Years

Pharmacy advocacy groups such as the National Community Pharmacists Association ("NCPA") are sounding the alarm about the changing pharmaceutical market and the market power associated with independent pharmacists.⁹⁴ NCPA conducted a survey of 10,000 independent pharmacy owners and managers over 10 days in February 2024 and received 815 responses.⁹⁵ The conclusion NCPA has drawn from this survey, which was focused on negotiations with PBMs over rates for Medicare Part D, is that "[n]early a third of independent pharmacy owners may close their stores this year under pressure from plunging

prescription reimbursements by big insurance plans and their pharmacy benefit managers."⁹⁶ The CEO of the organization, B. Douglas Hoey, pharmacist, MBA, made clear that "[t]his is an emergency."⁹⁷ Moreover, his conclusion was that "if Congress fails to act again, thousands of local pharmacies could be closed within months and millions of patients could be stranded without a pharmacy."⁹⁸

In locations where there are very few providers, such as Puerto Rico, the impact of the profit margin growth for PBMs and significantly smaller profits for pharmacies is a dire issue indeed. Although Puerto Rico has a unique infrastructure, as described above, it is also akin to a rural location in the mainland United States. As early as 2016, the then-President and Executive Director of the Puerto Rico Community Pharmacies Association, Idalia Bonilla and Marylis Gavillán Cruz, respectively, drafted a letter to Senator Orrin Hatch, Member of the United States Senate's Economic Development Task Force and Jose B. Carrión III, President of Puerto Rico's Financial Oversight and Management Board, to express interest in providing assistance to the Task Force in identifying "ways and means of providing Puerto Rico equitable access to federal health care programs."⁹⁹ Bonilla and Cruz stated that community pharmacies, which are "characterized by mainly and efficiently serving the beneficiaries of the public health programs," have seen their ability to continue operations "greatly affected" by, among other causes, "the unjust practices" of PBMs.¹⁰⁰ They articulated that "PBMs' unjust practices have created local and global concerns, as they directly and significantly increase the cost of medications."¹⁰¹

An analysis by the Rural Policy Research Institute ("RUPRI") Center for Rural Health Policy analysis of data collected by the National Council for Prescription Drug Programs on pharmacies in the United States from 2003 to 2021 supports the conclusion that PBMs have been harmful to independent, and particularly rural, pharmacies.¹⁰² RUPRI concluded that "[b]etween 2003 and 2021, the number of independently owned retail pharmacies declined in noncore areas by 16.1 percent, and in micropolitan areas by 9.1 percent, while the number in metropolitan areas increased by 28.2 percent during the same period."¹⁰³

Moreover, government entities at both the State and Federal levels, including the Commission, the Centers for Medicare and Medicaid, and Congress, have recognized the shift in market status/market share for PBMs and the

oversized impact and bargaining power they wield, as well as recognizing the increases in consumer pricing resulting from it.¹⁰⁴ Absent the relief requested herein, the inability of Coopharma to negotiate for fair and reasonable contract terms on behalf of its small, independent pharmacy members will lead to the very real possibility of more independent pharmacy closures. This will further diminish the ability of Coopharma's customers to readily access needed health care services.

3. The Commission Has Previously Recognized That Absent the Ability To Negotiate, an Entity Without Market Power Cannot Compete

The Commission's own precedent supports taking action to reopen and set aside the Order in this case. In *In Re Toys 'R Us*, the Commission amended an Order based on recognizing a shift in market circumstances and bargaining power for the toy seller.¹⁰⁵ In pertinent part, the Commission found that:

TRU had market power as a buyer and distributor of toys. TRU has demonstrated that it no longer has market power as a buyer of toys. Walmart and Target have overtaken TRU in competitive strength and market share. TRU has submitted data showing that TRU's loss of competitive position is consistent across product categories.¹⁰⁶

Moreover, it changed the record keeping requirements based on a recognition of the "changes in market conditions."¹⁰⁷ As with that matter, the prohibited conduct here "unnecessarily inhibits respondent from engaging in conduct which, in and of itself, is innocuous and may, in certain circumstances, be procompetitive."¹⁰⁸

Further, the Commission has granted petitions to set aside or modify orders where such orders impose a competitive disadvantages on firms that impairs their ability to offer full, vigorous competition. For example, in the matter regarding *Pendleton Woolen Mills, Inc.*, the Commission reopened and modified an order that put the respondent at a "at a substantial disadvantage" with respect to its competitors who were not subject to the prohibitions on otherwise lawful conduct that was proscribed by the order.¹⁰⁹ And, in the *Onkyo U.S.A. Corp.* matter, the Commission modified an order when, as a result of the objectionable provisions, the respondent was unable to operate its business as effectively as its competitors and was "thus competitively disadvantaged in a manner that was not contemplated when the order was issued by the Commission."¹¹⁰

Additionally, the Commission has modified and set aside orders where the order imposes restrictions to that party

that are not imposed on other members of the industry, creating a competitive disadvantage. For example, in the *Nat'l Fire Hose Corp.* matter, the Commission recognized that “an order should be modified or vacated if changed circumstances of fact or law place a party to the order under restrictions not applicable to other members of the industry. Fairness and the public interest require that the Commission apply its policies consistently and uniformly among all the members of the industry.”¹¹¹ Where every other Health Care Provider Cooperative in Puerto Rico can take advantage of collective negotiations with third party payors pursuant to Act 228, including *Cooperativa de Médicos Oftalmólogos de Puerto Rico*, which is still under a separate Commission Order, Coopharma’s inability to do so is at a competitive disadvantage, both in terms of its position with other Health Care Provider Cooperatives and with its bargaining position with third party payors. This is directly in line with Commission precedent for reopening and setting aside an Order. Third party payors are currently able to take advantage of Coopharma and its members through low reimbursement rates and other conduct that Coopharma, at the moment, is unable to renegotiate to establish fairer terms for its independent pharmacy members. If allowed, these negotiations would, in turn, translate to benefits to consumers. Thus, the Order should be set aside.

Conclusion

The legal, factual, and market changes described herein are sufficient to meet the Commission’s standard to reopen and modify or set aside the Order. First, as stated above, the significant change in law with the enactment of Act 228, in and of itself warrants a modification of the Order. While the Commission recognized, at the time of the Complaint, the applicability of the State Action Doctrine, which Coopharma whole-heartedly believed applied to its conduct given the regulatory scheme of Act 239 and the oversight of cooperative activities by COSSEC,¹¹² the Commission ultimately concluded that Coopharma’s activities did not qualify for State Action immunity.¹¹³ However, the Commission cannot now deny the clear establishment of State Action immunity imposed by Act 228, which allows Health Care Provider Cooperatives the benefit of engaging in collective negotiations with third-party payors, coupled with a specific regulatory scheme and COSSEC’s direct, active oversight over the exact conduct which underlies the Order. The State

Action Doctrine provides that with this State oversight and the regulations that are currently in place, Health Care Provider Cooperative negotiations in Puerto Rico are State-sanctioned and, therefore, shielded from the Commission’s scrutiny that they are anticompetitive.

Second, the public interest also dictates that the Commission reopen and set aside the Order as a result of the changes in the pharmaceutical market and PBMs’ increased market share, which has led to multiple government investigations. Federal and State government entities are currently investigating PBMs’ vertical integration and market share consolidation as well as their heavy handed policies and contract terms, which have already forced many independent pharmacies out of business entirely.

In the foregoing paragraphs, Coopharma has provided verified information, which shows PBMs’ and individual health insurance companies’ unprecedented and outsized accumulation and concentration of market power. This market imbalance has placed Coopharma’s members, primarily small, rural businesses, in a unique and precarious position given that the Order’s restrictions on negotiations are still in place.

Without the ability to negotiate with PBMs due to the Order, Coopharma also stands at a direct competitive disadvantage to all other entities within Puerto Rico that can, and have, taken advantage of Act 228 to “improve access and quality of health services to patients in the Commonwealth of Puerto Rico. The ability of Puerto Rican independent pharmacies to continue to provide life-sustaining care depends on their ability to collectively negotiate as a cooperative—negotiations which are now regulated and overseen by a State government agency.

For the foregoing reasons, the Commission should reopen and set aside the Consent Order and enter an order in the form attached dismissing the Complaint with prejudice. In the alternative, to the extent the Commission determines that only modification is required, it should amend the order to permit Coopharma to engage in negotiations on behalf of its members with third party payors consistent with Act 228.

Dated: August 7, 2024
Respectfully submitted,

s/Bradley A. Wasser

Bradley A. Wasser,
Eliase R. Herzl-Betz,
Duane Morris LLP,
30 S. 17th Street,

Philadelphia, PA 19103.

Counsel for Petitioner.

Endnotes

¹ Statement of Motives, General Cooperative Associations Act of 2004, Act No. 239 at 2 (Sept. 1, 2004) (“Act 239”). “The members of such cooperatives exercise the decision-making power in equal standing, regardless of the amount of capital they have contributed.” *Id.* at 2.

² Affidavit of Heriberto Ortiz (“Ortiz Affidavit”), ¶ 5.

³ *Id.* ¶ 6.

⁴ NCUA–COSSEC Partnership Will Strengthen Supervision of Cooperativas, <https://ncua.gov/newsroom/pressrelease/2023/ncua-cossec-partnership-will-strengthen-supervision-cooperativas> (Apr. 2023).

⁵ Statement of Motives, Act No. 239 at 3 (Sept. 1, 2004).

⁶ *Id.*

⁷ 5 L.P.R.A. § 4516.

⁸ COSSEC replaced the functions of the Inspector of Cooperatives. *See* Puerto Rico Pharmacy Law, Act No. 247- 2004, as amended.

⁹ For example, Act 239 requires regulation over the contents of cooperatives’ articles of incorporation and bylaw (§§ 4403 and 4404); the CDA must forward bylaws and articles of cooperatives to the Inspector of Cooperatives for review and approval (§§ 4415 and 4422); the Inspector of Cooperatives retains the right to reject creation of a cooperative (§ 4422); CDA has the right to dissolve cooperatives (§ 4555); the Inspector of Cooperatives is required to ensure that all cooperatives comply with the provisions of Act 239 (§ 4646); and, the Inspector must annually audit the operations of all cooperatives (§ 4647). Moreover, Act 239 allows for the direct transfer of goods and services between the government and Cooperatives, without a bidding process required for other third parties (§ 4528); and cooperatives are not required to pay rent for use of facilities in government offices or public corporations (§ 4528). *See* generally §§ 4645–4662, Office of the Inspector of Cooperatives.

¹⁰ *See* “About Us” section of COSSEC’s website, http://www.cossec.com/cossec/detail_content.asp?cn_id=802 (as translated to English).

¹¹ *Id.*

¹² Ortiz Affidavit ¶ 7.

¹³ *Id.* ¶ 8.

¹⁴ *Id.*

¹⁵ *Id.* ¶ 9.

¹⁶ *Id.* ¶ 10.

¹⁷ Ortiz Affidavit ¶ 10.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* ¶ 12 (citing and appending Ex. 1, Coopharma Clauses of Incorporation, Art. II, § 3).

²¹ *Id.* ¶ 13.

²² Ortiz Affidavit ¶ 16.

²³ *Id.* ¶ 17.

²⁴ *Id.* ¶ 18.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Ortiz Affidavit ¶ 19.

²⁸ *Id.*

²⁹ *Id.* (citing *Rumbin v. Utica Mutual Ins. Co.*, 254 Conn. 259, 264 n. 6, 757 A.2d 526

(2000) (“Standardized contracts of insurance continue to be prime examples of contracts of adhesion, whose most salient feature is that they are not subject to the normal bargaining processes of ordinary contracts.”) (Internal quotation marks omitted)).

³⁰ *Id.*

³¹ *Id.* ¶ 20.

³² Ortiz Affidavit ¶ 20.

³³ *Id.* ¶ 21.

³⁴ See Pharmacies—Puerto Rico, STATISTA, <https://www.statista.com/outlook/hmo/pharmacies/puerto-rico#volume> (last accessed November 7, 2023).

³⁵ Ortiz Affidavit ¶ 25.

³⁶ Statement of Chair Lina M. Kahn Regarding 6(b) Study of Pharmacy Benefit Managers, Commission File No. P221200 (June 8, 2022).

³⁷ Complaint, Docket C–4374 ¶¶ 22, 34.

³⁸ DEP’T OF JUSTICE, Herfindahl-Hirschman Index, <https://www.justice.gov/atr/herfindahl-hirschmanindex#:~:text=The%20term%20E%20%80%9CHHI%20%80%9D%20means%20the,then%20summing%20the%20resulting%20numbers> (last accessed June 20, 2024) (defining HHI as a commonly accepted measure of market concentration).

³⁹ See NOTICEL, Insurance Commissioner Favors Collective Bargaining with Health Providers, <https://www.noticel.com/ahora/gobierno/top-stories/20230307/comisionado-de-seguros-favorece-negociacioncolectiva-con-proveedores-de-salud/> (Mar. 7, 2023) (as translated to English) (citing Ramón J. Cao García, Ph.D. & José J. Cao Alvira, Ph.D., Un Estudio Económico de las Compañías de Seguros de Salud y sus Proveedores de Servicios para Identificar Posibles Enmiendas a la Regla Núm. 91 de la Oficina del Comisionado de Seguros de Puerto Rico, Estudio Comisionado por la Oficina del Comisionado de Seguros de Puerto Rico, at 16 (2023)).

⁴⁰ UNITED STATES CENSUS BUREAU, Result: Without Health Care Coverage in Puerto Rico (2022) is 5.1% (+/– 3%), <https://data.census.gov/all?q=health+insurance+puerto+rico> (last accessed June 20, 2024).

⁴¹ See KFF, Nancy Ochieng et al., Medicare Advantage in 2023: Enrollment Update and Key Trends, <https://www.kff.org/medicare/issue-brief/medicare-advantage-in-2023-enrollment-update-and-key-trends/> (Aug. 9, 2023) (interpreting data from CMS Medicare Advantage Enrollment Files and March Medicare Enrollment Dashboard, 2013 and 2023).

⁴² ABARCA, Abarca selected as PBM for Vital—an ASES Medicaid program in Puerto Rico, <https://www.abarcahealth.com/abarca-selected-as-pbm-for-vital-an-ases-medicaid-program-in-puerto-rico/> (Oct. 20, 2022). See also ASES, Vital Beneficiary Manual, <https://www.sssvital.com/wp-content/uploads/beneficiarymanual.pdf> (last accessed June 20, 2024); CMS, Managed Care in Puerto Rico, <https://www.medicare.gov/medicaid-chip-program-information/by-topics/delivery-systems/managedcare/downloads/puerto-rico-mcp.pdf> (last accessed June 20, 2024).

⁴³ Per its own admission, in an interview of Jason Borschow, CEO of Abarca Health,

the largest PBM in Puerto Rico, on the HealthBiz Podcast with David E. Williams, dated March 17, 2022, Abarca controls approximately 70% of the PBM market and 100% of the State Medicaid Program market in Puerto Rico. See Interview of Jason Borschow (March 17, 2022), available at <https://www.youtube.com/watch?v=iQD1fER3QgA>.

⁴⁴ ASES, October 2023 Annual Report to Congress, https://www.asespr.org/wp-content/uploads/2023/12/PuertoRico-2023-Annual-Report-to-Congress_Final.pdf at 7 (Oct. 2023).

⁴⁵ CMS, Managed Care in Puerto Rico at 2, <https://www.medicare.gov/medicaid-chip-program-information/bytopics/delivery-systems/managed-care/downloads/puerto-rico-mcp.pdf> (stating, as of 2021, Plan Vital includes insurers Triple S, First Medical, MMM, and Plan de Salud Menonita). See also MMM, MMM celebrates 20 years taking care of the health of more than 720,000 members, <https://www.mmm-pr.com/mmm-celebra> (stating that it is the “leading health services plan in the Medicare Advantage sector in Puerto Rico” with 720,000 insureds) (last accessed June 20, 2024); FAEGRE DRINKER, Anthem Acquires Puerto Rico-Based MMM Holdings and Affiliates, <https://www.faegredrinker.com/en/services/experience/2021/6/anthem-acquires-puerto-ricobased-mmm-holdingsand-affiliates> (June 2021) (“MMM is the largest MA plan and the second-largest Medicaid plan in Puerto Rico, with a network that includes over a dozen offices and more than 10,000 health care providers across the island.”).

⁴⁶ Insurance Commissioner Favors Collective Bargaining with Health Providers, <https://www.noticel.com/ahora/gobierno/top-stories/20230307/comisionado-de-seguros-favorece-negociacioncolectiva-con-proveedores-de-salud/> (as translated to English). The Commissioner said: [The Study] found that the concentration of the market in Puerto Rico—both from the point of view of distribution of written premiums and distribution of subscribers—is not only high, but has been increasing over the past years. In the segment of medical plans in the commercial sector, it was found that a single company currently has 49.2% of the subscribers and two others make up 64.8% of the subscribers in Puerto Rico. See also García & Alvira, Un Estudio Económico de las Compañías de Seguros de Salud y sus Proveedores de Servicios.

⁴⁷ TRIPLE-S MANAGEMENT, <https://management.grupotriples.com/en/ourcompanies/#:~:text=With%20more%20than%202060%20years,%20C%20commercial%20C%20and%20Medicaid%20markets> (stating company has “approximately 1,000,000 insured in their individual, commercial and Medicare markets”) (last accessed June 20, 2024). See also ABARCA, Abarca renews, expands partnerships for pharmacy benefit services with Triple-S, CareFirst, <https://www.abarcahealth.com/abarca-expands-two-bcbsa-plans/> (Sept. 30, 2021).

⁴⁸ PR NEWSWIRE, First Medical Renews, Expands Partnership With Abarca For Pharmacy Benefit Services, <https://www.prnewswire.com/news-releases/first->

medical-renews-expands-partnership-with-abarca-for-pharmacybenefit-services-301400686.html (Oct. 14, 2021).

⁴⁹ See Department of Consumer Affairs Complaint No. SAN–2022–0012881, *Oficina de Asuntos Monopolísticos del Dept. de Justicia v. Abarca Health LLC*, <https://www.justicia.pr.gov/departamento-de-justicia-presenta-querella-porpracticase-ganadoras-contra-administrador-de-beneficios-de-farmacia/> (Jan. 26, 2023). At this time, the parties are litigating some procedural matters before the Supreme Court of Puerto Rico and Coopharma is an Amici Curiae in said matter, see Docket No. CC–2023–0773.

⁵⁰ See In the Matter of Cooperativa de Farmacias Puertorriqueñas (“Coopharma”), Docket No. C–4374 (Decision and Order, November 6, 2012).

⁵¹ *Id.* at Section II.

⁵² *Id.* at 6.

⁵³ FED. TRADE COMM’N, Putting the Mod in Order Modification, <https://www.ftc.gov/enforcement/competitionmatters/2014/07/putting-mod-order-modification> (2014).

⁵⁴ See In the Matter of: Toys R Us, Inc., 2014 WL 187460, at *11–12 (F.T.C. Jan. 13, 2014).

⁵⁵ 16 CFR 2.51(b).

⁵⁶ *Id.* at *12.

⁵⁷ *Id.* (citation omitted).

⁵⁸ Statement of Motives, P. de la C. 2440 (“Act 228”) (as translated) at 2 (stating the Legislature passed the law “with the purpose of authorizing [Health Service Provider Cooperatives] . . . to negotiate collectively with Health Service Organizations (HSO) and Third Party Administrators (AT), so that there is a balance in the negotiations of these parties, since currently the contractual terms between these parties are imposed through adhesion contracts.”).

⁵⁹ See *id.* at 1–2 (as translated) (stating that it was “not envisaged” that Health Service Provider Cooperatives would be part of Law 203 because all cooperatives “were already regulated and supervised by specialized cooperative laws, such as Law 239–2004, as amended . . .”).

⁶⁰ See Analysis of Agreement Containing Consent Order To Aid Public Comment to In the Matter of Coopharma, File No. 101–0079 at 3–4 (Aug. 21, 2012) (explaining Law 203).

⁶¹ See *id.* at 4 n.5 (August 21, 2012) (The Commission is aware that Law 239, which regulates cooperatives generally, declared that cooperatives “shall not be considered conspiracies or cartels to restrict business.”) 5 L.P.R.A. § 4516 (Law 239, § 20.5). The Commission and the Puerto Rico Department of Justice interpret Law 203 (which was passed after Law 239) to supersede Law 239.”).

⁶² See Statement of Motives, Act 228 (as translated) at 2.

⁶³ Statement of Motives, Act 228 (as translated) at 2.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ See *id.*; see also California Retail Liquor Dealers Ass’n v. Midcal Aluminum, Inc., 445 US 97 (1980) (court established a two-prong standard test for a party to satisfy the State Action Doctrine: “the challenged restraint must be one ‘clearly articulated and

affirmatively expressed as state policy” and “the policy must be ‘actively supervised’ by the State itself”) (internal citation omitted).

⁶⁷ COSSEC replaced the functions of the Inspector of Cooperatives. See Puerto Rico Pharmacy Law, Act No. 247–2004 (“Act 247”), as amended.

⁶⁸ See Ortiz Affidavit, ¶ 24, appending Ex. 2, Certification of Mabel Jiménez Miranda (explaining the role of COSSEC as its Executive President).

⁶⁹ See “About Us” section of COSSEC’s website, http://www.cossec.com/cossec/default.asp?cn_id=802 (as translated).

⁷⁰ See Ex. 2 to Ortiz Affidavit, Cert. of Mabel Jiménez Miranda, Executive President of COSSEC.

⁷¹ See Ex. 2 to Ortiz Affidavit at ¶ 5 (emphasis added).

⁷² Analysis of Agreement Containing Consent Order to Aid Public Comment to In the Matter of Coopharma, File No. 101–0079 at 3–4 (Aug. 21, 2012).

⁷³ Puerto Rican statutes may be referred to as Act or Law interchangeably.

⁷⁴ In the Matter of Coopharma, Docket C–4374, Complaint ¶ 47 (Nov. 7, 2012).

⁷⁵ See “Regulations for the Supervision and Supervision of Collective Negotiations of the Cooperatives of Health Service Providers (CPSS) with Third Party Administrators (AT) and Health Service Organizations (HSO)”. No. 9161 at Art. IV (Feb. 13, 2020) (as translated to English).

⁷⁶ *Id.*

⁷⁷ See Analysis of Agreement Containing Consent Order To Aid Public Comment to In the Matter of Cooperativa de Médicos Oftalmólogos de Puerto Rico, File No. 141–0194 at 4 (Jan. 19, 2017).

⁷⁸ See *Federal Trade Commission v. Ticor Title Insurance Company*, 504 U.S. 621, 634 (1992) (stating that the active supervision prong of the Midcal test is met if State officials “have and exercise power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy”) (citation omitted). See also *Morgan v. Div. of Liquor Control, Dep’t of Bus. Regul., State of Conn.*, 664 F.2d 353, 356 (2d Cir. 1981) (finding anticompetitive conduct immune from the Antitrust Act under the State Action Doctrine because the State of Connecticut structured “a detailed mechanism for determining prices for alcoholic beverages” which satisfied the active supervision requirement); *Destec Energy, Inc. v. S. California Gas Co.*, 5 F. Supp. 2d 433, 456 (S.D. Tex. 1997), *aff’d* sub nom. *Destec Energy v. S. California Gas Co.*, 172 F.3d 866 (5th Cir. 1999) (finding that a State entity which “agreed to modify long-term individually negotiated EOR contracts only upon a finding that the modification was necessitated by the ‘public interest’” satisfied the active supervision prong of the Midcal test because there is no requirement that a regulatory agency “must retain unfettered discretion” in order to meet the requirement). The court in *Destec* cited *Ticor* to explain that “the active supervision inquiry is intended to determine whether ‘the State has exercised sufficient independent judgment and control so that the details of the rates or prices have been established as a product of deliberate state intervention, not

simply by agreement among private parties.’” *Destec*, 5 F. Supp. 2d at 457–58 (citing *Ticor*, 504 U.S. at 634–35). Here, COSSEC’s broad and explicit authority to monitor negotiations and, therefore, pharmaceutical reimbursement prices and contracts, between healthcare cooperatives, third party administrators, and health service organizations and to identify illicit practices which do not comply with the law and State policy, as laid out in Regulation No. 9161, satisfies the Midcal requirement for active supervision. COSSEC explains that in order to promote the public policy of having functional healthcare cooperatives, it will ensure balance by overseeing negotiations between those cooperatives, third-party administrators, and health care services organizations, to improve the public’s access to quality healthcare services. See Ex. 2 to Ortiz Affidavit (COSSEC letter explaining its role as established by Act 239 and Regulation No. 9161). Compliance with the active supervision prong of the Midcal test is further shown because the regulation allows COSSEC to “investigate and prosecute illicit practices under collective bargaining authorized by the Subchapter 20A of Act No. 239–2004, as amended.” See Regulation No. 9161 at Art. IV (as translated to English).

⁷⁹ *Ports Auth. of Puerto Rico v. Compania Panamena de Aviacion (Copa)*, S.A., 77 F. Supp. 2d 227, 236 (D.P.R. 1999) (finding that a “detailed formula for annually adjusting” a Federal Inspection Service Facility fee satisfied the active supervision prong of the Midcal test). Here, Puerto Rico’s Regulation No. 9161 provides for direct oversight by COSSEC over negotiations between healthcare players. This is arguably more stringent than issuing a formula annually, as a court nonetheless found sufficient to satisfy the active supervision prong under *Compania Panamena*.

⁸⁰ Statement of Chair Lina M. Khan Regarding the Policy Statement Concerning Reliance on Prior PBM-Related Advocacy Statements and Reports, <https://www.ftc.gov/legal-library/browse/cases-proceedings/publicstatements/statement-chair-lina-m-khan-regarding-policy-statement-concerning-reliance-prior-pbm-related> (July 20, 2023).

⁸¹ *Id.* at 2 (emphasis added).

⁸² See, e.g., NYS Committee on Investigations and Gov’t Operations, Final Investigative Report: Pharmacy Benefit Managers in New York, https://www.nysenate.gov/sites/default/files/article/attachment/final_investigatory_report_pharmacy_benefit_managers_in_new_york.pdf (May 31, 2019). The Committee determined that: PBMs often employ controversial utilization and management tools to generate revenue for themselves in a way that is detrimental to health plan sponsors, patients, and pharmacies. Such practices include maximum allowable cost lists, direct and indirect remuneration fees, rebates, formularies, and most controversially, spread pricing. The Committee also found evidence that PBMs are undermining patient choice by forcing consumers to use their preferred distributors, which are predominantly their own retail and mail order operations. *Id.* at 4–5 (internal citations omitted). See also Nat’l Assoc’n of

Attys General, A Bipartisan Coalition of 39 State Attorneys General Urge Congressional Action on Pharmacy Benefit Manager Reform, <https://www.naag.org/pressreleases/a-bipartisan-coalition-of-39-state-attorneys-general-urge-congressional-action-on-pharmacy-benefit-manager-reform/> (Feb. 21, 2024); Erin Trish, Ph.D., Karen Van Nuys, Ph.D. & Robert Popovian, PharmD, U.S. Consumers Overpay for Generic Drugs, <https://healthpolicy.usc.edu/research/u-s-consumers-overpay-for-genericdrugs/> (White Paper abstract states that “PBMs’ current practices—coupled with market distortions within the pharmaceutical supply chain—have inflated retail generic prices”); JACOBIN, H. Santoro, Middlemen Are Profiting off the Broken US Pharma System, <https://jacobin.com/2024/03/pharmacy-benefit-managers-drug-prices-congress> (Mar. 10, 2024) (Title excerpt: “Pharmacy benefit managers push expensive medications and slash drug reimbursement rates, pocketing the profits for themselves. Congress looked set to regulate these shadowy middlemen—but \$50 million in industry lobbying later, the effort has stalled.”).

⁸³ See, e.g., DEP’T OF JUSTICE, Assistant Attorney General Jonathan Kanter Announces Task Force on Health Care Monopolies and Collusion, <https://www.justice.gov/opa/pr/assistant-attorney-general-jonathan-kanter-announcestask-force-health-care-monopolies-and> (May 9, 2024); U.S. GOV’T ACCOUNTABILITY OFFICE REPORT TO CONGRESSIONAL REQUESTERS, Selected States’ Regulation of Pharmacy Benefit Managers, <https://www.gao.gov/assets/d24106898.pdf> (Mar. 2024) (stating that GAO conducted the study to review the legislation enacted by states in response to “certain PBM practices, such as PBMs retaining a share of the rebates and use of spread pricing,” because every U.S. State has “enacted at least one PBM-related law between 2017 and 2023”); NYS DEP’T OF FINANCIAL SVCS., DFS Superintendent Adrienne A. Harris Proposes Pharmacy Benefit Manager Regulations to Strengthen Consumer Protections and Address Anti-Competitive Conduct, https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202402061 (Feb. 6, 2024).

⁸⁴ See also, Interim FTC Report at 53 (“our initial review of documents received thus far reveals that PBMs can have the ability and incentive to put downward pressure on reimbursement rates for rival, unaffiliated pharmacies—including to a degree that may be unsustainable for small, independent pharmacies.”).

⁸⁵ FED. TRADE COMM’N, Putting the Mod in Order Modification, <https://www.ftc.gov/enforcement/competitionmatters/2014/07/putting-mod-order-modification> (2014) (“The modification process helps keep Commission orders from doing more harm than good when conditions change, and as the public interest requires.”).

⁸⁶ In the matter of Occidental Petroleum Corp., 101 F.T.C. 373, 1974 WL 175259, at *1. FTC Docket C–2492 (F.T.C. Mar. 9, 1983); see also, e.g., In the matter of Removatron Int’l Corp., et al., 114 F.T.C. 715, 719, FTC Docket No. 9200 (F.T.C. 1991) (setting aside order provision when “continued application

would be inequitable or harmful to competition”).

⁸⁷ In the matter of Nestlé Holdings, Inc., et al., C–4082, 2005 WL 1786402, at *3 (F.T.C. July 15, 2005).

⁸⁸ In the matter of the Readers’ Digest Ass’n. No. C–2075, 102 F.T.C. 1268, 1971 WL 128725, at *2 (Sept. 30, 1983).

⁸⁹ Statement of Motives, P. de la C. 2440 (“Act 228”) (as translated) at 2.

⁹⁰ See Ximena Benavides, Disparate Health Care In Puerto Rico: A Battle Beyond Statehood, 23 Univ. of Penn. J. of Law and Social Change 163, 175 (2020).

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ NCPA, Local Pharmacies on the Brink, New Survey Reveals, <https://ncpa.org/newsroom/newsreleases/2024/02/27/local-pharmacies-brink-new-survey-reveals> (Feb. 27, 2024).

⁹⁵ NCPA, NCPA Report for February 2024 Survey of Independent Pharmacy Owners/Managers, <https://ncpa.org/sites/default/files/2024-02/Feb2024-DIRsurvey.Exec%20Summary.pdf> (Feb. 2024).

⁹⁶ NCPA, Local Pharmacies on the Brink, New Survey Reveals, at 1 <https://ncpa.org/newsroom/newsreleases/2024/02/27/local-pharmacies-brink-new-survey-reveals> (Feb. 27, 2024).

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Oct. 24, 2016 Letter to Sen. Orrin Hatch and Jose B. Carrión III, [https://www.finance.senate.gov/imo/media/doc/Puerto%20Rico%20Community%20Pharmacies%20Association%20\(Late%20-%20Submission%201\).pdf](https://www.finance.senate.gov/imo/media/doc/Puerto%20Rico%20Community%20Pharmacies%20Association%20(Late%20-%20Submission%201).pdf) (Oct. 24, 2016).

¹⁰⁰ *Id.* at 2.

¹⁰¹ *Id.*

¹⁰² RURAL HEALTH RESEARCH GATEWAY, Research Alert: Sept. 1, 2022, <https://www.ruralhealthresearch.org/alerts/504#:~:text=Between%202003%20and%202021%2C%20the,percent%20during%20the%20same%20period> (last accessed June 19, 2024).

¹⁰³ RUPRI CENTER FOR RURAL HEALTH POLICY ANALYSIS, Update on Rural Independently Owned Pharmacy Closures in the United States, 2003–2021, <https://rupri.publichealth.uiowa.edu/publications/policybriefs/2022/Independent%20Pharmacy%20Closures.pdf> (last accessed June 19, 2024).

¹⁰⁴ See notes 78 and 79, *supra*. See also “Letter to Pharmacy Benefit Managers, Medicare Part D Plans, Medicaid Managed Care Plans, and Private Insurance Plans,” <https://www.cms.gov/newsroom/fact-sheets/cms-letter-plans-and-pharmacy-benefit-managers> (Dec. 13, 2023); see also, Sens. Wyden, Crapo Call for Swift Passage of Bipartisan PBM Reforms, <https://www.finance.senate.gov/chairmans-news/wyden-crapo-call-for-swift-passage-of-bipartisan-pbm-reforms> (Mar. 14, 2024).

¹⁰⁵ In Re Toys ‘R Us, Petition to Modify Order, FTC File No. 131–0052, Docket C–4405, at 4, located at <https://www.ftc.gov/sites/default/files/documents/cases/140109toysruspetition.pdf> (Jan. 3, 2014).

¹⁰⁶ In Re Toys ‘R Us, Modified Order, FTC File No. 131–0052, Docket C–4405, at 4, located at <https://www.ftc.gov/system/files/documents/cases/140415toysrusorder.pdf> (Apr. 11, 2014).

¹⁰⁷ *Id.* at 4.

¹⁰⁸ See In the Matter of Occidental Petroleum Corp., 101 F.T.C. 373, 1974 WL 175259, at *1.

¹⁰⁹ In the Matter of Pendleton Woolen Mills, Inc., 122 F.T.C. 267, 270, FTC Docket No. C–2985 (1996).

¹¹⁰ In the Matter of Onkyo U.S.A. Corp., 122 F.T.C. 325, 326, FTC Docket No. C–3092 (1996).

¹¹¹ In the Matter of Nat’l Fire Hose Corp., No. C–2935, 1978 WL 206076, at *10 (F.T.C. Nov. 1, 1978).

¹¹² See n. 8, *supra*.

¹¹³ See Analysis of Agreement Containing Consent Order To Aid Public Comment to In the Matter of Coopharma, File No. 101–0079 at 4 (August 21, 2012). It should also be noted that the Commission has recognized the enactment of and applicable of Act 228 “when negotiating with any Payor in compliance with Act 228.” See In the Matter of Cooperativa de Médicos Oftalmólogos de Puerto Rico, No. C–4603 at 4 (Decision and Order, Mar. 3, 2017). Moreover, Act 228 covers all of the conduct which is addressed in the Order, and, in fact goes further than the Order in prohibiting specific conduct. By way of specific example, 26 P.R. Laws § 3107 explicitly states that any “threats to boycott, go on strike or other coordinated action by the providers shall be subject to oversight by the Antitrust Affairs Office of the Department of Justice, in order to determine whether the same is in violation of the provisions of this chapter or the Antitrust Act.” The section further authorizes the imposition of civil and/or criminal liability on any Health Care Cooperative engaged in such conduct.

[FR Doc. 2024–20811 Filed 9–12–24; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2024–0065, NIOSH–352–A]

Request for Public Comment on the Draft Hazard Review: Wildland Fire Smoke Exposure Among Farmworkers and Other Outdoor Workers

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Request for comment.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) in the Centers for Disease Control and Prevention (CDC), an Operating Division of the Department of Health and Human Services (HHS), requests public comment and technical

review on the draft Hazard Review: Wildland Fire Smoke Exposure Among Farmworkers and Other Outdoor Workers.

DATES: Electronic or written comments must be received by November 12, 2024.

ADDRESSES: You may submit comments, identified by docket number CDC–2024–0065 and docket number NIOSH–352–A, by either of the following methods:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments.

- **Mail:** National Institute for Occupational Safety and Health, NIOSH Docket Office, 1090 Tusculum Avenue, MS C–34, Cincinnati, Ohio 45226–1998.

Instructions: All information received in response to this notice must include the agency name and docket number (CDC–2024–0065; NIOSH–352–A). All relevant comments, including any personal information provided, will be posted without change to <https://www.regulations.gov>. Do not submit comments by email. CDC does not accept comments by email. For access to the docket to read the draft Hazard Review document or comments received, go to <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: R. Todd Niemeier, Ph.D., National Institute for Occupational Safety and Health, MS–C15, 1090 Tusculum Avenue, Cincinnati, OH 45226. Telephone: (513) 533–8166.

SUPPLEMENTARY INFORMATION: NIOSH is requesting public comment and technical review of the draft Hazard Review: Wildland Fire Smoke Exposure Among Farmworkers and Other Outdoor Workers, which is accessible in the docket (CDC–2024–0065; NIOSH–352–A). The final document will be edited, so comments that focus on the technical content are requested. The final document will be used as the scientific evidence base to inform the development of supplementary educational materials for workers, employers, and other relevant audiences to support the implementation of the recommendations. Therefore, comments that focus on the understandability, accessibility, and feasibility of the recommendations are requested. To facilitate the review of this document, NIOSH requests that responses to the following specific questions be considered:

1. How could the outdoor worker populations who may be exposed to wildland fire smoke be more completely characterized in Chapter 2? Please provide supporting references.

2. How could this document better identify and characterize the health hazards of exposures to wildland fire smoke based on the available scientific literature in Chapter 3? Is there additional scientific information to be considered regarding the adverse health endpoints associated with exposure to wildland fire smoke? Please provide scientific references to support your response as necessary.

3. What additional information should NIOSH consider adding or how should NIOSH modify the discussion of exposure assessment methods for wildland fire smoke (based on PM_{2.5} airborne concentration, and when desired, other airborne exposures) to measure outdoor worker exposures in Chapter 4? What are the barriers to employers to implement these recommended methods? Please provide scientific evidence to support your response as necessary.

4. How can the recommendation in Chapter 4 to use the air quality index (AQI) for PM_{2.5} to define exposure control categories be better explained and supported from both a scientific and health communications standpoint? Please provide scientific evidence to support your response as necessary.

5. What additional information should NIOSH consider to improve the strategies identified in Chapter 5 for controlling exposure to wildland fire smoke (e.g., engineering controls, work practices, personal protective equipment) to make them more effective and reduce barriers to implementation? What additional controls could be considered to protect outdoor workers from wildland fire smoke? Please provide scientific evidence to support your response as necessary.

6. Do the recommendations in Chapter 5 adequately address the protection of potentially disadvantaged or at-risk outdoor workers, such as persons with pre-existing health conditions (e.g., asthma, cardiovascular disease), migrant workers, persons of lower socioeconomic status, and elderly or minor workers? If not, how could the recommendations be changed to better protect these populations? Are there additional recommendations to consider to protect these at-risk workers?

7. How could the recommendations in Chapter 5 better address accessibility and feasibility for outdoor workers and employers?

8. What are the potential barriers to the understandability of the recommendations in Chapter 5 for outdoor workers and employers? When developing supplementary educational materials to support the implementation

of these recommendations, how can NIOSH best address those barriers?

9. What other research needs should be considered in addition to those included in Chapter 6, Research Needs? Please provide a scientific justification for additional research needs.

The draft Hazard Review was developed to provide the scientific rationale for characterizing hazards of exposure to wildland fire smoke for outdoor workers. The draft Hazard Review also provides recommendations and guidance for minimizing exposures and potential health effects associated with wildland fire smoke for outdoor workers.

After the comments received on the draft Hazard Review are considered and addressed, the final Hazard Review will be posted on the NIOSH website.

Background: The purpose of the Hazard Review document is to provide an overview of the relevant health effects literature and present evidence-based recommendations to protect outdoor workers, including farm workers, construction workers, oil and gas workers, park rangers, emergency responders, and others from the adverse health effects of occupational exposure to wildland fire smoke. On March 14, 2024, CDC/NIOSH published a Request for Information (RFI) in the **Federal Register** (89 FR 18638). The **Federal Register** notice announced plans to develop a Hazard Review document that summarizes the scientific literature about the health effects from exposures to wildland fire smoke and provides recommendations to protect outdoor workers [NIOSH 2024]. In response to the RFI, NIOSH received 10 comment submissions, all of which were reviewed and considered during the development of this draft Hazard Review. The RFI and comments received are accessible in the docket (CDC-2024-0019, NIOSH-352). In addition to requesting information from the public, the Hazard Review development process involved review and assessment of the scientific literature about exposures to wildland fire smoke, potential health effects, outdoor worker populations at risk, and development or update of recommendations to protect outdoor workers. The information presented in this draft Hazard Review represents the scientific rationale and the current methodology about approaches to assess and control the hazards of wildland fire smoke to outdoor workers. Scientific information related to wildland fire smoke presented in the draft Hazard Review covers the following topics:

- Background on wildland fire smoke

- History of NIOSH and other government organizations' related activity
- Chemical and physical properties of the smoke
- Population of outdoor workers with potential exposure
- Routes of worker exposure
- Health equity
- Health effects of exposure
- Exposure assessment
- Controlling workplace exposures
- Medical surveillance and medical monitoring
- Research needs

Reference

NIOSH [2024]. National Institute for Occupational Safety and Health; Outdoor workers exposed to wildland fire smoke; Request for information. 89 FR 18638. <https://www.federalregister.gov/documents/2024/03/14/2024-05403/national-institute-for-occupational-safety-and-health-outdoor-workers-exposed-to-wildland-fire-smoke>.

Dated: September 9, 2024.

John J. Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Department of Health and Human Services.

[FR Doc. 2024-20763 Filed 9-12-24; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Award of a Sole Source Cooperative Agreement To Fund Northwestern Provincial Health Office in Zambia

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), announces the award of approximately \$4,450,000, for Year 1 funding to Northwestern Provincial Health Office (NWPHO) in Zambia. The award will provide NWPHO with CDC Technical Assistance and financial support to maintain and sustain the province's overall oversight and quality assurance for the implementation of high-impact HIV combination prevention, treatment, and support services, including clinical, surveillance, and laboratory services as well as to identify and mitigate emerging disease threats for people

living with HIV (PLHIV). Funding amounts for years 2–5 will be set at continuation.

DATES: The period for this award will be January 1, 2025, through September 29, 2029.

FOR FURTHER INFORMATION CONTACT: Vance Brown, Global Health Center, Centers for Disease Control and Prevention, 351 Independence Avenue, P.O. Box 320065, Lusaka, Zambia, Telephone: +260-761-428-720, email: vhu7@cdc.gov.

SUPPLEMENTARY INFORMATION: The sole source award will support the Zambian Ministry of Health (MOH) to achieve and sustain HIV epidemic control gains by providing programmatic oversight, coordination, and direct service delivery in the provision of comprehensive HIV/TB prevention, treatment, and support services, while strengthening health systems for sustainability.

NWPHO is the only entity that can carry out this work, as it is the sole government institution with the mandate to support the health service delivery through capacity building, systems strengthening and oversight for HIV program implementation for the population of the Northwestern Province (NWP) of Zambia by the National Public Health Act of Zambia. NWPHO has been actively implementing PEPFAR programs through support provided by USG-awarded implementing partners funded by USAID. The government-to-government award is only possible to be executed with NWPHO as the registered sub-national provincial health authority in NWP Zambia.

Summary of the Award

Recipient: Northwestern Provincial Health Office (NWPHO).

Purpose of the Award: The purpose of this award is to provide NWPHO with CDC Technical Assistance and financial support to maintain and sustain the province's overall oversight and quality assurance for the implementation of high-impact HIV combination prevention, treatment, and support services, including clinical, surveillance, and laboratory services as well as to identify and mitigate emerging disease threats for PLHIV. The award aims to strengthen capacity development activities, while providing optimal health systems strengthening in support of continued and sustainable HIV epidemic control in Zambia.

Amount of Award: The approximate year 1 funding amount will be \$4,450,000 in Federal Fiscal Year (FFY) 2025 funds, subject to the availability of

funds. Funding amounts for years 2–5 will be set at continuation.

Authority: This program is authorized under Public Law 108–25 (the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003) [22 U.S.C. 7601, *et seq.*] and Public Law 110–293 (the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008), and Public Law 113–56 (PEPFAR Stewardship and Oversight Act of 2013).

Period of Performance: January 1, 2025, through September 29, 2029.

Dated: September 4, 2024.

Terrance Perry,

*Acting Director, Office of Grants Services,
Centers for Disease Control and Prevention.*

[FR Doc. 2024–20790 Filed 9–12–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1822–N]

Medicare Program; Town Hall Meeting on the Fiscal Year 2026 Applications for New Medical Services and Technologies Add-On Payments

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: This notice announces a town hall meeting in accordance with the Social Security Act (the Act) to discuss fiscal year (FY) 2026 applications for add-on payments for new medical services and technologies under the hospital inpatient prospective payment system (IPPS). Interested parties are invited to this virtual meeting to present their comments, recommendations, and data regarding whether the FY 2026 new medical services and technologies applications meet the substantial clinical improvement criterion.

DATES:

Meeting Dates: The New Technology Town Hall meeting announced in this notice will be held virtually on Wednesday, December 11, 2024, and Thursday, December 12, 2024 (the number of presentations will determine if a second day for the meeting is necessary; see the **SUPPLEMENTARY INFORMATION** section for details regarding the second day of the meeting and the posting of the final schedule). The New Technology Town Hall meeting will begin each day at 9 a.m.

eastern standard time (EST) and check-in via online platform will begin at 8:30 a.m. EST.

Deadline for Registration of Presenters at the New Technology Town Hall Meeting: The deadline to register to present at the New Technology Town Hall meeting is 5 p.m., EST on Monday, November 4, 2024.

Deadline for Submission of Agenda Item(s) or Written Comments for the New Technology Town Hall Meeting: Written comments and agenda items (public comments to be delivered at the New Technology Town Hall meeting) for discussion at the New Technology Town Hall meeting, including agenda items by presenters (presentation slide decks), must be received by 5 p.m. EST on Tuesday, November 12, 2024.

Deadline for Requesting Special Accommodations: The deadline to submit requests for special accommodations is 5 p.m., EST on Tuesday, November 12, 2024.

Deadline for Submission of Written Comments after the New Technology Town Hall Meeting for Consideration in the Fiscal Year (FY) 2026 Hospital Inpatient Prospective Payment System/Long Term Care PPS (IPPS/LTCH PPS) Proposed Rule: Individuals may submit written comments after the New Technology Town Hall meeting, as specified in the **ADDRESSES** section of this notice, on whether the service or technology represents a substantial clinical improvement. These comments must be received by 5 p.m. EST on Monday, December 16, 2024, to ensure consideration in the FY 2026 IPPS/LTCH PPS proposed rule.

ADDRESSES:

Meeting Location: The New Technology Town Hall meeting will be held virtually via live stream technology or webinar and listen-only via toll-free teleconference. Live stream or webinar and teleconference dial-in information will be provided through an upcoming listserv/email notice and will appear on the final meeting agenda, which will be posted on the New Technology website when available at: <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/newtech.html>. Continue to check the website for updates.

Registration and Special Accommodations: Individuals wishing to present at the meeting must follow the instructions located in section III. of this notice. Individuals who need special accommodations should send an email to newtech@cms.hhs.gov.

Submission of Agenda Item(s) or Written Comments for the New Technology Town Hall Meeting: Each

presenter must submit at least one agenda item for presentation regarding whether a FY 2026 application meets the substantial clinical improvement criterion. Other items such as written comments, questions or other statements must not exceed three single-spaced typed pages and may be sent via email to newtech@cms.hhs.gov.

FOR FURTHER INFORMATION CONTACT:

Drew Kasper, (410) 786–8926, drew.kasper@cms.hhs.gov and newtech@cms.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Add-On Payments for New Medical Services and Technologies Under the IPPS

Effective for discharges beginning on or after October 1, 2001, section 1886(d)(5)(K)(i) of the Act requires the Secretary to establish (after notice and opportunity for public comment) a mechanism to recognize the costs of new services and technologies under the hospital inpatient prospective payment system (IPPS). In addition, section 1886(d)(5)(K)(vi) of the Act specifies that a medical service or technology will be considered “new” if it meets criteria established by the Secretary (after notice and opportunity for public comment). For further discussion on the new technology add-on payment criteria, we refer readers to the new technology add-on payment final rule (66 FR 46912, September 7, 2001), as well as the FY 2012 IPPS/LTCH PPS final rule (76 FR 51572 through 51574), the FY 2020 IPPS/LTCH PPS final rule (84 FR 42288 through 42300), and the FY 2021 IPPS/LTCH PPS final rule (85 FR 58736 through 58742).

As finalized in the FY 2020 and FY 2021 IPPS/LTCH PPS final rules, technologies which are eligible for the alternative new technology pathway for transformative new devices or the alternative new technology pathway for certain antimicrobials do not need to meet the requirement under 42 CFR 412.87(b)(1) that the technology represent an advance that substantially improves, relative to technologies previously available, the diagnosis or treatment of Medicare beneficiaries. These medical devices or products will also be considered not substantially similar to an existing technology for purposes of new technology add-on payment under the IPPS. See the FY 2020 IPPS/LTCH PPS final rule (84 FR 42292 through 42297) and the FY 2021 IPPS/LTCH PPS final rule (85 FR 58737 through 58739) for additional information.

In the FY 2020 IPPS/LTCH PPS final rule (84 FR 42289 through 42292), we

codified in our regulations at § 412.87 the following aspects of how we evaluate substantial clinical improvement for purposes of new technology add-on payments under the IPPS to determine if a new technology meets the substantial clinical improvement requirement:

- The totality of the circumstances is considered when making a determination that a new medical service or technology represents an advance that substantially improves, relative to services or technologies previously available, the diagnosis or treatment of Medicare beneficiaries.

- A determination that a new medical service or technology represents an advance that substantially improves, relative to services or technologies previously available, the diagnosis or treatment of Medicare beneficiaries means—

- ++ The new medical service or technology offers a treatment option for a patient population unresponsive to, or ineligible for, currently available treatments;

- ++ The new medical service or technology offers the ability to diagnose a medical condition in a patient population where that medical condition is currently undetectable or offers the ability to diagnose a medical condition earlier in a patient population than allowed by currently available methods, and there must also be evidence that use of the new medical service or technology to make a diagnosis affects the management of the patient; or

- ++ The use of the new medical service or technology significantly improves clinical outcomes relative to services or technologies previously available as demonstrated by one or more of the following:

- A reduction in at least one clinically significant adverse event, including a reduction in mortality or a clinically significant complication.

- A decreased rate of at least one subsequent diagnostic or therapeutic intervention (for example, due to reduced rate of recurrence of the disease process).

- A decreased number of future hospitalizations or physician visits.

- A more rapid beneficial resolution of the disease process treatment including, but not limited to, a reduced length of stay or recovery time; an improvement in one or more activities of daily living; an improved quality of life; or a demonstrated greater medication adherence or compliance.

- ++ The totality of the circumstances otherwise demonstrates that the new medical service or technology substantially improves, relative to technologies previously available, the diagnosis or treatment of Medicare beneficiaries.

- Evidence from the following published or unpublished information sources from within the United States or elsewhere may be sufficient to establish that a new medical service or technology represents an advance that substantially improves, relative to services or technologies previously available, the diagnosis or treatment of Medicare beneficiaries: Clinical trials, peer reviewed journal articles; study results; meta-analyses; consensus statements; white papers; patient surveys; case studies; reports; systematic literature reviews; letters from major healthcare associations; editorials and letters to the editor; and public comments. Other appropriate information sources may be considered.

- The medical condition diagnosed or treated by the new medical service or technology may have a low prevalence among Medicare beneficiaries.

- The new medical service or technology may represent an advance that substantially improves, relative to services or technologies previously available, the diagnosis or treatment of a subpopulation of patients with the medical condition diagnosed or treated by the new medical service or technology.

Section 1886(d)(5)(K)(viii) of the Act requires that as part of the process for evaluating new medical services and technology applications, the Secretary shall do the following:

- Provide for public input regarding whether a new service or technology represents an advance in medical technology that substantially improves the diagnosis or treatment of Medicare beneficiaries before publication of a proposed rule.

- Make public and periodically update a list of all the services and technologies for which an application is pending.

- Accept comments, recommendations, and data from the public regarding whether the service or technology represents a substantial improvement.

- Provide for a meeting at which organizations representing hospitals, physicians, manufacturers, and any other interested party may present comments, recommendations, and data to the clinical staff of CMS as to whether the service or technology represents a substantial improvement before publication of a proposed rule.

The opinions and presentations provided during this meeting will assist us as we evaluate the new medical services and technology applications for FY 2026.

II. New Technology Town Hall Meeting Format and Conference Call Information

A. Format of the Town Hall Meeting

As noted in section I. of this notice, we are required to provide for a meeting at which organizations representing hospitals, physicians, manufacturers, and any other interested party may present comments, recommendations, and data to the clinical staff of CMS concerning whether the service or technology represents a substantial clinical improvement. This meeting will allow for a discussion of the substantial clinical improvement criterion for the FY 2026 applications for new technology add-on payments. Information regarding the applications can be found on our website at <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/newtech.html>.

The majority of the meeting will be reserved for presentations of comments, recommendations, and data from registered presenters. The time for each presentation will be approximately 10 minutes, with additional time reserved for questions, and will be based on the number of presentations. Individuals who would like to present must register and submit their agenda item(s) via email to newtech@cms.hhs.gov by the dates specified in the **DATES** section of this notice.

Depending on the number of presentations, we will determine if a second meeting day is necessary. The final schedule for the New Technology Town Hall meeting will be posted on the CMS website at <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/newtech.html> by November 25, 2024 to inform the public of the number of days of the meeting.

In addition, written comments will also be accepted and presented at the meeting if they are received via email to newtech@cms.hhs.gov by the date specified in the **DATES** section of this notice. Written comments may also be submitted after the meeting for our consideration. If the comments are to be considered before the publication of the FY 2026 IPPS/LTCH PPS proposed rule, the comments must be received via email to newtech@cms.hhs.gov by the date specified in the **DATES** section of this notice.

B. Conference Call and Webinar Information

As noted previously, the New Technology Town Hall meeting will be held virtually. There will be an option to participate in the New Technology Town Hall Meeting via webinar and a toll-free teleconference phone line. Information on the option to participate via webinar and a teleconference dial-in will be provided through an upcoming listserv/email notice to registrants and will appear on the final meeting agenda, which will be posted on the New Technology website at: <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/newtech.html>. Continue to check the website for updates.

C. Disclaimer

We cannot guarantee reliability for a webinar.

III. Registration Instructions

The Division of New Technology in CMS is coordinating the meeting registration for the New Technology Town Hall meeting on substantial clinical improvement. While there is no registration fee, individuals planning to present at the New Technology Town Hall meeting must register to present.

Registration for presenters may be completed by sending an email to newtech@cms.hhs.gov, by the date specified in the **DATES** section of this notice. Please include the name and email address of the presenter(s), as well as address, telephone number, and the name of the technology for which they will be presenting.

Registration for attendees not presenting at the meeting is not required.

IV. Collection of Information

This document does not impose information collection requirements, that is, reporting, recordkeeping, or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Chyana Woodyard, who is the Federal Register Liaison, to electronically sign this document for

purposes of publication in the **Federal Register**.

Chyana Woodyard,
Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2024–20791 Filed 9–12–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Assistance Listing Number: 93.652]

Announcement of the Intent To Award a Within Scope Awarding Agency-Initiated Non-Competitive Supplement With Extension to the American Public Human Services Association for the Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC) in Washington, DC

AGENCY: Children's Bureau (CB), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of Issuance of a within scope awarding agency-initiated non-competitive supplement with extension.

SUMMARY: The ACF,ACYF, CB, Division of Capacity Building announces the intent to award a within scope awarding agency-initiated non-competitive supplement with extension in the amount of up to \$1,600,000, to the American Public Human Services Association for its affiliate the Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC) in Washington, DC, for the further implementation and support nationally of the National Electronic Interstate Compact Enterprise (NEICE) system. The NEICE is an inter-jurisdictional electronic system to improve administrative efficiency in implementing the Interstate Compact on the Placement of Children (ICPC), a process that ensures safe and suitable interstate placements for children in foster care.

DATES: The proposed period of performance is September 30, 2024, through September 29, 2025.

FOR FURTHER INFORMATION CONTACT: June Dorn, National Adoption Specialist, Children's Bureau, Division of Capacity Building, 330 C St. SW, Suite 3521B, Washington, DC 20201. Telephone: (202) 205–9240; Email: June.Dorn@acf.hhs.gov.

SUPPLEMENTARY INFORMATION: Award funds will support the continued

implementation, support, and scale up of the NEICE. The NEICE is a national electronic system for quickly and securely exchanging the data and documents required by the Interstate Compact on the Placement of Children (ICPC) to place children with foster, adoptive, and kinship families across state lines. AHPA has been the recipient of funding from the ACYF/CB for the development and national implementation of the NEICE since its inception as a pilot project funded by the Partnership Fund for Program Integrity Innovation at the Office of Management and Budget and administered by CB in November 2013. This 20-month pilot proved successful and led to a new sole source cooperative agreement for the expansion of the pilot to all 52 jurisdictions of the AAICPC nationwide. This funding was further extended and supplemented to continue to support the expansion of the project nationally with the current funding period expiring September 29, 2024. This within scope awarding agency-initiated non-competitive supplement with extension is essential to allow the remaining states to join the system and to provide ongoing support and upgrades necessary for an electronic system. In addition, the Family First Prevention Services Act of 2018 requires all states to join an electronic exchange system by October 1, 2027, and NEICE is on track to support states in meeting this requirement.

It is CB's intention to provide funding of up to \$1,600,000 beginning September 30, 2024. The state members of the AAICPC contribute annual membership and connection fees; however, these are currently not adequate to meet the full operational costs of managing the national system. The AHPA is well-positioned to continue to scale the project nationally and to assure the continued optimal maintenance of the NEICE.

Statutory Authority: Title II, section 203(b) of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978 (42 U.S.C. 5113(b)(3)), as most recently amended by CAPTA Reauthorization Act of 2010.

Anthony Petrucci,

Senior Grants Policy Specialist, Office of Grants Policy, Office of Administration.

[FR Doc. 2024-20827 Filed 9-12-24; 8:45 am]

BILLING CODE 4184-44-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2024-N-4057]

General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting; Establishment of Public Docket; Request for Comments—ProSense Cryoablation System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee (the Committee). The general function of the Committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held on November 7, 2024, from 9 a.m. to 6 p.m. eastern time.

ADDRESSES: Holiday Inn Gaithersburg, Two Montgomery Village Ave., Gaithersburg, MD 20879. The hotel's telephone number is 301-948-8900. The hotel's link can be found at: <https://www.ihg.com/holidayinn/hotels/us/en/gaithersburg/wasrv/hoteldetail>.

Answers to commonly asked questions about FDA advisory committee meetings may be accessed at: <https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm>.

FDA is establishing a docket for public comment on this meeting. The docket number is FDA-2024-N-4057. The docket will close on December 9, 2024. 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 December 9, 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.

Comments received on or before October 17, 2024, will be provided to the Committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will

continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments as follows:

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-4057 for "General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments." 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.” FDA 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 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 the 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: Candace Nalls, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5214, Silver Spring, MD 20993–0002, 301–636–0510, Candace.Nalls@fda.hhs.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last-minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency’s website at <https://www.fda.gov/AdvisoryCommittees/default.htm> and scroll down to the

appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION: Agenda:

On November 7, 2024, the Committee will discuss, make recommendations, and vote on clinical information related to a *De Novo* request for the ProSense Cryoablation System sponsored by IceCure Medical Ltd. The discussion will focus on the sponsor’s proposed indication: “for use in the treatment of patients with early stage, low-risk breast cancer for the treatment of breast cancer with adjuvant endocrine therapy.”

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA’s website at the time of the advisory committee meeting, and the background material will be posted on FDA’s website after the meeting. Background material will be available at the location of the advisory committee meeting and at <https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm>. Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee. All electronic and written submissions to the Docket (see **ADDRESSES**) on or before October 17, 2024, will be provided to the Committee. Oral presentations from the public will be scheduled on November 7, 2024, between approximately 1:45 p.m. and 2:45 p.m. eastern time. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 10, 2024. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 15, 2024. Persons attending FDA’s advisory committee meetings are

advised that FDA is not responsible for providing access to electrical outlets.

For press inquiries, please contact the Office of Media Affairs at fdaoma@fda.hhs.gov or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Ann Marie Williams at Annmarie.Williams@fda.hhs.gov or 301–796–5966 at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at <https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. 1001 *et seq.*).

Dated: September 10, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–20889 Filed 9–12–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–3878]

New Drugs Regulatory Program Modernization: Integrated Assessment of Marketing Applications and Integrated Review Documentation; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is seeking public comments on the “New Drugs Regulatory Program Modernization: Integrated Assessment of Marketing Applications and Integrated Review Documentation.” The purpose is to seek public comments/feedback on the Integrated Review documentation generated by the Integrated Assessment of Marketing Applications for new drug products developed as part of the New Drugs Regulatory Program Modernization. The Agency hopes to receive public feedback on how this Integrated Review documentation can continue supporting our stakeholders’ needs.

DATES: Submit either electronic or written comments on the notice by December 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 December 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-3878 for "New Drugs Regulatory Program Modernization: Integrated Assessment of Marketing Applications and Integrated Review Documentation; Request for Comments." 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:

Rhonda M. Hearn-Stewart, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6460, Silver Spring, MD 20993-0002, 240-402-3180, Rhonda.Hearn-Stewart@fda.hhs.gov, with the subject line "Collecting Public Feedback on the Integrated Review."

SUPPLEMENTARY INFORMATION:

I. Background

The Integrated Assessment of Marketing Applications, which is part of FDA's New Drugs Regulatory Program Modernization, includes a new review template for the assessment and documentation of new drug product marketing applications (e.g., new drug applications (NDAs) or biologics license applications (BLAs)) in the Center for Drug Evaluation and Research. The resultant Integrated Review is the product of an interdisciplinary team assessment process that provides collaborative discussions of key review issues that span multiple disciplines and includes resolution of important issues pertinent to benefit-risk assessments. This interdisciplinary approach facilitates clarity of decision making and ensures input from relevant disciplines in the consideration of scientific issues. FDA believes the format and content of the Integrated Review documentation will provide sufficient detail concerning the evidence of efficacy and assessment of risk and risk management as well as a clearer description of FDA's analysis of the scientific issues raised by the application and the scientific reasoning supporting the benefit-risk determination. The overall objective is to more effectively communicate the basis for FDA's decision on applications.

This new Integrated Review document replaces the previous documentation, which included a separate review document authored by each discipline. It also replaces the multidisciplinary review (i.e., Unireview) in which each discipline provided a separate review section but within a single review document. FDA implemented the Integrated Review documentation for new molecular entities, original BLAs, and select efficacy supplements. FDA plans to expand the scope to other marketing application types in the near future.

The following guiding principles informed the Integrated Review documentation:

- The importance of conducting an issue-focused assessment,
- Enhanced communication within the review team, and
- Strong interdisciplinary collaboration.

The Integrated Review documentation template has three main components:

- **Executive Summary:**
 - Represents FDA's conclusions regarding key scientific and regulatory issues while describing any differences of scientific opinion or perspective,

- Provides a summary of FDA's decision and assessment of the application, including FDA's benefit-risk determination (as currently employed in marketing application reviews), and
- Provides an overall Agency assessment, including an overview of the major decisions made during the review process, and a brief discussion of the basis for the decisions.
- **Interdisciplinary Assessment:**
 - Includes succinct, integrated, focused analyses of the evidence of benefit, risk and risk management, and therapeutic individualization (e.g., special populations, drug interactions).
 - Highlights key review issues (including analyses specific to key issues) the review team thinks are pertinent to the decision-making process. Issues are presented and assessed in an interdisciplinary manner.
 - Includes any dissenting data interpretations.
- **Additional Analyses and Information:**
 - Includes Discipline-Specific Appendices
 - Contains assessments and analyses that are supportive and/or important to key facts/data or conclusions included in the overall review and, in certain instances, may include discipline-specific content (e.g., relevant pharmacology/toxicology information),
 - May contain work that did not directly impact the overall assessment of benefit-risk, regulatory action, labeling, or risk-mitigation plans, and
 - Includes separate reviews of reviewers who disagree with significant elements of the Executive Summary and Interdisciplinary Assessment sections or the decision of the Signatory Authority.

In general, the first two parts of the Integrated Review document are expected to provide a complete explanation of FDA's action and supporting analyses, with the third component (the additional analyses and information) providing additional detail on the comprehensive analyses FDA conducted in its review of the drug application. The target audiences for this document are diverse and include those with a specific interest in the application, such as the lay public, drug sponsors, researchers, and others who are seeking to understand the basis for FDA's decision.

II. Integrated Review Documentation

As part of FDA's ongoing evaluation of the Integrated Review documentation, the Agency welcomes comments and any relevant information specific to the Integrated Review that stakeholders wish to share in a submission to the docket. However, we emphasize that the focus is to seek input that prioritizes feedback specifically on characteristics of the Integrated Review document. Please see information and examples relevant to the Integrated Review at <https://www.fda.gov/drugs/news-events-human-drugs/new-drugs-regulatory-program-modernization-integrated-assessment-marketing-applications-and>.

Furthermore, we anticipate that the most informative suggestions would not be specific to an indication, a therapeutic area, or a disease but rather apply across multiple indications, therapeutic areas, or diseases. The Agency is interested in receiving responses to the following questions/topics, in addition to any general comments the public might have. For convenience, it would be helpful if commenters refer to the numbered question and topic when submitting responses and comments.

1. We are interested in preserving for stakeholders what they find most useful in FDA reviews.

a. Comparing the Integrated Review to previous review documentation, is there any information you are having difficulty locating?

b. Are you able to use the Integrated Review for the same purpose that you used previous reviews? If not, please provide specific examples.

2. We are interested in specific recommendations about any areas of the Integrated Review documentation of the Integrated Assessment that can be improved to meet the needs of stakeholders.

3. We are interested in stakeholders' views regarding the advantages and disadvantages of an interdisciplinary assessment presentation of key review issues and the resultant integration of the assessments of multiple disciplines into a single Integrated Review document.

4. We would like to know whether the new format of the Integrated Review documentation for the Integrated Assessment provides clarity of benefit-risk assessments and informs your knowledge of FDA's basis for making decisions.

5. Based on the integrated review, were the issues that concerned the review team clear and understandable? If so, what helped achieve this? If not, what can be improved?

Dated: September 10, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–20891 Filed 9–12–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–2803]

Sandoz Inc., et al.; Withdrawal of Approval of 20 Abbreviated New Drug Applications; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** on June 21, 2024. The document announced the withdrawal of approval of 20 abbreviated new drug applications (ANDAs) from multiple applicants, withdrawn as of July 22, 2024. The document indicated that FDA was withdrawing approval of the ANDA 076648 for nitrofurantoin (monohydrate/macrocystals) capsules, 75 milligrams (mg) and 25 mg, held by Aurobindo Pharma USA Inc., 279 Princeton-Hightstown Rd., East Windsor, NJ 08520; and the ANDA 090723 for duloxetine hydrochloride capsules, delayed-release pellets, Equivalent to (EQ) 20 mg base, EQ 30 mg base, and EQ 60 mg base, held by Marksans Pharma, Inc., U.S. Agent for Marksans Pharma Ltd., 150 Motor Pkwy., Suite 401, 4th Floor, Rm. 430, Hauppauge, NY 11788. Before FDA withdrew the approval of these ANDAs, Aurobindo Pharma USA Inc., and Marksans Pharma, Inc., U.S. Agent for Marksans Pharma Ltd., informed FDA that they did not want the approval of the ANDAs withdrawn. Because Aurobindo Pharma USA Inc. and Marksans Pharma, Inc., U.S. Agent for Marksans Pharma Ltd., timely requested that approval of their respective ANDAs not be withdrawn, the approvals are still in effect. This notice corrects these errors.

FOR FURTHER INFORMATION CONTACT:

Martha Nguyen, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1676, Silver Spring, MD 20993–0002, 301–796–3471, Martha.Nguyen@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of Friday, June 21, 2024 (89 FR 52057), appearing on page

52058 in FR Doc. 2024–13660, the following correction is made:

On page 52058, in the table, the entries for ANDA 076648 and ANDA 090723 are removed.

Dated: September 10, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–20873 Filed 9–12–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Initial Review Group; Effectiveness of Mental Health Interventions Study Section.

Date: October 17–18, 2024.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: North Bethesda Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852 (Hybrid Meeting).

Contact Person: Claudio Dario Ortiz, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Rockville, MD 20892, (240) 869–9245, email: claudio.ortiz@nih.gov.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: September 10, 2024.

Bruce A. George,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–20884 Filed 9–12–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Innovative Research in Cancer Nanotechnology.

Date: October 10–11, 2024.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: AC Hotel Bethesda, 4646 Montgomery Avenue, Bethesda, MD 20814.

Contact Person: Raj K Krishnaraju, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, MSC 7804, Bethesda, MD 20892, (301) 435–1047, kkrishna@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 9, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–20788 Filed 9–12–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C.,

as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Pathophysiology of Eye Disease—2 Study Section.

Date: October 9–10, 2024.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle NW, Washington, DC 20005.

Meeting Format: In person.

Contact Person: Cibu Paul Thomas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1011–H, Bethesda, MD 20894, (301) 402–4341, thomascp@mail.nih.gov.

Name of Committee: Social and Community Influences on Health Integrated Review Group; Psychosocial Development, Risk and Prevention Study Section.

Date: October 10–11, 2024.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Meeting Format: In person.

Contact Person: Anna L. Riley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, (301) 435–2889, rileyann@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–NS–24–021: HEAL Initiative: Individual Differences in Human Pain Conditions.

Date: October 10–11, 2024.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Georgetown, 2350 M Street NW, Washington, DC 20037.

Meeting Format: In person.

Contact Person: Abu Saleh Mohammad Abdullah, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1003–L, Bethesda, MD 20892, (301) 827–4043, abuabdullah.abdullah@nih.gov.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Behavioral Neuroendocrinology, Neuroimmunology, Rhythms, and Sleep Study Section.

Date: October 10–11, 2024.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: John N. Stabley, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594-0566, stableyjn@csr.nih.gov.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Cancer and Hematologic Disorders Study Section.

Date: October 10–11, 2024.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Steven M. Frenk, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3141, Bethesda, MD 20892, (301) 480-8665, frenksm@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 10, 2024.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024-20883 Filed 9-12-24; 8:45 am]

BILLING CODE 4140-01-P

Contact Person: Serena Chu, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Bethesda, MD 20852, 301-500-5829, Email: serena.chu@nih.gov.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; BRAIN U01 Armamentarium Review Meeting.

Date: October 18, 2024.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Evon Abisaid, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Boulevard, Rockville, MD 20852, (301) 827-0399, ereifejes@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: September 10, 2024.

Bruce A. George,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024-20818 Filed 9-12-24; 8:45 am]

BILLING CODE 4140-01-P

Place: National Institutes of Health, NIMHD DEM II, Suite 800, 6707 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Deborah Ismond, Ph.D., Scientific Review Officer, Office of Extramural Research Administration, National Institute on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, (301) 594-2704, ismondrr@mail.nih.gov.

Name of Committee: National Institute on Minority Health and Health Disparities Special Emphasis Panel; Model Continuums of Care Initiative (MCCI) to Advance Health Equity and End Health Disparities Among Women and Girls in Racial/Ethnic Minority and Other Underserved Communities (U34).

Date: October 31, 2024.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIMHD DEM II, Suite 800, 6707 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Xinli Nan, M.D., Ph.D., Scientific Review Officer, Office of Extramural Research Activities, National Institute on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Boulevard, Suite 800, Bethesda, MD 20892, (301) 594-7784, Xinli.Nan@nih.gov.

Name of Committee: National Institute on Minority Health and Health Disparities Special Emphasis Panel; Technologies/Innovations for Improving Minority Health and Eliminating Health Disparities.

Date: November 6–8, 2024.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIMHD DEM II, Suite 800, 6707 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Jingsheng Tuo, Ph.D., Scientific Review Officer, Office of Extramural Research Administration, National Institute on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, (301) 451-5953, jingsheng.tuo@nih.gov.

Dated: September 10, 2024.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024-20882 Filed 9-12-24; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Non-Pharmacological Clinical Trials.

Date: October 17, 2024.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Minority Health and Health Disparities; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Minority Health and Health Disparities Special Emphasis Panel; NIMHD Mentored Career and Research Development Awards (Ks).

Date: October 30–November 1, 2024.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Biomedical Research Study Section, October 29, 2024, 09:00 a.m. to October 29, 2024, 03:30 p.m.,

National Institute of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on August 20, 2024, 89 FR 67453, Doc 2024–18557.

This notice is being amended to change the Meeting Scientific Review Officer from Dr. Anna Ghambaryan, M.D., Ph.D. to Dr. Mamatha Garige, Ph.D., Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 6700B Rockledge Drive, Room 2118, Bethesda, MD, 20817, Phone: (301) 443–9737, Email: mamatha.garige@nih.gov. The meeting is closed to the public.

Dated: September 10, 2024.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–20881 Filed 9–12–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Vascular and Hematology Integrated Review Group; Atherosclerosis and Vascular Inflammation Study Section.

Date: October 10–11, 2024.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Natalia Komissarova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, (301) 435–1206, komissar@mail.nih.gov.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Integrative and Clinical Endocrinology and Reproduction Study Section.

Date: October 15–16, 2024.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: North Bethesda Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852 (In Person).

Contact Person: Victoria Martinez Virador, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–4703, victoria.virador@nih.gov.

Name of Committee: Cell Biology Integrated Review Group; Development—2 Study Section.

Date: October 15–16, 2024.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015 (In Person).

Contact Person: Rass M Shayiq, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, shayiqr@csr.nih.gov.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neuroscience of Interception and Chemosensation Study Section.

Date: October 15–16, 2024.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel 2430 Pennsylvania Ave. NW Washington, DC 20037 (In Person).

Contact Person: Myongsoo Matthew Oh, Ph.D., Scientific Review Officer Center for Scientific Review National Institutes of Health, 6701 Rockledge Drive, Room 1011F Bethesda, MD 20892, (301) 435–1042, ohmm@csr.nih.gov.

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Pathobiology of Kidney Disease Study Section.

Date: October 15–16, 2024.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Atul Sahai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818 Bethesda, MD 20892, 301–435–1198, sahaia@csr.nih.gov.

Name of Committee: Vascular and Hematology Integrated Review Group; Hemostasis, Thrombosis, Blood Cells and Transfusion Study Section.

Date: October 15–16, 2024.

Time: 9:00 a.m. to 9:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Vivian Tang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Bethesda, MD 20892, (301) 594–6208, tangvw@csr.nih.gov.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Lung Immunology and Infection Study Section.

Date: October 15–16, 2024.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015 (In Person).

Contact Person: Rupali Das, Ph.D., Scientific Review Officer, The Center for Scientific Review The National Institutes of Health, 6701 Rockledge Drive Bethesda, MD 20892, (301) 594–0023, rupali.das@nih.gov.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Maximizing Investigators' Research Award A Study Section.

Date: October 15–16, 2024.

Time: 9:30 a.m. to 8:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mollie Kim Manier, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Bethesda, MD 20892, (301) 594–0510, mollie.manier@nih.gov.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Biobehavioral Mechanisms of Emotion, Stress and Health Study Section.

Date: October 15–16, 2024.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Brittany L. Mason-Mah, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1000A, Bethesda, MD 20892, (301) 594–3163, masonmahbl@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 10, 2024.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–20880 Filed 9–12–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2024–0434]

National Offshore Safety Advisory Committee; Vacancies

AGENCY: U.S. Coast Guard, Department of Homeland Security.

ACTION: Notice; request for applications.

SUMMARY: The Coast Guard is requesting applications to fill ten vacancies on the National Offshore Safety Advisory Committee (Committee). This Committee advises the Secretary of the Department of Homeland Security on matters relating to activities directly involved with, or in support of, the exploration of offshore mineral and non-mineral energy resources, to the extent that such matters are within the jurisdiction of the Coast Guard.

DATES: Your completed application should reach the U.S. Coast Guard on or before October 15, 2024.

ADDRESSES: Applications must include: (a) a cover letter expressing interest in an appointment to the National Offshore Safety Advisory Committee and detailing the applicants qualifications to serve as Special Government Employee representing the general public, and/or as a representative in one or more of the ten other membership positions, (b) a resume detailing the applicant's relevant experience for the position applied for, and (c) a brief 2–3 paragraph biography written in third person. Applications should be submitted via email with subject line “NOSAC Vacancy Application” to Patrick.W.Clark@uscg.mil or to Justin.P.Goff@uscg.mil.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick W. Clark, Designated Federal Officer of the National Offshore Safety Advisory Committee; telephone 571–607–8236; or email at Patrick.W.Clark@uscg.mil; or Lieutenant Justin Goff, Alternate Designated Federal Officer; telephone (571) 610–0130; or email at Justin.P.Goff@uscg.mil.

SUPPLEMENTARY INFORMATION: The National Offshore Safety Advisory Committee is a Federal advisory committee. The Committee was established on December 4, 2018, by section 601 of the *Frank LoBiondo Coast Guard Authorization Act of 2018* (Pub. L. 115–282, 132 Stat. 4284), and amended by section 8331 of the *Elijah E. Cummings Coast Guard Authorization Act of 2020* (Pub. L. 116–283, 134 Stat. 4702) and is codified in 46 U.S.C. 15106. The Committee

operates under the provisions of the *Federal Advisory Committee Act* and 46 U.S.C. 15109.

The Committee provides advice and recommendations to the Secretary of Homeland Security on matters relating to activities directly involved with, or in support of, the exploration of offshore mineral and non-mineral energy resources, to the extent that such matters are within the jurisdiction of the U.S. Coast Guard.

The Committee is required to meet at least once a year in accordance with 46 U.S.C. 15109(a). We expect the Committee to meet at least twice a year, but it may meet more frequently. The meetings are generally held in Houston, Texas and New Orleans, Louisiana.

Under provisions in 46 U.S.C. 15109(f)(6), if you are appointed as a member of the Committee, your membership term will expire on December 31st of the third full year after the effective date of your appointment. Under provisions in 46 U.S.C. 15109(f)(4) the Secretary of Homeland Security may require an individual to have passed an appropriate security background examination before appointment to the Committee. All members serve at their own expense and receive no salary or other compensation from the Federal Government.

If you are appointed as a member of the Committee, you will be required to sign a Non-Disclosure Agreement and a Gratuitous Services Agreement.

In this solicitation for Committee Members, we will consider applications for the following ten positions:

(a) Two members representing entities engaged in the production of petroleum. (Two of two positions are open).

(b) One member representing entities engaged in offshore drilling. (One of two positions is open).

(c) One member representing entities engaged in the support, by offshore supply vessels or other vessels, of offshore mineral and oil operations, including geophysical services. (One of two positions is open).

(d) One member representing entities engaged in diving services related to offshore construction, inspection, and maintenance.

(e) One member representing entities engaged in safety and training services related to offshore exploration and construction.

(f) One member representing entities providing subsea engineering construction or remotely operated vehicle support to the offshore industry.

(g) One member representing entities individuals employed in offshore operations and, of the two, one shall have recent practical experience on a

vessel or offshore unit involved in the offshore mineral and energy industry. (One of two positions are open).

(h) One member representing national environmental entities and entities providing environmental protection, compliance, or response services to the offshore industry.

(i) One member representing the general public (but not a specific environmental group).

The members who will fill positions (a) through (h) as described above will be appointed to represent the interest of their respective groups and viewpoints and are not Special Government Employees as defined in 18 U.S.C. 202(a).

If you are selected to fill position (i) as described above, as a member drawn from the general public, you will be appointed and serve as a Special Government Employee as defined in 18 U.S.C. 202(a). Applicants for appointment as a Special Government Employee are required to complete a Confidential Financial Disclosure Report (OGE Form 450) for new entrants and if appointed as a member must submit OGE Form 450 annually. The U.S. Coast Guard may not release the reports or the information in them to the public except under an order issued by a Federal Court or as otherwise provided under the *Privacy Act* (5 U.S.C. 552a). Only the Designated U.S. Coast Guard Ethics Official or his or her designee may release a Confidential Financial Disclosure Report. Applicants can obtain this form by going to the website of the Office of Government Ethics (www.oge.gov), or by calling or emailing the individuals listed above in the **FOR FURTHER INFORMATION CONTACT** section.

Registered lobbyists are not eligible to serve on Federal Advisory Committees in an individual capacity. See “*Revised Guidance on Appointment of Lobbyists to Federal Advisory Committees, Boards and Commissions*” (79 FR 47482, August 13, 2014). Registered lobbyists are “lobbyists,” as defined in 2 U.S.C. 1602, who are required by 2 U.S.C. 1603 to register with the Secretary of the Senate and the Clerk of the House of Representatives.

In order for the Department, to fully leverage broad-ranging experience and education, the National Offshore Safety Advisory Committee must be diverse with regard to professional and technical expertise. The Department is committed to pursuing opportunities, consistent with applicable law, to compose a committee that reflects the diversity of the Nation's people.

If you are interested in applying to become a member of the Committee,

email your application to Patrick.W.Clark@uscg.mil or Justin.P.Goff@uscg.mil as provided in the **ADDRESSES** section of this notice.

Applications for members who will serve to represent the general public must be accompanied by a completed OGE Form 450. Once we receive your application we will send you an email confirming receipt.

The U.S. Coast Guard will not consider incomplete or late applications.

Privacy Act Statement

Purpose: To obtain qualified applicants to fill ten vacancies on the National Offshore Safety Advisory Committee. When you apply for appointment to the DHS' National Offshore Safety Advisory Committee, DHS collects your name, contact information, and any other personal information that you submit in conjunction with your application. DHS will use this information to evaluate your candidacy for Committee membership. If you are chosen to serve as a Committee member, your name will appear in publicly available Committee documents, membership lists, and Committee reports.

Authorities: 14 U.S.C. 504; 46 U.S.C. 15106 and 15109; and 18 U.S.C. 202(a), and Department of Homeland Security Delegation No. 00915.

Routine Uses: Authorized U.S. Coast Guard personnel will use this information to consider and obtain qualified candidates to serve on the Committee. Any external disclosures of information within this record will be made in accordance with DHS/ALL-009, Department of Homeland Security Advisory Committee (73 FR 57639, October 3, 2008).

Consequences of Failure to Provide Information: Furnishing this information is voluntary. However, failure to furnish the requested information may result in your application not being considered for the Committee.

Dated: September 5, 2024.

Jeffrey G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2024-20804 Filed 9-12-24; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS-2024-0032]

DHS Data Privacy and Integrity Advisory Committee

AGENCY: Privacy Office, Department of Homeland Security (DHS).

ACTION: Committee management; notice of open Federal advisory committee meeting.

SUMMARY: The DHS Data Privacy and Integrity Advisory Committee will meet on Thursday, October 17, 2024, via virtual conference. The meeting will be open to the public. There will be a listening session related to the November 2023 tasking to the Committee.

DATES: The DHS Data Privacy and Integrity Advisory Committee will conduct a meeting on Thursday, October 17, 2024, from 1:30 p.m. to 4:30 p.m. EDT. The virtual meeting may end early if the Committee has completed its business.

ADDRESSES: The meeting will be held via a virtual forum (conference information will be posted on the Privacy Office website in advance of the meeting at www.dhs.gov/privacy-advisory-committee, or call (202) 343-1717, to obtain the information). The Data Privacy and Integrity Advisory Committee is committed to ensuring all participants have equal access regardless of disability status. If you require reasonable accommodations due to a disability to fully participate, please email Ms. Sandra L. Taylor at privacycommittee@hq.dhs.gov or call (202) 343-1717 as soon as possible.

To facilitate the listening session, if you would like to address the Committee, please register in advance by contacting Sandra L. Taylor at the address provided below. The names and affiliations of individuals who address the Committee will be included in the public record of the meeting. Advanced written comments or comments for the record, including persons who wish to submit comments and who are unable to participate or speak at the meeting, should be sent to Sandra L. Taylor, Designated Federal Official, DHS Data Privacy and Integrity Advisory Committee, privacycommittee@hq.dhs.gov by September 30, 2024. All submissions must include the Docket Number (DHS-2024-0032) and may be submitted by any one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Email:** PrivacyCommittee@hq.dhs.gov. Include the Docket Number (DHS-2024-0032) in the subject line of the message.

- **Mail:** Sandra L. Taylor, Designated Federal Official, Data Privacy and Integrity Advisory Committee, Department of Homeland Security, 2707 Martin Luther King, Jr. Avenue SE, Mail Stop 0655, Washington, DC 20598.

Instructions: All submissions must include the words "Department of Homeland Security Data Privacy and Integrity Advisory Committee" and the Docket Number (DHS-2024-0032). Comments received will be posted without alteration at <http://www.regulations.gov>, including any personal information provided. You may wish to review the Privacy & Security Notice found via a link on the homepage of www.regulations.gov.

The DHS Privacy Office encourages you to register for the meeting and listening session in advance by contacting Sandra L. Taylor, Designated Federal Official, DHS Data Privacy and Integrity Advisory Committee, at PrivacyCommittee@hq.dhs.gov. Advance registration is voluntary. The Privacy Act Statement below explains how DHS uses the registration information you provide and how you may access or correct information retained by DHS, if any.

Docket: For access to the docket to read background documents or comments received by the DHS Data Privacy and Integrity Advisory Committee, go to <http://www.regulations.gov> and search for docket number DHS-2024-0032.

FOR FURTHER INFORMATION CONTACT: Sandra L. Taylor, Designated Federal Official, DHS Data Privacy and Integrity Advisory Committee, Department of Homeland Security, 2707 Martin Luther King, Jr. Avenue SE, Mail Stop 0655, Washington, DC 20598, by telephone (202) 343-1717, or by email to PrivacyCommittee@hq.dhs.gov.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act (FACA). The DHS Data Privacy and Integrity Advisory Committee provides advice at the request of the Secretary of Homeland Security and the DHS Chief Privacy Officer on programmatic, policy, operational, administrative, and technological issues within DHS that relate to personally identifiable information, as well as data integrity, transparency, information sharing, and other privacy-related matters. The

Committee was established by the Secretary of Homeland Security under 6 U.S.C. 451.

Agenda

The Acting Chief Privacy Officer will make an introduction and provide the Committee with an update on DHS Privacy Office activities and discuss priorities. The Chairs of the Policy and Technology subcommittees will provide a progress update. In addition, the Committee will hold an open listening session for members of the public to provide insight and feedback on the office's authorities, resources, efficacy, and mission to meet the department's missions over the next twenty years. This listening session is in response to the November 7, 2023, tasking issued by former Chief Privacy Officer Mason Clutter and can be found here:

www.dhs.gov/dhs-data-privacy-and-integrity-advisory-committee-meeting-information. Specifically, we would like members of the public to consider:

(1) How important is it for government agencies to have a dedicated office for privacy concerns?

(2) What privacy issues do you think will be most important for the government to address over the next twenty years?

(3) How do you believe the role of the Privacy Office should evolve as technology continue to advance?

(4) What emerging technologies do you think the Privacy Office should focus on regulating or monitoring?

(5) What actions could the Privacy Office take to increase your confidence in their ability to safeguard your privacy?

(6) In what ways could the Privacy Office better engage with the public to understand their privacy concerns?

(7) Any specific actions or policies issued by the Privacy Office that have impacted your community?

(8) What steps should the Privacy Office take to ensure that privacy protections keep pace with future developments?

(9) What specific privacy concerns would you like to see addressed by the Privacy Office over the next two decades?

(10) How important is public input in shaping the policies and activities of the DHS Privacy Office?

If you wish to submit written comments, you may do so in advance or post-meeting by submitting them to Docket Number (DHS-2024-0032) at www.regulations.gov or by forwarding them to the Committee at the locations listed under the **ADDRESSES** section. The final agenda and a copy of the tasking will be posted on or before September

30, 2024, on the Committee's website at www.dhs.gov/dhs-data-privacy-and-integrity-advisory-committee-meeting-information.

Privacy Act Statement: DHS's Use of Your Information

Authority: DHS requests that you voluntarily submit information under the following authorities: The Federal Records Act, 44 U.S.C. 3101; the FACA, 5 U.S.C. chapter 10; and the Privacy Act of 1974, 5 U.S.C. 552a.

Principal Purposes: When you register to attend a DHS Data Privacy and Integrity Advisory Committee meeting, DHS collects your name, contact information, and the organization you represent, if any. DHS uses this information to contact you for purposes related to the meeting, such as to confirm your registration, to advise you of any changes to the meeting, or to assure that DHS has sufficient materials to distribute to all attendees. DHS may also use the information you provide for public record purposes such as posting publicly available transcripts and meeting minutes.

Routine Uses and Sharing: In general, DHS will not use the information you provide for any purpose other than the Principal Purposes above and will not share this information within or outside the agency. In certain circumstances, DHS may share this information on a case-by-case basis as required by law or as necessary for a specific purpose, as described in the DHS/ALL-002 Mailing and Other Lists System of Records Notice (November 25, 2008, 73 FR 71659).

Effects of Not Providing Information: You may choose not to provide the requested information or to provide only some of the information DHS requests. If you choose not to provide some or all of the requested information, DHS may not be able to contact you for purposes related to the meeting.

Accessing and Correcting Information: If you are unable to access or correct the information provided by using the method that you originally used to submit it, you may direct your request in writing to the DHS Deputy Chief FOIA Officer at foia@hq.dhs.gov. Additional instructions are available at <http://www.dhs.gov/foia> and in the DHS/ALL-002 Mailing and Other Lists System of Records referenced above.

Deborah Fleischaker,
Chief Privacy Officer (A), Department of Homeland Security.

[FR Doc. 2024-20821 Filed 9-12-24; 8:45 am]

BILLING CODE 4410-10-P

DEPARTMENT OF HOMELAND SECURITY

[DOCKET NUMBER DHS 2024-0019]

Agency Information Collection Activities: Various Homeland Security Acquisitions Regulations Forms OMB Control No. 1600-0002

AGENCY: Department of Homeland Security (DHS).

ACTION: 30-Day notice and request for comments.

SUMMARY: The Department of Homeland Security, DHS will submit the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. DHS previously published this information collection request (ICR) in the **Federal Register** on June 13, 2024, for a 60-day public comment period. One comment was received by DHS. The purpose of this notice is to allow additional 30-days for public comments.

DATES: Comments are encouraged and will be accepted until October 15, 2024. This process is conducted in accordance with 5 CFR 1320.10.

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.

The Office of Management and Budget is particularly interested in comments which:

1. 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;

2. Evaluate 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. Enhance the quality, utility, and clarity of the information to be collected; and

4. 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 submissions of responses.

SUPPLEMENTARY INFORMATION: In accordance with Federal regulations and statutes, when protests are filed, the contracting officer will require information/documentation such as detailed statements of legal and factual grounds for the protests, copies of relevant documents, solicitation or contract number, and requests for a ruling by the agency. The Federal Acquisition Regulation (FAR) and 48 CFR chapter 1 provide general procedures on handling protests submitted by contractors to Federal agencies. FAR part 33, Protests, Disputes and Appeals, prescribes policies and procedures for filing protests and for processing contract disputes and appeals. While the FAR prescribes the procedures to be followed for protests to the agency, it allows agencies to determine the method of receipt. DHS will utilize electronic mediums (email or facsimile) for collection of information and will not prescribe a format or require more information than what is already required in the FAR. If DHS determines there is a need to collect additional information outside of what is required in the FAR, DHS will submit a request to the Office of Management and Budget (OMB) for approval. The prior information collection request for OMB No. 1600-0004 was approved through November 30, 2024, by OMB in a Notice of OMB Action. This justification supports a request for an extension of the approval.

The information being collected will be obtained from contractors as part of their submissions whenever they file a bid protest with DHS. The information will be used by DHS officials in deciding how the protest should be resolved. Failure to collect this information would result in delayed resolution of protests. Agency protest information is contained in each individual solicitation document, and provides the specified contracting officer's name, email, and mailing address that the contractors would use to submit its response. The FAR does not specify the format in which the contractor should submit protest information. However, most contractors use computers to prepare protest materials and submit time sensitive responses electronically (email or facsimile) to the specified Government point of contact. Since the responses must meet specific timeframes, a centralized mailbox or website would not be a practical method of submission. Submission of protest information through contracting officers' email or through facsimile are the best methods

to use to document receipt of protest information, and are the methods most commonly used in the Government protest process. This information collection may involve small business contractors, depending on the particular transaction. The burden applied to small businesses is minimal and consistent with the goals of achieving timely resolution of agency protests. This information is collected only when contractors choose to file a protest to the agency. The information is requested from contractors so that the Government will be able to evaluate protests effectively and provide prompt resolution of issues in dispute when contractors file such claims.

DHS/ALL/PIA-006 General Contact Lists covers the basic contact information that must be collected for DHS to address these protests. The other information collected will typically pertain to the contract itself, and not individuals. However, all information for this information collection is submitted voluntarily. Technically, because this information is not retrieved by personal identifier, no SORN is required. However, DHS/ALL-021 DHS Contractors and Consultants provides coverage for the collection of records on DHS contractors and consultants, to include resume and qualifying employment information. There is no assurance of confidentiality provided to the respondents.

The burden estimates provided in response to Item 12 above are based upon the Department's findings in its FY 2022 Procurement Line of Business, Operational Status Report. No program changes have occurred or changes to the information being collected, however, the burden was adjusted to reflect an agency adjustment increase of 33 respondents within DHS for fiscal year 2022, as well as an increase in the average hourly wage rate.

Analysis

Agency: Department of Homeland Security (DHS).

Title: Various Homeland Security Acquisitions Regulations Forms.

OMB Number: 1600-0002.

Frequency: Annually.

Affected Public: Contractor.

Number of Respondents: 21,379.

Estimated Time per Respondent: 1 hour.

Total Burden Hours: 21,379.

Total Burden Cost (capital/startup): \$1,685,903.

Total Burden Cost (operating/maintaining):

Robert Dorr,

Executive Director, Business Management Directorate.

[FR Doc. 2024-20793 Filed 9-12-24; 8:45 am]

BILLING CODE 9112-FL-P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA-2024-0023]

Revision of a Currently Approved Information Collection for Chemical-Terrorism Vulnerability Information (CVI)

AGENCY: Cybersecurity and Infrastructure Security Agency, DHS.

ACTION: 60-Day notice and request for comments; renewal of Information Collection Request (ICR): 1670-0015.

SUMMARY: The Infrastructure Security Division (ISD) within the Cybersecurity and Infrastructure Security Agency (CISA) 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. The submission proposes to renew the information collection for an additional three years and to update both the burden estimates and the statutory authority for the information collection.

DATES: Comments are encouraged and will be accepted until November 12, 2024.

ADDRESSES: You may send comments, identified by docket number through the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for sending comments.

Instructions: All submissions received must include the agency name "CISA" and docket number CISA-2024-0023. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Comments that include trade secrets, confidential commercial or financial information, Chemical-terrorism Vulnerability Information (CVI),¹ Sensitive Security Information (SSI),² or Protected Critical Infrastructure

¹ For more information about CVI see 6 CFR 27.400 and the CVI Procedural Manual at www.dhs.gov/publication/safeguarding-cvi-manual.

² For more information about SSI see 49 CFR part 1520 and the SSI Program web page at www.tsa.gov/for-industry/sensitive-security-information.

Information (PCII) ³ should not be submitted to the public docket. Comments containing trade secrets, confidential commercial or financial information, CVI, SSI, or PCII should be appropriately marked and packaged in accordance with applicable requirements and submission must be coordinated with the point of contact for this notice provided in **FOR FURTHER INFORMATION CONTACT** section. Comments must be identified by docket number CISA–2024–0023.

FOR FURTHER INFORMATION CONTACT:
Annie Hunziker Boyer, 703–603–5000, CISARegulations@cisa.dhs.gov.

SUPPLEMENTARY INFORMATION: The Chemical Facility Anti-Terrorism Standards (CFATS) Program identified and regulated the security of high-risk chemical facilities using a risk-based approach. Pursuant to section 5 of the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014 (Pub. L. 113–254, as amended by Pub. L. 116–150; 6 U.S.C. 621 note), authorization had been granted for CFATS until July 27, 2023. Congress did not act to reauthorize the program in time and, as such, the authorization expired on July 28, 2023. Therefore, regulations written pursuant to CFATS authority are not currently active. While regulatory text for the CFATS regulation, including information protection requirements, is located in part 27 of title 6 of the Code of Federal

Regulations (CFR), the text is inactive due to the lapse in authority. CISA continues to possess and safeguard the information provided to CISA under the CFATS program prior to the program’s lapse in authority on July 28, 2023. CISA also continues to receive requests for these government records and has continued to treat any information previously designated as CVI prior to the July 28, 2023 lapse consistent with the previously established CVI information handling protection regime. As a result, prior to granting access to information safeguarded as CVI, CISA verifies that the requestor is a CVI Authorized User. If that requestor has a need to know but is not a CVI Authorized User, CISA will provide the requestor with CVI training. The requestor then submits an application to become a CVI Authorized User. CISA is authorized to safeguard information provided to CISA under CFATS prior to July 28, 2023 under 6 U.S.C. 652(e)(1)(J), which grants CISA the authority to safeguard information from unauthorized disclosure and to ensure that the information is handled and used only for the performance of official duties.⁴ It is the Administration’s position that CFATS should be reauthorized. However, even without statutory reauthorization, there is both a reason to continue collecting this information (*i.e.*, enabling individuals with a need to know but who are not CVI Authorized

Users to access historical government records safeguarded as CVI) as well as existing statutory authority to do so under 6 U.S.C. 652(e)(1)(J). Once CFATS is reauthorized, the training and application to become a CVI Authorized User will be made accessible to the public. The current information collection for the CVI program (IC 1670–0015) will expire on November 30, 2024.⁵ CISA proposes three revisions from the previously approved collection. Specifically, to renew the information collection for an additional three years, increase the loaded average hourly wage rate of respondents from \$79.75 to \$101.87 based on updated BLS wage and compensation data, and to cite 6 U.S.C. 652(e)(1)(J) as its statutory authority rather than 6 U.S.C. 623. This process is conducted in accordance with 5 CFR 1320.8. **CISA’S Methodology in Estimating the Burden for the Chemical-Terrorism Vulnerability Information Authorization**

Number of Respondents
The current information collection estimated that 20,000 respondents submit a request to become a CVI Authorized User Number annually. The table below provides the number of respondents over the past three years (*i.e.*, Calendar Year (CY) 2020 through CY 2022).

	CY 2020	CY 2021	CY 2022
Number of Respondents	11,444	12,931	14,252

Due to past fluctuations and uncertainty regarding the number of future respondents, CISA believes that 20,000 continues to be a reasonable estimate when CFATS is reauthorized. Therefore, CISA proposes to retain the estimated annual number of respondents.⁶

Estimated Time per Respondent

In the current information collection, the estimated time per respondent to prepare and submit a CVI Authorization is 0.50 hours (30 minutes). CISA proposes to retain the estimated time per respondent.

Annual Burden Hours
The annual burden hours for the CVI Authorization is [0.50 hours × 20,000 respondents × 1 response per respondent], which equals 10,000 hours. *Total Capital/Startup Burden Cost*
Prior to the expiration of CFATS’ statutory authorization, the instrument through which the information was collected electronically was a web interface incorporated into CISA’s Chemical Security Assessment Tool (CSAT). Since the lapse, and until reauthorization, the instrument is a PDF form sent via email to respondents. The

PDF form is filled out by respondents and returned to CISA via email. When the CFATS program is reauthorized, a web-enabled interface will be made accessible to the public. Thus, for the purposes of this notice, CISA continues to assume there is no annualized capital or start-up costs incurred by respondents for this information collection. *Total Recordkeeping Burden*
There are no recordkeeping burden costs incurred by respondents for this information collection.

³ For more information about PCII see 6 CFR part 29 and the PCII Program web page at www.dhs.gov/pcii-program.

⁴ 6 U.S.C. 652(e)(1)(J): (J) To ensure that any material received pursuant to this chapter is protected from unauthorized disclosure and handled and used only for the performance of official duties.

⁵ The current information collection for CVI (*i.e.*, IC 1670–0015) may be viewed at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202012-1670-001.

⁶ If the CFATS program is not reauthorized, renewal of this IC under the authority of 6 U.S.C. 652(e)(1)(J) for the more limited purpose of issuing CVI Authorized User Numbers and allowing

individuals to become CVI Authorized Users would reduce the estimated number of respondents to 150. It is CISA’s position that CFATS will be reauthorized. Therefore, CISA proposes to retain the estimate of 20,000 respondents.

Total Annual Burden Cost

CISA assumes that respondents are generally Site Security Officers (SSOs), although other types of respondents may also complete this instrument (e.g., State, and local government employees and contractors). For the purpose of this notice, CISA maintains this assumption. To estimate the total annual burden, CISA multiplied the annual burden of 10,000 hours by the loaded average hourly wage rate of SSOs of \$101.87 per hour.⁷ Therefore, the total annual burden cost for the CVI Authorization instrument is \$1,018,700 [10,000 total annual burden hours × \$101.87 per hour].

Analysis

Agency: Department of Homeland Security, Cybersecurity and Infrastructure Agency, Infrastructure Security Division.

Title: CFATS Chemical-Terrorism Vulnerability Information.

OMB Number: 1670–0015.

Instrument: Chemical-Terrorism Vulnerability Information Training and Authorized User Application.

Frequency: “On occasion” and “Other”.

Affected Public: Business or other for-profit.

Number of Respondents: 20,000 respondents (rounded estimate).

Estimated Time per Respondent: 0.50 hours.

Total Burden Hours: 10,000 annual burden hours.

Total Burden Cost (capital/startup): \$0.

Total Recordkeeping Burden: \$0.

Total Burden Cost: \$1,001,275.

Robert J. Costello,

Chief Information Officer, Department of Homeland Security, Cybersecurity and Infrastructure Security Agency.

[FR Doc. 2024–20828 Filed 9–12–24; 8:45 am]

BILLING CODE 9111–LF–P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service**

**[FWS–R4–ES–2024–N046;
FXES11140400000–245–FF04E00000]**

Endangered Species; Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive written data or comments on the applications by October 15, 2024.

ADDRESSES:

Reviewing Documents: Submit requests for copies of applications and other information submitted with the applications to Karen Marlowe (see **FOR FURTHER INFORMATION CONTACT**). All requests and comments should specify the applicant's name and application number (e.g., Mary Smith, ESPER0001234).

Submitting Comments: If you wish to comment, you may submit comments by one of the following methods:

- *Email (preferred method):* permitsR4ES@fws.gov. Please include your name and return address in your email message. If you do not receive a confirmation from the U.S. Fish and Wildlife Service that we have received your email message, contact us directly at the telephone number listed in **FOR FURTHER INFORMATION CONTACT**.
- *U.S. mail:* U.S. Fish and Wildlife Service Regional Office, Ecological Services, 1875 Century Boulevard, Atlanta, GA 30345 (Attn: Karen Marlowe, Permit Coordinator).

FOR FURTHER INFORMATION CONTACT: Karen Marlowe, Permit Coordinator, via telephone at 404–679–7097 or via email at karen_marlowe@fws.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered

within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite review and comment from the public and local, State, Tribal, and Federal agencies on applications we have received for permits to conduct certain activities with endangered and threatened species under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17. Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act of 1974, as amended (5 U.S.C. 552a), and the Freedom of Information Act (5 U.S.C. 552).

Background

With some exceptions, the ESA prohibits take of listed species unless a federal permit is issued that authorizes such take. The definition of “take” in the ESA includes hunting, shooting, harming, wounding, or killing, and also such activities as pursuing, harassing, trapping, capturing, or collecting.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to take endangered or threatened species while engaging in activities that are conducted for scientific purposes that promote recovery of species or for enhancement of propagation or survival of species. These activities often include the capture and collection of species, which would result in prohibited take if a permit were not issued. Our regulations implementing section 10(a)(1)(A) of the ESA for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies, and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies. Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild.

⁷ The wage used for an SSO equals that of Managers, All (11–9199), with a load factor of 1.4481 to account for benefits in addition to wages <https://www.bls.gov/oas/2023/may/oas119199.htm>. The load factor is estimated by dividing total compensation by total wages and salaries for the Management, Professional and Related series (\$72/\$49.72), which can be found at <https://www.bls.gov/news.release/eccec.t04.htm>.

Permit application No.	Applicant	Species	Location	Activity	Type of take	Permit action
ES27608B-2	McGehee Engineering Corporation; Jasper, AL.	Tricolored bat (<i>Perimyotis subflavus</i>).	Alabama, Mississippi, and Tennessee.	Presence/ probable absence surveys.	Enter hibernacula, capture, handle, identify, band, radio tag, and release.	Renewal and amendment.
ES54578B-3	Mary Frazer; Raleigh, NC.	Tricolored bat (<i>Perimyotis subflavus</i>).	Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.	Presence/ probable absence surveys.	Enter hibernacula, capture, handle, identify, band, radio tag, and release.	Renewal and amendment.
ES119937-5	Susan Loeb; Clemson, SC.	Gray bat (<i>Myotis grisescens</i>), Indiana bat (<i>Myotis sodalis</i>), northern long-eared bat (<i>Myotis septentrionalis</i>), and tricolored bat (<i>Perimyotis subflavus</i>).	Alabama, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.	Presence/ probable absence surveys and scientific research.	Enter hibernacula or maternity roost caves, capture, handle, identify, band, radio tag, collect hair samples, light tag, wing punch, and release.	Renewal and amendment.
ES64393C-2	Vanasse Hangen Brustlin, Inc.; Raleigh, NC.	Gray bat (<i>Myotis grisescens</i>), Indiana bat (<i>Myotis sodalis</i>), northern long-eared bat (<i>Myotis septentrionalis</i>), tricolored bat (<i>Perimyotis subflavus</i>), and Virginia big-eared bat (<i>Corynorhinus townsendii virginianus</i>).	Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.	Presence/ probable absence surveys.	Enter hibernacula or maternity roosts, capture with mist nets or harp traps, handle, identify, band, radio tag, and release.	Renewal and amendment.
PER0018443-1	U.S. Army Engineer Research and Development Center; Vicksburg, MS.	Balcones spike (<i>Fusconaia iheringi</i>), false spike (<i>Fusconaia mitchelli</i>), Guadalupe orb (<i>Cyclonaias necki</i>), Guadalupe fatmucket (<i>Lampsilis bergmanni</i>), Ouachita fanshell (<i>Cyprogenia sp. cf. aberti</i>), Texas fatmucket (<i>Lampsilis bracteata</i>), Texas fawnsfoot (<i>Truncilla macrodon</i>), Texas pimpleback (<i>Cyclonaias petrina</i>), and western fanshell (<i>Cyprogenia aberti</i>).	Alabama, Kansas, Louisiana, Missouri, Oklahoma, and Texas.	Presence/ probable absence surveys.	Capture, handle, identify, and release.	Amendment.

Permit application No.	Applicant	Species	Location	Activity	Type of take	Permit action
ES02200B-5	Atlanta Botanical Garden; Atlanta, GA.	<i>Helonias bullata</i> (swamp pink), <i>Hudsonia montana</i> (mountain golden heather), <i>Isotria medeoloides</i> (small whorled pogonia), <i>Platanthera integrilabia</i> (white fringeless orchid), <i>Sarracenia oreophila</i> (green pitcher plant), <i>Spiraea virginiana</i> (Virginia spiraea), <i>Trillium persiciens</i> (persistent trillium), <i>Trillium reliquum</i> (relict trillium), and <i>Xyris tennesseensis</i> (Tennessee yellow-eyed grass).	Federal lands in Alabama, Georgia, North Carolina, and Tennessee.	Long-term storage, artificial propagation, ex situ safe-guarding, and genomic studies.	Remove and reduce to possession (collect) seeds, leaves, root tips, pollen, and stem cuttings.	Renewal.
PER11488797-0 ...	North Carolina State University; Raleigh, NC.	Red wolf (<i>Canis rufus</i>) ..	Red Wolf SAFE facilities and North Carolina.	Evaluation of cortisol values.	Collect hair samples	New.
PER3315996-0	Domonique DiLandro; Holly Springs, NC.	Indiana bat (<i>Myotis sodalis</i>).	Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin.	Presence/ probable absence surveys.	Enter roosts (bridges, culverts, and abandoned buildings), capture, handle, identify, band, radio tag, and release.	New.
ES88778B-3	John Lamb; Decherd, TN.	Gray bat (<i>Myotis grisescens</i>), Indiana bat (<i>Myotis sodalis</i>), and northern long-eared bat (<i>Myotis septentrionalis</i>).	Tennessee	Presence/ probable absence surveys.	Enter hibernacula or maternity roost caves, capture, handle, identify, band, radio tag, and release.	Renewal and amendment.
ES81492B-2	Biotope Forestry & Environmental, LLC; Nacogdoches, TX.	Tricolored bat (<i>Perimyotis subflavus</i>).	Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.	Presence/ probable absence surveys.	Capture, handle, identify, band, radio tag, and release.	Amendment.
PER5292605-0	Amanda Miller; Winchester, TN.	Gray bat (<i>Myotis grisescens</i>), Indiana bat (<i>Myotis sodalis</i>), and northern long-eared bat (<i>Myotis septentrionalis</i>).	Arkansas, Colorado, Georgia, Florida, Kansas, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, Pennsylvania, South Carolina, Texas, and Virginia.	Presence/ probable absence surveys.	Capture, handle, identify, band, radio tag, and release.	New.
ES 75551C-1	Phillip Arant; Fairmont, WV.	Tricolored bat (<i>Perimyotis subflavus</i>).	Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.	Presence/ probable absence surveys.	Capture, handle, identify, band, radio tag, and release.	Renewal and amendment.

Permit application No.	Applicant	Species	Location	Activity	Type of take	Permit action
ES 88796C-3	Geological Survey of Alabama; Tuscaloosa, AL.	Fish: Blue shiner (<i>Cyprinella caerulea</i>), Cahaba shiner (<i>Notropis cahabae</i>), goldline darter (<i>Percina aurolineata</i>), rush darter (<i>Etheostoma phytophilum</i>), trispot darter (<i>E. trisella</i>), vermilion darter (<i>E. chermocki</i>), and watercress darter (<i>E. nuchale</i>); Mussels: Alabama moccasinshell (<i>Medionidus acutissimus</i>), Coosa moccasinshell (<i>M. parvulus</i>), dark pigtoe (<i>Pleurobema furvum</i>), finelined pocketbook (<i>Hamiota altilis</i>), Georgia pigtoe (<i>Pleurobema hanleyianum</i>), heavy pigtoe (<i>P. taitianum</i>), inflated heelsplitter (<i>Potamilus inflatus</i>), orangenacre mucket (<i>Hamiota perovalis</i>), ovate clubshell (<i>Pleurobema perovatum</i>), southern acornshell (<i>Epioblasma othcaloogensis</i>), southern clubshell (<i>Pleurobema decisum</i>), southern combshell (<i>Epioblasma penita</i>), southern pigtoe (<i>Pleurobema georgianum</i>), triangular kidneyshell (<i>Ptychobranthus greenii</i>), and upland combshell (<i>Epioblasma metastrata</i>).	Alabama	Presence/ probable absence surveys and monitoring.	Fish: capture, handle, identify and release; Mussels: capture, handle, identify, mark, release, and collect relic shells.	Renewal and amendment.
ES 824723-12	Archbold Expeditions, Inc; Venus, FL.	Birds: Florida grasshopper sparrow (<i>Ammodramus savannarum floridanus</i>), Florida scrub jay (<i>Aphelocoma coerulescens</i>), and red-cockaded woodpecker (<i>Picoides borealis</i>); Reptile: Eastern indigo snake (<i>Drymarchon couperi</i>); Plants: <i>Cladonia perforata</i> (Florida perforate cladonia), <i>Dicerandra christmanii</i> (Garrett's mint), <i>Polygala lewtonii</i> (Lewton's milkwort), and <i>Ziziphus celata</i> (Florida ziziphus).	Florida	Population management and monitoring, genetic analyses, studies on habitat use, germination experiments, propagation, and reintroduction.	Birds: Red-cockaded woodpeckers: capture, band, construct and monitor artificial nest cavities and restrictors, translocate, collect blood, and salvage non-viable eggs; Florida scrub jays: capture, band, collect blood and feathers, radio-tag, provide supplemental food, and administer Ivermectin; Florida grasshopper sparrows: capture, band, collect blood, salvage non-viable eggs, collect eggs and nestlings to be swapped with captive eggs and/or nestlings; Eastern indigo snake: capture, handle, take skin swabs, release, and salvage; Plants: collect seeds, leaves, stem cuttings, and portions of thallus.	Renewal and amendment.

Permit application No.	Applicant	Species	Location	Activity	Type of take	Permit action
ES63633A-7	Biodiversity Research Institute; Portland, ME.	Tricolored bat (<i>Perimyotis subflavus</i>).	Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.	Presence/probable absence surveys.	Enter hibernacula, capture with mist nets or harp traps, handle, identify, band, radio tag, and release.	Renewal and amendment.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue a permit to an applicant listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Daniel Elbert,

*Acting Deputy Assistant Regional Director,
Ecological Services, Southeast Region.*

[FR Doc. 2024-20786 Filed 9-12-24; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_NV_FRN; MO# 4500181312]

Notice of Availability of the Record of Decision and Approved Resource Management Plan Amendment for the Greenlink West Transmission Project in Clark, Esmeralda, Lyon, Mineral, Nye, Storey, and Washoe Counties, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the Approved Resource Management Plan (RMP) and associated Final Environmental Impact Statement (EIS) for the Greenlink West Transmission Project located in Clark, Esmeralda, Lyon, Mineral, Nye, Storey, and Washoe Counties, Nevada. The Acting Deputy Secretary of the Interior signed the ROD on September 9, 2024, which constitutes the decision of the BLM and two other Department of Interior agencies (National Park Service, Bureau of Indian Affairs) and makes the Approved RMP Amendments for the BLM effective immediately. The Department of Energy/National Nuclear Security Administration, as a Cooperating Agency, also signed the ROD that constitutes the decision for the Department of Energy/National Nuclear Security Administration on September 9, 2024.

DATES: The Acting Deputy Secretary of the Interior, representative of the lead federal agency (BLM), signed the ROD/Approved RMP Amendment on September 9, 2024.

ADDRESSES: The ROD/Approved RMP Amendment is available online at <https://eplanning.blm.gov/eplanning-ui/project/2017391/510>. Printed copies of the ROD/Approved RMP Amendment

are available for public inspection at the Nevada State Office, 1340 Financial Boulevard, Reno, Nevada or can be provided upon request by contacting Brian Buttazoni, Project Manager, at: 775-861-6491.

FOR FURTHER INFORMATION CONTACT:

Brian Buttazoni, Project Manager, telephone (775) 861-6491; address 1340 Financial Boulevard, Reno, Nevada 89502; email BLM_NV_greenlinkwest@blm.gov. Individuals in the United States who are deaf, blind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Mr. Buttazoni. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The Acting Deputy Secretary of the Interior has approved the RMP Amendments to re-classify the visual resources management classification of certain segments, and to make modifications to certain Section 368 corridors, which required amending the existing 2001 Carson City Consolidated RMP, 1997 Tonopah RMP and ROD, the 1998 ROD for the Approved Las Vegas RMP and Final EIS, and 2009 Approved RMP Amendment(s)/ROD for Designation of Energy Corridors on BLM-Administered Lands in the 11 Western States.

The ROD allows the BLM and three other federal agencies (National Park Service, Bureau of Indian Affairs (BIA), and Department of Energy/National Nuclear Security Administration) to issue their agency-specific authorizations for their segments within their jurisdiction for the construction, operation and maintenance, and decommissioning of the 472-mile long transmission project and ancillary facilities. As reflected in the ROD, the BIA is only authorized to grant the rights-of-way (ROW) across those Tribal

lands for which NV Energy has received consent. Issuing these authorizations meets the agencies' purpose and need to respond to NV Energy's applications.

There were no changes to the Approved RMP from the Proposed RMP for BLM-administered lands, which was published on June 14, 2024. The Approved RMP allows the BLM to modify the visual resource classification for certain segments of the project, along with modification to the alignment of certain Section 368 corridor segments.

The BLM provided the Proposed RMP Amendment for a 30-day public protest period beginning on June 14, 2024, and at the end of the public protest period on July 15, 2024, six valid protests had been received. The BLM also received seven other comments which were not valid protests. The BLM Director resolved all protests. A copy of the Protest Resolution Report is available at: <https://www.blm.gov/programs/planning-and-nepa/public-participation/protest-resolution-reports>. No changes were made to the RMP Amendment as a result of these protests.

The BLM provided the Proposed RMP Amendment to the Governor of Nevada for a 60-day Governor's consistency review. On July 25, 2024, the Governor's Office responded to this request and determined that no inconsistencies with Nevada state plans were identified.

Approval of this ROW constitutes the final decision of the Department of the Interior (DOI) and, in accordance with the regulations at 43 CFR 4.410(a)(3), is not subject to appeal under DOI regulations at 43 CFR part 4.

Laura Daniel-Davis,

Acting Deputy Secretary of the Interior.

[FR Doc. 2024-20864 Filed 9-12-24; 8:45 am]

BILLING CODE 4331-21-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NMMN 106003224; NMMN 105953819]

Notice of Application for Withdrawal Extension and Opportunity for Public Meeting, Gallinas Peak and West Turkey Cone Electronic Sites; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of application.

SUMMARY: On behalf of the United States Department of Agriculture, the United States Forest Service (USFS) filed an application with the Bureau of Land Management (BLM) requesting that the Secretary of the Interior extend Public

Land Order (PLO) No. 7625 for an additional 20-year term. PLO No. 7625 withdrew 140 acres of National Forest System land in Lincoln County, New Mexico, from location and entry under the United States mining laws, subject to valid existing rights, to protect the Gallinas Peak and West Turkey Cone Electronic Sites for a period of 20 years. The withdrawal created by PLO No. 7625 will expire on February 16, 2025, unless extended. This notice announces to the public a 90-day opportunity to comment on the withdrawal extension application and to request a public meeting.

DATES: Comments and requests for a public meeting regarding the withdrawal extension application must be received by December 12, 2024.

ADDRESSES: All written comments and meeting requests should be sent to the Cibola National Regional Forester's Office, Attn: Michiko Martin, 333 Broadway SE, Albuquerque, NM 87102.

FOR FURTHER INFORMATION CONTACT: Jillian Aragon, BLM Project Manager by phone at 505-635-9701 or email at jgaragon@blm.gov or Michiko Martin by phone at 505-346-3842 or by email at michiko.martin@usda.gov.

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or Tele Braille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The purpose of the requested withdrawal extension is to protect the 140-acre electronic sites, identified as the Gallinas Peak Electronic Site and the West Turkey Cone Electronic Site, which are located within the Lincoln National Forest. The withdrawal was originally authorized under PLO No. 7625 effective February 17, 2005 (70 FR 8109), for an additional 20-year term and is incorporated herein by reference.

The use of a right-of-way, interagency agreement, or cooperative agreement would not provide adequate protection for this site.

There are no suitable alternative sites available.

No water rights will be needed to fulfill the purpose of the requested withdrawal.

Notice is hereby given that the opportunity for a public meeting is afforded in connection with the withdrawal application. All interested persons who wish to submit comments, suggestions, or objections in connection

with the withdrawal extension application, or to request a public meeting, may submit a written request to the Regional Forester by December 12, 2024, at the address in the **ADDRESSES** section above. If the Authorized Officer determines that there will be a public meeting, a notice of the location, time, and place will be published in the **Federal Register** and in a local newspaper at least 30 days before the scheduled date of the meeting. Before including your address, phone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask the BLM in your comment to withhold from your personal identifying information from the public review, we cannot guarantee that we will be able to do so.

This application will be processed in accordance with the regulations in 43 CFR part 2300.

(Authority: 43 U.S.C. 1714)

Michael Gibson,

Acting State Director.

[FR Doc. 2024-20787 Filed 9-12-24; 8:45 am]

BILLING CODE 4331-15-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0038698; PPWOCRADN0-PCU00RP14.R50000]

Notice of Inventory Completion: Indiana University, Bloomington, IN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Indiana University has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after October 15, 2024.

ADDRESSES: Dr. Jayne-Leigh Thomas, Office of the Native American Graves Protection and Repatriation Act, Student Building 318, 701 E Kirkwood Avenue, Bloomington, IN 47405, telephone (812) 856-5315, email thomajay@iu.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative

responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Indiana University and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

On an unknown date, partial human remains labeled 'Arikara' were delivered to Indiana University. It is assumed that these remains are part of other Arikara collections that were affiliated to the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota in 2021. There are no known contaminants present.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the available information about the human remains describe in this notice.

Determinations

Indiana University has determined that:

- The human remains described in this notice represent the physical remains of one individuals of Native American ancestry.
- There is a connection between the human remains and associated funerary objects described in this notice and the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under

ADDRESSES. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains described in this notice to a requestor may occur on or after October 15, 2024. If competing requests for repatriation are received, Indiana University must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. Indiana University is responsible for sending a

copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: September 5, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–20865 Filed 9–12–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0038706; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: University of California, Berkeley, Berkeley CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of California, Berkeley intends to repatriate a certain cultural item that meets the definition of a sacred object and an object of cultural patrimony and that has a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural item in this notice may occur on or after October 15, 2024.

ADDRESSES: Alexandra Lucas, Repatriation Coordinator, Government and Community Relations (Chancellor's Office), University of California, Berkeley, 200 California Hall, Berkeley, CA 94720, telephone (510) 570–0964, email nagpra-ucb@berkeley.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of California, Berkeley, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of one cultural item has been requested for repatriation. The sacred object and object of cultural patrimony is a Kyôin (war shield) estimated to have been created in 1792 by Black

Horse (catalog number 2–4866a,b and formerly named Satanta's Shield). Black Horse passed guardianship of the Kyôin to his son Sét:t'áin:dè, who passed guardianship of the Kyôin to his son Grey Goose between 1872 and 1874. US Cavalry Captain Hugh Lenox Scott obtained the Kyôin from Grey Goose in 1894, purportedly through Grey Goose's will. Phoebe Apperson Hearst purchased the Kyôin along with 200 other Plains Indian objects from Hugh Knox in 1901. Kiowa people know the Kyôin to be the temporary residence of a spirit, and while cared for by individual caretakers entrusted by the Kyôin, as a spirit it cannot be individually owned. The Kyôin has held a vital ceremonial and protective role in the Kiowa Tribe of Oklahoma since its creation. Since 2000, the Kyôin has been on loan from the Phoebe A Hearst Museum of Anthropology to the U.S Army Fort Sill National Historic Landmark and Museum in Oklahoma to ensure its continued access by Kiowa people and inclusion in ceremony and cultural practice.

Collections and collection spaces at the Phoebe A Hearst Museum of Anthropology were treated with substances for preservation and pest control, some potentially hazardous. No records have been found to date at the Museum to indicate whether or not chemicals or natural substances were used prior to 1960. No chemicals are recorded to have been applied while on loan to the U.S. Army Fort Sill National Historic Landmark and Museum.

Determinations

The University of California, Berkeley has determined that:

- The one sacred object/object of cultural patrimony described in this notice is, according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization, a specific ceremonial object needed by a traditional Native American religious leader for present-day adherents to practice traditional Native American religion, and have ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision).
- There is a reasonable connection between the cultural item described in this notice and the Kiowa Indian Tribe of Oklahoma.

Requests for Repatriation

Additional, written requests for repatriation of the cultural item in this notice must be sent to the authorized

representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural item in this notice to a requestor may occur on or after October 15, 2024. If competing requests for repatriation are received, the University of California, Berkeley must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural item are considered a single request and not competing requests. The University of California, Berkeley is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: September 5, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–20875 Filed 9–12–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0038695;
PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Western Washington University, Department of Anthropology, Bellingham, WA

AGENCY: National Park Service, Interior.
ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Western Washington University (WWU) has completed an inventory of associated funerary objects and has determined that there is a cultural affiliation between the associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The associated funerary objects were removed from 45–WH–67 in Whatcom County, WA.

DATES: Repatriation of the associated funerary objects in this notice may occur on or after October 15, 2024.

ADDRESSES: Dr. Judith Pine, Western Washington University, Department of

Anthropology, Arntzen Hall 340, 516 High Street, Bellingham, WA 98225, telephone (360) 650–4783, email pinej@www.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the WWU, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Three associated funerary objects have been newly identified during a recent repatriation and rehousing project. The three associated funerary objects consist of one wooden burial box, one lot of carbon 14 samples, and one antler wedge. These items were newly identified in consultation with Lummi Nation Cultural Specialist, R. Tom. No hazardous chemicals are known to have been used to treat the associated funerary objects while in the custody of WWU.

Western Washington State College signed a contract with Arcomm Construction Company, Inc. of Seattle in April of 1975 to conduct “salvage” archaeology during the development of the Birch Bay sewage treatment facility. The project was led by Jeannette Gaston and Garland Grabert (WWU). Most of the work consisted of monitoring and salvage archaeology during construction activities throughout the summer of 1975. A total of twenty-six test cuts were excavated within the pipeline right-of-way (Gaston and Grabert, 1975).

During this work, an intact cedar slab box burial was identified at site 45–WH–67. Analysis of the box burial was conducted, which included radiocarbon dating of a sample of the wood burial box (Lundy, 1977). The ancestral remains were previously repatriated to the Lummi Nation, however, the burial box, carbon 14 samples, and an antler wedge found with the box are present in the WWU collections.

The associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological information, archaeological information,

geographical information, historical information, and oral tradition.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the associated funerary objects described in this notice.

Determinations

The WWU has determined that:

- The three objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.

- There is a connection between the associated funerary objects described in this notice and the Lummi Tribe of the Lummi Reservation and the Nooksack Indian Tribe.

Requests for Repatriation

Written requests for repatriation of the associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after October 15, 2024. If competing requests for repatriation are received, the WWU must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The WWU is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: September 5, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–20869 Filed 9–12–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR**National Park Service**

[NPS-WASO-NAGPRA-NPS0038694;
PPWOCRADNO-PCU00RP14.R50000]

Notice of Intended Repatriation: U.S. Army Corps of Engineers, Sacramento District, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Army Corps of Engineers, Sacramento District intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after October 15, 2024.

ADDRESSES: Dr. Michelle Fitzgerald, Physical Anthropologist and Sacramento District NAGPRA Liaison, U.S. Army Corps of Engineers, Sacramento District, Planning Division, 1325 J. Street, Sacramento, CA 95814, telephone (916) 557-7114, email Michelle.K.Fitzgerald@usace.army.mil.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the U.S. Army Corps of Engineers, Sacramento District, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of 297 cultural items from 17 sites and unspecified locations located within the U.S. Army Corps of Engineers, Sacramento District Black Butte Dam and Lake operating project in Glenn and Tehama counties, California have been requested for repatriation. These cultural items are described below.

Glenn County

One hundred thirty-three cultural items have been requested for repatriation. The 133 unassociated funerary objects are: one faunal bone, one metal fragment, one metal nail, one drilled *Olivella* shell fragment, one chipped stone, two pieces of groundstone, two shell fragments, two unmodified stones, four blue beads, four

pieces of debitage, eight seed beads, 24 *Olivella* shell beads, and 82 shell disk beads. The unassociated funerary objects were removed from site CA-GLE-10/H (Brownell Indian Cemetery) at the Sacramento District operating project at Black Butte Dam and Lake in Glenn County, CA. Site CA-GLE-10/H is a Native American cemetery that was utilized into the late-1930s. Black Butte Dam and Lake staff, Sacramento District personnel, contractors, and/or park visitors collected these cultural items on unknown dates. The unassociated funerary objects were stored at the Black Butte Dam and Lake Project Office prior to being transferred to the Veterans Curation Program facility in San Mateo, CA in 2018. The unassociated funerary objects currently remain at the Veterans Curation Program facility.

Two cultural items have been requested for repatriation. The two unassociated funerary objects are one pestle fragment and one projectile point (*missing*). The two unassociated funerary objects were removed from site CA-GLE-22 at the Sacramento District operating project at Black Butte Dam and Lake in Glenn County, CA. The pestle was collected in 1960 by archaeologists affiliated with San Francisco State College, now San Francisco State University. The pestle currently remains at San Francisco State University where it has been housed since 1960. The projectile point was removed in 1983 during survey and excavation work done by archaeologists affiliated with California State University, Sacramento under contract with the Sacramento District. California State University, Sacramento has reported this projectile point as missing.

Six cultural items have been requested for repatriation. The six unassociated funerary objects are column samples. The unassociated funerary objects were removed from site CA-GLE-25 at the Sacramento District operating project at Black Butte Dam and Lake in Glenn County, CA. The unassociated funerary objects were removed in 1983 during survey and excavation work done by archaeologists affiliated with California State University, Sacramento under contract with the Sacramento District. The unassociated funerary objects currently remain at California State University, Sacramento.

One cultural item has been requested for repatriation. The one unassociated funerary object is a projectile point. The unassociated funerary object was removed from site CA-GLE-22 or site CA-GLE-35 at the Sacramento District operating project at Black Butte Dam and Lake located in Glenn County, CA

by Black Butte Dam and Lake staff, Sacramento District personnel, contractors, and/or park visitors on an unknown date. This unassociated funerary object was stored at the Black Butte Dam and Lake Project Office prior to being transferred to the Veterans Curation Program facility in San Mateo, CA in 2018. The unassociated funerary object currently remains at the Veterans Curation Program facility.

Ten cultural items have been requested for repatriation. The 10 unassociated funerary objects are: three pieces of debitage (one is *missing*), three lithic tools (one is *missing*), and four projectile points (one is *missing*). The unassociated funerary objects were removed from site CA-GLE-35 at the Sacramento District operating project at Black Butte Dam and Lake in Glenn County, CA. One piece of debitage, one lithic tool, and one projectile point were removed in 1983 during survey and excavation work done by archaeologists affiliated with California State University, Sacramento under contract with the Sacramento District. California State University, Sacramento has reported these three unassociated funerary objects as missing. Two pieces of debitage, two lithic tools, and three projectile points were removed by Black Butte Dam and Lake staff, Sacramento District personnel, contractors, and/or park visitors on an unknown date. The unassociated funerary objects were stored at the Black Butte Dam and Lake Project Office prior to being transferred to the Veterans Curation Program facility in San Mateo, CA in 2018. The seven unassociated funerary objects currently remain at the Veterans Curation Program facility.

Five cultural items have been requested for repatriation. The five unassociated funerary objects are: one crescent, one piece of debitage (*missing*), one worked stone (*missing*), and two projectile points (one *missing*). The unassociated funerary objects were removed from site CA-GLE-306 at the Sacramento District operating project at Black Butte Dam and Lake in Glenn County, CA. One piece of debitage, one worked stone, and one projectile point were removed in 1983 during survey and excavation work done by archaeologists affiliated with California State University, Sacramento under contract with the Sacramento District. California State University, Sacramento has reported these three unassociated funerary objects as missing. One crescent and one projectile point were removed by Black Butte Dam and Lake staff, Sacramento District personnel, contractors, and/or park visitors on unknown dates. The unassociated

funerary objects were stored at the Black Butte Dam and Lake Project Office prior to being transferred to the Veterans Curation Program facility in San Mateo, CA in 2018. The two unassociated funerary objects currently remain at the Veterans Curation Program facility.

One cultural item has been requested for repatriation. The unassociated funerary object is a historic-era bottle (*missing*). The unassociated funerary object was removed from site CA-GLE-317 at the Sacramento District operating project at Black Butte Dam and Lake in Glenn County, CA. The unassociated funerary object was removed in 1983 during survey and excavation work done by archaeologists affiliated with California State University, Sacramento under contract with the Sacramento District. California State University, Sacramento has reported this unassociated funerary object as missing.

One cultural item has been requested for repatriation. The unassociated funerary object is one flaked stone/core (*missing*). The unassociated funerary object was removed from site CA-GLE-321 at the Sacramento District operating project at Black Butte Dam and Lake in Glenn County, CA. The unassociated funerary object was removed in 1983 during survey and excavation work done by archaeologists affiliated with California State University, Sacramento under contract with the Sacramento District. California State University, Sacramento has reported this unassociated funerary object as missing.

Two cultural items have been requested for repatriation. The unassociated funerary objects are one projectile point (*missing*) and one unmodified obsidian cobble (*missing*). The unassociated funerary objects were removed from site CA-GLE-322 at the Sacramento District operating project at Black Butte Dam and Lake in Glenn County, CA. The unassociated funerary objects were removed in 1983 during survey and excavation work done by archaeologists affiliated with California State University, Sacramento under contract with the Sacramento District. California State University, Sacramento has reported these unassociated funerary objects as missing.

Three cultural objects have been requested for repatriation. The unassociated funerary objects are three projectile points. The unassociated funerary objects were removed from unspecified locations within the Sacramento District operating project at Black Butte Dam and Lake in Glenn County, CA by Black Butte Dam Lake staff, Sacramento District personnel, contractors, and/or park visitors on unknown dates. The unassociated

funerary objects were stored at the Black Butte Dam and Lake Project Office prior to being transferred to the Veterans Curation Program facility in San Mateo, CA in 2018. The unassociated funerary objects currently remain at the Veterans Curation Program facility.

Tehama County

One lot of cultural items have been requested for repatriation. The unassociated funerary items are one lot of faunal remains. The unassociated funerary objects were removed from site CA-TEH-10/TEH-Burris Creek at the Sacramento District operating project at Black Butte Dam and Lake in Tehama County, CA by Black Butte Dam and Lake staff, Sacramento District personnel, contractors, and/or park visitors on unknown dates. The unassociated funerary objects were stored at the Black Butte Dam and Lake Project Office prior to being transferred to the Veterans Curation Program facility in San Mateo, CA in 2018. The unassociated funerary objects currently remain at the Veterans Curation Program facility.

Forty-two cultural items have been requested for repatriation. The 42 unassociated funerary objects are 42 column samples. The unassociated funerary objects were removed from site CA-TEH-231 at the Sacramento District operating project at Black Butte Dam and Lake in Tehama County, CA. The unassociated funerary objects were removed in 1983 during survey and excavation work done by archaeologists affiliated with California State University, Sacramento under contract with the Sacramento District. The unassociated funerary objects currently remain at California State University, Sacramento.

Twenty-six cultural items have been requested for repatriation. The 26 unassociated funerary objects are: one chert flake, one handstone (*missing*), and 24 column samples. The unassociated funerary objects were removed from site CA-TEH-1317 at the Sacramento District operating project at Black Butte Dam and Lake in Tehama County, CA. The chert flake was removed by Black Butte Dam and Lake staff, Sacramento District personnel, contractors, and/or park visitors on an unknown date. This unassociated funerary object was stored at the Black Butte Dam and Lake Project Office prior to being transferred to the Veterans Curation Program facility in San Mateo, CA in 2018. The chert flake currently remains at the Veterans Curation Program facility. The handstone and column samples were removed in 1983 during survey and excavation work

done by archaeologists affiliated with California State University, Sacramento under contract with the Sacramento District. The column samples currently remain at California State University, Sacramento while the handstone has been reported by the University as missing.

Three cultural items have been requested for repatriation. The three unassociated funerary objects are one glass sherd (*missing*) and two historic-era ceramic sherds (*missing*). The unassociated funerary objects were removed from site CA-TEH-1318 at the Sacramento District operating project at Black Butte Dam and Lake in Tehama County, CA. The unassociated funerary objects were removed in 1983 during survey and excavation work done by archaeologists affiliated with California State University, Sacramento under contract with the Sacramento District. California State University, Sacramento has reported these three unassociated funerary objects as missing.

Three cultural items have been requested for repatriation. The three unassociated funerary items are column samples. The unassociated funerary objects were removed from site CA-TEH-1321 at the Sacramento District operating project at Black Butte Dam and Lake in Tehama County, CA. The unassociated funerary objects were removed in 1983 during survey and excavation work done by archaeologists affiliated with California State University, Sacramento under contract with the Sacramento District. The unassociated funerary objects currently remain at California State University, Sacramento.

One cultural item has been requested for repatriation. The one unassociated funerary object is an obsidian biface (*missing*). The unassociated funerary object was removed from site CA-TEH-1322 at the Sacramento District operating project at Black Butte Dam and Lake in Tehama County, CA. The unassociated funerary object was removed in 1983 during survey and excavation work done by archaeologists affiliated with California State University, Sacramento under contract with the Sacramento District. California State University, Sacramento has reported this unassociated funerary object as missing.

One cultural item has been requested for repatriation. The one unassociated funerary object is an obsidian projectile point (*missing*). The unassociated funerary object was removed from site CA-TEH-1323 at the Sacramento District operating project at Black Butte Dam and Lake in Tehama County, CA. The unassociated funerary object was

removed in 1983 during survey and excavation work done by archaeologists affiliated with California State University, Sacramento under contract with the Sacramento District. California State University, Sacramento has reported this unassociated funerary object as missing.

One cultural item has been requested for repatriation. The one unassociated funerary object is a chert flake. The unassociated funerary object was removed from site CA-TEH-1326 at the Sacramento District operating project at Black Butte Dam and Lake in Tehama County, CA by Black Butte Dam and Lake staff, Sacramento District personnel, contractors, and/or park visitors on an unknown date. The unassociated funerary object was stored at the Black Butte Dam and Lake Project Office prior to being transferred to the Veterans Curation Program facility in San Mateo, CA in 2018. The unassociated funerary object currently remains at the Veterans Curation Program facility.

One cultural item has been requested for repatriation. The one unassociated funerary object is a piece of debitage (*missing*). The unassociated funerary object was removed from site CA-TEH-1328 at the Sacramento District operating project at Black Butte Dam and Lake in Tehama County, CA. The unassociated funerary object was removed in 1983 during survey and excavation work done by archaeologists affiliated with California State University, Sacramento under contract with the Sacramento District. California State University, Sacramento has reported this unassociated funerary object as missing.

Unspecified County (Glenn or Tehama)

Fifty-four cultural items have been requested for repatriation. The 54 unassociated funerary objects are: one chert flake, one projectile point, seven *Olivella* shell beads, and 45 shell disk beads. The unassociated funerary objects were removed from unspecified locations within the Sacramento District operating project at Black Butte Dam and Lake in Glenn and Tehama counties, CA by Black Butte Dam and Lake staff, Sacramento District personnel, contractors, and/or park visitors on unknown dates. The unassociated funerary objects were stored at the Black Butte Dam and Lake Project Office prior to being transferred to the Veterans Curation Program facility in San Mateo, CA in 2018. The unassociated funerary objects currently remain at the Veterans Curation Program facility.

No information is available that would indicate that any of the cultural items in this notice have been treated with potentially hazardous substances.

Determinations

The U.S. Army Corps of Engineers, Sacramento District has determined that:

- The 297 unassociated funerary objects described in this notice are reasonably believed to have been placed intentionally with or near human remains, and are connected, either at the time of death or later as part of the death rite or ceremony of a Native American culture according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. The unassociated funerary objects have been identified by a preponderance of the evidence as related to human remains, specific individuals, or families, or removed from a specific burial site or burial area of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization.
- There is a reasonable connection between the cultural items described in this notice and the Paskenta Band of Nomlaki Indians of California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after October 15, 2024. If competing requests for repatriation are received, the U.S. Army Corps of Engineers, Sacramento District must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The U.S. Army Corps of Engineers, Sacramento District is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: September 5, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–20878 Filed 9–12–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

**[NPS–WASO–NAGPRA–NPS0038700;
PPWOCRADN0–PCU00RP14.R50000]**

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Fort Sumter and Fort Moultrie National Historical Park, Sullivan's Island, SC

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, National Park Service, Fort Sumter and Fort Moultrie National Historical Park (FOSU) has completed an inventory of associated funerary objects and has determined that there is a cultural affiliation between the associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the associated funerary objects in this notice may occur on or after October 15, 2024.

ADDRESSES: J. Tracy Stakely, Superintendent, Fort Sumter and Fort Moultrie National Historical Park, 1214 Middle Street, Sullivan's Island, SC 29482, telephone (843) 732–5014, email tracy_stakely@nps.gov.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Superintendent, FOSU, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records.

Abstract of Information Available

In 1968 associated funerary objects were removed from the grave of Seminole leader Osceola in Charleston County, SC during excavation by John W. Griffin of the National Park Service. This excavation was conducted in response to a self-reported 1966 case of vandalism, wherein an individual claimed to have excavated and stolen the remains of Osceola. The remains of Osceola were re-interred following the

excavation, but the associated funerary objects remained in National Park Service collections. The 35 associated funerary objects are five pottery sherds, two buttons, one bag of faunal bones, three bags of metals, 23 bags of mixed material, and one tombstone.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the associated funerary objects described in this notice.

Determinations

FOSU has determined that:

- The 35 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a connection between the associated funerary objects described in this notice and the Seminole Tribe of Florida.

Requests for Repatriation

Written requests for repatriation of the associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the associated funerary objects in this notice to a requestor may occur on or after October 15, 2024. If competing requests for repatriation are received, FOSU must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the associated funerary objects are considered a single request and not competing requests. FOSU is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: September 5, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–20872 Filed 9–12–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0038696;
PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: Turtle Bay Exploration Park, Redding, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Turtle Bay Exploration Park (TBEP) intends to repatriate certain cultural items that meet the definition of a sacred objects and that has a known lineal descendant.

DATES: Repatriation of the cultural items in this notice may occur on or after October 15, 2024.

ADDRESSES: Julia Cronin, Turtle Bay Exploration Park, 844 Sundial Bridge Drive, Redding, CA 96001, telephone (530) 242–3191, email jcronin@turtlebay.org.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of TBEP and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of one cultural item has been requested for repatriation. The one sacred object is a Pomo bead drill. The drill was made by Kenneth Fred around 1978. The Redding Museum and Art Center, the predecessor of TBEP, purchased the item from the Fall 1978 Pacific West Traders catalog with funds from the Redding Museum of Art and History League, a fundraising body for the museum. Pacific West Traders was located in Folsom, CA and owned/operated by Herb Puffer. There is no record of treatment with potentially hazardous materials by TBEP or prior to acquisition.

Determinations

Turtle Bay Exploration Park has determined that:

- The one sacred object described in this notice is a specific ceremonial object needed by a traditional Native American religious leader for present-day adherents to practice traditional Native American religion, according to the Native American traditional

knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization.

- Vincent Fred is connected to the cultural item described in this notice.

Requests for Repatriation

Additional, written requests for repatriation of the cultural item in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural item in this notice to a requestor may occur on or after October 15, 2024. If competing requests for repatriation are received, Turtle Bay Exploration Park must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural item are considered a single request and not competing requests. Turtle Bay Exploration Park is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: September 5, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–20876 Filed 9–12–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0038699;
PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: The University of Toledo, Toledo, OH

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), The University of Toledo has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after October 15, 2024.

ADDRESSES: Thomas Zych, The University of Toledo, 2801 W. Bancroft Street MS 956, Toledo, OH 43606, telephone (419) 530-4395, email thomas.zych@UToledo.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of The University of Toledo, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, 38 individuals have been reasonably identified. The 16 associated funerary objects are three lots of pottery fragments; one lot of flotation excess residue; one ceramic pipe fragment; one faunal bone; one lot of calcined faunal bone; one lot of burnt faunal bone fragments; four pottery fragments; two pieces of white clay; one quartzite stone; and one lot of rocks. The human remains and associated funerary objects were removed from the Reau Site (20-MR-166) by The University of Toledo between 1974 and 1977, under the direction of David Stothers, a professor at the university. On August 15, 1991, David Stothers loaned "all cultural material and skeletal remains" from the Reau Site to the Firelands Archaeological Research Center (FARC). In November 2021, FARC transferred individuals and associated funerary objects from the Reau Site to Ohio History Connection (OHC). In April 2023, the University of Toledo and OHC determined that the University of Toledo retained legal control of the individuals and associated funerary objects from the Reau Site. On May 10, 2023, OHC transferred physical custody of the individuals and associated funerary objects from the Reau Site to the University of Toledo. The University of Toledo has no record of any potentially hazardous substances being used to treat the human remains or associated funerary objects.

Cultural affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the

information available about the human remains and associated funerary objects described in this notice.

Determinations

The University of Toledo has determined that:

- The human remains described in this notice represent the physical remains of 38 individuals of Native American ancestry.
- The 16 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the human remains and associated funerary objects described in this notice and the Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana; Citizen Potawatomi Nation, Oklahoma; Eastern Shawnee Tribe of Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan; Ottawa Tribe of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa

Indians, Michigan; Seneca Nation of Indians; Seneca-Cayuga Nation; Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Tonawanda Band of Seneca; Turtle Mountain Band of Chippewa Indians of North Dakota; and the Wyandotte Nation.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after October 15, 2024. If competing requests for repatriation are received, The University of Toledo must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The University of Toledo is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: September 5, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024-20874 Filed 9-12-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0038697; PPWOCRADNO-PCU00RP14.R50000]

Notice of Inventory Completion: San Bernardino County Museum, Redlands, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and

Repatriation Act (NAGPRA), the San Bernardino County Museum has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after October 15, 2024.

ADDRESSES: Tamara Serrao-Leiva, San Bernardino County Museum, 2024 Orange Tree Lane, Redlands, CA 92374, telephone (909) 798-8623, email tserrao-leiva@sbcm.sbcounty.gov.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the San Bernardino County Museum, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing at least one individual have been identified. The 12 associated funerary objects include a pendant, projectile points, pipe stem fragments, pottery sherds, faunal fragments, flakes, shell fragments, ground stone, stone tools, projectile points, shell beads, and historic beads. San Bernardino County Museum site numbers SBCM-815 (also SBCM-5868) are considered the same site to the culturally affiliated tribes list below. This site was recorded by B. McCown on March 1944 and was excavated by McCown in 1948 through the Archaeological Survey Association (ASA) (McCown Site #7, Santa Margarita River) in Fallbrook, CA. In *Collected Papers of Benjamin Ernest McCown*, Excavation of Fallbrook Site No. 7, Archaeological Survey Association of Southern California Paper Number Six, 1964, pgs 61-72, McCown confirms the presence of a human cremation that he excavated from April 10, 1948, to July 16, 1948. McCown writes that only a small amount of the bones was left in place due to the flood waters, but that the "remains suggest an adult of about middle age" (page 64). Based on this reference, there seems to have been much more collected than is present at San Bernardino County Museum. The collection was donated to the county

museum in two instances, hence the different catalog numbers. The first donation was in 1956 and the second when the ASA disbanded and donated McCown's collection to the county museum in the early 2000s.

Human remains representing at least one individual has been identified. The six associated funerary objects reflected in the record are ground stone, lithics, ceramics, faunal bone, worked shell (beads), and ecofacts. San Bernardino County Museum site number SBCM-5907 is in the Murrieta Creek region of Riverside County, about one mile south of Old Town, Temecula. In 1953 a note included in the Accession file connects this site to Vail Ranch by the "Temeku fork of River." Vail Ranch was an 87,000-acre cattle ranch purchased by Walter Vail in 1905. His ranch headquarters was located along Temecula Creek in an area now bordered by Temecula Parkway. The site was first documented 3/30/1952 and later excavated by Benjamin McCown who donated the collection to the museum in 1956. No known hazardous substances were used to treat this collection.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains and associated funerary objects described in this notice.

Determinations

The San Bernardino County Museum has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- The 18 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a connection between the human remains and associated funerary objects described in this notice and the La Jolla Band of Luiseno Indians, California; Pala Band of Mission Indians; Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California; Pechanga Band of Indians (previously listed as Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California); Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California; and the Soboba Band of Luiseno Indians, California.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after October 15, 2024. If competing requests for repatriation are received, the San Bernardino County Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The San Bernardino County Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: September 5, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024-20867 Filed 9-12-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0038703; PPWOCRADN0-PCU00RP14.R50000]

Notice of Inventory Completion: Cape Girardeau County Sheriff's Office, Jackson, MO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Cape Girardeau County Sheriff's Office has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after October 15, 2024.

ADDRESSES: Dr. Jennifer Bengtson, NAGPRA consultant, Cape Girardeau County Sheriff's Office, 216 N Missouri Street, Jackson, MO 63755, telephone (573) 651-2354, email jbengtson@semo.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Cape Girardeau County Sheriff's Office, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at least, two individuals have been identified. No associated funerary objects are present. These remains were turned over on August 11, 2020, by a private citizen. The citizen stated that they did not know how old the remains were or where they came from, but that they had been removed from an unknown archaeological site at least 50 years ago and retained by now deceased persons.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains described in this notice.

Determinations

The Cape Girardeau County Sheriff's Office has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- There is a connection between the human remains and associated funerary objects described in this notice and the Quapaw Nation and The Osage Nation.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under

ADDRESSES. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization

not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains described in this notice to a requestor may occur on or after October 15, 2024. If competing requests for repatriation are received, the Cape Girardeau County Sheriff's Office must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Cape Girardeau County Sheriff's Office is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: September 5, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024-20877 Filed 9-12-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0038705; PPWOCRADNO-PCU00RP14.R50000]

Notice of Intended Repatriation: University of California, Berkeley, Berkeley CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of California, Berkeley intends to repatriate a certain cultural item that meet the definition of an object of cultural patrimony and that has a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural item in this notice may occur on or after October 15, 2024.

ADDRESSES: Alexandra Lucas, Repatriation Coordinator, Government and Community Relations (Chancellor's Office), University of California, Berkeley, 200 California Hall, Berkeley, CA 94720, telephone (510) 570-0964, email nagpra-ucb@berkeley.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The

determinations in this notice are the sole responsibility of the University of California, Berkeley, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of one cultural item has been requested for repatriation. The one object of cultural patrimony is a Kiowa calendar (winter counts) created by Chief Dohasan, chronicling events from winter 1832-33 to summer 1892 (catalog number 2-4933a-c). Hugh Lenox Scott obtained the calendar at Fort Sill on the Kiowa reservation prior to 1900. The calendar was sold to the Lowie Museum (Phoebe A Hearst Museum of Anthropology) as part of a large private collection from Hugh Lenox Scott in 1906. Documentation in the accession file and a museum publication on the calendar indicate the owner, 'Dohasan, nephew of the well-known Kiowa chief, of the same name, said that the record had been kept in his family since his youth. The Chronicle was originally painted on hides which were renewed from time to time as they wore out from age and handling. The calendar given to Scott and included in the collections of the Lowie Museum since 1900, was on paper, executed with colored pencils by Dohasan, from the last hide record.'

Collections and collection spaces at the Phoebe A Hearst Museum of Anthropology were treated with substances for preservation and pest control, some potentially hazardous. No records have been found to date at the Museum to indicate whether or not chemicals or natural substances were used prior to 1960.

Determinations

The University of California, Berkeley has determined that:

- The one object of cultural patrimony described in this notice has ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization.

- There is a reasonable connection between the cultural item described in this notice and the Kiowa Indian Tribe of Oklahoma.

Requests for Repatriation

Additional, written requests for repatriation of the cultural item in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural item in this notice to a requestor may occur on or after October 15, 2024. If competing requests for repatriation are received, the University of California, Berkeley must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural item are considered a single request and not competing requests. The University of California, Berkeley is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: September 5, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024-20866 Filed 9-12-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0038702;
PPWOCRADNO-PCU00RP14.R50000]

Notice of Inventory Completion: Stoddard County Sheriff's Office, Bloomfield, MO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Stoddard County Sheriff's Office has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after October 15, 2024.

ADDRESSES: Dr. Jennifer Bengtson, NAGPRA consultant, Stoddard County Sheriff's Office, 207 S Prairie Street, Bloomfield, MO 63825, telephone (573) 651-2354, email jbengtson@semo.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Stoddard County Sheriff's Office, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at least, one individual has been identified. The eight associated funerary objects are faunal remains. These remains were turned over by a private citizen, who removed them from an unknown archaeological site.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains and associated funerary objects described in this notice.

Determinations

The Stoddard County Sheriff's Office has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The eight objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a connection between the human remains and associated funerary objects described in this notice and the Quapaw Nation and The Osage Nation.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that

the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after October 15, 2024. If competing requests for repatriation are received, the Stoddard County Sheriff's Office must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Stoddard County Sheriff's Office is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: September 5, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024-20870 Filed 9-12-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0038693;
PPWOCRADNO-PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Army Corps of Engineers, Sacramento District, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Army Corps of Engineers, Sacramento District, has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after October 15, 2024.

ADDRESSES: Dr. Michelle Fitzgerald, Physical Anthropologist and NAGPRA Liaison, U.S. Army Corps of Engineers, Sacramento District, 1325 J Street, Sacramento, CA 95814, telephone (916) 557-7114, email Michelle.K.Fitzgerald@usace.army.mil.

SUPPLEMENTARY INFORMATION: This notice is published as part of the

National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the U.S. Army Corps of Engineers, Sacramento District, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at least, 51 individuals have been identified from site CA-GLE-10/H, in Glenn County, CA. The 1,842 associated funerary objects are: 337 beads, 17 bear claws, one botanical, one bottle, five buckles, six buckles with leather, one bullet mold, 321 buttons, nine charmstones, one clock, two cloth/textile fragments, 67 coffin components, 41 coins, one comb, one cufflink, eight fastening caps, 13 faunal bones, one piece of glass, one harmonica, three lithic flakes, 10 lithic tools, 79 metal objects, one nail, 18 ornamental items, one pencil lead, three pestles, one pipe stem, three pocket knives, two pocket watches, 22 projectile points, five rings, one rosette, one rubber ball, one scissors, one Shaman's purse, 69 unmodified shells, 489 shell beads, 223 shell ornaments/pendants, 10 shoe fragments, seven unmodified stones, two modified stones, one telescope fragment, one thimble, one tube, 18 utensils, five violin fragments, one lot of trade and shell beads, one lot of bead and button fragments, six lots of beads, five lots of coffin components, one lot of metal objects, 14 lots of shell beads, one lot of burial soil, and one lot of violin fragments.

In 1961, a salvage excavation conducted by archaeologists affiliated with San Francisco State College, now San Francisco State University, took place in the Brownell Indian Cemetery (CA-GLE-10/H) which removed human remains from multiple unmarked burials, as well as the remains of Mr. James (Jim) Brown, identified later through written accounts of his funeral and funerary objects. The individuals and associated funerary objects from this investigation have been in the custody of San Francisco State University since their excavation. Black Butte Dam and Lake staff and a Sacramento District archaeologist collected additional human remains and associated funerary objects in 1989, after CA-GLE-10/H was accidentally impacted by heavy machinery. These human remains and cultural items were housed at the Black Butte Dam and Lake Project Office and Sacramento District Office

until they were transferred in 2018 by the Sacramento District to the Veterans Curation Program (VCP) in San Mateo, CA, where they remain.

Human remains representing, at least, one individual have been identified from site CA-GLE-11, in Glenn County, CA. The 37 associated funerary objects are: one charmstone, one clam shell disc bead, five faunal bones, one piece of glass, nine lithic tools, five manos, three pecking stones, five pestles, two petal stones, and five projectile points.

In 1960, San Francisco State College, under contract to the National Park Service, initiated archaeological excavations at site CA-GLE-11 as part of the salvage archaeology program for the proposed Black Butte Reservoir. The human remains and associated funerary objects have been in the custody of San Francisco State College, now San Francisco State University, since their excavation.

Human remains representing, at least, nine individuals have been identified from site CA-TEH-10, in Tehama County, CA. The 1,881 associated funerary objects are: three beads, 36 botanical items, 12 pieces of charcoal, two pieces of baked clay, 466 faunal bones, 117 fire-cracked rocks, two groundstone, one hammerstone, six lithic cores, 765 lithic flakes, 14 lithic tools, one mano, one piece of metal hardware, one metate, five mortars, 17 nails, three pestles, one piece of plastic, 32 projectile points/fragments, nine soil samples, three unmodified stones, one piece of wood, 23 lots of botanicals, 280 lots of charcoal, two lots of faunal bones, two lots of radiocarbon samples, 65 lots of soil, one lot of mixed soil and charcoal, and 10 lots of wood.

CA-TEH-10 was excavated in 1983 and 1986 by archaeologists affiliated with California State University, Sacramento under contract with the Sacramento District. The site was comprised of a large burial ground with two cemeteries, the human remains from which were thought to have been reburied in 1985 and 1990 at a private cemetery. However, some cultural materials recovered from the site were transferred to the California State University, Sacramento's Archaeological Study Center for curation as Accession #81-138. In 2021, the Sacramento District transferred these items to the VCP in San Mateo, CA. During review of the items, Sacramento District staff identified human remains. The human remains and associated funerary objects are currently housed at the VCP.

No information is available that would indicate that any of the human remains or cultural items in this notice

have been treated with potentially hazardous substances.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains and associated funerary objects described in this notice.

Determinations

The U.S. Army Corps of Engineers, Sacramento District, has determined that:

- The human remains described in this notice represent the physical remains of 61 individuals of Native American ancestry.
- The 3,760 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a connection between the human remains and associated funerary objects described in this notice and the Grindstone Indian Rancheria of Wintun-Wailaki Indians of California and the Paskenta Band of Nomlaki Indians of California.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after October 15, 2024. If competing requests for repatriation are received, the U.S. Army Corps of Engineers, Sacramento District, must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The U.S. Army Corps of Engineers, Sacramento District, is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: September 5, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024-20871 Filed 9-12-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0038701;
PPWOCRADN0-PCU00RP14.R50000]

Notice of Inventory Completion: Perry County Coroner's Office, Perryville, MO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Perry County Coroner's Office has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after October 15, 2024.

ADDRESSES: Dr. Jennifer Bengtson, NAGPRA consultant, Perry County Coroner's Office, 321 N Main Street, Perryville, MO 63775, telephone (573) 651-2354, email jbengtson@semo.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Perry County Coroner's Office, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at least, one individual has been identified. No associated funerary objects are present. The remains were left on the steps of the Perry County Courthouse in 2019. They are estimated to be about 1600 years old.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition

history of the human remains and associated funerary objects described in this notice.

Determinations

The Perry County Coroner's Office has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a connection between the human remains and associated funerary objects described in this notice and the Quapaw Nation and The Osage Nation.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains described in this notice to a requestor may occur on or after October 15, 2024. If competing requests for repatriation are received, the Perry County Coroner's Office must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Perry County Coroner's Office is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: September 5, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024-20879 Filed 9-12-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0038704;
PPWOCRADN0-PCU00RP14.R50000]

Notice of Inventory Completion: Madison County Coroner's Office, Fredericktown, MO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Madison County Coroner's Office has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after October 15, 2024.

ADDRESSES: Dr. Jennifer Bengtson, NAGPRA consultant, Madison County Coroner's Office, 700 Madison Plaza Drive, Fredericktown, MO 63645, telephone (573) 651-2354, email jbengtson@semo.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Madison County Coroner's Office, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at least, three individuals have been identified. The one associated funerary object is unmodified faunal bone fragment. The remains were removed from an unknown archaeological site at an unknown time by a private citizen and were discovered in a closet decades later.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains and associated funerary objects described in this notice.

Determinations

The Madison County Coroner's Office has determined that:

- The human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- The one object described in this notice is reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a connection between the human remains and associated funerary objects described in this notice and the Quapaw Nation and The Osage Nation.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after October 15, 2024. If competing requests for repatriation are received, the Madison County Coroner's Office must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Madison County Coroner's Office is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: September 5, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024-20868 Filed 9-12-24; 8:45 am]

BILLING CODE 4312-52-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1417]

Certain Hydrodermabrasion Systems and Components Thereof III; Notice of Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 8, 2024, under section 337 of the Tariff Act of 1930, as amended, on behalf of HydraFacial LLC f/k/a Edge Systems LLC of Long Beach, California. Supplements were filed on August 23 and 28, 2024. The complaint, as supplemented, 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 hydrodermabrasion systems and components thereof by reason of the infringement of certain claims of U.S. Patent No. 11,446,477 ("the '477 patent"). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205-2000. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>.

FOR FURTHER INFORMATION CONTACT: Susan Orndoff, The Office of Docket Services, U.S. International Trade Commission, telephone (202) 205-1802.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the

Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2024).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on September 9, 2024, *ordered that—*

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1-5 and 7-20 of the '477 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is "systems and subassemblies for skin treatment through mechanical and/or fluid-based abrasion or exfoliation";

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) *The complainant is/are:* HydraFacial LLC f/k/a Edge Systems LLC, 2165 E. Spring St., Long Beach, California 90806.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Luvo Medical Technologies Inc., 125 Fleming Drive, Cambridge, Ontario, N1T 2B8, Canada
Clarion Medical Technologies, Inc., 125 Fleming Drive, Cambridge, Ontario, N1T 2B8, Canada
Healthcare Markets, Inc. d/b/a Powered by MRP, 2720 Rasmussen Rd. A3, Park City, Utah 84098
Medical Purchasing Resource, LLC, 5026 Cardinal Court, Little Elm, TX 75068
Bio-Infusions USA Inc., 9190 Oakhurst Road, Suite 2, Seminole, FL 33776
MIRAmедtech UG, Habichtweg 3-5, 75245 Neulingen, Germany
eMIRAmед USA, LLC, 38 Tesla, Irvine, CA 92618
MIRAmедtech SP. Z.O.O., Powstańców Śląskich 89A/235, 01-355 Warsaw, Poland

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission,

shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: September 9, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024-20789 Filed 9-12-24; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2023-0012]

Federal Advisory Council on Occupational Safety and Health (FACOSH); Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of FACOSH meeting.

SUMMARY: The Federal Advisory Committee on Occupational Safety and Health (FACOSH) will meet October 17, 2024, by WebEx.

DATES: FACOSH will meet from 1 p.m.–4 p.m., ET, October 17, 2024, virtually via Webex.

ADDRESSES:

Submission of comments and requests to speak: Submit comments and requests to speak at the FACOSH meeting by September 30, 2024, identified by the docket number for this **Federal Register** notice (Docket No. OSHA-2023-0012), using the following method:

Electronically: Comments and requests to speak, including attachments, must be submitted electronically at www.regulations.gov, the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

Requests for special accommodations: Submit requests for special accommodations for this FACOSH meeting by September 30, 2024, to Ms. Lana Morrison, Directorate of Enforcement Programs, OSHA, U.S. Department of Labor; telephone: (202) 693-2128; email: morrison.lana.n@dol.gov.

Instructions: All submissions must include the agency name and the OSHA docket number for this **Federal Register** notice (Docket No. OSHA-2023-0012). OSHA will place comments and requests to speak, including personal information, in the public docket, which may be available online. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates.

Docket: To read or download documents in the public docket for this FACOSH meeting, go to www.regulations.gov. All documents in the public docket are listed in the index; however, some documents (e.g., copyrighted material) are not publicly available to read or download through www.regulations.gov. 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.

Participation in the FACOSH meeting: Members of the public may attend the FACOSH meeting by going to the website: <https://usdolee.webex.com/usdolee/j.php?MTID=m6ac7a35039a9ef13d3954e9380484b33>.

VoIP or dial: 877-465-7975.

Access code: 2831 162 3736.

Meeting password: Welcome!24 (93526631 from phones).

However, any participation by the public will be in listen-only mode.

FOR FURTHER INFORMATION CONTACT:

Press inquiries: Mr. Frank Meilinger, Director, OSHA Office of

Communications; telephone: (202) 693-1999; email: meilinger.francis2@dol.gov.

General information: Ms. Lana Morrison, Director, OSHA Office of Federal Agency Programs; telephone (202) 693-2100; email: ofap@dol.gov.

Copies of this Federal Register document: Electronic copies of this **Federal Register** document are available at <http://www.regulations.gov>. This document, as well as news releases and other relevant information are also available on the OSHA web page at <http://www.osha.gov>.

SUPPLEMENTARY INFORMATION:

I. Background

FACOSH is authorized to advise the Secretary of Labor (Secretary) on all matters relating to the occupational safety and health of Federal employees (Occupational Safety and Health Act of 1970 (29 U.S.C. 668), 5 U.S.C. 7902, Executive Orders 12196 and 14109). This includes providing advice on how to reduce and keep to a minimum the number of injuries and illnesses in the Federal workforce and how to encourage the establishment and maintenance of effective occupational safety and health programs in each Federal agency.

II. Meeting Information

FACOSH Meeting

FACOSH will meet from 1 p.m. to 4 p.m., ET, Thursday, October 17, 2024. The meeting is open to the public.

Meeting agenda: The tentative agenda for this meeting includes:

- Assistant Secretary's Agency Update and Remarks.
- Update from FACOSH's Subcommittee on Identification of Best Practices and Lessons Learned.
- OSHA's regulatory updates
- OPM presentation on job classifications (proposed)
- BLS presentation on data input (proposed)
- Wage and Hour Updates (proposed)

In addition, meeting information will be posted to the Office of Federal Agency Programs' website at: <https://www.osha.gov/advisorycommittee/facosh>.

Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by section 19 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 668), 5 U.S.C. 7902, the Federal Advisory Committee Act (5 U.S.C. 10), Executive Order 12196 and 14109, Secretary of Labor's Order 8–

2020 (85 FR 58393, 9/18/2020), 29 CFR part 1960 (Basic Program Elements of for Federal Employee Occupational Safety and Health Programs), and 41 CFR part 102–3.

Signed at Washington, DC, on September 9, 2024.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024–20808 Filed 9–12–24; 8:45 am]

BILLING CODE 4510–26–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 24–05]

Notice of Entering Into a Compact With the State of Belize

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: In accordance with the provisions of the Millennium Challenge Act of 2003, as amended, the Millennium Challenge Corporation (MCC) is publishing a summary of the Millennium Challenge Compact (Compact) between the United States of America and the State of Belize. Representatives of the United States of America and the State of Belize executed the Compact on September 4, 2024. The complete text of the Compact has been posted at: <https://www.mcc.gov/resources/doc/compact-belize/>.

(Authority: 22 U.S.C. 7709 (b)(3))

Dated: September 9, 2024.

Peter E. Jaffe,

Vice President, General Counsel, and Corporate Secretary.

Summary of Belize Compact

Overview of MCC Belize Compact

MCC has signed a five-year, \$125 million compact with the government of Belize aimed at reducing poverty through economic growth. The Compact seeks to assist Belize in addressing two binding constraints to economic growth—low quality of education and high cost of electricity. The Compact will address these constraints through two primary projects—the *Education Project* and the *Energy Project*.

Background and Context

Belize is a small, diverse, coastal nation with a population of 397,483 (2022). As a stable democracy located at the crossroads of the Caribbean and Central America, Belize maintains strong commercial and educational ties

to the Caribbean and has increasingly strengthened ties with Central America.

While Belize's economy has historically relied on the export of forest products, sugar, and fruit, tourism began to expand rapidly in the 1990s, contributing to robust real per capita income ("PCI") growth averaging 4.3% for the next decade. However, from 2004 to 2019 real PCI growth was near zero. In 2020, Belize experienced a sharp fall in tourism revenue and real PCI fell by 16%, which caused Belize to be classified as a lower middle-income country. The economy has since rebounded. As of 2018, 52% of the population had income below the Belizean general poverty line, with four socioeconomic groups disproportionately affected: Maya populations, rural households, women, and youth.

Country Selection and Ongoing Eligibility

MCC's Board of Directors selected Belize as eligible to develop a compact in December 2021. In selecting Belize for a compact, MCC's Board made the decision to partner with a country that has demonstrated a clear commitment to democratic governance and tackling development challenges. In the year following its selection, Belize was reclassified by the World Bank as an upper middle-income country and exited MCC's candidate country pool. The Board has since repeatedly affirmed its support for Belize continuing to develop a compact with MCC, and the country has continued to demonstrate its commitment to the principles of democratic governance that underpin MCC's eligibility criteria and scorecard.

Constraints Analysis

In April 2022, the Government of Belize selected two binding constraints to economic growth for further program development in the education and energy sectors.

The *education sector* has a severe shortage of post-primary graduates as well as skilled workers in key industries. The Belize education system does not produce a sufficient number of individuals with the types of competencies needed by the labor market. Shifts in Belize's economic and employment landscape have increased the demand for workers with higher levels of qualifications and 21st century skills. However, over half of Belize's labor force currently does not have any form of post-primary education resulting in the first binding constraint for the Compact: *low quality of education that leads to a shortage of trained professionals in all industries*.

In the *energy sector* the cost of wholesale electricity is higher than it should be compared to a well-functioning competitive electricity market. The primary driver of high electricity rates is the elevated cost of purchasing wholesale power, which results in the second binding constraint for the Compact: *high cost of electricity that drives up input costs for all industries*.

The Government of Belize has shown strong country ownership and commitment to the Compact through their engagement on the technical design of the projects, their repeated commitment and preliminary progress on policy reforms, and their commitment of counterpart funding for the implementation and long-term sustainability of the compact objectives. MCC successfully concluded compact negotiations with the Government of Belize in mid-April and secured approval for the \$125 million investment from the MCC Board of Directors on June 26, 2024. The Government of Belize and MCC signed the Compact on September 4, 2024 in Belize City, Belize.

Project Summaries

The projects and activities to be completed are:

The Education Project (\$73.8 million) aims to equitably increase the number of post-primary graduates with the competencies relevant to labor market demands by pursuing the following activities and outcomes:

- *Transforming Teaching and Learning in Secondary Education Activity* aims to improve the numeracy, literacy, and 21st century skills of secondary graduates by improving the capability and accountability of the Ministry of Education, Culture, Science, and Technology, managing authorities, educators, and other actors in the Belizean educational system for providing inclusive, quality education.

- *Access to and Progression through Secondary Education Activity* aims to increase the percentage of primary graduates that enroll in and complete secondary school.

- *Training and Transitioning to Work Activity* aims to improve the capability of Technical and Vocational Education and Training (TVET) providers to deliver high quality training demanded by the labor market as well as to provide inclusive access to these training opportunities.

The project focuses on inclusion and equity by intentionally creating opportunities across all three activities for members of groups that have been traditionally excluded in the Belizean

educational context, particularly students living with trauma, those with special education needs, immigrant students, and indigenous students. Additionally, special emphasis will be placed on closing gender gaps facing male students (in transition, retention, and graduation) and female students (in participation in workforce preparation).

The Energy Project (\$21.7 million) aims to reduce the wholesale cost of electricity in real terms through supporting the competitive procurement of lower cost power purchase agreements using energy alternatives that would displace higher cost imports by pursuing the following activity and outcomes:

- *Facilitating New Lower-Cost Renewable Generation Activity* is designed to support Belize in implementing its utility scale solar-

powered energy expansion plans and maintaining the stability of the grid.

Policy Reform and the Compact

MCC and Belize jointly identified the following key policy reform areas to support the sustainability of the proposed compact, the timing and content of which was negotiated with Belize and is included in the compact.

Key policy reforms of the *Education Project* include reforming the Education Act to require national student assessments to meet minimum testing requirements, school-level results to be published, and a more rigorous evaluation process for teacher licensing and certification. Additional reforms include increasing the compulsory school age to 16 from 14, ensuring access to free secondary education to all primary graduates by offering free education at all government schools

and, to ensure adequate geographical coverage, select grant-aided schools, and requiring each secondary school have a dedicated school counselor.

Key policy reforms of the *Energy Project* include the approval of regulations governing the process for competitive procurement for electricity generation, limits on amendments and extensions of power purchase agreements to improve transparency and protect consumers and revising the grid code to clarify the interconnection requirements for variable alternative forms of energy.

Compact Overview and Budget

Below is a summary describing the components of the Compact with Belize. The anticipated budget for the overall program is \$165,650,000, with up to \$125,000,000 under the Compact and \$40,650,000 of contribution from Belize.

TABLE 1—BELIZE COMPACT PROGRAM BUDGET
[Million in US\$]

	Amount
MCC Funding by Compact Components	
1. Education Project:	
1.1 Transforming Teaching and Learning in Secondary Education	\$41,045,000
1.2 Access to and Progression through Secondary Education	16,256,000
1.3 Training and Transitioning to Work	16,500,000
Subtotal	73,801,000
2. Energy Project:	
2.1 Facilitating New Lower-Cost Renewable Generation	21,684,000
Subtotal	21,684,000
3. Monitoring and Evaluation	1,820,000
4. Program Administration and Oversight	27,695,000
Total MCC Compact Funding	125,000,000
Total Program Funding	
Total MCC Compact Funding	125,000,000
Government of Belize Contribution	40,650,000
Total Program	165,650,000

[FR Doc. 2024–20752 Filed 9–12–24; 8:45 am]
BILLING CODE 9211–03–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 24–06]

Notice of Open Meeting

AGENCY: Millennium Challenge Corporation.
ACTION: Notice.

SUMMARY: In accordance with the requirements of the Federal Advisory Committee Act, the Millennium Challenge Corporation (MCC) Economic Advisory Council was established as a discretionary advisory committee on October 5, 2018. Its charter was most recently renewed on September 30, 2022, for two additional years. The MCC Economic Advisory Council serves MCC solely in an advisory capacity and provides advice and guidance to MCC economists, evaluators, leadership of the Department of Policy and Evaluation, and senior MCC leadership

regarding relevant trends in development economics, applied economic and evaluation methods, poverty analytics, as well as modeling, measuring, and evaluating development interventions. In doing so, the MCC Economic Advisory Council helps sharpen MCC’s analytical methods and capacity in support of the agency’s economic development goals. It also serves as a sounding board and reference group for assessing and advising on strategic policy innovations and methodological directions in MCC.

DATES: Friday, September 27, 2024, from 10:00 a.m.–12:30 p.m. EDT.

ADDRESSES: The meeting will be held both in-person at 1099 14th Street NW, Suite 700, Washington, DC 20005 and virtually via WebEx.

FOR FURTHER INFORMATION CONTACT: Contact Mesbah Motamed, 202.521.3600, MCCEACouncil@mcc.gov or visit www.mcc.gov/about/org-unit/economic-advisory-council.

SUPPLEMENTARY INFORMATION:

Agenda: During this meeting of the MCC Economic Advisory Council, members will receive an overview of MCC's work to fulfill its poverty reduction through economic growth mission and the role of the MCC Economic Advisory Council. The MCC Economic Advisory Council will also discuss issues related to MCC's work on concurrent regional compacts.

Public Participation: The meeting will be open to the public. Members of the public may file written statement(s) before or after the meeting. If you plan to participate, please submit your name and affiliation no later than Friday, September 20, 2024, to MCCEACouncil@mcc.gov to receive instructions for virtual participation and to be placed on an attendee list.

(Authority: Federal Advisory Committee Act, 5 U.S.C. App.)

Dated: September 9, 2024.

Peter E. Jaffe,
*Vice President, General Counsel, and
Corporate Secretary.*

[FR Doc. 2024–20755 Filed 9–12–24; 8:45 am]

BILLING CODE 9211–03–P

PENSION BENEFIT GUARANTY CORPORATION

Solicitation of Nominations for Appointment to the Advisory Committee of the Pension Benefit Guaranty Corporation

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is soliciting nominations for appointment to the Advisory Committee of the PBGC.

DATES: Nominations must be received on or before October 28, 2024. Please allow three weeks for regular mail delivery to PBGC.

ADDRESSES: Nominations must be submitted electronically to OfficeOfTheDirector@pbgc.gov as email attachments in Word or pdf format, or by mail to Office of the Director,

Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101.

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation (PBGC or the Corporation) administers the pension plan termination insurance program under title IV of the Employee Retirement Income Security Act of 1974 (ERISA). Section 4002(h) of ERISA provides for the establishment of an Advisory Committee to the Corporation. The Advisory Committee consists of seven members appointed by the President from among individuals recommended by the PBGC Board of Directors, which consists of the Secretaries of Labor, Treasury, and Commerce. The Advisory Committee members are as follows:

- two representatives of employee organizations;
- two representatives of employers who maintain pension plans; and
- three representatives of the general public.

No more than four members of the Committee shall be members of the same political party. Anyone currently subject to federal registration requirements as a lobbyist is not eligible for appointment.

Advisory Committee members must have experience with employee organizations, employers who maintain defined benefit pension plans, the administration or advising of pension plans, or in related fields. Appointments are for 3-year terms. Reappointments are possible but are subject to the appointment process.

The Advisory Committee's prescribed duties include advising the Corporation as to its policies and procedures relating to investment of moneys, and other issues as the Corporation may request or as the Advisory Committee determines appropriate. The Advisory Committee meets at least six times each year. At least one meeting is a joint meeting with the PBGC Board of Directors.

By February 19, 2025, the terms of three of the Advisory Committee members, two representing employers who maintain pension plans and one representing the general public, will have expired. Therefore, PBGC is seeking nominations for three seats.

PBGC is committed to equal opportunity in the workplace and seeks a broad-based and diverse Advisory Committee.

If you or your organization wants to nominate one or more people for appointment to the Advisory Committee to represent employers who maintain pension plans or the general public, you may submit nominations to PBGC.

Nominations may be in the form of a letter, resolution or petition, signed by the person making the nomination. PBGC encourages you to include additional supporting letters of nomination. PBGC will not consider self-nominees who have no supporting letters. Please do not include any information that you do not want publicly disclosed.

Nominations, including supporting letters, should:

- state the person's qualifications to serve on the Advisory Committee (including any specialized knowledge or experience relevant to the nominee's proposed Advisory Committee position to represent employers who maintain pension plans or the general public);
- state that the candidate will accept appointment to the Advisory Committee if offered;
- include the nominee's full name, work affiliation, mailing address, phone number, and email address;
- include the nominator's full name, mailing address, phone number, and email address; and
- include the nominator's signature, whether sent by email or otherwise.

PBGC will contact nominees for information on their political affiliation and their status as registered lobbyists. Nominees should be aware of the time commitment for attending meetings and actively participating in the work of the Advisory Committee. Historically, this has meant a commitment of at least 15 days per year. PBGC has a process for vetting nominees under consideration for appointment.

Issued in Washington, DC.

Ann Y. Orr,

Acting Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2024–20782 Filed 9–12–24; 8:45 am]

BILLING CODE 7709–02–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's

estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

1. *Title and purpose of information collection:* Claimant Appeal Under the Railroad Retirement Act or Railroad Unemployment Insurance Act; OMB 3220-0007.

Under Section 7(b) of the Railroad Retirement Act (RRA) (45 U.S.C. 231f), and Section 5(c) of the Railroad Unemployment Insurance Act (RUIA)

(45 U.S.C. 355) any person aggrieved by a decision made by an office of the RRB on his or her application for an annuity or benefit under those Acts has the right to appeal to the RRB. This right is prescribed in 20 CFR 260 and 20 CFR 320. The notification letter, which is provided at the time of filing the original application, informs the applicant of such right. When an applicant protests a decision, the concerned RRB office reviews the entire file and any additional evidence submitted and sends the applicant a letter explaining the basis of the determination. The applicant is then notified that to protest further, they can appeal to the RRB's Bureau of Hearings

and Appeals. The appeal process is prescribed in 20 CFR 260.5 and 260.9 and 20 CFR 320.12 and 320.38.

To file a request for an appeal the applicant must complete Form HA-1, *Appeal Under the Railroad Retirement Act or Railroad Unemployment Insurance Act*. The form asks the applicant to explain the basis for their request for an appeal and, if necessary, to describe any additional evidence they wish to submit in support of the appeal. Completion is voluntary, however, if the information is not provided the RRB cannot process the appeal. The RRB proposes a minor change to Form HA-1 to reference page 2 of the form.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
HA-1	300	20	100

2. *Title and purpose of information collection:* Evidence for Application of Overall Minimum; OMB 3220-0083.

Under Section 3(f)(2) of the Railroad Retirement Act (RRA) (45 U.S.C. 231b), the total monthly benefits payable to a railroad employee and his/her family are guaranteed to be no less than the amount which would be payable if the employee's railroad service had been covered by the Social Security Act. This is referred to as the Social Security Overall Minimum Guarantee, which is prescribed in 20 CFR 229. To administer this provision, the Railroad Retirement

Board (RRB) requires information about a retired employee's spouse and child(ren) who would not be eligible for benefits under the RRA but would be eligible for benefits under the Social Security Act if the employee's railroad service had been covered by that Act. The RRB obtains the required information by the use of Forms G-319, Statement Regarding Family and Earnings for Special Guaranty Computation, and G-320, Student Questionnaire for Special Guaranty Computation. One response is required of each respondent. Completion is

required to obtain or retain benefits. The RRB proposes minor changes to Form G-319:

- In Section 1, updated the year in example date format.
- In Section 2, changed first sentence to "Check the information entered by the Railroad Retirement Board (RRB) for accuracy."
- In Receipt For Your Statement section (page 11), updated the office hours.

The RRB proposes no changes to Form G-320.

ESTIMATE OF ANNUAL RESPONDENT BURDEN—CURRENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
G-319 (completed by the employee):			
With assistance	5	26	2
Without assistance	230	55	211
G-319 (completed by spouse):			
With assistance	5	30	2
Without assistance	10	60	10
G-320:			
(Age 18 at Special Guaranty Begin Date or Special Guaranty Age 18 Attainments)	30	15	7
G-320:			
(Student Monitoring done in Sept, March and at end of school year)	10	15	2
Total	290	.....	234

3. *Title and purpose of information collection:* Request to Non-Railroad Employer for Information About Annuitant's Work and Earnings; OMB 3220-0107.

Under Section 2 of the Railroad Retirement Act (RRA) (45 U.S.C. 231a), a railroad employee's retirement

annuity or an annuity paid to the spouse of a railroad employee is subject to work deductions in the Tier II component of the annuity and any employee supplemental annuity for any month in which the annuitant works for a Last Pre-Retirement Non-Railroad Employer (LPE). The LPE is defined as the last

person, company, or institution, other than a railroad employer, that employed an employee or spouse annuitant. In addition, the employee, spouse, or divorced spouse Tier I annuity benefit is subject to work deductions under Section 2(f)(1) (45 U.S.C. 231a) of the RRA for earnings from any non-railroad

employer that are over the annual exempt amount. The regulations pertaining to non-payment of annuities by reason of work and LPE are contained in 20 CFR 230.1 and 230.2.

The RRB utilizes Form RL-231-F, Request to Non-Railroad Employer for Information About Annuitant's Work and Earnings, to obtain the information needed to determine if a work deduction should be applied because an

annuitant worked in non-railroad employment after the annuity beginning date. One response is requested of each respondent. Completion is voluntary. The RRB proposes no changes to Form RL-231-F.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
RL-231-F	300	30	150

4. Title and purpose of information collection: Student Beneficiary Monitoring; OMB 3220-0123.

Under provisions of the Railroad Retirement Act (RRA), there are two types of benefit payments that are based on the status of a child being in full-time elementary or secondary school attendance at age 18-19: (1) A survivor child's annuity benefit under Section 2(d)(1)(iii) (45 U.S.C. 231a) and (2) an increase in the employee retirement annuity under the Special Guaranty computation as prescribed in Section 3(f)(2) (45 U.S.C. 231b) and 20 CFR 229.

The survivor student annuity is usually paid by direct deposit to a

financial institution either into the student's checking or savings account or into a joint bank account with a parent. The requirements for eligibility as a student are prescribed in 20 CFR 216.74 and include students in independent study and home schooling.

To help determine if a child is entitled to student benefits, the RRB requires evidence of full-time school attendance. This evidence is acquired through the RRB's student monitoring program, which utilizes the following forms. Form G-315, Student Questionnaire, obtains certification of a student's full-time school attendance as well as information on the student's

marital status, social security benefits, and employment, which are needed to determine entitlement or continued entitlement to benefits under the RRA. Form G-315A, Statement of School Official, is used to obtain, from a school, verification of a student's full-time attendance when the student fails to return a monitoring Form G-315. Form G-315A.1, School Official's Notice of Cessation of Full-Time School Attendance, is used by a school to notify the RRB that a student has ceased full-time school attendance. The RRB proposes no changes to Forms G-315, G-315A, or G-315A.1.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
G-315	860	15	215
G-315A	20	3	1
G-315A.1	20	2	1
Total	900	.....	217

5. Title and purpose of information collection: Gross Earnings Report; OMB 3220-0132.

In order to carry out the financial interchange provisions of Section 7(c)(2) of the Railroad Retirement Act (RRA) (45 U.S.C. 231f), the RRB obtains annually from railroad employer's the gross earnings for their employees on a one-percent basis, i.e., 1% of each employer's railroad employees. The gross earnings sample is based on the earnings of employees whose social security numbers end with the digits "30." The gross earnings are used to compute payroll taxes under the financial interchange.

The gross earnings information is essential in determining the tax

amounts involved in the financial interchange with the Social Security Administration and Centers for Medicare & Medicaid Services. Besides being necessary for current financial interchange calculations, the gross earnings file tabulations are also an integral part of the data needed to estimate future tax income and corresponding financial interchange amounts. These estimates are made for internal use and to satisfy requests from other government agencies and interested groups. In addition, cash flow projections of the social security equivalent benefit account, railroad retirement account and cost estimates made for proposed amendments to laws administered by the RRB are dependent

on input developed from the information collection.

The RRB utilizes Form BA-11 to obtain gross earnings information from railroad employers. Employers have the option of preparing and submitting BA-11 reports online via the RRB's Employer Reporting System or on paper (or in like format) by File Transfer Protocol (FTP) or secure Email. The online BA-11 includes the option to file a "negative report" (no employees, or no employees with the digits "30"). Completion is mandatory. One response is requested of each respondent. The RRB proposes no changes to Form BA-11.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
BA-11 CD-ROM	0	30	0
BA-11 File Transfer Protocol	20	300	100
BA-11 Secure Email	1	30	1
BA-11 (Internet)—Positive	150	30	75
BA-11 (Internet)—Negative	318	15	80
Total	489	.....	256

6. Title and purpose of information collection: Railroad Separation Allowance or Severance Pay Report; OMB 3220-0173.

Section 6 of the Railroad Retirement Act (45 U.S.C. 231e) provides for a lump-sum payment to an employee or the employee's survivors equal to the Tier II taxes paid by the employee on a separation allowance or severance payment for which the employee did not receive credits toward retirement. The lump-sum is not payable until retirement benefits begin to accrue or the employee dies. Also, Section 4 (a-1) (iii) (45 U.S.C. 231c) of the Railroad

Unemployment Insurance Act provides that a railroad employee who is paid a separation allowance is disqualified for unemployment and sickness benefits for the period of time the employee would have to work to earn the amount of the allowance. The reporting requirements are specified in 20 CFR 209.14.

In order to calculate and provide payments, the Railroad Retirement Board (RRB) must collect and maintain records of separation allowances and severance payments which were subject to Tier II taxation from railroad employers. The RRB uses Form BA-9, Report of Separation Allowance or

Severance Pay, to obtain information from railroad employers concerning the separation allowances and severance payments made to railroad employees and/or the survivors of railroad employees. Employers currently have the option of submitting their reports on paper Form BA-9, (or in like format) on a CD-ROM, or by File Transfer Protocol (FTP), or Secure Email. Completion is mandatory. One response is requested of each respondent. The RRB proposes no changes to the manual, CD-ROM, secure email, or FTP Version of Form BA-9. The RRB proposes no changes from BA-9 (Internet).

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
BA-9 (Paper)	100	76	127
BA-9 (Internet)	215	15	54
BA-9 (CD-ROM)	10	76	13
BA-9 (Secure Email)	25	76	32
BA-9 (FTP)	10	76	13
Total	360	.....	239

7. Title and purpose of information collection: Annual Earnings Questionnaire for Annuitants in Last Pre-Retirement Non-Railroad Employment; OMB 3220-0179.

Under Section 2(e)(3) of the Railroad Retirement Act (RRA) (45 U.S.C. 231a), an annuity is not payable for any month in which a beneficiary works for a railroad. In addition, an annuity is reduced for any month in which the beneficiary works for an employer other than a railroad employer and earns more than a prescribed amount. Under the 1988 amendments to the RRA, the Tier

II portion of the regular annuity and any supplemental annuity must be reduced by one dollar for each two dollars of Last Pre-Retirement Non-Railroad Employment (LPE) earnings for each month of such service. However, the reduction cannot exceed 50 percent of the Tier II and supplemental annuity amount for the month to which such deductions apply. The LPE generally refers to an annuitant's last employment with a non-railroad person, company, or institution prior to retirement, which was performed at the same time as railroad employment or after the

annuitant stopped railroad employment. The collection obtains earnings information needed by the RRB to determine if possible reductions in annuities are in order due to LPE.

The RRB utilizes Form G-19L, *Annual Earnings Questionnaire*, to obtain LPE earnings information from annuitants. One response is requested of each respondent. Completion is required to retain a benefit. The RRB proposes minor changes to update the office hours on Form G-19L.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
G-19L	300	15	75

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Kennisha Money at (312) 469-2591 or Kennisha.Money@rrb.gov. Comments regarding the information collection should be addressed to Brian Foster, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-1275 or emailed to Brian.Foster@rrb.gov. Written comments should be received within 60 days of this notice.

Brian D. Foster,
Clearance Officer.

[FR Doc. 2024-20854 Filed 9-12-24; 8:45 am]

BILLING CODE 7905-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-110, OMB Control No. 3235-0286]

Submission for OMB Review; Comment Request; Extension: Regulation A (Form 1-A): Small Issuer Exemption From Registration Under the Securities Act and Its Attendant Form

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 ("Commission") has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Regulation A (17 CFR 230.251 through 230.263) provides an exemption from registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) for certain limited offerings of securities by issuers who do not otherwise file reports with the Commission. Form 1-A is an offering statement filed under Regulation A. The paperwork burden from Regulation A is imposed through the forms that are subject to the disclosure requirements in Regulation A and is reflected in the analysis of the form. To avoid a Paperwork Reduction Act inventory reflecting duplicative burdens, for administrative convenience we estimate the burden imposed by Regulation A to be a total of one hour. We estimate that approximately 325 issuers file Forms 1-A. We estimate that Form 1-A takes approximately 717.372 hours to prepare. We estimate that 75%

of the 717.372 hours per response (538.029 hours) is prepared by the company for a total annual burden of 174,859 hours (538.029 hours per response × 325 responses).

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 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) www.reginfo.gov/public/do/PRAMain 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 10, 2024.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-20845 Filed 9-12-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35316; 812-15603]

MA Specialty Credit Income Fund and MA Asset Management, LLC

September 10, 2024.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 18(a)(2), 18(c) and 18(i) of the Act, under sections 6(c) and 23(c) of the Act for an exemption from rule 23c-3 under the Act, and for an order pursuant to section 17(d) of the Act and rule 17d-1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end investment companies to issue multiple classes of shares and to impose asset-based distribution and/or service fees and early withdrawal charges.

APPLICANTS: MA Specialty Credit Income Fund and MA Asset Management, LLC.

FILING DATES: The application was filed on July 17, 2024 and amended on August 27, 2024.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at Secretarys-Office@sec.gov and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on October 7, 2024, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: Secretarys-Office@sec.gov. Applicants: Paul Grady, c/o MA Asset Management, LLC, 3 W Main St., Suite 301, Irvington, New York 10533, with copies to William Bielefeld, Esq., Dechert LLP, 1900 K Street NW, Washington, DC 20006, and Matthew Barsamian, Esq., Dechert LLP, 1900 K Street NW, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Trace W. Rakestraw, Senior Special Counsel, at (202) 551-6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' application, dated August 27, 2024, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field on the SEC's EDGAR system. The SEC's EDGAR system may be searched at <https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html>. You may also call the SEC's Public Reference Room at (202) 551-8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-20851 Filed 9-12-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35317; 812-15612]

Wellington Global Multi-Strategy Fund and Wellington Management Company LLP

September 10, 2024.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 18(a)(2), 18(c) and 18(i) of the Act, under sections 6(c) and 23(c) of the Act for an exemption from rule 23c-3 under the Act, and for an order pursuant to section 17(d) of the Act and rule 17d-1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end investment companies to issue multiple classes of shares and to impose asset-based distribution and/or service fees and early withdrawal charges.

APPLICANTS: Wellington Global Multi-Strategy Fund and Wellington Management Company LLP.

FILING DATES: The application was filed on August 13, 2024, and amended on August 16, 2024.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at Secretarys-Office@sec.gov and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on October 7, 2024, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: Secretarys-Office@sec.gov. Applicants: Christopher D. Christian, Esq., Dechert LLP, One International Place, 40th Floor, 100 Oliver Street, Boston,

Massachusetts 02110, William Bielefeld, Esq., Dechert LLP, 1900 K Street NW, Washington, DC 20006, and Aaron D. Withrow, Esq., Dechert LLP, 1900 K Street NW, Washington, DC 20006, with a copy to Gregory S. Konzal, Wellington Management Company LLP, 280 Congress Street, Boston, Massachusetts 02210.

FOR FURTHER INFORMATION CONTACT:

Trace W. Rakestraw, Senior Special Counsel, at (202) 551-6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' application, dated August 16, 2024, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field on the SEC's EDGAR system. The SEC's EDGAR system may be searched at <https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html>. You may also call the SEC's Public Reference Room at (202) 551-8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-20852 Filed 9-12-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-050, OMB Control No. 3235-0060]

Submission for OMB Review; Comment Request; Extension: Exchange Act Form 8-K

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 ("Commission") has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form 8-K (17 CFR 249.308) is filed by issuers to satisfy their current reporting obligations pursuant to Sections 13 and 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m and 78o(d)) in connection with the occurrence of significant corporate events. The

purpose of Form 8-K is to provide investors with prompt disclosure of material information so that investors will be able to make investment and voting decisions better informed and receive information more-timely. We estimate that Form 8-K takes 8.414583 hours per response and is filed by 70,560 responses annually. We estimate that 75% of the 8.414583 hours per response (6.31094 hours) is prepared by the issuer for a total annual reporting burden of 445,300 hours (6.31094 hours per response × 70,560 responses).

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 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) www.reginfo.gov/public/do/PRAMain 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 10, 2024.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-20846 Filed 9-12-24; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20503 and #20504; NEW YORK Disaster Number NY-20011]

Administrative Declaration of a Disaster for the State of New York

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of New York dated 09/09/2024.

Incident: Severe Storms, Tornadoes and Flooding.

Incident Period: 07/10/2024.

DATES: Issued on 09/09/2024.

Physical Loan Application Deadline Date: 11/08/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 06/09/2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Vanessa Morgan, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be submitted online using the MySBA Loan Portal <https://lending.sba.gov> or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at disastercustomerservice@sba.gov or by phone at 1-800-659-2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Essex, Lewis.

Contiguous Counties:

New York: Clinton, Franklin, Hamilton, Herkimer, Jefferson, Oneida, Oswego, St. Lawrence, Warren, Washington.

Vermont: Addison, Chittenden.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere	5.375
Homeowners without Credit Available Elsewhere	2.688
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere ...	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.250
<i>For Economic Injury:</i>	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for physical damage is 205036 and for economic injury is 205040.

The States which received an EIDL Declaration are New York, Vermont.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,
Administrator.

[FR Doc. 2024-20779 Filed 9-12-24; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20533 and #20534;
FLORIDA Disaster Number FL-20009]

Presidential Declaration Amendment of a Major Disaster for the State of Florida

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Florida (FEMA-4806-DR), dated August 10, 2024.

DATES: Issued on August 28, 2024.

Physical Loan Application Deadline Date: October 9, 2024.

Economic Injury (EIDL) Loan Application Deadline Date: May 12, 2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Vanessa Morgan, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Florida, dated 08/10/2024, is hereby amended to include the following areas as adversely affected by the disaster:

Incident: Hurricane Debby.

Incident Period: August 1, 2024 and continuing.

Primary Counties (Physical Damage and Economic Injury Loans): Alachua, Jefferson.

Contiguous Counties (Economic Injury Loans Only):

Florida: Bradford, Leon, Putnam, Wakulla

Georgia: Thomas

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Deputy Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024-19830 Filed 9-12-24; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20546; CALIFORNIA Disaster Number CA-20020 Declaration of Economic Injury]

Administrative Declaration of an Economic Injury Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of California dated August 19, 2024.

DATES: Issued on August 19, 2024.

Economic Injury (EIDL) Loan Application Deadline Date: May 19, 2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for disaster loans may be submitted online using the MySBA Loan Portal <https://lending.sba.gov> or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at disastercustomerservice@sba.gov or by phone at 1-800-659-2955 for further assistance.

Incident: Marysville Hotel Fire and Road Closures.

Incident Period: June 15, 2024 and continuing.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Yuba.

Contiguous Counties:

California: Butte, Nevada, Placer, Plumas, Sierra, Sutter.

The Interest Rates are:

	Percent
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for economic injury is 205460.

The States which received an EIDL Declaration are California.

(Catalog of Federal Domestic Assistance
Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2024–18974 Filed 9–12–24; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #20566 and #20567;
IOWA Disaster Number IA–20011]**

Administrative Disaster Declaration of a Rural Area for the State of Iowa

AGENCY: U.S. Small Business
Administration.

ACTION: Notice.

SUMMARY: This is a notice of an
Administrative disaster declaration of a
rural area for the State of Iowa dated
August 26, 2024.

DATES: Issued on August 26, 2024.

*Physical Loan Application Deadline
Date:* October 25, 2024.

*Economic Injury (EIDL) Loan
Application Deadline Date:* May 27,
2025.

ADDRESSES: Visit the MySBA Loan
Portal at <https://lending.sba.gov> to
apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT:
Alan Escobar, Office of Disaster
Recovery Resilience, U.S. Small
Business Administration, 409 3rd Street
SW, Suite 6050, Washington, DC 20416,
(202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is
hereby given that as a result of the
Administrator's disaster declaration of a
rural area, applications for disaster
loans may be submitted online using the
MySBA Loan Portal <https://lending.sba.gov> or other locally
announced locations. Please contact the
SBA disaster assistance customer
service center by email at
disastercustomerservice@sba.gov or by
phone at 1–800–659–2955 for further
assistance.

The following areas have been
determined to be adversely affected by
the disaster:

Incident: Severe Storms, Tornadoes,
and Flooding.

Incident Period: May 20, 2024 through
May 31, 2024.

Primary Counties: Harrison, Tama.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Avail- able Elsewhere	5.375
Homeowners without Credit Available Elsewhere	2.688

	Percent
Businesses with Credit Avail- able Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere ...	3.250
Non-Profit Organizations with- out Credit Available Else- where	3.250
<i>For Economic Injury:</i>	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations with- out Credit Available Else- where	3.250

The number assigned to this disaster
for physical damage is 20566C and for
economic injury is 205670.

The State which received an EIDL
Declaration is Iowa.

(Catalog of Federal Domestic Assistance
Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2024–19535 Filed 9–12–24; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #20562 and #20563;
NEW HAMPSHIRE Disaster Number NH–
20006]**

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of New Hampshire

AGENCY: U.S. Small Business
Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the
Presidential declaration of a major
disaster for Public Assistance Only for
the State of New Hampshire (FEMA–
4812–DR), dated August 20, 2024.

DATES: Issued on August 20, 2024.

*Physical Loan Application Deadline
Date:* October 21, 2024.

*Economic Injury (EIDL) Loan
Application Deadline Date:* May 20,
2025.

ADDRESSES: Visit the MySBA Loan
Portal at <https://lending.sba.gov> to
apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT:
Vanessa Morgan, Office of Disaster
Recovery & Resilience, U.S. Small
Business Administration, 409 3rd Street
SW, Suite 6050, Washington, DC 20416,
(202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is
hereby given that as a result of the
President's major disaster declaration on
08/20/2024, Private Non-Profit

organizations that provide essential
services of a governmental nature may
file disaster loan applications online
using the MySBA Loan Portal <https://lending.sba.gov> or other locally
announced locations. Please contact the
SBA disaster assistance customer
service center by email at
disastercustomerservice@sba.gov or by
phone at 1–800–659–2955 for further
assistance.

The following areas have been
determined to be adversely affected by
the disaster:

Incident: Severe Storm and Flooding.
Incident Period: July 10, 2024 through
July 13, 2024.

Primary Counties: Coos, Grafton.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Non-Profit Organizations with Credit Available Elsewhere ...	3.250
Non-Profit Organizations with- out Credit Available Else- where	3.250
<i>For Economic Injury:</i>	
Non-Profit Organizations with- out Credit Available Else- where	3.250

The number assigned to this disaster
for physical damage is 205626 and for
economic injury is 205630.

(Catalog of Federal Domestic Assistance
Number 59008)

Rafaela Monchek,

*Acting Associate Administrator, Office of
Disaster Recovery & Resilience.*

[FR Doc. 2024–19087 Filed 9–12–24; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #20612; CALIFORNIA
Disaster Number CA–20022 Declaration of
Economic Injury]**

Administrative Declaration of an Economic Injury Disaster for the State of California

AGENCY: U.S. Small Business
Administration.

ACTION: Notice.

SUMMARY: This is a notice of an
Economic Injury Disaster Loan (EIDL)
declaration for the State of California
dated September 6, 2024.

DATES: Issued on September 6, 2024.

*Economic Injury (EIDL) Loan
Application Deadline Date:* June 6,
2025.

ADDRESSES: Visit the MySBA Loan
Portal at <https://lending.sba.gov> to
apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT:

Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for disaster loans may be submitted online using the MySBA Loan Portal <https://lending.sba.gov> or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at disastercustomerservice@sba.gov or by phone at 1-800-659-2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Incident: Lake Fire.

Incident Period: July 5, 2024 through August 4, 2024.

Primary Counties:

Santa Barbara.

Contiguous Counties:

California: Kern, San Luis Obispo, Ventura.

The Interest Rates are:

	Percent
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for economic injury is 206120.

The State which received an EIDL Declaration is California.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2024-20775 Filed 9-12-24; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20333 and #20334; WEST VIRGINIA Disaster Number WV-20004]

Presidential Declaration Amendment of a Major Disaster for the State of West Virginia

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of West Virginia (FEMA-4787-DR), dated July 3, 2024.

DATES: Issued on August 27, 2024.

Physical Loan Application Deadline Date: November 2, 2024.

Economic Injury (EIDL) Loan Application Deadline Date: April 3, 2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT:

Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of WEST VIRGINIA, dated July 3, 2024, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to November 2, 2024.

Incident: Severe Storms, Flooding, Landslides, and Mudslides.

Incident Period: April 11, 2024 through April 12, 2024.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Deputy Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024-19713 Filed 9-12-24; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20591 and #20592; FLORIDA Disaster Number FL-20011]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Florida

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Florida (FEMA-4806-DR), dated August 28, 2024.

DATES: Issued on August 28, 2024.

Physical Loan Application Deadline Date: October 28, 2024.

Economic Injury (EIDL) Loan Application Deadline Date: May 28, 2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Vanessa Morgan, Office of Disaster Recovery & Resilience, U.S. Small

Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/28/2024, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications online using the MySBA Loan Portal <https://lending.sba.gov> or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at disastercustomerservice@sba.gov or by phone at 1-800-659-2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Incident: Hurricane Debby.

Incident Period: August 1, 2024 and continuing.

Primary Counties: Baker, Charlotte,

Columbia, Dixie, Gilchrist,

Hamilton, Jefferson, Lafayette,

Leon, Levy, Madison, Manatee,

Sarasota, Suwannee, Taylor, Union,

Wakulla.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i> Non-Profit Organizations with Credit Available Elsewhere ...	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.250
<i>For Economic Injury:</i> Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for physical damage is 205918 and for economic injury is 205920.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Deputy Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024-19831 Filed 9-12-24; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20554 and #20555; SOUTH DAKOTA Disaster Number SD-20002]

Administrative Disaster Declaration of a Rural Area for the State of South Dakota

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative disaster declaration of rural areas for the State of South Dakota dated August 26, 2024.

DATES: Issued on August 26, 2024.
Physical Loan Application Deadline Date: October 25, 2024.

Economic Injury (EIDL) Loan Application Deadline Date: May 27, 2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration of a rural area, applications for disaster loans may be submitted online using the MySBA Loan Portal <https://lending.sba.gov> or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at disastercustomerservice@sba.gov or by phone at 1-800-659-2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Incident: Severe Storms, Straight-line Winds, and Flooding.

Incident Period: June 16, 2024 through July 8, 2024.

Primary Counties: Bon Homme, Clay, Hutchinson, McCook, Yankton
The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere	5.375
Homeowners without Credit Available Elsewhere	2.688
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere ...	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.250
<i>For Economic Injury:</i>	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for physical damage is 205546 and for economic injury is 205550.

The State which received an EIDL Declaration is South Dakota.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,
Administrator.

[FR Doc. 2024-19540 Filed 9-12-24; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20505 and #20506; TEXAS Disaster Number TX-20021]

Administrative Rural Declaration Amendment of a Disaster for the State of Texas

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Administrative Rural declaration of disaster for the State of Texas dated August 7, 2024.

DATES: Issued on August 26, 2024.

Physical Loan Application Deadline Date: October 7, 2024.

Economic Injury (EIDL) Loan Application Deadline Date: May 7, 2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: The notice of an Administrative declaration of a rural area for the State of Texas, dated August 7, 2024 is hereby amended to include the following areas as adversely affected by the disaster.

Incident: Severe Storms, Straight-Line Winds, Tornadoes and Flooding.

Incident Period: April 26, 2024 through June 5, 2024.

Primary Counties: Coke, Rockwall

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,
Administrator.

[FR Doc. 2024-19533 Filed 9-12-24; 8:45 am]

BILLING CODE 8026-09-P

DEPARTMENT OF STATE

[Public Notice 12523]

60-Day Notice of Proposed Information Collection: Foreign Service Officer Test Registration Form

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to November 12, 2024.

ADDRESSES: You may submit comments by any of the following methods:

- *Web:* Persons with access to the internet may comment on this notice by going to www.Regulations.gov. You can search for the document by entering "Docket Number: DOS-2024-0033" in the Search field. Then click the "Comment Now" button and complete the comment form.

- *Email:* FSOTQuestions@state.gov.
- *Regular Mail:* Send written

comments to: Board of Examiners for the Foreign Service, FSOT Registration Form Comments Department of State SA-1, H-518, 2401 E Street NW, Washington, DC 20522.

- *Fax:* (202) 736-9190, Attn: FSOT Registration Form Comments.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Gailyn McClung, Board of Examiners for the Foreign Service, Department of State SA-1, H-518, 2401 E Street NW, Washington, DC 20522, 202-320-0295.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Registration for the Foreign Service Officer Test.
- *OMB Control Number:* 1405-0008.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Human Resources, Board of Examiners.
- *Form Number:* DS-1998E.

- *Respondents*: Registrants for the Foreign Service Officer Test.
- *Estimated Number of Respondents*: 7,000.
- *Estimated Number of Responses*: 7,000.
- *Average Time per Response*: 2 hours.
- *Total Estimated Burden Time*: 14,000 hours.
- *Frequency*: Annually.
- *Obligation to Respond*: Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

Individuals registering for the Foreign Service Officer Test will complete a Registration Form, asking for their name, contact information, ethnicity, education and work history, and military experience. The information will be used to prepare and issue admission to the Foreign Service Officer Test, to provide data useful for improving future tests, and to conduct research studies based on the test results.

Methodology

The registration process, which includes concurrent application submission and seat selection, opens approximately four (4) weeks prior to each testing window. To register, individuals go to pearsonvue.com/fsot/ during the four-week period prior to a specific testing window to create an account, submit completed eligibility verification and application forms, and

select a location and seat for the specific test date.

Yolonda Kerney,
Acting Director, GTM/TAC/BEX, Department of State.

[FR Doc. 2024–20840 Filed 9–12–24; 8:45 am]

BILLING CODE 4710–15-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36808]

Georges Creek Division Railroad, LLC—Lease and Operation Exemption—Eighteen Thirty Group, LLC

Georges Creek Division Railroad, LLC (GCDR), a noncarrier, has filed a verified notice of exemption under 49 CFR part 1150, subpart D, to lease and conduct common carrier operations over approximately 14.49 miles of rail line as follows: (a) 13.94 miles of railroad line consisting of a portion of the former CSXT Transportation, Inc. (CSXT) Georges Creek Subdivision between approximately milepost BAI 31.6 at Westernport, Md., and approximately milepost BAI 18.46 at the end of the line at Carlos/Shaft, Md.; and (b) 0.55 miles of railroad consisting of a portion of the former CSXT Thomas Subdivision from approximately milepost BAH 26.25 at Barton, Md., to the end of track at approximately milepost BAH 26.80 at Westernport (collectively, the Lines).

According to the verified notice, the Lines are owned by Eighteen Thirty Group, LLC (Eighteen Thirty). The verified notice states that GCDR and Eighteen Thirty are finalizing a Land and Rail Assets Lease Agreement (Lease), under which GCDR will assume the right and obligation to offer and provide railroad common carrier service over the Lines. Furthermore, the verified notice states that the Lease will permit GCDR to enter into a land and rail assets sublease agreement with Western Maryland Scenic Railroad Development Corporation (WMSR), the noncarrier that controls GCDR, to enable WMSR to operate intrastate excursion and railroad tourism over the Lines.¹

GCDR certifies that its projected annual revenue will not result in the creation of a Class I or Class II rail carrier and will not exceed \$5 million. GCDR also certifies that the agreement does not include an interchange commitment. The transaction may be consummated on or after September 28,

¹ According to the verified notice, under such a sublease, WMSR would assume all rights and obligations in the Lines under the Lease except the right and obligation to offer and provide railroad common carrier service, which GCDR would retain.

2024, the effective date of the exemption (30 days after the verified notice was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than September 20, 2024 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36808, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on GCDR's representative, Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606–3208.

According to GCDR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at www.stb.gov.

Decided: September 9, 2024.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Zantori Dickerson,
Clearance Clerk.

[FR Doc. 2024–20762 Filed 9–12–24; 8:45 am]

BILLING CODE 4915–01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 35508 (Sub-No. 2)]

Iowa Northern Railway Company—Lease Renewal Exemption—North Central Iowa Rail Corridor, LLC

Iowa Northern Railway Company (IANR) has filed a verified notice of exemption under 49 CFR 1180.2(d)(4) for the further renewal of its lease of the railroad property of North Central Iowa Rail Corridor, LLC (NCIRC), between milepost 48.12 at Belmond, Iowa, and milepost 75.95 at Forest City, Iowa, and 600 feet of connecting track at Garner, Iowa (the Line).

According to the verified notice, in 2011, IANR leased the Line from NCIRC for an initial term of ten years, pursuant to a lease and purchase agreement. *See Iowa N. Ry.—Operation Exemption—N. Cent. Rail Corridor, LLC*, FD 35508 (STB served May 26, 2011). In 2021, IANR extended the term of the lease three additional years, to September 30, 2024.

See Iowa N. Ry.—Operation Exemption—N. Cent. Rail Corridor, LLC, FD 35508 (Sub-No. 1) (STB served December 15, 2023). IANR states that it and NCIRC have agreed to a second amendment to renew the lease for an additional three years, to September 30, 2027. IANR states that the agreement does not include any provision that would limit the future interchange of traffic with a third-party connecting carrier.

IANR represents that the transaction involves a renewal of a lease that the Board previously authorized, and only an extension in time is involved. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(4).

This transaction may be consummated on or after September 29, 2024, the effective date of the exemption (30 days after the verified notice was filed).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. 11326(c) does not provide for labor protection for transactions under 49 U.S.C. 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than September 20, 2024.

All pleadings, referring to Docket No. FD 35508 (Sub-No. 2), must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423-0001. In addition, one copy of each pleading must be served on IANR's representative, Kevin M. Sheys, Law Offices of Kevin M. Sheys, 42 Brush Hill Rd., Sherborn, MA 01770.

According to IANR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at www.stb.gov.

Decided.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Raina White,

Clearance Clerk.

[FR Doc. 2024-20855 Filed 9-12-24; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA-2024-0062]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) to approve a new information collection. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by October 15, 2024.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 0062 by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Fax: 1-202-493-2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Chip Millard, Reduction of Truck Emissions at Port Facilities Grant Program Manager, 202-366-4415, Office of Transportation Management (HOTM), Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8:30 a.m. to 6 p.m. ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: We published a **Federal Register** Notice with a 60-day public comment period

on this information collection on July 11, 2024, at [89 FR 56921]. There were no comments received.

Title: Reduction of Truck Emissions at Port Facilities Grant Program.

Background: The Bipartisan Infrastructure Law (BIL) created the Reduction of Truck Emissions at Port Facilities (RTEPF), which includes a discretionary grant program that was allocated up to \$400 million over the five-year life of the BIL. The BIL provides the RTEPF Grant Program funding to test, evaluate, and deploy projects that reduce port-related emissions from idling trucks, including through the advancement of port electrification and improvements in efficiency, focusing on port operations, including heavy-duty commercial vehicles, and other related projects.

Respondents: Eligible applicants for RTEPF Grant Program funds are entities that (1) have authority over, operate, or utilize port facilities and/or intermodal port transfer facilities, (2) have authority over areas within or adjacent to ports and intermodal port transfer facilities, or (3) will test and/or evaluate technologies that reduce truck emissions at port facilities and/or intermodal port transfer facilities.

Frequency: RTEPF Grant Program Notices of Funding Opportunity (NOFOs) will be issued annually during the life of the BIL, though some years of funding created for the program may be combined, resulting in a multi-year NOFO.

Estimated Average Burden per Response: 86 hours per respondent per application.

Estimated Total Annual Burden Hours: The total annual burden hours are 3,300 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, 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.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued on: September 10, 2024.

Jazmyne Lewis,

Information Collection Officer.

[FR Doc. 2024–20809 Filed 9–12–24; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2024–0178]

Agency Information Collection Activities; Renewal of an Approved Information Collection: Road Test Requirement

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. FMCSA requests approval to renew the ICR titled “Road Test Requirement.” This ICR estimates the information burden incurred by motor carriers associated with the road test requirements in two circumstances. The first is when the motor carrier hires a new driver. The second is when the road test is required for individuals physically qualified under the Agency’s alternative vision standard for the first time. In each circumstance, motor carriers are required to rate the performance of the driver during the test on a road test form provided by the motor carrier. If the road test is successfully completed, the motor carrier completes a certificate of driver’s road test and provides a copy to the driver. The motor carrier retains the original signed road test form and the original, or a copy, of the signed certificate in the driver qualification file.

DATES: Comments on this notice must be received on or before November 12, 2024.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2024–0178 using any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200

New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590–0001.

- *Hand Delivery or Courier:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC, 20590–0001 between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

- *Fax:* 1–202–493–2251.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Pearlle Robinson, Driver and Carrier Operations Division, DOT, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; 202–366–4225; pearlie.robinson@dot.gov.

SUPPLEMENTARY INFORMATION:

Instructions

All submissions must include the Agency name and docket number. For detailed instructions on submitting comments, see the Public Participation heading below. Note that all comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

Public Participation and Request for Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2024–0178), indicate the specific section of this document to which the comment applies and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to <https://www.regulations.gov/docket/FMCSA-2024-0178/document>, click on this notice, click “Comment,” and type your comment into the text box on the following screen.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at www.dot.gov/privacy.

Background

This ICR supports the DOT strategic goal of safety. Public interest in highway safety dictates that employers hire drivers who can safely operate CMVs amid the various physical and mental demands of truck and bus driving. Subject to some exceptions, § 391.31 requires a motor carrier to conduct a road test when the motor carrier hires a new driver. The motor carrier is required to rate the performance of the driver during the test on a road test form provided by the motor carrier. If the road test is successfully completed, the motor carrier completes a certificate of driver’s road test and provides a copy to the driver. The motor carrier retains the original signed road test form and the original, or a copy, of the signed certificate in the driver qualification file. Motor carriers may maintain the required road test form and certificate electronically or via paper copy. The information collected by the motor carrier is needed to document the motor carrier conducted the road test as required and determined the driver can operate a CMV safely. The information also assists Federal and State safety investigators in determining that motor carriers fulfilled their regulatory requirements when deciding who may drive CMVs on their behalf and in assessing the qualifications of drivers.

The ICR estimates the information-collection burden incurred by motor carriers associated with the § 391.31 road test in two circumstances. The first is when the road test is required by § 391.31 (IC–1); the second is when the road test is required as part of the alternative vision standard in § 391.44 (IC–2). However, individuals are excepted from the road test requirement if they have 3 years of intrastate or specific excepted interstate CMV driving experience with the vision deficiency, hold a valid Federal vision exemption, or are medically certified under § 391.64(b). Most of the motor

carrier burden hours and cost for the information collection relates to IC-1.

Renewal of This Information Collection

The current burden estimate associated with this ICR, approved by OMB on March 28, 2022, is 273,888 hours. The expiration date of the current ICR is March 31, 2025. Through this ICR renewal, the Agency requests an increase in the burden hours from 273,888 hours to 584,408 hours. The increase is the result of an increase in the estimated driver population as well as an increase in the expected industry growth rate for drivers from 2022 to 2032.

Title: Road Test Requirements.

OMB Control Number: 2126-0072.

Type of Request: Renewal of a currently approved collection.

Respondents: Motor carriers.

Estimated Number of Respondents: 3,187,668.

Estimated Time per Response: 33 minutes.

Expiration Date: March 31, 2025.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 584,408.

Definitions: N/A.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for

FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize or include your comments in the request for OMB's clearance of this ICR.

Issued under the authority of 49 CFR 1.87.

Thomas P. Keane,

Associate Administrator, Office of Research and Registration.

[FR Doc. 2024-20806 Filed 9-12-24; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S.

persons are generally prohibited from engaging in transactions with them. In addition, OFAC is publishing the names of vessels that have been placed on OFAC's SDN List and identified as blocked property.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT:

OFAC: Lisa M. Palluconi, Acting Director, tel.: 202-622-2490; Associate Director for Global Targeting, tel.: 202-622-2420; Assistant Director for Licensing, tel.: 202-622-2480; Assistant Director for Regulatory Affairs, tel.: 202-622-4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (<https://www.treasury.gov/ofac>) (<https://www.treasury.gov/ofac>).

Notice of OFAC Action(s)

A. On June 12, 2024, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

BILLING CODE 4810-AL-P

Individuals

1. BADIKOV, Alexey, Moscow, Russia; DOB 22 Nov 1973; nationality Russia; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024. (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of Executive Order 14024 of April 15, 2021, “Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation,” 86 FR 20249, 3 CFR, 2021 Comp., p. 542 (Apr. 15, 2021) (E.O. 14024) as amended by Executive Order 14114 of December 22, 2023, “Taking Additional Steps With Respect to the Russian Federation's Harmful Activities,” 88 FR 89271 (Dec. 22, 2023) (E.O. 14114), for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

2. ERMAKOV, Maksim Yuryevich (a.k.a. ERMAKOV, Maxim), Moscow, Russia; DOB 16 Mar 1979; POB Moscow, Russia; nationality Russia; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024. (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

3. CHICHENEV, Alexey (Cyrillic: ЧИЧЕНЕВ, Алексей) (a.k.a. CHICHENEUVE, Alex; a.k.a. CHICHENEUVE, Alexey), Flat B 7/F Conduit Tower, 20 Conduit Road, Hong Kong, Hong Kong, China; DOB 01 Jul 1966; POB Moscow, Russia; nationality Russia; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Passport 515524700 (Russia) issued 13 Sep 2012 expires 13 Sep 2017; Identification Number R8293987 (Hong Kong) (individual) [RUSSIA-EO14024] (Linked To: SUPERCHIP LIMITED).

Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of SUPERCHIP LIMITED, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

4. YANBORISOV, Bulat Akhatovich, Sozopol, Bulgaria; 51 Rue de Prony, Paris, France; Sytzia, Ioanni Kapodistria Str, Dali Residence Mez.6., Potamos Germasogias, Limassol 4046, Cyprus; DOB 01 Jan 1970; POB Penza, Russia; nationality Russia; alt. nationality Cyprus; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Passport K00427312 (Cyprus) expires 19 Nov 2028 (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

5. YANBORISOV, Amir Bulatovich (a.k.a. IANBORISOV, Amir Bulatovich), 51 Rue de Prony, Paris, France; DOB 26 Jul 1996; nationality Russia; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024. (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

6. LOUW, Shaun, South Africa; DOB 21 May 1968; POB South Africa; nationality South Africa; citizen South Africa; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Passport A05050112 (South Africa) expires 17 Nov 2025; National ID No. 6805215258084 (South Africa) (individual) [RUSSIA-EO14024] (Linked To: PRIVATE MILITARY COMPANY 'WAGNER').

Designated pursuant to section 1(a)(vi)(B) of E.O. 14024 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of PRIVATE MILITARY COMPANY 'WAGNER', a person whose property and interests in property are blocked pursuant to this order.

7. MAC DONALD, Brett Warrick, South Africa; DOB 03 Jul 1975; POB South Africa; nationality South Africa; citizen South Africa; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024.; National ID No. 7507035002085 (South Africa) (individual) [RUSSIA-EO14024] (Linked To: PRIVATE MILITARY COMPANY 'WAGNER').

Designated pursuant to section 1(a)(vi)(B) of E.O. 14024 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of PRIVATE MILITARY COMPANY 'WAGNER', a person whose property and interests in property are blocked pursuant to this order.

8. ANISIMOV, Andrei Andreevich (Cyrillic: АНИСИМОВ, Андрей Андреевич), Khabarovsk, Russia; DOB 02 Oct 1989; nationality Russia; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 254300912027 (Russia) (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

9. SUDAKOV, Andrey Dmitriyevich, Russia; DOB 18 Sep 1991; nationality Russia; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024. (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

10. XIAOLU, Mu, Hong Kong, China; DOB 08 Mar 1990; POB Mianyang, China; nationality China; Gender Female; Secondary sanctions risk: See Section 11 of Executive

Order 14024. (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

11. TYTSYK, Siarhei, 86-3 Nesterova Street, Apartment 65, Minsk 220047, Belarus; DOB 12 Aug 1974; nationality Belarus; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Passport MP4310207 (Belarus) expires 05 Mar 2029; National ID No. 3120874A089PB0 (Belarus) (individual) [RUSSIA-EO14024] (Linked To: KVAND IS OOO).

Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of KVAND IS OOO, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

12. CHEN, Ting (a.k.a. CHEN, Sharry; a.k.a. "TING, Chen"), Shenzhen, China; Hong Kong, China; DOB 14 Feb 1986; nationality China; Gender Female; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Passport E16512030 (China) (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

13. LEE, Lap Shun (a.k.a. "LEE, Francis"), China; DOB 17 Jan 1972; POB Hong Kong, China; nationality China; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024. (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

14. WU, Yi Xuan, China; DOB 17 Dec 1982; nationality China; Gender Female; Secondary sanctions risk: See Section 11 of Executive Order 14024. (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

15. LEVIN, Nikolai Aleksandrovich (a.k.a. LEVIN, Nikolai Alexandrovich; a.k.a. LEVINE, Nikolai), Moscow, Russia; DOB 21 May 1985; POB Lukhovitsy, Russia; nationality Russia; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Passport 757015613 (Russia) expires 21 Feb 2028; Tax ID No. 507202968432 (Russia) (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

16. TANCHEV, Aleksandr Vasilyevich (a.k.a. TANCHEV, Aleksandr Vasilevich; a.k.a. TANCHEV, Alexander), Moscow, Russia; DOB 30 Aug 1985; nationality Russia; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024.; National ID No. 4508110984 (Russia); Tax ID No. 771402694259 (Russia) (individual)

[RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the transportation sector of the Russian Federation economy.

17. ALIKHANOV, Dmitrii Vladimirovich (a.k.a. ALIKHANOV, Dmitry Vladimirovich), Russia; DOB 13 Sep 1976; POB Vladikavkaz, Russia; nationality Russia; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024. (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

Entities

1. AKTSIONERNOE OBSHCHESTVO KAZANSKOE OPYTNOE KONSTRUKTORSKOE BYURO SOYUZ, ul. Dementyeva D. 1, Kazan 420036, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 1661008339 (Russia); Registration Number 1021603884610 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

2. AKTSIONERNOE OBSHCHESTVO KONTSEYN RADIOSTROENIYA VEGA (a.k.a. KONTSEYN VEGA AO; a.k.a. RADIO ENGINEERING CORPORATION VEGA), Prospekt Kutuzovskii 34, Moscow 121170, Russia; Ul. Akademika Pavlova, 14A, St. Petersburg 197376, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Target Type State-Owned Enterprise; Tax ID No. 7730170167 (Russia); Registration Number 1037730020844 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

3. AKTSIONERNOE OBSHCHESTVO MALMYZHSKII ZAVOD PO REMONTU DIZELNYKH DVIGATELEI (a.k.a. JOINT STOCK COMPANY MALMYZH DIESEL ENGINE REPAIR PLANT), ul. Druzhby D.2, Malmyzh 612921, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 4317000543 (Russia); Registration Number 1024300612049 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

4. AKTSIONERNOE OBSHCHESTVO MOVEN NN (a.k.a. AO MOVEN NN), Zarevskaya Obyezdnaya Doroga 40, Dzerzhinsk 606000, Russia; Ul. Svobody D. 15, Nizhniy Novgorod 603003, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 5262261827 (Russia); Registration Number 1115262002503 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in

the manufacturing sector of the Russian Federation economy.

5. AKTSIONERNOE OBSHCHESTVO NAUCHNO PROIZVODSTVENNOE OBYEDINENIE POISK, ul. Lesnaya D. 3, Murino 188662, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 4703142849 (Russia); Registration Number 1144703004380 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

6. AKTSIONERNOE OBSHCHESTVO NPTS SPETSELEKTRONSISTEMY (a.k.a. AO NPTS SPETSELEKTRONSISTEMY), Volgogradskii Prospekt D. 42, K. 5, Moscow 109316, Russia; Ul. Begovaya D. 13, Podv. Pom. VI Komn 1, Moscow 125284, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7714712091 (Russia); Registration Number 1077760360292 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

7. AKTSIONERNOE OBSHCHESTVO RUSGAZDOBYCHA (a.k.a. "AO RGD"), Ul. Vereiskaya D. 29, Str. 134, BTS Vereiskaya Plaza 3, Floor 7, Moscow 121357, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7705529981 (Russia); Registration Number 1127747296918 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the construction sector of the Russian Federation economy.

8. AKTSIONERNOE OBSHCHESTVO SINARA TRANSPORTNYE MASHINY (a.k.a. SINARA TRANSPORT MACHINES HOLDING), ul. Rozy Lyuksemburg D. 51, Yekaterinburg 620026, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 6672241304 (Russia); Registration Number 1076672030820 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

9. AKTSIONERNOE OBSHCHESTVO STRELA, ul. Internatsionalnaya D. 44, Suzemka 242190, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 3228002924 (Russia); Registration Number 1023202935755 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

10. ALPTECH MAKINA SANAYI LIMITED SIRKETI (a.k.a. ALPTECH MACHINERY & INDUSTRY LTD CO; a.k.a. ALPTECH MACHINERY AND INDUSTRY LTD CO; a.k.a. ALPTECH MACHINERY INDUSTRY LTD CO), D:98 Newo Residans, Cobancesme E-5 Yan Yol Caddesi No:12/2, Atakoy 7-8-9-10, Kisim Mahallesi, Bakirkoy, Turkey; Secondary sanctions risk: See Section 11 of Executive Order 14024.;

Organization Established Date 06 Jun 2022; Tax ID No. 0580702974 (Turkey); Identification Number 0058070297400001 (Turkey) [RUSSIA-EO14024] (Linked To: FABCENTER LLC; Linked To: OSTEC-ARTTOOL LTD).

Designated pursuant to section 1(a)(vi)(B) of E.O. 14024 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of FABCENTER LLC, a person whose property and interests in property are blocked pursuant to E.O. 14024.

Designated pursuant to section 1(a)(vi)(B) of E.O. 14024 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of OSTEC-ARTTOOL LTD, a person whose property and interests in property are blocked pursuant to E.O. 14024

11. ALYANS RITEIL, ul. Chkalova D. 250, Pomeshch. 199, Yekaterinburg 620149, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 6674353123 (Russia); Registration Number 1106674006801 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

12. ANALOG TECHNOLOGY LIMITED, Rm 83, 3/F, Yau Lee Ctr, Kwung Tong, Hong Kong, China; Rm 19H, Hangdu Bldg, Huaifu Road, Futian Dist, Shenzhen, China; 53, Ground Floor, 3rd Cross, 40 Ft Road, Raghavanagar, Bangalore 560026, India; Unit 17, 9th Floor of Tower A, Mandarin Plaza, No. 14, Science Museum Road, Kowloon, Hong Kong, China; Website www.analogtechnology.net; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 06 May 2011; Company Number 1597915 (Hong Kong); Business Registration Number 58327353 (Hong Kong) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

13. AO PROTON IMPULS, ul. Leskova Orel, d. 19 etazh 4 pom. 9, Oryol 302040, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 5753018373 (Russia); Registration Number 1025700826458 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

14. AO PROTON PM, PR-kt Komsomolskii D.93, Perm 614010, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Target Type State-Owned Enterprise; Tax ID No. 5904006044 (Russia); Registration Number 1025900893622 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

15. ARKTIK SPG 1 (a.k.a. ARCTIC LNG 1 LLC), Mkr Slavyanskii D. 9, Kabinet 333, Novyy Urengoy 629309, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 8904075340 (Russia); Registration Number 1148904001289 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the construction sector of the Russian Federation economy.

16. ARKTIK SPG 3, Mkr Slavyanskii D. 9, Kabinet 325, Novyy Urengoy 629309, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 8904075364 (Russia); Registration Number 1148904001311 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

17. ARMORGRUPP (a.k.a. ARMOUR GROUP), ul. Fedoseenko D.81 KV.13, Nizhniy Novgorod 603101, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 5263056732 (Russia); Registration Number 1065263037597 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

18. ARP INVESTMENTS LIMITED, 3rd Floor, Yamraj Building, Market Square, P.O. Box 3175, Road Town, Tortola, Virgin Islands, British; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 29 Jan 2010; Organization Type: Activities of holding companies; Registration Number 1568785 (Virgin Islands, British) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

19. ASTROSIB, ul. Michurina d. 24, kv. 119, Novosibirsk 630005, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 54006656346 (Russia); Registration Number 11155476003356 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

20. AVTONOMNOE UCHREZHDENIE TEKHNOPARK MORDOVIYA (a.k.a. TECHNOPARK MORDOVIA), ul. Lodygina D. 3, Saransk 430034, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 1326211834 (Russia); Registration Number 1091326002020 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

21. BARGAWINE HONG KONG LIMITED (Cyrillic: КОМПАНИЯ С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ БАРГАВАЙН ГОН-КОНГ ЛИМИТЕД), Unit 704, 7/F, 135 Bonham Strand Trade Center, Sheung Wan, Hong

Kong, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 19 Jun 2008; Company Number 1248808 (Hong Kong); Business Registration Number 39473717 (Hong Kong) [RUSSIA-EO14024] (Linked To: CHICHENEV, Alexey).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly CHICHENEV, Alexey, a person whose property and interests in property are blocked pursuant to E.O. 14024.

22. BASSIRE GROUP DOO BEOGRAD, Vojkovicva 12/3, Belgrade 11000, Serbia; Gospodar-Jevremova 9, Belgrade 11000, Serbia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 21 Feb 2023; Tax ID No. 113536030 (Serbia); Registration Number 21884910 (Serbia) [RUSSIA-EO14024] (Linked To: LEVIN, Nikolai Aleksandrovich).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly LEVIN, Nikolai Aleksandrovich, a person whose property and interests in property are blocked pursuant to E.O. 14024.

23. BELOGORODSKAYA SHIPYARD LIMITED LIABILITY COMPANY (a.k.a. BELOGORODSKAYA SUDOVERF), Ul. Zavodskaya D 15, Zakamensk 171530, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7736524704 (Russia); Registration Number 1057747438968 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

24. BIOPHARMIST MEDIKAL URUNLER DIS TICARET LTD STI (a.k.a. BIOPHARMIST MEDICAL PRODUCTS TRADE LIMITED COMPANY; a.k.a. BIOPHARMIST MEDIKAL URUNLER TICARET LIMITED SIRKETI), D-134956, Orta Mah. Oztes Sk, No. 3, Orhanli, Tuzla, Istanbul, Turkey; Inonu Mah., 19 Mayıs Cd., No 106-5, Atasehir, Istanbul 34755, Turkey; Website biopharmist.com; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 20 Apr 2022; Business Registration Number 375841-5 (Turkey); Registration Number 1760978321 (Turkey) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

25. BIRTRANS, Ul. Stepana Shutova D. 4, Str. 1, E 2 Pom. V K 17 Of 1, Moscow 109380, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7721231416 (Russia); Registration Number 1027739243025 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

26. CHIMMED GROUP, Kashirskoe Shosse, 3, korp. 2, str. 9, Sirius Park, Moscow 115230, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 1991; Organization Type: Chemicals and allied products wholesale [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

27. CHONGQING FAGIMA ELECTROMECHANICAL EQUIPMENT CO LTD (a.k.a. HYPER MACHINE TOOLS; a.k.a. ZHONGQING FA JIMA MECHANICAL EQUIPMENT CO LTD), 1701, Building 30, Xingyao Tiandi, Beibin Second Road, Jiangbei District, Chongqing 400000, China; Cai Fu Da Dao 2HIAO 5-7, Yu Bei Qu, Chongqing 401120, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 29 Dec 2017; Unified Social Credit Code (USCC) 91500000MA5YPY1U8R (China) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

28. CHONGQING XIANUOFUGELUODE INTERNATIONAL TRADE COMPANY, No. 319, Haier Road, Conference Room 2, Floor 2, Jiangbei District, Chongqing 400025, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Unified Social Credit Code (USCC) 91500000MA61BAD093 (China) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

29. CPS PROSES KONTROL URUNLERI SANAYI VE TICARET ANONIM SIRKETI, Carsi Yapi Sitesi G Blok, No: 10G/5 Sanayi Mahallesi, Kocaeli, Turkey; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 22 Feb 2022; Tax ID No. 2150603096 (Turkey); Business Registration Number 32873 (Turkey) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

30. CRYOTRADE ENGINEERING (a.k.a. KRIOTREID INZHINIRING), Pr-d Polesskii D. 14A, Et 1, Pom. II, Kom 1, Moscow 125367, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7733250163 (Russia); Registration Number 1157746856519 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

31. DAYTEK CHONGQING INTERNATIONAL TRADE CO (a.k.a. DAIFEKU INTERNATIONAL TRADE CHONGQING CO LTD; a.k.a. DAYTEK TRADING), B73-B74, Floor 5, No 4. Auxiliary, No. 157, Jinyu Avenue, Cuntan Sub-District, Liangjian New District, Chongqing 400000, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 31 Aug 2022; Unified Social Credit Code (USCC) 91500000MABYE7C18N (China) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

32. DD IMEKS, ul. Vostochnaya str. 160A, pomeshch. 2, Yekaterinburg 620100, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 6685191668 (Russia); Registration Number 121660055429 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

33. DENER ITHALAT IHRACAT VE DIS TICARET ANONIM SIRKETI, Organize Sanayi Bolgesi 8 Cad. No: 40/42 Melikgazi, Kayseri, Turkey; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 11 Sep 2013; Organization Type: Wholesale of other machinery and equipment [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

34. DESIGN PARTNER MICROCHIP LLC (a.k.a. DIZAIN PARTNER MIKROCHIP; a.k.a. DP MICROCHIP LLC), Kosa Petrovskaya D. 1, K. 1 Lit. R, Chast Pomeshch. 7-N, Office 4012, Saint Petersburg 197198, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 26 Feb 2020; Tax ID No. 7813643272 (Russia); Registration Number 1207800027038 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

35. EAST WEST CONVERSION (a.k.a. OOO OVK), Pr-d Olonetskii D. 4, K.2, E 5 pom.XII K 12A, Moscow 129281, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7716561842 (Russia); Registration Number 1067758702340 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

36. EKODOR, ul. Snezhnaya, d. 20 etazh 2, Moscow 129323, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7716770807 (Russia); Registration Number 1147746328322 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the transportation sector of the Russian Federation economy.

37. ELEKKOM LOGISTIK (a.k.a. LLC ELEKKOM LOGISTICS), Pr. I. Ya. Yakovleva D. 3, Of. 908, Cheboksary 428020, Russia; Pr-Kt I. Ya. Yakovleva Zd. 3, Floor 8, Cheboksary 428003, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 2130133291 (Russia); Registration Number 1142130002442 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in

the technology sector of the Russian Federation economy.

38. ELEKTORADIOAVTOMATIKA JSC (a.k.a. "AO ERA"), Per. Grivtsova D.1/64, Saint Petersburg 190031, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7812018283 (Russia); Registration Number 1027810260136 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

39. ENKA TRADING LIMITED, Rm 4, 16/F, Ho King Comm Ctr, 2-16 Fayuen St, Mongkok Kowloon, Hong Kong, China; Website <https://www.enkatrade.com>; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 28 Nov 2022; Company Number 3212572 (Hong Kong); Business Registration Number 74646694 (Hong Kong) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

40. EXPERT MACHINERY KIMYASAL URUNLER TICARET LIMITED SIRKETI, Merkez Mah. Hasat Sk. Kamara Blok No: 52, Ic Kapi No: 1, Sisli, Istanbul, Turkey; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 25 Aug 2022; Identification Number 1395033 (Turkey); Registration Number 402023-5 (Turkey); Central Registration System Number 0381-1002-4110-0001 (Turkey) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

41. FABCENTER LLC (a.k.a. FABTSENTR), ul. Moldavskaya d. 5, str. 2, Moscow 121467, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7731567038 (Russia); Registration Number 5077746752067 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the construction sector of the Russian Federation economy.

42. FEDERAL RESEARCH AND PRODUCTION CENTER NIZHNY NOVGOROD RESEARCH INSTITUTE OF RADIO ENGINEERING JOINT STOCK COMPANY (a.k.a. AO FNPTS NNIIRT), Ul. Geroya Shaposhnikova D. 5, Nizhniy Novgorod 603153, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 5261064047 (Russia); Registration Number 1085261002628 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

43. FEDERAL STATE AUTONOMOUS SCIENTIFIC INSTITUTION CENTRAL RESEARCH AND EXPERIMENTAL AND DESIGN INSTITUTE OF ROBOTICS AND TECHNICAL CYBERNETICS (a.k.a. CENTRAL RESEARCH INSTITUTE OF ROBOTICS AND TECHNICAL CYBERNETICS; a.k.a. RUSSIAN STATE

SCIENTIFIC CENTER FOR ROBOTICS AND TECHNICAL CYBERNETICS; a.k.a. TSNI RTK), Prosp Tikhoretskii 21, St. Petersburg 194064, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Target Type Government Entity; Tax ID No. 7804023410 (Russia); Registration Number 1027802484852 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

44. FRESHVALE EOOD, 28 Hristo Botev Blvd., Sofia 1000, Bulgaria; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 16 Mar 2018; Tax ID No. BG205043420 (Bulgaria) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

45. GAS INDUSTRY INSURANCE COMPANY SOGAZ (a.k.a. INSURANCE COMPANY OF GAZ INDUSTRY SOGAZ; a.k.a. SOGAZ INSURANCE), PR-KT Akademika Sakharova D. 10, Moscow 107078, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7736035485 (Russia); Legal Entity Number 253400L5RQK7PU6R7J04; Registration Number 1027739820921 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

46. GAZPROM INVEST, OOO (a.k.a. GAZPROM INVEST; a.k.a. LIMITED LIABILITY COMPANY GAZPROM INVEST; a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU 'GAZPROM INVEST'), d. 6 litera D ul. Startovaya, St. Petersburg 196210, Russia; Website zapad-invest.gazprom.ru; Executive Order 13662 Directive Determination - Subject to Directive 4; Secondary sanctions risk: Ukraine-/Russia-Related Sanctions Regulations, 31 CFR 589.201 and/or 589.209; alt. Secondary sanctions risk: See Section 11 of Executive Order 14024.; Target Type State-Owned Enterprise; Registration ID 1077847507759 (Russia); Tax ID No. 7810483334 (Russia); Government Gazette Number 82129203 (Russia); For more information on directives, please visit the following link: <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives> [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY GAZPROM).

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the construction sector of the Russian Federation economy.

47. GBL INTERNATIONAL LOGISTICS CO LTD, Room 05A, 17/F Billion Plaza 2, 10 Cheung Yue Street, Cheung Sha Wan, Kowloon, Hong Kong, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 05 Dec 2011; Business Registration Number 59225457 (Hong Kong); Registration Number 1687247 (Hong Kong) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

48. GEPA ULUSLARARASI TICARET LIMITED SIRKETI, Sirinevler Mah. Mahmutbey Cad. Imren Ishani No: 14, Ic Kapi No: 32, Bahcelievler, Istanbul, Turkey; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 01 Jun 2023; Organization Type: Wholesale of other machinery and equipment [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

49. GKER LASER TECHNOLOGY CO LTD, No. 3258 Nanting Road, Fengxian, Shanghai 201415, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 27 Mar 2023 [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

50. GRUPPA KOMPANII ASTROKUPOL, ul. Moskovskaya d. 3, kv. 2, Penza 440000, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 5836687674 (Russia); Registration Number 1185835010899 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

51. GRUPPA PROMAVTO, ul. Zaovrazhnaya D.7 A, Nizhniy Novgorod 603107, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 5263093100 (Russia); Registration Number 1125263004162 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

52. HANGZHOU KEMING INTELLIGENT TECHNOLOGY CO LTD (a.k.a. HANGZHOU KEMING INTELLIGENCE TECHNOLOGY CO LTD), No. C717, Building 2, No. 452, Da Street, No. 6, Baiyang Sub-District, Economic Technology Development Zone, Hangzhou, Zhejiang 310000, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Registration Number 330198000147649 (China); Unified Social Credit Code (USCC) 91330101MA27X1EW0D (China) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

53. HK NICEST ELECTRIC TECHNOLOGY CO LIMITED, Hong Kong, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 20 Apr 2022; Company Number 3144798 (Hong Kong); Business Registration Number 73963914 (Hong Kong) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

54. HOLDEN INTERNATIONAL TRADING LIMITED, Room B3, 19/F, Tung Lee Commercial Building, 91-97 Jervois Street, Sheung Wan, Hong Kong, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 13 Sep 2022; Company Number 3189526 (Hong Kong); Legal Entity Number 984500UF0E1A360BED45; Business Registration Number 74414102 (Hong Kong) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

55. INFINITE FORCE CARGO SERVICE HK LIMITED, Unit 11, 9/F, Block B, Hoi Luen Industrial Centre, 55 Hoi Yuen Road, Hong Kong, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 07 Oct 2002; Company Number 0816883 (Hong Kong); Business Registration Number 33037731 (Hong Kong) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

56. INSTITUTE OF HIGH CURRENT ELECTRONICS SIBERIAN BRANCH RUSSIAN ACADEMY OF SCIENCES (a.k.a. FGBUN INSTITUTE OF HIGH CURRENT ELECTRONICS SIBERIAN BRANCH OF THE RUSSIAN ACADEMY OF SCIENCES; a.k.a. IHCE SB RAS), PR-KT Akademicheskii 2/3, Tomsk 634055, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7021001375 (Russia); Registration Number 1027000871666 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

57. JINAN KEWEI OPTICS CO LTD (Chinese Simplified: 济南科唯光学有限公司), Poly Zhongke Innovation Plaza, 190 meters due west of No. 66 Yantai Road, Huaiyin District, Jinan, Shandong Province 10-1427, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 03 Nov 2022; Unified Social Credit Code (USCC) 91370103MAC1G8797H (China) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

58. JOINT INSTITUTE FOR HIGH TEMPERATURES OF THE RUSSIAN ACADEMY OF SCIENCES (a.k.a. FEDERAL STATE BUDGETARY INSTITUTION OF SCIENCE JOINT INSTITUTE FOR HIGH TEMPERATURES RAN; a.k.a. "JIHT RAS"; a.k.a. "OIVT RAN"), Ul. Izhorskaya D. 13, Str. 2, Moscow 125412, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7713010798 (Russia); Registration Number 1027739271009 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in

the technology sector of the Russian Federation economy.

59. JOINT STOCK COMPANY ALEKSEEV CENTRAL HYDROFOIL DESIGN BUREAU (a.k.a. AO TSKB PO SPK IM RE ALEKSEEVA; a.k.a. JOINT STOCK COMPANY ALEKSEEV CENTRAL HIDROFOIL DESIGN BUREAU), Ul. Svobody D. 51, Nizhniy Novgorod 603003, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 5263001420 (Russia); Registration Number 1025204411286 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

60. JOINT STOCK COMPANY FACTORY CRIZO (a.k.a. AO ZAVOD KRIZO), Ul. Zheleznodorozhnaya D. 43, Gatchina 188304, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 4705006552 (Russia); Registration Number 1024701241322 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

61. JOINT STOCK COMPANY FEDERAL SCIENTIFIC AND PRODUCTION CENTER SCIENTIFIC RESEARCH INSTITUTE OF APPLIED CHEMISTRY (a.k.a. AO FNPTS NII PRIKLADNOI KHIMII), Ul. Akademika Silina D. 3, Sergiyev Posad 141313, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Target Type State-Owned Enterprise; Tax ID No. 5042120394 (Russia); Registration Number 1115042005638 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

62. JOINT STOCK COMPANY INSTITUTE FOR NETWORKING TECHNOLOGY (a.k.a. "JSC INT"), Liniya 17-YA V.O D. 54, Korp. 1, Lit. V, Saint Petersburg 199048, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7825347630 (Russia); Registration Number 1027809192333 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

63. JOINT STOCK COMPANY KB LUCH (a.k.a. AKTSIONERNOE OBSHCHESTVO KONSTRUKTORSKOE BYURO LUCH (Cyrillic: АКЦИОНЕРНОЕ ОБЩЕСТВО КОНСТРУКТОРСКОЕ БЮРО ЛУЧ); a.k.a. JSC DB LUTCH; a.k.a. KB LUCH AO (Cyrillic: АО КБ ЛУЧ); a.k.a. LUCH DESIGN BUREAU JSC (Cyrillic: АО КОНСТРУКТОРСКОЕ БЮРО ЛУЧ)), Bul. Pobedy, D. 25, Rybinski, Yaroslavl 152920, Russia (Cyrillic: Бульвар Победы, Д. 25, Рыбинск, Ярославская Область 152920, Russia); Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 16 Nov 2004; alt. Organization Established Date circa 1955; Organization Type: Research and experimental development on natural sciences and engineering; Tax ID No. 7610063043 (Russia); Government Gazette Number 07507666 (Russia); Business Registration Number 1047601614390 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

64. JOINT STOCK COMPANY MUROM MACHINE BUILDING PLANT PRODUCTION ASSOCIATION, per. 4-i Lesnoi d. 4, office 488, Moscow 125047, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 3334005395 (Russia); Registration Number 1053302121509 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

65. JOINT STOCK COMPANY NOVAYA ERA, 21 Partizanskaya Street, Saint Petersburg 195248, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7806008174 (Russia); Registration Number 1027804176047 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

66. JOINT STOCK COMPANY NPO STEKLOPLASTIC (a.k.a. NPO STEKLOPLASTIC), K. 3A, Solnechnogorsk, r/p Andreevka District, Moscow Region 141551, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 5044000039 (Russia); Registration Number 1035008852097 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

67. JOINT STOCK COMPANY OBORONAUTO (a.k.a. AO OBORONAVTO), Nab. Krasnopresnenskaya D. 12, Pomesheh. 1/18, Moscow 123610, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7743376366 (Russia); Registration Number 1227700119679 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

68. JOINT STOCK COMPANY OMSKIY NAUCHNO ISSLEDOVATELSKIY INSTITUT PRIBOROSTROENIYA (a.k.a. "JSC ONIIP"), Ul. Maslennikova D. 231, Omsk 644009, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Target Type State-Owned Enterprise; Tax ID No. 5506218498 (Russia); Registration Number 1115543024574 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

69. JOINT STOCK COMPANY POLEMA, ul. Przhevalskogo D. 3, Tula 300016, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7105008070 (Russia); Registration Number 1027100684050 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

70. JOINT STOCK COMPANY RESEARCH AND IMPLEMENTATION ENTERPRISE PROTEK (a.k.a. AKTSIONERNOE OBSHCHESTVO NAUCHNO VNEDRENCHESKOE PREDPRIYATIE PROTEK), Ul. Bazovaya D. 6, Voronezh 394028, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 3665017521 (Russia); Registration Number 1023601555097 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

71. JOINT STOCK COMPANY RESEARCH AND PRODUCTION CENTER VIGSTAR (a.k.a. AO NPTS VIGSTAR), Proezd Dorozhnyi 1-I D. 8, Moscow 117545, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Target Type State-Owned Enterprise; Tax ID No. 7726687555 (Russia); Registration Number 1117746976379 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

72. JOINT STOCK COMPANY RUSSIAN NATIONAL REINSURANCE COMPANY (a.k.a. "RNPK"; a.k.a. "RNRC"), Duat Place III Business Centre, Floor 5, 6 Gasheka Street, Moscow 125047, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Target Type State-Owned Enterprise; Tax ID No. 7706440687 (Russia); Registration Number 1167746727378 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

73. JOINT STOCK COMPANY SCIENTIFIC AND PRODUCTION ASSOCIATION IMPULS (a.k.a. AO NPO IMPULS), Ul. Kirishakaya D. 2, Saint Petersburg 195299, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7804478424 (Russia); Registration Number 1127847076202 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

74. JOINT STOCK COMPANY SHIPBUILDING PLANT NAMED AFTER B YE BUTOMA (a.k.a. AO SUDOSTROITELNYI ZAVOD IMENI BE BUTOMY), Ul. Tankistov D. 4, Kerch 298313, Ukraine; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 9111022140 (Russia); Registration Number 1169102089353 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

75. JOINT STOCK COMPANY SITRONICS KT (a.k.a. SITRONICS KT JSC), Pr-Kt Malyi V.O D.54, Korp 5 Lit.P, Saint Petersburg 199178, Russia; Secondary sanctions risk: See

Section 11 of Executive Order 14024.; Tax ID No. 7819305720 (Russia); Registration Number 5067847533012 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

76. JOINT STOCK COMPANY SOEDINITEL (a.k.a. AKTSIONERNOE OBSHCHESTVO SOEDINITEL), Sh. Turgoyakskoe D. 11/5, Miass 456313, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7415015198 (Russia); Registration Number 1027400875149 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

77. JOINT STOCK COMPANY SOLIKAMSK PLANT URAL (a.k.a. AO SOLIKAMSKII ZAVOD URAL), Ul. Energetikov D. 19A, Solikamsk 618554, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Target Type State-Owned Enterprise; Tax ID No. 5919015877 (Russia); Registration Number 1115919002561 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

78. JOINT STOCK COMPANY SR SPACE, ul. Usacheva d. 37, str. 1, Moscow 119048, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 9724017598 (Russia); Registration Number 1207700264683 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

79. JOINT STOCK COMPANY THE CENTRAL RESEARCH INSTITUTE KURS (a.k.a. AO TSNII KURS), Ul. Kirpichnaya D. 34A, Moscow 105187, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Target Type State-Owned Enterprise; Tax ID No. 7719584213 (Russia); Registration Number 1067746378798 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

80. JOINT STOCK COMPANY TIZOL (a.k.a. AO TIZOL), Ul. Malysheva D. 59, Lesnoy 624223, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 6624002881 (Russia); Registration Number 1026601483886 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

81. JOINT STOCK COMPANY VORONEZH CENTRAL DESIGN BUREAU POLUS (a.k.a. AO VTSKB POLYUS), Ul. Krasnodonskaya D. 16, Korp. B, Voronezh 394019, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No.

3662104575 (Russia); Registration Number 1053600512998 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

82. JOINT STOCK CORPORATION SHIPBUILDING AND SHIP REPAIR TECHNOLOGY CENTER (a.k.a. "AO TSTSS"; a.k.a. "JSC SSTC"), Ul. Promyshlennaya D. 7, Saint Petersburg 198095, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Target Type State-Owned Enterprise; Tax ID No. 7805482938 (Russia); Registration Number 1097847011371 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

83. JSC RESEARCH AND PRODUCTION COMPANY MAGNETON (a.k.a. AKTSIONERNOE OBSHCHESTVO NAUCHNO-PROIZVODSTVENNOE OBYDINENIE MAGNETON; a.k.a. AO NPO MAGNETON), Ul. Kuibysheva D. 26, Vladimir 600035, Russia; Ul. Shchipok D. 18, Kom. 10, 10A, 10B, Floor 5, Moscow 115093, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 3328100019 (Russia); Registration Number 1023301456364 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

84. JSC RESURS (a.k.a. AO RESURS), PR-D Zavodskoi D. 4, Bogoroditsk 301830, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7112000210 (Russia); Registration Number 1027102670760 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

85. JSC THE SPECIAL BOILER DESIGN BUREAU (a.k.a. AKTSIONERNOE OBSHCHESTVO SPETSIALNOE KONSTRUKTORSKOE BYURO KOTLOSTROENIYA; a.k.a. "AO SKBK"), Pr-kt Stachek D. 47, Lit. Ts, Kabinet 415, Saint Petersburg 198097, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7801064369 (Russia); Registration Number 1027800527347 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

86. KAMILHAN LOJISTIK DIS TICARET LIMITED SIRKETI, Giyimkent Sitesi B74 Apartman, No-79-A Orucreis Mahallesi, Istanbul 34235, Turkey; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 08 Jul 2019; Business Registration Number 198987 (Turkey) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in

the technology sector of the Russian Federation economy.

87. KBR TEKHNologii TOO (a.k.a. "KBR TECHNOLOGIES LLP"), ul. Konstitutsii Kazakhstana d. 18, Petropavl, Kazakhstan; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 13 May 2022; Registration Number 220540015744 (Kazakhstan) [RUSSIA-EO14024] (Linked To: FABCENTER LLC; Linked To: OSTEC-ARTTOOL LTD; Linked To: OSTEC-SMT LTD; Linked To: OSTEC-INTEGRA LTD).

Designated pursuant to section 1(a)(vi)(B) of E.O. 14024 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of FABCENTER LLC, a person whose property and interests in property are blocked pursuant to E.O. 14024.

Designated pursuant to section 1(a)(vi)(B) of E.O. 14024 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of OSTEC-ARTTOOL LTD, a person whose property and interests in property are blocked pursuant to E.O. 14024.

Designated pursuant to section 1(a)(vi)(B) of E.O. 14024 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of OSTEC-SMT LTD, a person whose property and interests in property are blocked pursuant to E.O. 14024.

Designated pursuant to section 1(a)(vi)(B) of E.O. 14024 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of OSTEC-INTEGRA LTD, a person whose property and interests in property are blocked pursuant to E.O. 14024.

88. KEKOTECH EQUIPMENT LIMITED, Unit C, 8/F, Dan 6, No. 6 Fui Yiu Kok Street, Tsuen Wan, Hong Kong, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Company Number 0739194 (Hong Kong); Business Registration Number 31526104 (Hong Kong) [RUSSIA-EO14024] (Linked To: LIMITED LIABILITY COMPANY AK MICROTECH).

Designated pursuant to section 1(a)(vi)(B) of E.O. 14024 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of LIMITED LIABILITY COMPANY AK MICROTECH, a person whose property and interests in property are blocked pursuant to E.O. 14024.

89. KSEOPROM, Sh. Ochakovskoe d. 34, Et/Pom/Kom/Of 4/VII/24/6, Moscow 119530, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 5032295331 (Russia); Registration Number 1185053006016 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

90. KVAND IS OOO, d. 57, 1-2-3 etazh, ul. Parnikovaya g., Minsk 220076, Belarus; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 06 Jul 2010; Tax ID No. 191306418 (Belarus) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

91. KVANTEK LIMITED, Unit 704, 7/F, 135 Bonham Strand Trade CTR Sheung Wan, Hong Kong, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 12 Feb 2020; Company Number 71602328 (Hong Kong) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

92. LENINGRAD LASER SYSTEMS (a.k.a. AKTSIONERNOE OBSHCHESTVO LLS), Ul. Yablochkova D. 20, Lit. Ya. Office 408, Saint Petersburg 197198, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7813261308 (Russia); Registration Number 1167847373209 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

93. LIFORS (a.k.a. LI-FORCE), ul. Vavilova D. 10A, Tomsk 634055, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7017434753 (Russia); Registration Number 1177031086649 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

94. LIMITED LIABILITY COMPANY AERO-HIT (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ АЭРО-ХИТ) (a.k.a. LLC AERO-HIT (Cyrillic: ООО АЭРО-ХИТ)), Sh. Mateveevskoe, D. 28A, Pomeshch. 26, Khabarovsk 680031, Russia (Cyrillic: Ш. МАТВЕЕВСКОЕ, Д. 28А, ПОМЕЩ. 26, ХАБАРОВСК 680031, Russia); Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 09 Jun 2023; Organization Type: Manufacture of air and spacecraft and related machinery; Tax ID No. 2700012608 (Russia); Government Gazette Number 52200010 (Russia); Business Registration Number 1232700009398 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

95. LIMITED LIABILITY COMPANY BANK TOCHKA, Proezd 1-I Veshnyakovskii D. 1, Str. 8, Floor 1, Pomeshch. 43, Moscow 109456, Russia; SWIFT/BIC LCTCRUMM; Website www.tochka.com; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Target Type Financial Institution; Tax ID No. 9721194461 (Russia); Registration Number 1237700005157 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

96. LIMITED LIABILITY COMPANY CARBONTEX (a.k.a. KARBONTEKS), Ul. Zaraiskaya D. 21, Pom. 306 Office 0401, Moscow 109428, Russia; Secondary sanctions

risk: See Section 11 of Executive Order 14024.; Tax ID No. 9721111539 (Russia); Registration Number 1207700454884 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

97. LIMITED LIABILITY COMPANY ELECOM (a.k.a. CANDY PLACE LIMITED LIABILITY COMPANY), Ul. Chertanovskaya D. 11, K. 1, KV. 91, Moscow 117208, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 01 Mar 2021; Tax ID No. 7726474109 (Russia); Registration Number 1217700088704 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

98. LIMITED LIABILITY COMPANY FARAD, Pr-d Polesskii d. 16, str. 1, pomesheh. 9/1/2, Moscow 125367, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 02 Sep 2022; Tax ID No. 7751231607 (Russia); Registration Number 1227700544268 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

99. LIMITED LIABILITY COMPANY GEOSCAN (a.k.a. GEOSCAN LTD), ul. Shatelena 26 A, Saint Petersburg 194021, Russia; Politekhnikeskaya street, building 22, complex L, room 1-N, room 12, St. Petersburg 194021, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7801450808 (Russia); Registration Number 1077847632818 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

100. LIMITED LIABILITY COMPANY GK TRIZ ROBOTICS (a.k.a. GK TRIZ ROBOTIKS; a.k.a. TRIZROBOTICS), Pl. 1-I Pyatiletki D. 1, Office 26, Yekaterinburg 620012, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 6686099714 (Russia); Registration Number 1176658097362 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

101. LIMITED LIABILITY COMPANY INTERNATIONAL INNOVATION CENTER FOR MARINE STRUCTURES AND SHIP REPAIR (a.k.a. IIC MSSR LLC), Ul. Shkolnaya D. 16, Pomesheh. 4 I (24-27), Sovetskaya Gavan 682813, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 2709017858 (Russia); Registration Number 1212700007640 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

102. LIMITED LIABILITY COMPANY KINGISEPSKY MACHINE BUILDING PLANT (a.k.a. KINGISEPP MACHINE BUILDING PLANT LLC; a.k.a. KMZ CO LTD), Prkt Slavy D. 52, Kor/Lit. 1/A, Pom. 51N, Saint Petersburg 192241, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7816562511 (Russia); Registration Number 1137847194187 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

103. LIMITED LIABILITY COMPANY MERKATOR HOLDING, Per. Mamonovskii D. 4, Str. 1, Moscow 123001, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7709401982 (Russia); Registration Number 1037709006312 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

104. LIMITED LIABILITY COMPANY MILITARY TRANSPORTATION (a.k.a. VOENNNYYE PEREVOZKI OOO), Per. Malyi Sukharevskii D. 9, Str. 1, Pomeshch. 11/1/2 RM9, Moscow 127051, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7702826697 (Russia); Registration Number 5137746100729 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

105. LIMITED LIABILITY COMPANY NEVA TOOL FACTORY (a.k.a. SOCIETY WITH LIMITED LIABILITY NEVA TOOL FACTORY; a.k.a. "NTF LTD"), PR-D 3-I Rybatskii D. 3, Lit. A, Pomeshch. 56.1, Saint Petersburg 192177, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7811540183 (Russia); Registration Number 1129847035009 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

106. LIMITED LIABILITY COMPANY OBSKY GAS CHEMICAL COMPLEX (a.k.a. LLC OBSKY GCC), Ul. Khudi Seroko D. 39, Pomeshch. 20, Yar Sale 629700, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 8901037441 (Russia); Registration Number 1198901000121 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the construction sector of the Russian Federation economy.

107. LIMITED LIABILITY COMPANY PLASTIK STROYMARKET (a.k.a. PLASTIK STROIMARKET), Belyakovsky lane, 46, office 5, Tver 170006, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 6950139428 (Russia); Registration Number 1116952045870 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

108. LIMITED LIABILITY COMPANY PRIME RADAR TECHNOLOGY (a.k.a. "LLC PRT"), PR-D 2-I Zapadnyi D. 1, Str. 1, Zelenograd 124460, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7735207283 (Russia); Registration Number 1247700269013 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

109. LIMITED LIABILITY COMPANY PRODUCTION PLANT NAMED AFTER SHAUMYAN (a.k.a. PROIZVODSTVO ZAVOD IMENI SHAUMYANA; a.k.a. SHAUMYAN PLANT), Prd 3-I Rybatskii D. 3, Lit. R, Pomesch. 5N/406, Saint Petersburg 192177, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7805666029 (Russia); Registration Number 1147847428717 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

110. LIMITED LIABILITY COMPANY REVOLEMC (a.k.a. REVOLEMS), Ul. Gorbunova D. 2, Str. 2, Office 616, 618, Moscow 121596, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7719481419 (Russia); Registration Number 1187746790153 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

111. LIMITED LIABILITY COMPANY ROBOAVIA UNMANNED SYSTEMS (a.k.a. BESPILOTNYE SISTEMY ROBOAVIA), Ul. 9 Yanvarya D. 262/2, V Lit. A1, Office 1-4, Voronezh 394020, Russia; Simferopol, Ukraine; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 3666218510 (Russia); Registration Number 1173668023957 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

112. LIMITED LIABILITY COMPANY ROSIZOLIT, Ul. Naberezhnaya D. 1, Pomesch. 10, Kirovsk 187342, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7810865781 (Russia); Registration Number 1127847216210 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

113. LIMITED LIABILITY COMPANY RUSSIAN EAGLE (a.k.a. "RUSSKII OREL"), Ul. Kotelnicheskaya D. 24A, Lyubertsy 140000, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 5027128078 (Russia); Registration Number 1075027014754 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

114. LIMITED LIABILITY COMPANY SCIENTIFIC AND PRODUCTION ASSOCIATION OF STRUCTURAL MATERIALS PROMETHEY (a.k.a. LLC SCIENTIFIC AND PRODUCTION ASSOCIATION OF STRUCTURAL MATERIALS PROMETHEUS; a.k.a. "NPO KM PROMETEI"), Ul. Ivana Chernykh D. 31-33, Lit. B, Office 519, Saint Petersburg 198095, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7838431079 (Russia); Registration Number 1097847247530 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

115. LIMITED LIABILITY COMPANY SCIENTIFIC PRODUCTION COMPANY ADVENT (a.k.a. "NPP ADVENT"), Nab. Obvodnogo Kanala D. 227, Korpus 1, Saint Petersburg 190020, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7839348320 (Russia); Registration Number 1069847569714 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

116. LIMITED LIABILITY COMPANY SEVERNAYA ZVEZDA, Ul. Zastavskaya D.33, Lit. D, Office #23, Saint Petersburg 196084, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7814356111 (Russia); Registration Number 5067847463063 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

117. LIMITED LIABILITY COMPANY UNMANNED SYSTEMS (a.k.a. BESPILOTNYE SISTEMY), Ul. 10 Let Oktyabrya D. 24, Kv. 62, Izhevsk 426011, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 1831156383 (Russia); Registration Number 1121831007759 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

118. LIMITED LIABILITY COMPANY VOLGOGRAD SHIP ENGINEERING PLANT (a.k.a. VOLGOGRADSKII ZAVOD SUDOVOGO MASHINOSTROENIYA; a.k.a. "VZSM"), Ul. Im. Arsenyeva D.2, Kabinet 17, Volgograd 400112, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 3461065380 (Russia); Registration Number 1193443012553 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

119. LIMITED LIABILITY COMPANY YUZHPOLYMETAL HOLDING (a.k.a. "YPH GROUP"; a.k.a. "YUPKH"), Shosse Varshavskoe D 56, Moscow 117638, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7726383028 (Russia); Registration Number 1167746707358 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

120. LIMITED TRADE DEVELOPMENT CHIMTECH-R, Ul. Komsomolskaya D. 15A, Ev/Kom 13/20, Lyubertsy 140005, Russia; Ul Kosyakova D. 13, Roshal 140730, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 5049013761 (Russia); Registration Number 1035010102071 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

121. LKKA COMPANY LIMITED, Per. Stroitelnyi 5, Elektrostal 144001, Russia; Ul. Lesnaya D. 8A, Pomeschch. 201, 203-211, Elektrostal 144011, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7723718597 (Russia); Registration Number 1097746330637 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

122. LLC APPLIED MECHANICS (a.k.a. LIMITED LIABILITY COMPANY APPLIED MECHANICK), Ul. 15-YA Parkovaya D. 5, Kom. 213, Moscow 105203, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7709885571 (Russia); Registration Number 1117746735182 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

123. LYSKOVSKII ELEKTROTEKHNIЧЕСKII ZAVOD, ul. 1-ya Zavodskaya D.1, Lyskovo 606210, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 5222000882 (Russia); Registration Number 1025200937508 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

124. MARINE EQUIPMENT ENGINEERING CORPORATION JSC (a.k.a. AKTSIONERNOE OBSHCHESTVO KORPORATSIYA MORSKOGO PRIBOROSTROENIYA; a.k.a. "AO KMP"), Ul. Malaya Posadskaya D. 30, LIT. A, Saint Petersburg 197046, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Target Type State-Owned Enterprise; Tax ID No. 7813649764 (Russia); Registration Number 1207800171050 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in

the manufacturing sector of the Russian Federation economy.

125. MICROEM (a.k.a. AO MIKROEM), Proezd Savelkinskii D. 4, ET. 9, Zelenograd 124482, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7735082700 (Russia); Registration Number 1027739282922 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

126. MINYON KESICI TAKIMLAR MAKINE SANAYI VE TICARET LIMITED SIRKETI, 17/P Fevzi Cakmak Mahallesi, Konya 42050, Turkey; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 11 Jan 2017; Tax ID No. 1230499319 (Turkey); Business Registration Number 50623 (Turkey) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

127. MORAN SECURITY GROUP LTD, Moscow, Russia; Website moran-group.org; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 2009 [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

128. NAL SOLUTIONS COMPANY LIMITED, 11/2, P/23, Floor 11, Soi Sukhumvit 23, Sukhumvit, Khlong Toe Nua, Vadhana, Bangkok 10110, Thailand; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 23 Jan 2024; Registration Number 0105567016858 (Thailand) [RUSSIA-EO14024] (Linked To: LEVIN, Nikolai Aleksandrovich).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, LEVIN, Nikolai Aleksandrovich, a person whose property and interests in property are blocked pursuant to E.O. 14024.

129. NATIONAL CLEARING CENTER (Cyrillic: НЕБАНКОВСКАЯ КРЕДИТНАЯ ОРГАНИЗАЦИЯ-ЦЕНТРАЛЬНЫЙ КОНТРАГЕНТ НАЦИОНАЛЬНЫЙ КЛИРИНГОВЫЙ ЦЕНТР) (a.k.a. CCP NCC; a.k.a. CENTRAL COUNTERPARTY NATIONAL CLEARING CENTER; a.k.a. "NCC"), 13 Bolshoy Kislovskii Per., Moscow 125009, Russia; SWIFT/BIC NCCBRUMM; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 30 May 2006; Target Type Financial Institution; Tax ID No. 7750004023 (Russia); Government Gazette Number 96537839 (Russia); Legal Entity Number 2534007UK6G30KDX1A47; Registration Number 1067711004481 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

130. NAUCHNO PROIZVODSTVENNAYA FIRMA TREKOL (a.k.a. NPF TREKOL; a.k.a. "LLC R&PC TRECOL"), Per. Kholodilnyi D.1, Moscow 113191, Russia; Ul. Initsiativnaya D. 3, Kom. 41, Lyubertsy 140015, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7706029910 (Russia); Registration Number 1037700104386 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

131. NAUCHNO PROIZVODSTVENNOE OBYEDINENIE GORIZONT (a.k.a. NPO GORIZONT), Ul. Mamina-Sibiryaka Str. 145, Office 6424, Yekaterinburg 620075, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 6685103809 (Russia); Registration Number 1156658097397 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

132. NEW HORIZONS TRADING LIMITED, Hong Kong, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 29 Aug 2022; Company Number 3185490 (Hong Kong); Business Registration Number 74373487 (Hong Kong) [RUSSIA-EO14024] (Linked To: FABCENTER LLC; Linked To: OSTEC-ARTTOOL LTD).

Designated pursuant to section 1(a)(vi)(B) of E.O. 14024 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of FABCENTER LLC, a person whose property and interests in property are blocked pursuant to E.O. 14024.

Designated pursuant to section 1(a)(vi)(B) of E.O. 14024 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of OSTEC-ARTTOOL LTD, a person whose property and interests in property are blocked pursuant to E.O. 14024.

133. NEWTON ITM (a.k.a. ENGINEERING CENTER SDM LLC; a.k.a. LIMITED LIABILITY COMPANY NEYUTON ITM; a.k.a. NEYUTON ITM), Prkt Mira D. 102, Str. 31, Pomesheh 4N/3, Moscow 129626, Russia; 13/3 Tikhaya St., Floor 4, r/p Zarechye, Odintsovo 143085, Russia; 69 km MKAD, OOK ZAO Greenwood, Bld. 9, Putilkovo 143085, Russia; 28A Pulkovo Highway, Pulkovo Star, Saint Petersburg 196158, Russia; 4B Automobile Street, Pushkin, Saint Petersburg, 196650, Russia; 79 Chkalov Street, Kozelsk 249722, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 5032295067 (Russia); Registration Number 1185024007398 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

134. NICEBERG LIMITED LIABILITY COMPANY, Ter. Grinvud Str. 19, Office 51, Kom. 42, Putilkovo 143440, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 14 Jun 2023; Tax ID No. 5024233518 (Russia); Registration Number 1235000075342 (Russia) [RUSSIA-

EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

135. NON-BANK CREDIT INSTITUTION JOINT STOCK COMPANY NATIONAL SETTLEMENT DEPOSITORY (Cyrillic: НЕБАНКОВСКАЯ КРЕДИТНАЯ ОРГАНИЗАЦИЯ АКЦИОНЕРНОЕ ОБЩЕСТВО НАЦИОНАЛЬНЫЙ РАСЧЕТНЫЙ ДЕПОЗИТАРИЙ) (a.k.a. NATIONAL SETTLEMENT DEPOSITORY; a.k.a. NCO JSC NSD; a.k.a. NKO AO NRD (Cyrillic: НКО АО НРД); a.k.a. "NSD"), 12, Spartakovskaya St., Moscow 105066, Russia; SWIFT/BIC MICURUMM; alt. SWIFT/BIC NADCRUMM; Website www.nsd.ru; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 27 Jun 1996; Tax ID No. 7702165310 (Russia); Legal Entity Number 253400M18U5TB02TW421; Registration Number 1027739132563 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

136. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU ANALITICHESKAYA MANUFAKTURA (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ АНАЛИТИЧЕСКАЯ МАНУФАКТУРА) (a.k.a. ANALITICHESKAYA MANUFAKTURA OOO; a.k.a. LIMITED LIABILITY COMPANY ANALYTICAL MANUFACTURE; a.k.a. "ANALYTICAL MANUFACTORY"), Sh. Rublevskoe, D. 9, ET/ПОМ/КОМ 1/1/10Б, Moscow 121108, Russia (Cyrillic: Ш. РУБЛЁВСКОЕ, Д. 9, ЭТ/ПОМ/КОМ 1/1/10Б, МОСКВА 121108, Russia); Website amanuf.ru; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 16 Jan 2018; Organization Type: Non-specialized wholesale trade; Tax ID No. 9701098128 (Russia); Government Gazette Number 23281390 (Russia); Business Registration Number 1187746024696 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

137. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU ELYUENTLABORATORIZ (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ЭЛЮЕНТЛАБОРАТОРИЗ) (a.k.a. ELYUENTLABORATORIZ OOO (Cyrillic: ООО ЭЛЮЕНТЛАБОРАТОРИЗ); a.k.a. LIMITED LIABILITY COMPANY ELUENTLABORATORIZ), Ul. Ivana Franko, D. 4, K. 2, ET 2, Pom #1, Kom #27, Moscow 121108, Russia (Cyrillic: УЛ. ИВАНА ФРАНКО, Д. 4, К. 2., ЭТ 2 ПОМ No1 КОМ No27, Москва 121108, Russia); Website eluent.ru; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 22 Dec 2017; Organization Type: Non-specialized wholesale trade; Tax ID No. 9715310575 (Russia); Government Gazette Number 22529861 (Russia); Business Registration Number 5177746372403 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

138. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU MEDSTANDART (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ МЕДСТАНДАРТ) (a.k.a. MEDSTANDART OOO (Cyrillic: ООО МЕДСТАНДАРТ)), Sh. Varshavskoe, D. 16, Korpus 2, Floor 1, Pom. I, Kom. 3, Moscow 117105, Russia (Cyrillic: ШОССЕ ВАРШАВСКОЕ, ДОМ 16, КОПУС 2, ЭТАЖ 1, ПОМЕЩЕНИЕ I, КОМ 3, МОСКВА 117105, Russia); Website med-std.ru; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 14 Aug 2015; Tax ID No. 7726349563 (Russia); Government Gazette Number 47389778 (Russia); Business Registration Number 1157746749632 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

139. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU RUSMEDTORG (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ РУСМЕДТОРГ) (a.k.a. ANKOR OOO; a.k.a. LIMITED LIABILITY COMPANY RUSMEDTORG; a.k.a. RUSMEDTORG OOO (Cyrillic: ООО РУСМЕДТОРГ)), Ul. Pokrovka, D. 2/1, Str. 2, Pom. 1, Komn. 6, Moscow 101000, Russia; Ul. Lenskaya, D. 2/21, Pom III, Kom 2, ET 5, Moscow 129327, Russia (Cyrillic: УЛ. ЛЕНСКАЯ, Д. 2/21, ПОМ III, КОМ 2, ЭТ 5, МОСКВА 129327, Russia); Website rusmedtorg.ru; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 08 Jul 2002; alt. Organization Established Date 05 Jun 2002; Organization Type: Non-specialized wholesale trade; Tax ID No. 7727218122 (Russia); Government Gazette Number 58687987 (Russia); Business Registration Number 1027700009732 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

140. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU TORGOVY DOM KHMIMED (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ТОРГОВЫЙ ДОМ ХИММЕД) (a.k.a. TD KHMIMED (Cyrillic: ТД ХИММЕД); a.k.a. TD KHMIMED OOO (Cyrillic: ООО ТД ХИММЕД); a.k.a. TORGOVYI DOM KHMIMED (Cyrillic: ТОРГОВЫЙ ДОМ ХИММЕД)), Kashirskoe Shosse, Dom 3, Korpus 2, Stroenie 4, Moscow 115230, Russia; Website chimmed.ru; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 15 Jun 2009; Tax ID No. 7724709468 (Russia); Government Gazette Number 62112778 (Russia); Business Registration Number 1097746351504 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

141. OBSHCHESTVO S ORGANICHENNOI OTVETSTVENNOSTYU RENOVATSIO-INVEST (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ РЕНОВАЦИО-ИНВЕСТ) (a.k.a. RENOVATSIO-INVEST; a.k.a. RENOVATSIO-INVEST OOO (Cyrillic: ООО РЕНОВАЦИО-ИНВЕСТ)), Per. Bolshoi Kislovskii, D. 1/12, K. 2, Office 318, Moscow 125009, Russia (Cyrillic: ПЕРЕУЛОК БОЛЬШОЙ КИСЛОВСКИЙ, ДОМ 1/12, КОПУС 2, ОФИС 318, МОСКВА 125009, Russia); Secondary sanctions risk: See Section 11 of Executive Order

14024.; Organization Established Date 03 Aug 2017; Tax ID No. 7704440882 (Russia); Government Gazette Number 19093352 (Russia); Business Registration Number 1177746841304 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

142. OBSHESTVO S OGRANICHENNOY OTVETSTVENNOSTYU NOVA PROEKT (a.k.a. "NOVA PROJECT LLC"), Str. Ibraimova 115, Bishkek 720001, Kyrgyzstan; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 09 Aug 2022; Tax ID No. 00908202210145 (Kyrgyzstan); Registration Number 31556688 (Kyrgyzstan) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

143. OLAX FINANCE LIMITED, Rm 704 7/F 135 Bonham Strand Trade CTR Sheung Wan, Hong Kong, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 11 Apr 2005; Company Number 35690286 (Hong Kong) [RUSSIA-EO14024] (Linked To: CHICHENEV, Alexey).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly CHICHENEV, Alexey, a person whose property and interests in property are blocked pursuant to E.O. 14024.

144. ONYAD BILGISAYAR TICARET SIRKETI, Kadipada Mah. Keykubat Bulvar, No: 4/d, Alanya, Antalya 07400, Turkey; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 2023; Organization Type: Non-specialized wholesale trade [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

145. OOO GAZPROMMASH, ul. Moskovskaya, d. 44, Saratov 410031, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 6450027395 (Russia); Registration Number 1026402197502 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

146. OOO SEPO ZEM (a.k.a. OBSHCHESTVO S OGRANICHENNOY OTVETSTVENNOSTYU ZAVOD ELEKTROAGREGATNOGO MASHINOSTROENIYA SEPO-ZEM AKTSIONERNOGO OBSHCHESTVA SARATOVSKOE ELEKTROAGREGATNOE PROIZVODSTVENNOE OBEDINENIE), pr-kt 50 Let Oktyabrya, Saratov 410040, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 6453037698 (Russia); Registration Number 1026403046702 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in

the defense and related materiel sector of the Russian Federation economy.

147. OOO SOYUZ PODSHIPNIK, ul. Agregatnaya 3-Ya d. 23, Kursk 305022, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7725546537 (Russia); Registration Number 1057747885469 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

148. OOO TAV, Pr-D Zavoda Serp I Molot D. 6, Pod 1, Et 4, Kom 37, Moscow 111250, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7724388133 (Russia); Registration Number 5167746262899 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the transportation sector of the Russian Federation economy.

149. OOO VALCOM (a.k.a. VALKOM), Ul. Lomanaya D.10, Saint Petersburg 196084, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 27 Mar 1997; Tax ID No. 7825370005 (Russia); Registration Number 1027809248818 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

150. OSTEC SMART TECHNOLOGIES LIMITED LIABILITY COMPANY (a.k.a. OSTEC SMART TECHNOLOGIES LLC; a.k.a. OSTEK SMART TECHNOLOGIES), Ul. Kulakova D. 20, Str. 1G, Pomeshch. XIV, Kom. 12, Moscow 123592, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7734462210 (Russia); Registration Number 1227700665994 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

151. OTKRYTOE AKTSIONERNOE OBSHCHESTVO VLADIMIRSKII ZAVOD ELEKTROPRIBOR, ul. Baturina d. 28, Vladimir 600017, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 3328100682 (Russia); Registration Number 1023301460269 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

152. PAKO INTERNATIONAL TRADING LIMITED, 8th Floor, China Hong Kong Tower, 8-12 Hennessy Road, Wan Chai, Hong Kong, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 21 Apr 2022; Company Number 3145570 (Hong Kong); Business Registration Number 73971656 (Hong Kong) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in

the technology sector of the Russian Federation economy.

153. PAO RADIOFIZIKA, ul. Geroev Panfilovtsev d. 10, Moscow 125480, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7733022671 (Russia); Registration Number 1027739029614 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

154. PARITET, ul. Moskovskaya d. 16, kv. 14, Lyubertsy 140011, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 5027290680 (Russia); Registration Number 1205000099391 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

155. PJSC ROSTOV OPTICAL AND MECHANICAL PLANT (a.k.a. ROSTOVSKII OPTIKO-MEKHANICHESKII ZAVOD; a.k.a. "ROMZ"), Savinskoe shosse, 36, Rostov 152150, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7609000881 (Russia); Registration Number 1027601066569 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

156. PKP SEGMENT ENERGO (a.k.a. "PKP SE"), Ul. Bolshaya Polyanka D. 51A/9, Pomeschch. 1/1, Moscow 119180, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7721478117 (Russia); Registration Number 1167746251848 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

157. PLATFORM ENDUSTRIYEL GIDA INSAAT ELEKTRONIK VE MADENCILIK DIS TICARET LIMITED SIRKETI, Istanbul, Turkey; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date Jun 2022; Organization Type: Non-specialized wholesale trade; Registration Number 384964-5 (Turkey) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

158. POWERTECH LIMITED LIABILITY COMPANY, ul. Gorbunova d. 2, str. 3, pomeschch. 5/3, Moscow 121596, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 03 Jul 2023; Tax ID No. 9731117071 (Russia); Registration Number 1237700448700 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in

the manufacturing sector of the Russian Federation economy.

159. PUBLIC JOINT STOCK COMPANY PRIBOY (a.k.a. PRIBOY PJSC), V.O. 11-ya Liniya D. 66., Saint Petersburg 199178, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7801012120 (Russia); Registration Number 1027800516281 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

160. RED COAST METALS TRADING DMCC, Unit No. 4838, DMCC Business Center, Level No. 1, Jewellery and Gemplex 3, Dubai, United Arab Emirates; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 09 Jun 2022; Registration Number 193675 (United Arab Emirates) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

161. REGENT BALTICA COMPANY LIMITED (a.k.a. REGENT BALTICA CO LTD), Ul. Beloostrovskaya D. 17, Kor. 2 BTS, Avantazh Of 101, Saint Petersburg 197342, Russia; Ul. Savodovaya D. 117, Lit. A, Pomeschch. 3N, Office 1, Saint Petersburg 190008, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7842457680 (Russia); Registration Number 1117847326178 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

162. REGIONAL CENTER FOR LASER TECHNOLOGIES CJSC (a.k.a. ZAKRYTOE AKTSIONERNOE OBSHCHESTVO REGIONALNYI TSENTR LAZERNYKH TEKHNOLOGII; a.k.a. ZAO RTSLT), Ul. Frontovyykh Brigad D. 18, 2-aya Prokhnodnaya, Yekaterinburg 620017, Russia; Ul. Lunacharskogo Soor. 31, Yekaterinburg 620133, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 6659042028 (Russia); Registration Number 1026602958250 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

163. REOMAKS LIMITED LIABILITY COMPANY (a.k.a. REOMAKS LLC), PR-D 2-I Silikatnyi D. 14, K. 1 Str. 20, Antresol Etazha 3, Kabinet 13, Moscow 123308, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7734470965 (Russia); Registration Number 1237700078197 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

164. RESEARCH AND MANUFACTURING ASSOCIATION DEVELOPMENT OF INNOVATIVE TECHNOLOGIES (a.k.a. AKTSIONERNOE OBSHCHESTVO NAUCHNO PROIZVODSTVENNOE OBYEDINENIE RAZVITE

INNOVATSIONNYKH TEKHNOLOGII; a.k.a. "AO NPO RIT"), Ul. Ozernaya D. 14, K. 1, Tver 170008, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 6901043667 (Russia); Registration Number 1036900089093 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

165. RESEARCH AND PRODUCTION ASSOCIATION NAMED AFTER AS POPOV (a.k.a. AO NPO RADIOZAVOD IM AS POPOVA), Ul. 10 Let Oktyabrya D. 195, Omsk 644009, Russia; Ul. Khutorskaya 2-YA D. 29, Str. 4, Moscow 127287, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 5508000095 (Russia); Registration Number 1025500972342 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

166. RESEARCH AND PRODUCTION COMPANY MICRAN JOINT STOCK COMPANY (a.k.a. MICRAN JSC), Pr-kt Kirova Zd. 51D, Tomsk 634041, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7017211757 (Russia); Registration Number 1087017011113 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

167. RESEARCH AND PRODUCTION ENTERPRISE KALUGA BASED INSTRUMENT MAKING PLANT TYPHOON JOINT STOCK COMPANY (a.k.a. JOINT STOCK COMPANY SCIENTIFIC AND PRODUCTION ENTERPRISE KALUZHSKIY PRIBOROSTROITELNYY ZAVOD TAYFUN), Grabtsevskoe Shosse, 174, Kaluga 248035, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 4026005699 (Russia); Registration Number 1024001425513 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

168. REZONIT, Solnechnaya alleya D. 6, Zelenograd 124527, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 5044031157 (Russia); Registration Number 1037739154870 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

169. RMB YAPI INSAAT TAAHHUT SANAYI VE TICARET LIMITED SIRKETI, Dumankaya Modern Vadi Sit., No: 20I-3, Koza Mahallesi, Istanbul 34538, Turkey; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 15 Aug 2022; Tax ID No. 7351964090 (Turkey); Business Registration Number 399660 (Turkey) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

170. ROTOR, ul. Mikova d. 53, kv. 2, Krasnoturinsk 624440, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 6617027638 (Russia); Registration Number 1196658016741 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

171. SAFES LOJISTIK ITHALAT IHRACAT SANAYI TICARET LIMITED, Elmalı Mah. Cumhuriyet Cad. Dr. Galip Kahraman Is Merkezi No. 48, İc Kapi No. 105, Muratpasa, Antalya, Turkey; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 10 Mar 2021; Organization Type: Other transportation support activities [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

172. SAMARSKII ZAVOD KOMMUNAR (a.k.a. FKP SAMARA PLANT KOMMUNAR), UL. Kommunarov D. 3, Pos. Petra-Dubrava 443546, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Target Type State-Owned Enterprise; Tax ID No. 6367080065; Registration Number 136302392356 [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

173. SARIL OVERSEAS LIMITED, Unit 704 7/F 135 Bonham Strand Trade CTR Sheung Wan, Hong Kong, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 03 Apr 2006; Company Number 1035845 (Hong Kong) [RUSSIA-EO14024] (Linked To: CHICHENEV, Alexey).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly CHICHENEV, Alexey, a person whose property and interests in property are blocked pursuant to E.O. 14024.

174. SCIENTIFIC AND PRODUCTION ASSOCIATION OF AUTOMATICS NAMED AFTER ACADEMICIAN NA SEMIKHATOV (a.k.a. AKTSIONERNOE OBSHCHESTVO NAUCHNO PROIZVODSTVENNOE OBYEDINENIE AVTOMATIKI IMENI AKADEMIKA NA SEMIKHATOVA; a.k.a. "AO NPO AVTOMATIKI"), Ul. Mamina-Sibiryaka D.145, Yekaterinburg 620075, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Target Type State-Owned Enterprise; Tax ID No. 6685066917 (Russia); Registration Number 1146685026509 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

175. SCIENTIFIC PRODUCTION CENTER OF ANTI TERRORIST AND FORENSIC EQUIPMENT SPEKTR AT LLC (a.k.a. NPTS SPEKTR-AT; a.k.a. RPT SPEKTR-AT), Ul. Usacheva D. 35, Str. 1, Et 4 Pom. IV Kom 7, Moscow 119048, Russia; Ugreshskaya st., 2, bldg. 62, Moscow 109089, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7704661049 (Russia); Registration Number 1077759881980 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

176. SHANDONG KI FOREST NEW ADVANCED CO LTD (a.k.a. SHANDONG KESIN NEW MATERIAL CO LTD), No 35 Qiming Street, Lixia District, Jinan City, Shandong Province, China; Room 418, Floor 4, Suite A, Qiji Group, No. 34, Shanghai Road, Qianwan Bonded Zone, Qingdaopian District, China Pilot Free Trade Zone, Qingdao, Shandong, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Unified Social Credit Code (USCC) 91370102MA3U57TG1J (China) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

177. SHANDONG OREE LASER TECHNOLOGY CO., LTD. (Chinese Simplified: 山东欧锐激光科技有限公司) (a.k.a. "JINAN OREE LASER EQUIPMENT CO., LTD" (Chinese Simplified: "欧锐激光")), No.19-1, Industrial Park, Jiyang Sub-District, Jiyang County, Jinan, Shandong 250000, China; Website www.oreelaser.cn; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 28 Jun 2017; Organization Type: Manufacture of other special-purpose machinery; Unified Social Credit Code (USCC) 91370125MA3F547335 (China) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

178. SHANGHAI TRANSIT INTERNATIONAL FORWARDING AGENCY, East Building, 8 Floor, D, Jingan District, Shanghai, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Business Registration Number 310141400028942 (China); Unified Social Credit Code (USCC) 91310115351050878F (China) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

179. SHENZHEN C S IM EXPORT LTD (a.k.a. "CS IM EXPORT LIMITED"), Rm 60407 6/F Blk 1, Fantasia Mic Plaza, Nanhai Rd 1113-1115, Nanshan District, Shenzhen 518000, China; Room 1602, Building 2, Ganglong Fortune International Building, No. 99, Xiahe Road, Kunshan, Jiangsu Province, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Registration Number 440301105890954 (China); Unified Social Credit Code (USCC) 914403005879007795 (China) [RUSSIA-EO14024]. Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in

the technology sector of the Russian Federation economy.

180. SHENZHEN HUASHENG INDUSTRY CO LTD (Chinese Simplified: 深圳市华圣工业有限公司) (a.k.a. SHENZHEN HUASHENG INDUSTRIAL CO LTD), 415, Building 5, Nanshan Cloud Valley Innovation Industrial Park Phase 2, Pingshan Community, Taoyuan Street, Nanshan District, Shenzhen, China (Chinese Simplified: 南山云谷创业园二期5栋415, 桃源街道平山社区, 市南山区, 深圳, China); Floor 4, Building 4, Yalian Haoshida Industrial Factory, No. 5022, Wuhe Boulevard, Gangtou Community, Bantian Street, Longgang District, Shenzhen, China (Chinese Simplified: 四层 亚莲好时达工业厂区厂房四栋, 岗头社区五和大道5022号, 市龙岗区坂田街道, 深圳市, China); Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 2023; Business Registration Number 440300219582096 (China); Unified Social Credit Code (USCC) 91440300MA5HX67X24 (China) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

181. SHENZHEN YOUXIN TECHNOLOGY CO LTD, 6007B Saige Plaza, 1002 Huaqiang North Road, Fuqiang Community, Shenzhen, Guangdong Province, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Code 91440300MA5FLU8M7X (China) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

182. SHIP REPAIR YARD OF THE BLACK SEA FLEET OF THE MINISTRY OF DEFENSE OF THE RUSSIAN FEDERATION (a.k.a. 13 SRZ CHF MINOBORONY ROSSII; a.k.a. 13 SUDOREMONTNYI ZAVOD CHERNOMORSKOGO FLOTA MINISTERSTVA OBORONY ROSSIISKOI FEDERATSII), ul. Kilen-balka D. 1, Sevastopol 299041, Ukraine; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 9203501030 (Russia); Registration Number 1149204071664 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

183. SHIPREPAIRING AND SHIPBUILDING CORPORATION JSC, Per. 1-I Pozharnyi D.1, Gorodets 606505, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 5260100856 (Russia); Registration Number 1025203027134 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

184. SILK WAY RALLY ASSOCIATION, Ul. 2-Ya Brestskay D.30, Pomesheh. 8, Moscow 125047, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 16 Sep 2010; Tax ID No. 7702372838 (Russia); Registration Number 1107799025696 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

185. SITEM, sh. Mozhaiskoe d. 37, pom.IA, komn. 4, Moscow 121471, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 9731052057 (Russia); Registration Number 1197746563453 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

186. SOLARD, Ul. 3-YA Khoroshevskaya D. 2, Str. 1, Floor 6, Pomeschch. 3, Moscow 123308, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7730257643 (Russia); Registration Number 1207700204502 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

187. SPECIAL DESIGN BUREAU OF ELECTRIC INSTRUMENT ENGINEERING LLC (a.k.a. SKB ELEKTROTEKHNICHESKOGO PRIBOROSTROENIYA; a.k.a. "SKB EP"), Ul. Kokkolevskaya D. 1 Lit. A Pom. 42-N, Shushary 196140, Russia; Ter. Pulkovskoe, Ul. Kokkolevskaya D. 1, Str. 1, Pomeschch. 42-N, Shushary 196605, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 3812045829 (Russia); Registration Number 1033801751092 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

188. SPECIAL MATERIALS CORPORATION (a.k.a. AO NPO SPETSMATERIALOV), B. Sampsonievskii Pr-Kt D. 28A, Saint Petersburg 194044, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7806125671 (Russia); Registration Number 1037816016545 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

189. SSGCTM CNC TAKIM TEZGAHLARI MAKINE SANAYI VE TICARET LIMITED SIRKETI, 17 P Fevzicakmak Mahallesi, Konya, Turkey; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 30 Dec 2022; Tax ID No. 7811027471 (Turkey); Business Registration Number 66182 (Turkey) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

190. SUPERCHIP LIMITED, RM 704 7/F 135 Bonham Strand Trade CTR Sheung Wan, Hong Kong, China; Website www.superchip-ltd.com; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 20 Jul 2018;

Organization Type: Wholesale of electronic and telecommunications equipment and parts; Company Number 2724415 (Hong Kong) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

191. TAIBER OOO (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU TAIBER), ul. Bolshaya Tatarskaya 36, Moscow, Moscow 115184, Russia; Website www.tiber.su; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 12 Dec 2014; Tax ID No. 9705016006 (Russia); Government Gazette Number 40625508 (Russia); Business Registration Number 1147748031705 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

192. TAKSAN MAKINA SANAYI VE TICARET ANONIM SIRKETI, A1 Fabrika Apartmani, No: 667, Semerkent Mahallesi, Kayseri 38560, Turkey; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 22 Nov 2016; Tax ID No. 8160598006 (Turkey); Business Registration Number 46103 (Turkey) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

193. TAUBE PRECIOUS HK LIMITED, Unit 1107, 11/F Fu Hang Industrial Building No. 1, Hok Yuen Street, East Hung Hom, Kowloon, Hong Kong, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 26 Apr 2019; Company Number 2820898 (Hong Kong); Business Registration Number 70632538 (Hong Kong) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

194. TAVIT HONG KONG CO LIMITED, Rm 1318-19, 13/F Hollywood Plz, Mongkok, Hong Kong, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 20 Oct 2022; Registration Number 74527016 (Hong Kong) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

195. TECHNOLOGY RESEARCH CENTRE ANK LTD (a.k.a. "NTTS ANK"), Per. Zelenkov D. 9, Lit. D, Pomeshch. 32,33, Saint Petersburg 194044, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7810398914 (Russia); Registration Number 1157847438781 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

196. TIMKOM, Prkt Zlenyi D. 2, Pomesheh. VI Komnata 5, Moscow 111141, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7720361170 (Russia); Registration Number 5167746369060 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

197. TPK VOSTOK RESURS, ul. Maksima Gorkogo D. 68, Kabinet 501, Izhevsk 426008, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 1831081018 (Russia); Registration Number 1021801180026 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

198. TROITSK CRANE PLANT LIMITED LIABILITY COMPANY (a.k.a. TROITSKII KRANOVYI ZAVOD), Ul. Solnechnaya D. 21, Minzag 142150, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7709603570 (Russia); Registration Number 1057746645219 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

199. URAL METAL PROCESSING COMPANY LTD (a.k.a. URALSKAYA METALLOOBRABATYVAYUSHCHAYA KOMPANIYA; a.k.a. "UMZ"), Ul. Kommunalnaya D. 10, Str. 1, Magnitogorsk 455007, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7444048751 (Russia); Registration Number 1067444026187 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

200. VALETUDO LIMITED, Room 606, 6/F, Hollywood Centre, No. 77-91 Queen's Road West, Sheung Wan, Hong Kong, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 11 Apr 2023; Company Number 3268867 (Hong Kong); Business Registration Number 75213585 (Hong Kong) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

201. VM TRANS GROUP OF COMPANIES LLC (a.k.a. GRUPPA KOMPANII VM TRANS), Ul. Semyi Shamshinykh D. 22/1, Office 501, Novosibirsk 630099, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 5406983819 (Russia); Registration Number 1175476123240 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in

the defense and related materiel sector of the Russian Federation economy.

202. VPOWER FINANCE SECURITY HONG KONG LIMITED, 168 Yeung Uk Road, Tsuen Wan, New Territories, Hong Kong, China; Room 3, 7/F, Goodman International Communication Center, 168 Yeung Uk Road, Hong Kong, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 15 Mar 2016; Company Number 2348954 (Hong Kong); Legal Entity Number 2549003RJUBRHOOB62; Business Registration Number 65879680 (Hong Kong) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

203. WAY GOOD TECHNOLOGY LIMITED, Dan 6, No. 6 Fui Yiu Kok Street, Tsuen Wan, Hong Kong, China; 5 San Hop Lane, Flat B4, 21/F, Mai Kei Industrial Building, Tuen Mun, Hong Kong, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Company Number 1750133 (Hong Kong); Business Registration Number 59857044 (Hong Kong) [RUSSIA-EO14024] (Linked To: CHEN, Ting).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly CHEN, Ting, a person whose property and interests in property are blocked pursuant to E.O. 14024.

204. YIWU XINGLU IMPORT AND EXPORT CO LTD, Youlantang Village, Yiwu City, Zhejiang, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date Jul 2008; Organization Type: Non-specialized wholesale trade; Unified Social Credit Code (USCC) 91330782677217068D (China) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

205. ZAKRYTOE AKTSIONERNOE OBSHCHESTVO ZOLOTOI SHAR (a.k.a. ZAO ZOLOTOI SHAR), Ul. Chasovaya D. 9, Moscow 125315, Russia; 16 Krasnoproletarskaya, Moscow, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7714794802 (Russia); Registration Number 1097746755545 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

206. ZHEJIANG ZHENHUAN CNC MACHINE TOOL CO., LTD. (Chinese Simplified: 浙江震环数控机床股份有限公司) (a.k.a. "Z-MAT" (Chinese Simplified: "震环机床集团")), Mechanical and Electrical Zone, Yuhuan, Taizhou, Zhejiang 317699, China; Website <https://cn.zmat.com/>; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 22 Dec 2000; Organization Type: Manufacture of other special-purpose machinery; Unified Social Credit Code (USCC) 91331000725858856D (China) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

B. On June 12, 2024, OFAC also identified the following vessels as

property in which a blocked person has

an interest under the relevant sanctions authority listed below:

Vessels

1. ALEXEY KOSYGIN LNG Carrier Russia flag; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Vessel Registration Identification IMO 9904546 (vessel) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY SOVCOMFLOT).

Identified as property in which JOINT STOCK COMPANY SOVCOMFLOT, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

2. PYOTR STOLYPIN LNG Carrier Russia flag; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Vessel Registration Identification IMO 9904675 (vessel) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY SOVCOMFLOT).

Identified as property in which JOINT STOCK COMPANY SOVCOMFLOT, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

3. SERGEI WITTE LNG Carrier Russia flag; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Vessel Registration Identification IMO 9904687 (vessel) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY SOVCOMFLOT).

Identified as property in which JOINT STOCK COMPANY SOVCOMFLOT, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

4. ZVEZDA 044 LNG Carrier Russia flag; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Vessel Registration Identification IMO 9904699 (vessel) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY SOVCOMFLOT).

Identified as property in which JOINT STOCK COMPANY SOVCOMFLOT, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

5. ZVEZDA 045 LNG Carrier Russia flag; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Vessel Registration Identification IMO 9904704 (vessel) [RUSSIA-EO14024] (Linked To: LIMITED LIABILITY COMPANY SHIPBUILDING COMPLEX ZVEZDA).

Identified as property in which LIMITED LIABILITY COMPANY SHIPBUILDING COMPLEX ZVEZDA, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

6. ZVEZDA 046 (a.k.a. YARD NO. 9918779 ZVEZDA-DSME) LNG Carrier Russia flag; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Vessel Registration Identification IMO 9918779 (vessel) [RUSSIA-EO14024] (Linked To: LIMITED LIABILITY COMPANY SHIPBUILDING COMPLEX ZVEZDA).

Identified as property in which LIMITED LIABILITY COMPANY SHIPBUILDING COMPLEX ZVEZDA, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

7. ZVEZDA 047 (a.k.a. YARD NO. 9918781 ZVEZDA-DSME) LNG Carrier Russia flag; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Vessel Registration Identification IMO 9918781 (vessel) [RUSSIA-EO14024] (Linked To: LIMITED LIABILITY COMPANY SHIPBUILDING COMPLEX ZVEZDA).

Identified as property in which LIMITED LIABILITY COMPANY SHIPBUILDING COMPLEX ZVEZDA, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

Dated: September 10, 2024.

Lisa M. Palluconi,

Acting Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2024–20824 Filed 9–12–24; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Department of the Treasury.
ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: This action takes effect on the date listed in **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, tel: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Compliance, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (<https://www.treasury.gov/ofac>).

Notice of OFAC Action(s)

On September 10, 2024, OFAC determined that the persons identified below meet one or more of the criteria for the imposition of sanctions set forth in section 1(a)–(c) of Executive Order 14059 of December 15, 2021, “Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade,” 86 FR 71549 (December 17, 2021) (E.O. 14059). OFAC has selected to impose blocking sanctions pursuant to section 2(a)(i) of E.O. 14059 on the persons identified below.

Individuals

1. HERRERA MEDINA, Brandon Ernesto, Mexico; DOB 01 Aug 1993; POB Veracruz, Mexico; nationality Mexico; Gender Male; C.U.R.P. HEMB930801HVZRDR05 (Mexico) (individual) [ILLCIT–DRUGS–EO14059].

Determined to meet the criteria for imposition of sanctions pursuant to section (1)(b)(iii) of Executive Order 14059 of December 15, 2021, “Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade,” 86 FR 71549 (December 17, 2021) (E.O. 14059) for having acted or purported to act for or on behalf of, directly or indirectly, Ivan Cazarin Molina, a person sanctioned pursuant to E.O. 14059.

2. CAZARIN MOLINA, Cesar (a.k.a. “DELGADO RENTERIA, Victor Hugo”; a.k.a. “TORNADO”), Mexico; DOB 06 Feb 1980; POB Veracruz, Mexico; nationality Mexico; Gender Male; C.U.R.P. CAMC800206HVZZLS07 (Mexico) (individual) [ILLCIT–DRUGS–EO14059].

Determined to meet the criteria for imposition of sanctions pursuant to section

(1)(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, Cartel De Jalisco Nueva Generacion, a person sanctioned pursuant to E.O. 14059.

3. CAZARIN MOLINA, Ivan (a.k.a. “DELGADO RENTERIA, Victor Hugo”; a.k.a. “EL TANQUE”), Mexico; DOB 15 Oct 1984; POB Veracruz, Mexico; nationality Mexico; Gender Male; C.U.R.P. CAMI841015HVZZLV05 (Mexico) (individual) [ILLCIT–DRUGS–EO14059].

Determined to meet the criteria for imposition of sanctions pursuant to section (1)(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, Cartel De Jalisco Nueva Generacion, a person sanctioned pursuant to E.O. 14059.

4. MEDINA DIAZ, Domingo (a.k.a. “EL MINGO”), Mexico; DOB 19 Nov 1961; POB Guerrero, Mexico; nationality Mexico; Gender Male; C.U.R.P. MEDD611119HGRDZM01 (Mexico) (individual) [ILLCIT–DRUGS–EO14059].

Determined to meet the criteria for imposition of sanctions pursuant to section (1)(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, Cartel De Jalisco Nueva Generacion, a person sanctioned pursuant to E.O. 14059.

5. ALVARADO CASTILLO, Gerardo, Mexico; DOB 06 Jul 1988; POB Veracruz, Mexico; nationality Mexico; Gender Male; C.U.R.P. AACG880706HVZLSR00 (Mexico) (individual) [ILLCIT–DRUGS–EO14059].

Determined to meet the criteria for imposition of sanctions pursuant to section (1)(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, Cartel De Jalisco Nueva Generacion, a person sanctioned pursuant to E.O. 14059.

6. CAZARIN RAMOS, Jahir, Mexico; DOB 18 Mar 1998; POB Veracruz, Mexico; nationality Mexico; Gender Male; C.U.R.P.

CARJ980318HVZZMH01 (Mexico) (individual) [ILLICIT-DRUGS-EO14059].

Determined to meet the criteria for imposition of sanctions pursuant to section (1)(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, Ivan Cazarin Molina, a person sanctioned pursuant to E.O. 14059.

7. RODRIGUEZ HERNANDEZ, Jose Saul, Mexico; DOB 05 Oct 1968; POB Oaxaca, Mexico; nationality Mexico; Gender Male; C.U.R.P. ROHS681005HOCRL06 (Mexico) (individual) [ILLICIT-DRUGS-EO14059].

Determined to meet the criteria for imposition of sanctions pursuant to section (1)(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, Ivan Cazarin Molina, a person sanctioned pursuant to E.O. 14059.

8. RIVERA GARCIA, Patricia, Mexico; DOB 13 Mar 1976; POB Veracruz, Mexico; nationality Mexico; Gender Female; C.U.R.P. RIGP760313MVZVRT00 (Mexico) (individual) [ILLICIT-DRUGS-EO14059].

Determined to meet the criteria for imposition of sanctions pursuant to section (1)(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, Ivan Cazarin Molina, a person sanctioned pursuant to E.O. 14059.

9. ESTRADA MEDINA, Santos Aldair, Mexico; DOB 30 Apr 1994; POB Veracruz, Mexico; nationality Mexico; Gender Male; C.U.R.P. EAMS940430HVZSDN07 (Mexico) (individual) [ILLICIT-DRUGS-EO14059].

Determined to meet the criteria for imposition of sanctions pursuant to section (1)(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, Ivan Cazarin Molina, a person sanctioned pursuant to E.O. 14059.

Entities

1. AHORROCOMBUSTIBLES DE VERACRUZ, S.A. DE C.V., Veracruz, Mexico; Organization Established Date 31 May 2021; Organization Type: Retail sale of automotive fuel in specialized stores; Folio Mercantil No. N-2021040072 (Mexico) [ILLICIT-DRUGS-EO14059].

Determined to meet the criteria for imposition of sanctions pursuant to section (1)(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, Ivan Cazarin Molina, a person sanctioned pursuant to E.O. 14059.

2. BIOCMBUSTIBLES EL JICARO, S.A. DE C.V., Veracruz, Mexico; Organization Established Date 04 Sep 2019; Organization Type: Retail sale of automotive fuel in specialized stores; Folio Mercantil No. N-2020007868 (Mexico) [ILLICIT-DRUGS-EO14059].

Determined to meet the criteria for imposition of sanctions pursuant to section (1)(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, Ivan Cazarin Molina, a person sanctioned pursuant to E.O. 14059.

3. CARBURANTES DOS OCEANOS, S.A. DE C.V., Veracruz, Mexico; Organization Established Date 23 Jun 2020; Organization Type: Retail sale of automotive fuel in specialized stores; Folio Mercantil No. N-2021005612 (Mexico) [ILLICIT-DRUGS-EO14059].

Determined to meet the criteria for imposition of sanctions pursuant to section (1)(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, Ivan Cazarin Molina, a person sanctioned pursuant to E.O. 14059.

4. COMBUSTIBLES EVOLUTIVOS Y ALTERNATIVOS DOS OCEANOS, S.A. DE C.V., Veracruz, Mexico; Organization Established Date 23 Jun 2020; Organization Type: Retail sale of automotive fuel in specialized stores; Folio Mercantil No. N-2021005609 (Mexico) [ILLICIT-DRUGS-EO14059].

Determined to meet the criteria for imposition of sanctions pursuant to section (1)(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, Ivan Cazarin Molina, a person sanctioned pursuant to E.O. 14059.

5. DOS OCEANOS COMBUSTIBLES Y CARBURANTES, S.A. DE C.V., Veracruz, Mexico; Organization Established Date 23 Jun 2020; Organization Type: Retail sale of automotive fuel in specialized stores; Folio Mercantil No. N-2021006218 (Mexico) [ILLICIT-DRUGS-EO14059].

Determined to meet the criteria for imposition of sanctions pursuant to section (1)(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, Ivan Cazarin Molina, a person sanctioned pursuant to E.O. 14059.

6. DOS OCEANOS PASO DEL TORO, S.A. DE C.V., Medellin del Bravo, Veracruz, Mexico; Organization Established Date 20 Sep 2003; Organization Type: Retail sale of automotive fuel in specialized stores; Folio Mercantil No. 62 (Mexico) [ILLICIT-DRUGS-EO14059].

Determined to meet the criteria for imposition of sanctions pursuant to section (1)(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, Ivan Cazarin Molina, a person sanctioned pursuant to E.O. 14059.

7. ECONOCOMBUSTIBLES DE VERACRUZ, S.A. DE C.V., Veracruz, Mexico; Organization Established Date 31 May 2021; Organization Type: Retail sale of automotive fuel in specialized stores; Folio Mercantil No. N-2021040073 (Mexico) [ILLICIT-DRUGS-EO14059].

Determined to meet the criteria for imposition of sanctions pursuant to section (1)(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, Ivan Cazarin Molina, a person sanctioned pursuant to E.O. 14059.

8. ETANOFUEL, S.A. DE C.V. (a.k.a. "G ENERGY"), Veracruz, Mexico; Organization Established Date 30 May 2015; Organization Type: Retail sale of automotive fuel in specialized stores; R.F.C. ETA150530HD4 (Mexico); Folio Mercantil No. 31222 (Mexico) [ILLICIT-DRUGS-EO14059].

Determined to meet the criteria for imposition of sanctions pursuant to section (1)(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, Ivan Cazarin Molina, a person sanctioned pursuant to E.O. 14059.

9. MAGNOCOMBUSTIBLES DE VERACRUZ, S.A. DE C.V., Veracruz, Mexico; Organization Established

Date 31 May 2021; Organization Type: Retail sale of automotive fuel in specialized stores; Folio Mercantil No. N-2021040063 (Mexico) [ILLICIT-DRUGS-EO14059].

Determined to meet the criteria for imposition of sanctions pursuant to section (1)(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, Ivan Cazarin Molina, a person sanctioned pursuant to E.O. 14059.

10. MAQUINAS EDJA, S.A. DE C.V., Veracruz, Mexico; Organization Established Date 21 Apr 2022; Organization Type: Construction of other civil engineering projects; Folio Mercantil No. N-2022028425 (Mexico) [ILLICIT-DRUGS-EO14059].

Determined to meet the criteria for imposition of sanctions pursuant to section (1)(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, Ivan Cazarin Molina, a person sanctioned pursuant to E.O. 14059.

11. RAPICOMBUSTIBLES DE VERACRUZ, S.A. DE C.V., Veracruz, Mexico; Organization Established Date 31 May 2021; Organization Type: Retail sale of automotive fuel in specialized stores; Folio Mercantil No. N-2021040069 (Mexico) [ILLICIT-DRUGS-EO14059].

Determined to meet the criteria for imposition of sanctions pursuant to section (1)(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, Ivan Cazarin Molina, a person sanctioned pursuant to E.O. 14059.

12. SUMINISTROS COMBUSTIBLES OCEANOS, S.A. DE C.V., Veracruz, Mexico; Organization Established Date 23 Jul 2020; Organization Type: Retail sale of automotive fuel in specialized stores; Folio Mercantil No. N-2021006217 (Mexico) [ILLICIT-DRUGS-EO14059].

Determined to meet the criteria for imposition of sanctions pursuant to section (1)(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, Ivan Cazarin Molina, a person sanctioned pursuant to E.O. 14059.

13. TRAVER PERMISIONARIOS, S.A. DE C.V., Veracruz, Mexico; Organization Established Date 07 Aug 2019; Organization Type: Transportation and storage; Folio Mercantil No. N-2019067788 (Mexico) [ILLICIT-DRUGS-EO14059].

Determined to meet the criteria for imposition of sanctions pursuant to section (1)(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, Ivan Cazarin Molina, a person sanctioned pursuant to E.O. 14059.

14. 3D MODERN PRINTING PRESS, Veracruz, Mexico; Organization Established Date 15 Dec 2020; Organization Type: Service activities related to printing; Folio Mercantil No. N-2020081004 (Mexico) [ILLICIT-DRUGS-EO14059].

Determined to meet the criteria for imposition of sanctions pursuant to section (1)(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, Jose Saul Rodriguez Hernandez, a person sanctioned pursuant to E.O. 14059.

15. ACEITES Y LUBRICANTES MAYE, S.A. DE C.V., Veracruz, Mexico; Organization Established Date 02 Mar 2016; Organization Type: Retail sale of automotive

fuel in specialized stores; RFC

ALM160302SR9 (Mexico); Folio Mercantil No. N-2016002888 (Mexico) [ILLICIT-DRUGS-EO14059].

Determined to meet the criteria for imposition of sanctions pursuant to section (1)(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, Jose Saul Rodriguez Hernandez, a person sanctioned pursuant to E.O. 14059.

16. ADITIVOS Y SUMINISTROS

ETANOFUEL, S.A. DE C.V., Veracruz, Veracruz, Mexico; Organization Established Date 14 May 2019; Organization Type: Retail sale of automotive fuel in specialized stores; Folio Mercantil No. N-2019045850 (Mexico) [ILLICIT-DRUGS-EO14059].

Determined to meet the criteria for imposition of sanctions pursuant to section (1)(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, Jose Saul Rodriguez Hernandez, a person sanctioned pursuant to E.O. 14059.

17. COMBUSTIBLES Y LUBRICANTES

MAYE, S.A. DE C.V., Calle Ursulo Galvan Num. 360, Colonia Las Bajadas, Alvarado, Veracruz, Mexico; Organization Established Date 06 Apr 2015; Organization Type: Retail sale of automotive fuel in specialized stores; Folio Mercantil No. 31142 (Mexico) [ILLICIT-DRUGS-EO14059].

Determined to meet the criteria for imposition of sanctions pursuant to section (1)(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, Jose Saul Rodriguez Hernandez, a person sanctioned pursuant to E.O. 14059.

18. COMERCIALIZADORA BAGUETTE

KLIC, S.A. DE C.V., Veracruz, Veracruz, Mexico; Organization Established Date 19 May 2016; Organization Type: Other food service activities; Folio Mercantil No. N-2016007450 (Mexico) [ILLICIT-DRUGS-EO14059].

Determined to meet the criteria for imposition of sanctions pursuant to section (1)(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, Jose Saul Rodriguez Hernandez, a person sanctioned pursuant to E.O. 14059.

19. COMERCIALIZADORA COFFE KLIC, S.A. DE C.V., Veracruz, Veracruz, Mexico; Organization Established Date 19 May 2016; Organization Type: Beverage serving activities; Folio Mercantil No. N-2016007451 (Mexico) [ILLICIT-DRUGS-EO14059].

Determined to meet the criteria for imposition of sanctions pursuant to section (1)(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, Jose Saul Rodriguez Hernandez, a person sanctioned pursuant to E.O. 14059.

20. CONSTRUCTORA JJESA S.A. DE C.V., Veracruz, Veracruz, Mexico; Organization Established Date 09 Jul 1993; Organization Type: Construction of other civil engineering projects; Folio Mercantil No. 16996 (Mexico) [ILLICIT-DRUGS-EO14059].

Determined to meet the criteria for imposition of sanctions pursuant to section (1)(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, Jose Saul Rodriguez Hernandez, a person sanctioned pursuant to E.O. 14059.

21. ETANOPLUS, S.A. DE C.V., Calle ursulo galvan numero 360, Colonia Las

Bajadas, Alvarado, Veracruz, Mexico; Organization Established Date 30 May 2015; Organization Type: Retail sale of automotive fuel in specialized stores; Folio Mercantil No. 31223 (Mexico) [ILLICIT-DRUGS-EO14059].

Determined to meet the criteria for imposition of sanctions pursuant to section (1)(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, Jose Saul Rodriguez Hernandez, a person sanctioned pursuant to E.O. 14059.

22. MAXI-GASOIL SERVICIOS, S.A. DE C.V., Veracruz, Veracruz, Mexico; Organization Established Date 07 Aug 2018; Organization Type: Retail sale of automotive fuel in specialized stores; Folio Mercantil No. N-2018066203 (Mexico) [ILLICIT-DRUGS-EO14059].

Determined to meet the criteria for imposition of sanctions pursuant to section (1)(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, Jose Saul Rodriguez Hernandez, a person sanctioned pursuant to E.O. 14059.

23. MAYEGAS, S.A. DE C.V., Calle ursulo galvan numero 360, Colonia las Bajadas, Alvarado, Veracruz, Mexico; Organization Established Date 06 Apr 2015; Organization Type: Retail sale of automotive fuel in specialized stores; Folio Mercantil No. 31143 (Mexico) [ILLICIT-DRUGS-EO14059].

Determined to meet the criteria for imposition of sanctions pursuant to section (1)(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, Jose Saul Rodriguez Hernandez, a person sanctioned pursuant to E.O. 14059.

24. MULTISERVICIOS EN COMBUSTIBLE MAYE DE VERACRUZ, S.A. DE C.V., Jamapa, Veracruz, Mexico; Organization Type: Retail sale of automotive fuel in specialized stores; Folio Mercantil No. 29059 (Mexico) [ILLICIT-DRUGS-EO14059].

Determined to meet the criteria for imposition of sanctions pursuant to section (1)(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, Jose Saul Rodriguez Hernandez, a person sanctioned pursuant to E.O. 14059.

25. SUPER TIENDAS KLIC, S.A. DE C.V., Veracruz, Veracruz, Mexico; Organization Established Date 19 May 2016; Organization Type: Other food service activities; Folio Mercantil No. N-2016007452 (Mexico) [ILLICIT-DRUGS-EO14059].

Determined to meet the criteria for imposition of sanctions pursuant to section (1)(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, Jose Saul Rodriguez Hernandez, a person sanctioned pursuant to E.O. 14059.

26. VERACRUZANA DE SERVICIOS HOTELEROS Y GASTRONOMICOS LOS ANGELES, S.A. DE C.V. (a.k.a. "HOTEL ANGELES"), Carr. Fed. Santa Fe—San Julian Km. 4, Col. Santa Fe, Veracruz, Veracruz 91690, Mexico; Organization Established Date 01 Aug 2012; Organization Type: Restaurants and mobile food service activities; RFC VSH1208019D1 (Mexico); Folio Mercantil No. 29001 (Mexico) [ILLICIT-DRUGS-EO14059].

Determined to meet the criteria for imposition of sanctions pursuant to section (1)(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly

or indirectly, Jose Saul Rodriguez Hernandez, a person sanctioned pursuant to E.O. 14059.

Dated: September 10, 2024.

Lisa M. Palluconi,

Acting Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2024-20853 Filed 9-12-24; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Open Meeting of the Financial Research Advisory Committee

AGENCY: Office of Financial Research, Department of the Treasury.

ACTION: Notice of open meeting.

SUMMARY: The Financial Research Advisory Committee for the Treasury's Office of Financial Research (OFR) is convening for its twenty-third meeting on Tuesday, October 1, 2024, via webcast, beginning at 10 a.m. eastern time. The meeting will be open to the public and advance registration is required.

DATES: The meeting will be held Tuesday, October 1, 2024, beginning at 10 a.m. eastern time.

ADDRESSES: The meeting will be held via webcast using Zoom. Participants are required to register ahead of time. Register in advance for the meeting using this Zoom attendee registration link: https://ofr-treasury.zoomgov.com/webinar/register/WN_MpicHH5KQ8OfEfScngHkjq.

After registering, you will receive a confirmation email with a unique link to join the meeting.

Reasonable Accommodation: If you require a reasonable accommodation, please contact ReasonableAccommodationRequests@treasury.gov. Please submit requests at least five days before the event.

FOR FURTHER INFORMATION CONTACT: Patricia Driver, Designated Federal Officer, Office of Financial Research, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, (202) 213-4669 (this is not a toll-free number), or OFR_FRAC@ofr.treasury.gov. Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5 U.S.C. app. 2, 10(a)(2), through implementing regulations at 41 CFR 102-3.150, *et seq.*

Public Comment: Members of the public wishing to comment on the

business of the Financial Research Advisory Committee are invited to submit written statements by any of the following methods:

- *Electronic Statements.* Email the Committee's Designated Federal Officer at OFR_FRAC@ofr.treasury.gov.

- *Paper Statements.* Send paper statements in triplicate to the Financial Research Advisory Committee, Attn: Patricia Driver, Office of Financial Research, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

The OFR will post statements on the Committee's website, <https://www.financialresearch.gov/frac/>, including any business or personal information provided, such as names, addresses, email addresses, or telephone numbers. The OFR will also make such statements available for public inspection and copying in the Department of the Treasury's library, Annex Room 1020, 1500 Pennsylvania Avenue NW, Washington, DC 20220 on official business days between the hours of 8:30 a.m. and 5:30 p.m. eastern time. You may make an appointment to inspect statements by calling (202) 622-0990. All statements, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

Agenda/Topics for Discussion: The Committee provides an opportunity for researchers, industry leaders, and other qualified individuals to offer their advice and recommendations to the OFR, which, among other things, is responsible for collecting and standardizing data on financial institutions and their activities and for supporting the work of the Financial Stability Oversight Council.

This is the twenty-third meeting of the Financial Research Advisory Committee. Topics to be discussed among all members are technology vulnerabilities, cybersecurity, artificial intelligence, central counterparties, a hedge fund monitor demonstration, and an update from the OFR Data Center. For more information on the OFR and the Committee, please visit the OFR's website at <https://www.financialresearch.gov>.

Dated: September 10, 2024.

Emily Anderson,

Acting Deputy Director of Operations.

[FR Doc. 2024-20890 Filed 9-12-24; 8:45 am]

BILLING CODE 4810-AK-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0717]

Agency Information Collection Activity Under OMB Review: Child Care Provider Information-For the Child Care Subsidy Program

AGENCY: Human Resources and Administration/Operations, Security, and Preparedness (HRA/OSP), Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Human Resources and Administration/Operations, Security, and Preparedness (HRA/OSP), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden, and it includes the actual data collection instrument.

DATES: Comments and recommendations for the proposed information collection should be sent by October 10th, 2024.

ADDRESSES: To submit comments and recommendations for the proposed information collection, please type the following link into your browser: www.reginfo.gov/public/do/PRAMain, select "Currently under Review—Open for Public Comments", then search the list for the information collection by Title or "OMB Control No. 2900-0717."

FOR FURTHER INFORMATION CONTACT: VA PRA information: Maribel Aponte, 202-461-8900, vacopaperworkreduact@va.gov.

SUPPLEMENTARY INFORMATION:

Title: Child Care Provider Information-For the Child Care Subsidy Program.

OMB Control Number: 2900-0717
<https://www.reginfo.gov/public/do/PRASearch>.

Type of Review: Reinstatement with change of a previously approved collection.

Abstract: The Department of Veterans Affairs (VA) needs to collect information from child care providers to determine employee eligibility to participate in the VA Child Care Subsidy Program.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 89 FR 56477, July 9, 2024.

Affected Public: Individuals or Households.

Estimated Annual Burden: 937 Hours.

Estimated Average Burden per

Respondent: 15 Minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 4,500.

Authority: 44 U.S.C. 3501 *et seq.*

Dorothy Glasgow,

VA PRA Clearance Officer, (Alt.) Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024-20802 Filed 9-12-24; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0896]

Agency Information Collection Activity: 35% Exemption Request From 85/15 Reporting Requirement

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Comments must be received on or before November 12, 2024.

ADDRESSES: Comments must be submitted through <https://www.regulations.gov/>.

FOR FURTHER INFORMATION CONTACT:

Program-Specific information: Nancy Kessinger, 202-632-8924, nancy.kessinger@va.gov.

VA PRA information: Maribel Aponte, 202-461-8900, vacopaperworkreduact@va.gov.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is

being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on:

(1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: 35% Exemption Request From 85/15 Reporting Requirement, VA Form 22-10216.

OMB Control Number: 2900-0896.

Type of Review: Revision of a currently approved collection.

Abstract: As part of the benefits authorization process, Code of Federal Regulations (CFR) 38 CFR 21.4201 places restrictions on enrollment based on the percentage of students receiving financial support in any approved program. Except as otherwise provided by regulation, VA shall not approve an enrollment in any course for an eligible

Veteran, not already enrolled, for any period during which more than 85 percent of the students enrolled in the course are having all or part of their tuition, fees or other charges paid for them by the educational institution or by VA under title 38, U.S.C., or under title 10, U.S.C. This is known as the 85/15 Rule and is applicable to Institutions of Higher Learning (IHLs) and Non-College Degree postsecondary schools.

The requirements apply to all courses, not otherwise exempt, or waived, offered by all educational institutions, regardless of whether the institution is degree-granting, proprietary profit, proprietary nonprofit, eleemosynary, public and/or tax-supported. Schools are required to submit information necessary to determine if their programs of training are approved for the payment of VA educational assistance. This specified information is submitted either to VA or to the State Approving Agency (SAA) having jurisdiction over that school. This regulation includes a provision that permits an exemption from routine reporting of this data for schools that assert that the number of VA beneficiary students in all programs approved for GI Bill never exceeds 35% of the total enrollment at the educational institution. If approved, such schools must still monitor and

collect the data, but are exempt from routinely reporting it to VA. The VA uses data from this information collection to determine that non-receipt of the routine reporting of 85/15 data is authorized by certain schools. Schools with an approved exemption are required to provide the complete 85/15 data during regular, periodic compliance survey reviews by VA to ensure no more than 85% of students in any approved program are students in receipt of financial support from the educational institution or by VA under title 38, U.S.C., or under title 10, U.S.C. Without this information, VA might pay benefits in error.

Affected Public: Educational Institutions.

Estimated Annual Burden: 1,411 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 2,822.

Authority: 44 U.S.C. 3501 *et seq.*

Dorothy Glasgow,

VA PRA Clearance Officer, (Alt.) Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024-20785 Filed 9-12-24; 8:45 am]

BILLING CODE 8320-01-P



FEDERAL REGISTER

Vol. 89

Friday,

No. 178

September 13, 2024

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Corporate Alternative Minimum Tax Applicable After 2022; Proposed Rule

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1****[REG–112129–23]****RIN 1545–BQ84****Corporate Alternative Minimum Tax Applicable After 2022****AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This notice of proposed rulemaking provides proposed regulations that would address the application of the corporate alternative minimum tax, which is imposed on the adjusted financial statement income of certain corporations based on their applicable financial statements for applicable taxable years beginning after 2022. The proposed regulations would affect taxpayers that are applicable corporations, certain taxpayers that own interests in applicable corporations, and certain entities in which applicable corporations hold interests. This document also provides notice of a public hearing on the proposed regulations.

DATES: Written or electronic comments on this proposed rule must be received by December 12, 2024. A public hearing on these proposed regulations is scheduled to be held on January 16, 2025, at 10 a.m. Eastern Time (ET). Requests to speak and outlines of topics to be discussed at the public hearing must be received by December 12, 2024. If no outlines are received by December 12, 2024, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5 p.m. ET on January 14, 2025.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at <https://www.regulations.gov> (indicate IRS and REG–112129–23) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the “Comments and Requests for a Public Hearing” section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS’s public docket. Send paper submissions to: CC:PA:01:PR (REG–112129–23), Room 5203, Internal Revenue Service, P.O.

Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT:

Concerning proposed §§ 1.56A–1, 1.56A–9, and 1.56A–23, except for paragraphs (e) and (f), Madeline Padner at (202) 317–7006, concerning proposed §§ 1.56A–2 and 1.56A–3, Frank Dunham III at (202) 317–7009, concerning proposed §§ 1.56A–11, 1.56A–12, and 1.59–2, except for paragraphs (e), (f) and (h), John Aramburu at (202) 317–7006, concerning proposed § 1.56A–17, James Yu at (202) 317–4718, and concerning proposed §§ 1.56A–15 and 1.56A–16, except for issues related to partnerships, C. Dylan Durham at (202) 317–7005, each of the Office of Associate Chief Counsel (Income Tax and Accounting), and for issues related to partnerships, Yosef Koppel, Elizabeth Zanet, or Brian Barrett of the Office of Associate Chief Counsel (Passthroughs and Special Industries), at (202) 317–6850; concerning proposed § 1.56A–4, Daren J. Gottlieb at (202) 317–6938, concerning proposed § 1.56A–6, Dylan J. Steiner at (202) 317–6934, concerning proposed § 1.56A–7, Ryan Connery at (202) 317–6933, concerning proposed §§ 1.56A–8 and 1.59–4, John J. Lee at (202) 317–6936, concerning proposed § 1.56A–26(d), Michelle L. Ng at (202) 317–6939, concerning proposed § 1.56A–27, Joel Deuth at (202) 317–6938, and concerning proposed § 1.59–3, Karen Walny at (202) 317–6938, each of the Office of Associate Chief Counsel (International); concerning proposed §§ 1.56A–18, 1.56A–19, 1.56A–21, 1.56A–26, 1.1502–2, 1.1502–3, 1.1502–53, 1.1502–55, and 1.1502–56A, Jeremy Aron-Dine, William W. Burhop, or John Lovelace, concerning proposed §§ 1.56A–23(e) and (f) and 1.59–2(f) and (h), Jeremy Aron-Dine and William W. Burhop, each of the Office of Associate Chief Counsel (Corporate) at (202) 317–3181; concerning proposed § 1.56A–13, Diane Bloom at 202–317–6301, concerning proposed § 1.56A–14, Seth Groman at 202–317–5640, and concerning proposed § 1.59–2(e), Chris Dellana at 202–317–4726, each of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes); concerning proposed §§ 1.56A–5, 1.56A–10, and 1.56A–20, Yosef Koppel, Elizabeth Zanet, or Brian Barrett, each of the Office of Associate Chief Counsel (Passthroughs and Special Industries) at (202) 317–6850; concerning proposed § 1.56A–22, Ian Follansbee at (202) 317–6995, concerning proposed §§ 1.56A–24 and 1.56A–25, Vanessa Mekpong at (202) 317–6842, each of the Office of Associate Chief Counsel (Financial

Institutions and Products); concerning submissions of comments or the public hearing, the Publications and Regulations Section, (202) 317–6901 (not toll-free numbers) or by email at publichearings@irs.gov (preferred).

SUPPLEMENTARY INFORMATION:**Authority**

This document contains proposed additions and amendments to 26 CFR part 1 (Income Tax Regulations) addressing the application of the corporate alternative minimum tax (CAMT) imposed by section 55 of the Internal Revenue Code (Code), as amended by the enactment of section 10101 of Public Law 117–169, 136 Stat. 1818, 1818–1828 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA). The proposed additions and amendments are issued under section 56A, as added to the Code by the IRA, section 59 of the Code, as amended by the IRA, and section 1502 of the Code (proposed regulations), pursuant to the express delegations of authority provided under those sections. The express delegations relied upon are referenced in the parts of the Explanation of Provisions section of this preamble describing the individual sections of the proposed regulations. The proposed regulations are also issued under the express delegation of authority under section 7805 of the Code.

Background*I. Overview*

As amended by section 10101 of the IRA, section 55 imposes the CAMT based on the adjusted financial statement income, as determined under section 56A (AFSI), of an applicable corporation, as determined under section 59, for taxable years beginning after December 31, 2022. In general, under section 59(k), a corporation is an applicable corporation subject to the CAMT for a taxable year if it meets an average annual AFSI test for one or more taxable years that (i) are before that taxable year, and (ii) end after December 31, 2021.

Section 55(a) provides that, for the taxable year of an applicable corporation, the amount of CAMT equals the excess (if any) of (i) the tentative minimum tax for the taxable year, over (ii) the sum of the regular tax, as defined in section 55(c), for the taxable year plus the tax imposed under section 59A (commonly referred to as the base erosion and anti-abuse tax, or BEAT). Section 55(b)(2)(A) provides that, in the case of an applicable corporation, the tentative minimum tax

for the taxable year is the excess of (i) 15 percent of AFSI for the taxable year, over (ii) the CAMT foreign tax credit, as determined under section 59(l), for the taxable year. In the case of any corporation that is not an applicable corporation, section 55(b)(2)(B) provides that the tentative minimum tax for the taxable year is zero.

II. AFSI Under Section 56A

A. Adjusted Financial Statement Income; Applicable Financial Statement

Section 56A(a) provides that, for purposes of sections 55 through 59 of the Code, the term “AFSI” means, with respect to any corporation for any taxable year, the net income or loss of the taxpayer set forth on the taxpayer’s applicable financial statement (AFS) for that taxable year, adjusted as provided in section 56A. For purposes of section 56A, section 56A(b) provides that the term “AFS” means, with respect to any taxable year, an AFS, as defined in section 451(b)(3) of the Code or as specified by the Secretary in regulations or other guidance, that covers that taxable year.

B. Adjustments to AFSI

Section 56A(c) provides general adjustments to be made to AFSI. Section 56A(c)(1) provides that appropriate adjustments are to be made to AFSI in any case in which an AFS covers a period other than the taxable year. Section 56A(c)(2) provides special rules for related entities. Section 56A(c)(2)(A) provides that, if the financial results of a taxpayer are reported on the AFS for a group of entities (financial statement group), rules similar to the rules of section 451(b)(5) apply. Section 451(b)(5) provides that, in such a situation, the consolidated financial statement of the financial statement group is treated as the AFS of the taxpayer. However, for purposes of section 451(b)(5), if the taxpayer’s financial results are also reported on a separate financial statement that is of equal or higher priority to the consolidated financial statement, then the taxpayer’s AFS is the separate financial statement. *See* § 1.451–3(h)(1)(i). Section 1.451–3(h)(2) and (3) provide rules under section 451(b)(5) for determining the extent to which income reflected on the consolidated financial statement and the underlying source documents is allocable to the taxpayer for purposes of applying the rules under section 451(b).

Section 56A(c)(2)(B) provides a general rule that, if the taxpayer is part of an affiliated group of corporations that join in filing (or that are required

to join in filing) a consolidated return for Federal income tax purposes (tax consolidated group) for any taxable year, AFSI for that group for that taxable year must take into account items on the group’s AFS that are properly allocable to members of that group. However, section 56A(c)(2)(B) authorizes the Secretary to prescribe by regulation exceptions to that general rule.

Section 56A(c)(2)(C) provides that, in the case of any corporation that is not included on a consolidated return with the taxpayer, AFSI of the taxpayer with respect to that other corporation is determined by only taking into account dividends received from that other corporation (reduced to the extent provided by the Secretary in regulations or other guidance) and other amounts that are includible in gross income or deductible as a loss under chapter 1 of the Code (chapter 1), other than amounts required to be included under sections 951 and 951A of the Code or such other amounts as provided by the Secretary, with respect to that other corporation.

Section 56A(c)(2)(D)(i) provides that, except as provided by the Secretary, if the taxpayer is a partner in a partnership, the taxpayer’s AFSI with respect to such partnership is adjusted to take into account only the taxpayer’s distributive share of such partnership’s AFSI. Section 56A(c)(2)(D)(ii) provides that, for purposes of sections 55 through 59, the AFSI of a partnership is the partnership’s net income or loss set forth on that partnership’s AFS (adjusted under rules similar to the rules set forth in section 56A).

Section 56A(c)(3)(A) provides an adjustment to the AFSI of a taxpayer for any taxable year in which the taxpayer is a United States shareholder (within the meaning of section 951(b) or, if applicable, section 953(c)(1)(A) of the Code (each shareholder, a “U.S. shareholder”)) of one or more controlled foreign corporations (each within the meaning of section 957 of the Code or, if applicable, section 953(c)(1)(B)) (CFC). Under this rule, the AFSI of the taxpayer with respect to the CFC (as determined under section 56A(c)(2)(C)) is adjusted to also take into account the taxpayer’s pro rata share (determined under rules similar to the rules under section 951(a)(2)) of items taken into account in computing the net income or loss set forth on the AFS (as adjusted under rules similar to those that apply in determining AFSI) of each CFC with respect to which the taxpayer is a U.S. shareholder. Section 56A(c)(3)(B) provides that, if the adjustment determined under section 56A(c)(3)(A) would result in a negative adjustment

for the taxable year, (i) no adjustment is made to the taxpayer’s AFSI for that year, and (ii) the amount of the adjustment determined under section 56(c)(3)(A) for the succeeding taxable year is reduced by an amount equal to the negative amount from the prior taxable year.

Section 56A(c)(4) provides that, in determining the AFSI of a foreign corporation, the principles of section 882 of the Code (which subjects a foreign corporation to Federal income tax on its taxable income that is effectively connected with the conduct of a trade or business within the United States) apply.

Section 56A(c)(5) provides the general rule that AFSI is appropriately adjusted to disregard any Federal income taxes, or income, war profits, or excess profits taxes (within the meaning of section 901 of the Code) with respect to a foreign country or possession of the United States, which are taken into account on the taxpayer’s AFS. To the extent provided by the Secretary, this general rule does not apply to such foreign taxes taken into account on the taxpayer’s AFS if the taxpayer does not choose to claim a foreign tax credit (FTC) under section 27 of the Code (regular FTC). Section 56A(c)(5) also authorizes the Secretary to prescribe regulations or other guidance on the proper treatment of current and deferred taxes for purposes of section 56A(c)(5), including the time at which such taxes are properly taken into account.

Section 56A(c)(6) requires AFSI to be adjusted to take into account any AFSI of a disregarded entity owned by the taxpayer. Section 56A(c)(7) and (8) provide special rules for cooperatives and Alaska Native Corporations (within the meaning of section 3 of the Alaska Native Claims Settlement Act (ANCSA) (43 U.S.C. 1602(m))), respectively.

Section 56A(c)(9) requires AFSI to be appropriately adjusted to disregard any amount treated as a payment against the tax imposed by subtitle A of the Code (subtitle A) pursuant to an election under section 48D(d) or 6417 of the Code and included in the net income or loss set forth on the taxpayer’s AFS. However, if such amount is otherwise disregarded under the adjustment rule in section 56A(c)(5) (concerning AFSI adjustments for certain taxes), the adjustment in section 56A(c)(9) does not apply.

Section 56A(c)(10)(A) requires AFSI to be adjusted so as not to include any item of income in connection with a mortgage servicing contract any earlier than when the income is included in gross income under any other provision of chapter 1. Section 56A(c)(10)(B)

authorizes the Secretary to provide regulations to prevent the avoidance of taxes imposed by chapter 1 with respect to amounts not representing reasonable compensation (as determined by the Secretary) with respect to a mortgage servicing contract.

Section 56A(c)(11)(A) provides that AFSI is (i) adjusted to disregard any amount of income, cost, or expense that otherwise would be included on the AFS in connection with any covered benefit plan, (ii) increased by any amount of income in connection with any such covered benefit plan that is included in the gross income of the corporation under chapter 1, and (iii) reduced by any deductions allowed under any other provision of chapter 1 with respect to any such covered benefit plan. Section 56A(c)(11)(B) defines the term “covered benefit plan” to mean: (i) a defined benefit plan (other than a multiemployer plan described in section 414(f) of the Code) if the trust that is part of such plan is an employees’ trust described in section 401(a) of the Code that is exempt from tax under section 501(a) of the Code; (ii) any qualified foreign plan (as defined in section 404A(e) of the Code); or (iii) any other defined benefit plan that provides post-employment benefits other than pension benefits.

Section 56A(c)(12) requires AFSI to be appropriately adjusted, in the case of an organization subject to tax under section 511 of the Code, to take into account only AFSI (i) of an unrelated trade or business of such organization, as defined in section 513 of the Code, or (ii) derived from debt-financed property, as defined in section 514 of the Code, to the extent that income from such property is treated as unrelated business taxable income.

Section 56A(c)(13)(A) requires AFSI to be reduced by depreciation deductions allowed under section 167 of the Code with respect to property to which section 168 of the Code applies, to the extent of the amount allowed as deductions in computing taxable income for the taxable year. In addition, section 56A(c)(13)(B)(i) requires appropriate adjustments to AFSI to disregard any amount of depreciation expense that is taken into account on the taxpayer’s AFS with respect to such property. Section 56A(c)(13)(B)(ii) further provides that AFSI is appropriately adjusted to take into account any other item specified by the Secretary in order to provide that such property is accounted for in the same manner as that property is accounted for under chapter 1.

Section 56A(c)(14)(A)(i) requires AFSI to be reduced by amortization

deductions allowed under section 197 of the Code with respect to qualified wireless spectrum, to the extent of the amount allowed as deductions in computing taxable income for the taxable year. Section 56A(c)(14)(A)(ii)(I) requires appropriate adjustments to AFSI to disregard any amount of amortization expense that is taken into account on the taxpayer’s AFS with respect to such qualified wireless spectrum. Section 56A(c)(14)(A)(ii)(II) further provides that AFSI is appropriately adjusted to take into account any other item specified by the Secretary in order to provide that such qualified wireless spectrum is accounted for in the same manner as that property is accounted for under chapter 1. Section 56A(c)(14)(B) defines the term “qualified wireless spectrum” as wireless spectrum that is used in the trade or business of a wireless telecommunications carrier and that was acquired after December 31, 2007, and before August 16, 2022.

Section 56A(c)(15) authorizes the Secretary to issue regulations or other guidance to provide for such adjustments to AFSI as the Secretary determines necessary to carry out the purposes of section 56A, including adjustments to AFSI (i) to prevent the omission or duplication of any item, and (ii) to carry out the principles of part II of subchapter C (relating to corporate liquidations), part III of subchapter C (relating to corporate organizations and reorganizations), and part II of subchapter K (relating to partnership contributions and distributions) of chapter 1.

C. Financial Statement Net Operating Losses

Section 56A(d)(1) provides that AFSI (determined after the application of section 56A(c), but without regard to section 56A(d)) is reduced by an amount equal to the lesser of (i) the aggregate amount of financial statement net operating loss (FSNOL) carryovers to the taxable year, or (ii) 80 percent of AFSI (determined after the application of section 56A(c), but without regard to section 56A(d)). Section 56A(d)(2) provides that the amount of an FSNOL that can be carried forward to a taxable year is the FSNOL remaining (if any) after reducing AFSI in prior taxable years under section 56A(d)(1). An FSNOL is the net loss set forth on a taxpayer’s AFS, adjusted as provided by section 56A(c), but without regard to section 56A(d), for taxable years ending after December 31, 2019. *See* section 56A(d)(3).

Section 56A(e) authorizes the Secretary to provide such regulations

and other guidance as necessary to carry out the purposes of section 56A, including regulations and other guidance relating to the effect of the rules of section 56A on partnerships with income taken into account by an applicable corporation.

III. Applicable Corporations Under Section 59(k)

Section 59(k)(1)(A) provides that, for purposes of sections 55 through 59, the term “applicable corporation” means, with respect to any taxable year, any corporation other than an S corporation (as defined in section 1361(a)(1) of the Code), a regulated investment company (as defined in section 851 of the Code) (RIC), or a real estate investment trust (as defined in section 856 of the Code) (REIT), that meets the average annual AFSI test under section 59(k)(1)(B) (AFSI Test) for one or more taxable years that (i) are prior to that taxable year, and (ii) end after December 31, 2021.

There are two versions of the AFSI Test under section 59(k)(1)(B): one version that applies to corporations that are members of a foreign-parented multinational group (FPMG); and another version that applies to all other corporations. Under section 59(k)(1)(B)(i), a corporation that is not a member of an FPMG meets the AFSI test for a taxable year if the average annual AFSI of that corporation (determined without regard to the adjustment under section 56A(d) for FSNOLs) for the three-taxable-year period ending with that taxable year exceeds \$1,000,000,000 (general AFSI test). Under section 59(k)(1)(B)(ii), a corporation that is a member of an FPMG for any taxable year meets the AFSI test for that taxable year if (i) that corporation meets the general AFSI test (determined after applying the rule in section 59(k)(2)) (FPMG \$1 billion test), and (ii) the average annual AFSI of that corporation (determined without regard to the rule in section 59(k)(2) and without regard to the adjustment described in section 56A(d) for FSNOLs) for the aforementioned three-taxable-year period is at least \$100,000,000.

Solely for purposes of determining whether a corporation is an applicable corporation under section 59(k)(1), section 59(k)(1)(D) provides that all AFSI of persons treated as a single employer with the corporation under section 52(a) or (b) of the Code is treated as AFSI of that corporation.

Section 59(k)(1)(D) also provides that, solely for purposes of determining whether a corporation is an applicable corporation, the AFSI of such corporation must be determined without

regard to the partnership distributive share adjustment under section 56A(c)(2)(D)(i) and the adjustments under section 56A(c)(11) pertaining to covered benefit plans (as defined in section 56A(c)(11)(B)). In addition, section 59(k)(2)(A) provides that, solely for purposes of determining whether a corporation that is a member of an FPMG meets the FPMG \$1 billion test, (i) the AFSI of such corporation must include the AFSI of all members of the FPMG, and (ii) AFSI is determined without regard to the partnership distributive share adjustment under section 56A(c)(2)(D)(i), the CFC pro rata share adjustment under section 56A(c)(3), the effectively connected income adjustment under section 56A(c)(4), and the adjustments under section 56A(c)(11) pertaining to covered benefit plans.

Section 59(k)(1)(E) provides additional special rules for purposes of determining whether a corporation is an applicable corporation. With regard to a corporation with AFSI for any taxable year of less than 12 months, the AFSI of that corporation (including any predecessor) is annualized by multiplying the AFSI for the short period by 12 and dividing the result by the number of months composing the short period. *See* section 59(k)(1)(E)(ii) and (iii).

Section 59(k)(1)(E)(i) provides that, if a corporation has been in existence for less than three taxable years, the AFSI tests are applied to that corporation on the basis of the period during which that corporation was in existence. Section 59(k)(1)(E)(iii) provides that a reference in section 59(k)(1)(E) to a corporation includes a reference to any predecessor of such corporation. Accordingly, for purposes of determining whether a corporation was in existence for less than three taxable years and, if so, the period on the basis of which the AFSI Tests are applied to that corporation, the period(s) of existence of any predecessor(s) of such corporation are included. *See* section 59(k)(1)(E)(i) and (iii).

Section 59(k)(1)(C) excludes a corporation from the definition of “applicable corporation” if the following requirements are satisfied. First, the corporation must have either (i) a change in ownership, or (ii) a specified number of consecutive taxable years (as determined by the Secretary, taking into account the taxpayer’s facts and circumstances), including the most recent taxable year, in which the corporation does not meet an AFSI test. *See* section 59(k)(1)(C)(i). Second, the Secretary must determine that it would not be appropriate to continue to treat

that corporation as an applicable corporation (appropriateness determination). *See* section 59(k)(1)(C)(ii). However, as provided in the last sentence of section 59(k)(1)(C), a corporation that satisfies these two requirements for exclusion from applicable corporation status nonetheless will be treated as an applicable corporation if that corporation subsequently meets an AFSI test for any taxable year beginning after the first taxable year for which an appropriateness determination applies.

For purposes of applying section 59(k)(2)(A), section 59(k)(2)(B) defines an FPMG, with respect to a taxable year, as two or more entities if (i) at least one entity is a domestic corporation and another entity is a foreign corporation, (ii) the entities are included in the same AFS for the year, and (iii) either the common parent of the entities is a foreign corporation or, if there is no common parent, the entities are treated as having a common parent that is a foreign corporation under rules provided by the Secretary under the authority granted by section 59(k)(2)(D) (the common parent or the entity treated as the common parent, the FPMG Common Parent). For purposes of applying section 59(k)(2), if a foreign corporation is engaged in a trade or business in the United States, that trade or business is treated as a separate domestic corporation that is wholly owned by the foreign corporation. *See* section 59(k)(2)(C).

Section 59(k)(2)(D) authorizes the Secretary to provide regulations or other guidance applying the principles of section 59(k)(2), including rules to determine the entities treated as having an FPMG Common Parent, the entities included in an FPMG, and the FPMG Common Parent.

Section 59(k)(3) authorizes the Secretary to provide regulations or other guidance for purposes of applying section 59(k), including providing a simplified method for determining whether a corporation meets the requirements of section 59(k)(1), and addressing the application of section 59(k) to a corporation that experiences a change in ownership.

IV. CAMT FTC

Section 59(l)(1) provides rules for determining the amount of the CAMT FTC for a taxable year if an applicable corporation chooses to claim the Regular FTC for the taxable year. The CAMT FTC of the applicable corporation for a taxable year is the sum of two amounts. The first amount (CFC Taxes) is equal to the lesser of: (i) the aggregate of the applicable corporation’s

pro rata share (as determined under section 56A(c)(3)) of the amount of income, war profits, and excess profits taxes (within the meaning of section 901) imposed by any foreign country or possession of the United States that are (A) taken into account on the AFS of each CFC with respect to which the applicable corporation is a U.S. shareholder, and (B) paid or accrued (for Federal income tax purposes) by each such CFC; or (ii) 15 percent of the applicable corporation’s adjustment under section 56A(c)(3)(A) (CFC FTC Limitation). *See* section 59(l)(1)(A). The second amount is equal to the amount of income, war profits, and excess profits taxes (within the meaning of section 901) imposed by any foreign country or possession of the United States that are (i) taken into account on the AFS of the applicable corporation, and (ii) paid or accrued (for Federal income tax purposes) by the applicable corporation. *See* section 59(l)(1)(B).

Section 59(l)(2) provides that, for any taxable year for which an applicable corporation chooses to claim the Regular FTC, the amount of CFC Taxes for the taxable year in excess of the CFC FTC Limitation for the taxable year is carried forward for up to the five succeeding taxable years and increases the amount of CFC Taxes in any of those succeeding taxable years to the extent not taken into account in a prior taxable year.

Section 59(l)(3) authorizes the Secretary to provide regulations or other guidance as is necessary to carry out the purposes of the CAMT FTC rules in section 59(l).

V. Consolidated Return Regulations

Section 1502 authorizes the Secretary to prescribe regulations to clearly reflect the Federal income tax liability of a tax consolidated group and to prevent avoidance of such tax liability. *See* § 1.1502–1(h) (defining the term “consolidated group” for Federal income tax purposes). For purposes of carrying out those objectives, section 1502 explicitly permits the Secretary to prescribe rules that may be different from the provisions of chapter 1 that would apply if the corporations composing the tax consolidated group filed separate returns.

VI. Prior Guidance Relating to the CAMT

The Treasury Department and the IRS have issued seven notices with respect to the CAMT (CAMT notices).

A. Notice 2023–7

On January 17, 2023, the Treasury Department and the IRS published

Notice 2023–7, 2023–3 I.R.B. 390, which announced the intention of the Treasury Department and the IRS to issue proposed regulations addressing the application of the CAMT. Notice 2023–7 provides interim guidance on certain issues relating to the CAMT, including issues regarding subchapters C and K of chapter 1, troubled corporations, tax consolidated groups, depreciation of property to which section 168 applies, the treatment of certain Federal income tax credits under the CAMT, and the determination of applicable corporation status in circumstances involving certain partnerships. Notice 2023–7 also describes a simplified method for determining whether a corporation is an applicable corporation subject to the CAMT.

B. Notice 2023–20

On March 6, 2023, the Treasury Department and the IRS published Notice 2023–20, 2023–10 I.R.B. 523, to provide interim guidance on the determination of an insurance company's AFSI as it relates to (i) variable contracts (and similar contracts), and (ii) funds withheld reinsurance and modified coinsurance agreements. Notice 2023–20 also provides interim guidance on the determination of AFSI as it relates to the basis of certain assets held by certain previously tax-exempt entities that received a “fresh start” basis adjustment.

C. Notice 2023–42

On June 7, 2023, the Treasury Department and the IRS published Notice 2023–42, 2023–26 I.R.B. 1085, to provide relief from the addition to tax under section 6655 of the Code with respect to the tax imposed under section 55(a) (CAMT liability) for any taxable year that begins after December 31, 2022, and before January 1, 2024.

D. Notice 2023–64

On October 2, 2023, the Treasury Department and the IRS published Notice 2023–64, 2023–40 I.R.B. 974, to provide additional interim guidance on determining a taxpayer's AFS and AFSI, including guidance applicable to tax consolidated groups and certain foreign corporations. Notice 2023–64 also describes guidance related to (i) AFSI adjustments with respect to depreciation of property to which section 168 applies, (ii) the amortization of qualified wireless spectrum, (iii) the treatment of certain taxes, (iv) the prevention of certain duplications and omissions, (v) the determination of applicable corporation status, (vi) the CAMT FTC, and (vii) FSNOLs.

E. Notice 2024–10

On January 16, 2024, the Treasury Department and the IRS published Notice 2024–10, 2024–3 I.R.B., to provide additional interim guidance on determining the AFSI of a U.S. shareholder if a CFC pays a dividend. Notice 2024–10 also modifies and clarifies interim guidance provided in Notice 2023–64 regarding the AFS of a tax consolidated group.

F. Notice 2024–33

On April 15, 2024, the Treasury Department and the IRS issued Notice 2024–33, 2024–18 I.R.B. 959, which provided a limited waiver of the addition to tax under section 6655 to the extent the amount of any underpayment is attributable to a portion of a corporation's CAMT liability. The relief provided in Notice 2024–33 applied only for the purpose of calculating the installment of estimated tax by a corporate taxpayer that was due on or before April 15, 2024, or May 15, 2024 (in the case of a fiscal year taxpayer with a taxable year beginning in February 2024), with respect to a taxable year that began in 2024.

G. Notice 2024–47

On June 13, 2024, the Treasury Department and the IRS issued Notice 2024–47, 2024–27 I.R.B. 1, extending the relief provided in Notice 2024–33. Under Notice 2024–47, the limited waiver of the addition to tax under section 6655 that is attributable to a corporation's CAMT liability was extended to include the calculation of any installment of estimated tax by a corporate taxpayer that was due on or before August 15, 2024, with respect to a taxable year that began in 2024.

H. Reliance on Notices

Except as provided in the next paragraph, pursuant to section 15.02 of Notice 2023–64, a taxpayer may rely on the interim guidance provided in sections 3 through 7 of Notice 2023–7 (as modified and clarified by Notice 2023–64), sections 3 through 5 of Notice 2023–20, and sections 3 through 14 of Notice 2023–64, for taxable years ending on or before September 13, 2024.

Pursuant to section 5.01 of Notice 2024–10, taxpayers may rely on the interim guidance described in section 3 of Notice 2024–10 for Covered CFC Distributions (as defined therein) received on or before September 13, 2024. In addition, pursuant to section 5.02 of Notice 2024–10, taxpayers may rely on the interim guidance described in section 4.02(5)(b) and section 6.02 of Notice 2023–64 (as modified by Notice 2024–10) and section 4.04 of Notice

2024–10 for taxable years ending before September 13, 2024. A taxpayer may not rely on the unmodified text of sections 4.02(5)(b)(i) or 6.02 of Notice 2023–64 for any tax return filed on or after December 15, 2023.

I. Feedback Received

The Treasury Department and the IRS have received feedback from taxpayers, tax professionals, and other stakeholders regarding the CAMT, including feedback received in response to the CAMT notices. Based on the feedback received, and based on further consideration of sections 55, 56A, 59 and 1502, and the CAMT notices, the Treasury Department and the IRS are proposing these regulations under sections 55, 56A, 59, 1502, and 7805 as described in the Authority section. Certain CAMT issues with respect to which stakeholders have provided feedback, as well as issues on which the Treasury Department and the IRS have further reflected after publication of the CAMT notices, are discussed in the following Explanation of Provisions.

Explanation of Provisions

I. Proposed § 1.56A–1: Adjusted Financial Statement Income (AFSI)

Pursuant to the authority granted by section 56A(c)(2)(B), (c)(15), and (e), proposed § 1.56A–1 would provide definitions and general rules for determining the AFSI of a CAMT entity (that is, any entity identified in section 7701 of the Code and the regulations under section 7701 other than a disregarded entity) for purposes of sections 55 through 59 of the Code.

Proposed § 1.56A–1(a) would provide an overview of proposed § 1.56A–1 and clarify the scope of the section 56A regulations, which term is defined to mean proposed §§ 1.56A–1 through 1.56A–27 and § 1.1502–56A. Specifically, proposed § 1.56A–1(a)(2) would provide that the section 56A regulations apply to determine a CAMT entity's AFSI, as defined in proposed § 1.56A–1(b)(1), modified FSI, as defined in proposed § 1.56A–1(b)(32) (in the case of a partnership), or adjusted net income or loss, as defined in proposed § 1.56A–1(b)(2) (in the case of a CFC), for purposes of sections 55 through 59. Proposed § 1.56A–1(a)(2) would also provide that the section 56A regulations apply to any CAMT entity whose AFSI, modified FSI, or adjusted net income or loss, as applicable, is relevant for determining whether that CAMT entity, or any other CAMT entity, is an applicable corporation under section 59(k), or the tentative minimum tax amount under section 55(b)(2)(A) of

that CAMT entity, or any other CAMT entity. Significantly, while the definition of “CAMT entity” in proposed § 1.56A–1(b)(8) would include any entity identified in section 7701 of the Code and the regulations under section 7701 other than a disregarded entity, not all such entities are applicable corporations, nor are all relevant to the determination of CAMT liability for an applicable corporation, or to the determination of CAMT status.

Proposed § 1.56A–1(b) would provide definitions that apply for purposes of the section 56A regulations. Proposed § 1.56A–1(b)(1) would provide that the term “adjusted financial statement income” (AFSI) means the CAMT entity’s FSI for the taxable year, adjusted as provided in the section 56A regulations.

Proposed § 1.56A–1(b)(20) would provide that the term “financial statement income” (FSI) means the net income or loss of the CAMT entity set forth on the income statement included in the CAMT entity’s applicable financial statement (AFS) for the taxable year. FSI includes all the CAMT entity’s items of income, expense, gain, and loss reflected in the net income or loss set forth on the income statement for the taxable year, including nonrecurring items and net income or loss from discontinued operations, but does not include items reflected elsewhere in the CAMT entity’s AFS, including equity accounts such as retained earnings and other comprehensive income (OCI). OCI is not included in the net income or loss reflected on financial statements prepared in accordance with United States Generally Accepted Accounting Principles (GAAP) or International Financial Reporting Standards (IFRS). See Accounting Standards Codification (ASC) 220–10–20 and International Accounting Standards (IAS) 1.82A. Accordingly, because the determination of FSI starts with the net income or loss set forth on an AFS, OCI would not be included in that determination.¹

Proposed § 1.56A–1(b)(4) would provide that the term “AFS consolidation entries” means the financial accounting journal entries that are made in preparing a consolidated financial statement for a financial statement group in order to present the financial results of that financial statement group as though all members

of the financial statement group were a single economic entity. Proposed § 1.56A–1(b)(6) would provide that the term “applicable financial statement” (AFS) is defined in proposed § 1.56A–2(b). AFS means a CAMT entity’s financial statement from which a CAMT entity’s FSI and AFSI is determined. Proposed § 1.56A–1(b)(7) would provide that the term “CAMT basis” means the basis of an item for purposes of determining AFSI. Except as otherwise provided in the section 56A regulations, the CAMT basis of an item would be the AFS basis of the item, adjusted as provided in the section 56A regulations. Proposed § 1.56A–1(b)(22) would provide that the term “for regular tax purposes” means for the purposes of computing a CAMT entity’s regular tax liability, as defined under section 26(b) of the Code, or, if the CAMT entity is a pass-through entity or a CFC, the regular tax liability of a direct or indirect owner of the CAMT entity, as applicable.

Proposed § 1.56A–1(c) would provide general rules for determining a CAMT entity’s FSI, which is the starting point for determining the CAMT entity’s AFSI. The rules in proposed § 1.56A–1(c) generally would be consistent with section 5 of Notice 2023–64 and section 4 of Notice 2024–10.

Proposed § 1.56A–1(c)(1) would provide that FSI includes all items of income, expense, gain, and loss reflected in the net income or loss reported in the CAMT entity’s income statement, regardless of the treatment of these items for regular tax purposes. For example, FSI includes gain on a like-kind exchange that qualifies for non-recognition treatment under section 1031.

Proposed § 1.56A–1(c)(2) would set forth rules for determining the FSI of a tax consolidated group and CAMT entities that own disregarded entities. If the AFS of each member of the tax consolidated group is not the same consolidated financial statement (as determined under proposed § 1.56A–2(g)), the financial results of all CAMT entities reflected in the different AFSs of its members are combined to form a single consolidated financial statement that is treated as the AFS of the tax consolidated group. Adjustments are made to avoid duplication of financial results and to record any AFS consolidation entries that would have been made if such a consolidated financial statement actually had been prepared to the extent not already reflected in the financial results of any member. Proposed § 1.56A–1(c)(2)(i) would also provide that additional rules for determining the FSI of a tax

consolidated group are under proposed § 1.1502–56A. Proposed § 1.56A–1(c)(2)(ii) would provide that special rules for determining the FSI of a CAMT entity that owns a disregarded entity or branch are under proposed § 1.56A–9.

Proposed § 1.56A–1(c)(3) and (4) would provide the rules for determining the entity-level FSI, AFS basis, and balance sheet account amounts for a CAMT entity whose financial results are included in a single consolidated financial statement. It is necessary for a CAMT entity to determine entity-level FSI, AFS basis, and balance sheet account amounts because section 56A and other CAMT provisions require certain AFSI computations or adjustments to be performed at the entity level. For example, see section 56A(c)(2)(D), which determines the AFSI of a CAMT entity that is a partner in a partnership; section 56A(c)(3), which adjusts the AFSI of a CAMT entity for any taxable year that the CAMT entity is a U.S. shareholder of one or more CFCs; and section 55, which assesses the CAMT liability for each corporate filer notwithstanding that multiple corporations may be part of the same financial statement group.

Proposed § 1.56A–1(c)(3) would set forth rules for determining a CAMT entity’s FSI if the CAMT entity’s AFS is a consolidated financial statement (consolidated AFS) that reflects FSI for the financial statement group (consolidated FSI). Under the proposed rules, consolidated FSI that is the CAMT entity’s FSI must be (i) supported by the CAMT entity’s separate books and records, including trial balances, used to create the consolidated AFS, and (ii) generally determined without regard to the financial results of the other financial statement group members. Accordingly, the loss of one member of the financial statement group may not generally offset the income of another member in determining the consolidated FSI that is the CAMT entity’s FSI, even though the amounts are reflected in consolidated FSI on a net basis. See proposed § 1.56A–1(c)(3)(ii).

Additionally, under the proposed rules, the consolidated FSI that is the CAMT entity’s FSI would be determined without regard to AFS consolidation entries that are made in preparing the consolidated AFS and that either: eliminate the effect of transactions between the CAMT entity and other CAMT entities that are members of the same financial statement group; or eliminate any income, loss, expense, asset, liability, or other item of the CAMT entity with respect to its investment in another CAMT entity that

¹ Given the application of paragraph (c)(3)(iii)(B) of this section to disregard the AFS consolidation entry eliminating the \$200x loss from X’s investment in Y, the sum of the separate amounts of consolidated FSI that are X’s FSI and Y’s FSI (\$1,950x less 500x, or \$1,450x) is \$200x less than the consolidated FSI for the XY Consolidated AFS (\$1,650x).

is a member of the same financial statement group. These elimination entries are disregarded due to the statutory requirement for entity-level AFSI computations. Absent the rules in proposed § 1.56A–1(c)(3)(iii), items would be improperly omitted from AFSI because they would not be reflected in FSI. If the CAMT entity has an investment in a partnership or domestic corporation that is a member of the same financial statement group, the CAMT entity's FSI with respect to the investment is determined as though the CAMT entity had prepared a separate financial statement in which the investment was properly accounted for under the relevant accounting standards, for example, the Parent-Entity Financial Statement accounting standards described in ASC 810–10–45–11 (unless the CAMT entity already accounts for the investment in this manner in its separate books and records). Under this approach, parent company financial statements present the parent company's investment in its subsidiaries as a single line item on the balance sheet. The amount recorded as the investment reflects the parent's proportionate share of the subsidiary's net assets. Similarly, the parent company financial statements reflect the result of operations of the subsidiary as a single line item reflecting the parent's proportionate results. *See* proposed § 1.56A–1(c)(3)(iii). This rule is necessary because the investment account may not be properly maintained in the separate books of the CAMT entity investor, given that the FSI of the partnership or domestic corporation in which it has an investment is already included in the consolidated financial statement.

To prevent amounts from being duplicated or omitted from a CAMT entity's FSI, proposed § 1.56A–1(c)(3)(iv) would provide that AFS consolidation entries, other than elimination entries, that relate to one or more CAMT entities that are members of the financial statement group but are not reflected in the separate books and records of the CAMT entities are appropriately allocated or pushed down (or both), as applicable, to each CAMT entity to which the AFS consolidation entries relate and taken into account in each CAMT entity's FSI.

To ensure all items on a consolidated financial statement are properly accounted for by each CAMT entity that is a member of the financial statement group, proposed § 1.56A–1(c)(3)(v) would require each CAMT entity to maintain books and records sufficient to demonstrate how the CAMT entity's FSI, determined under the rules in

proposed § 1.56A–1(c)(3), reconciles to consolidated FSI of the financial statement group.

For reasons similar to those underlying proposed § 1.56A–1(c)(3), proposed § 1.56A–1(c)(4)(i) would provide that, if a CAMT entity's AFS is a consolidated financial statement, and if the CAMT entity's balance sheet accounts or AFS basis in an item is relevant for determining the CAMT entity's AFSI, then the CAMT entity uses the balance sheet accounts or AFS basis reflected in the CAMT entity's separate books and records used to create the CAMT entity's consolidated financial statement, determined under rules similar to the rules in proposed § 1.56A–1(c)(3)(iii) and (iv). Proposed § 1.56A–1(c)(4)(ii) would provide, in part, that any adjustments under purchase accounting (as defined in proposed § 1.56A–1(b)(35)) or push down accounting (as defined in proposed § 1.56A–1(b)(36)) reflected in a CAMT entity's AFS basis, balance sheet accounts, or FSI as a result of the application of proposed § 1.56A–1(c)(4)(i) may be disregarded for purposes of determining the CAMT entity's CAMT basis and AFSI under other sections of the section 56A regulations, for example, under proposed §§ 1.56A–4 and 1.56A–18. *See* parts IV and XVIII of this Explanation of Provisions.

Because it is necessary to determine a CAMT entity's FSI before determining its AFSI, proposed § 1.56A–1(c)(5) would provide that proposed § 1.56A–1(c) applies before proposed § 1.56A–1(d) and (e) and before all other sections of the section 56A regulations, other than proposed § 1.56A–2. Accordingly, references to AFS basis and FSI in proposed § 1.56A–1(d) and (e) and in proposed §§ 1.56A–3 through 1.56A–27 mean AFS basis and FSI as determined under the proposed § 1.56A–1(c) rules described previously.

Proposed § 1.56A–1(c)(6) would provide examples illustrating these rules.

Proposed § 1.56A–1(d) would provide general rules for determining a CAMT entity's AFSI under the section 56A regulations. The rules in proposed § 1.56A–1(d) for determining AFSI generally would be consistent with section 5 of Notice 2023–64. Accordingly, proposed § 1.56A–1(d)(1) would provide that AFSI includes all items of income, expense, gain, and loss reflected in a CAMT entity's FSI regardless of the treatment of these items for regular tax purposes, unless an exception is provided in another section of the section 56A regulations. For example, if a CAMT entity's FSI reflects

gain or loss from a transaction that qualifies for nonrecognition treatment for regular tax purposes, then the gain or loss is included in AFSI except as otherwise provided in the section 56A regulations.

Proposed § 1.56A–1(d)(2) would limit the adjustments allowed in determining a CAMT entity's AFSI to those provided in the section 56A regulations or in IRB guidance (as defined in proposed § 1.56A–1(b)(31)). The section 56A regulations would encompass all statutory AFSI adjustments and any AFSI adjustments provided with the use of the regulatory authority of the Treasury Department and the IRS described in the Authority section. Certain AFSI adjustments are based on the authority granted in section 56A(c)(15), which authorizes “such adjustments to adjusted financial statement income as the Secretary determines necessary to carry out the purposes of this section” Examples of AFSI adjustments based on section 56A(c)(15) authority are those found in proposed § 1.56A–21 (regarding troubled companies) and proposed § 1.56A–12(b)(2) (regarding the proceeds of certain credit transfers).

Proposed § 1.56A–1(d)(3) generally would provide that the AFSI adjustments described in the section 56A regulations, including those adjustments that affect the CAMT basis of an item, are made for taxable years ending after December 31, 2019. However, a transition rule in proposed § 1.56A–1(d)(3)(ii) generally would provide that, except as otherwise provided in the section 56A regulations (for example, in § 1.56A–15(c)(6) and (e)(2)(ii)(A) for AFSI adjustments for section 168 property), AFSI adjustments that otherwise affect the computation of AFSI in taxable years ending after December 31, 2019, but that arise from a transaction or an event that occurred in a taxable year ending on or before December 31, 2019, are not made. The rules underlying proposed § 1.56A–1(d)(3) are derived from the statute. For example, under section 59(k)(1)(A) and (B), a corporation is an applicable corporation for a taxable year if the average annual adjusted financial statement income of the corporation for a 3-taxable-year period that is prior to such taxable year and that ends after December 31, 2021, exceeds certain thresholds. In addition, section 56A(d)(3) defines a FSNOL as the amount of the net loss on the corporation's AFS for taxable years ending after 2019. The statute generally contemplates that events that occur before 2020 but affect AFSI computations and adjustments in 2020

and later need to be considered in determining AFSI in later years. Such an approach, however, may not be administrable in certain cases. Accordingly, except where it is appropriate to carry out the purposes of section 56A (for example, for section 168 property), the transition rule would neither permit nor require AFSI adjustments with respect to pre-2020 transactions or events.

To prevent duplications and omissions, proposed § 1.56A–1(d)(4) generally would provide that, if a gain or loss is reflected in FSI with respect to an item that has a CAMT basis that is different than the item's AFS basis, and if the gain or loss is required to be recognized for AFSI purposes, then the gain or loss reflected in FSI is redetermined for AFSI purposes by reference to the CAMT basis of the item.

Proposed § 1.56A–1(e) would provide that a CAMT entity whose AFSI is not expressed in U.S. dollars must translate its AFSI, after having made all other applicable adjustments under the section 56A regulations except for those adjustments that already are expressed in U.S. dollars, to U.S. dollars using the weighted average exchange rate, as defined in § 1.989(b)–1, for the CAMT entity's taxable year. See part VI.C. of this Explanation of Provisions for a discussion of the separate rules under proposed § 1.56A–6(c)(1) that apply for translating a CFC's adjusted net income or loss to U.S. dollars.

Proposed § 1.56A–1(f) would provide that the classification of an entity for regular tax purposes applies for purposes of the section 56A regulations regardless of whether the entity or arrangement is classified differently for AFS purposes. The proposed regulations would follow regular tax principles for purposes of determining whether an organization or other arrangement is treated as an entity separate from its owners, and whether an unincorporated organization or contractual arrangement is treated as a partnership. Accordingly, regardless of the AFS treatment, a participant in a contractual arrangement that rises to the level of an entity classified as a partnership for Federal income tax purposes is treated as owning a partnership investment to which section 56A(c)(2)(D)(i) adjustments may apply. This interpretation is supported by references in section 56A to entity classifications that do not exist for AFS purposes, such as disregarded entities, and provides for administrative consistency in situations in which the financial accounting rules and the Federal income tax rules provide for disparate structural characterizations.

For example, the Treasury and the IRS understand that in certain situations IFRS may treat a CAMT entity that is treated as a partner in a partnership for Federal income tax purposes as owning 100 percent of the partnership's equity, while treating another CAMT entity that is also treated as a partner in the partnership for Federal income tax purposes as a lender to that partnership. Although under IFRS a CAMT entity's partnership investment might be treated as that of a lender, the section 56A(c)(2)(D)(i) adjustment applies if the CAMT entity is treated as a partner in the partnership for Federal income tax purposes.

Proposed § 1.56A–1(g)(1) would require an applicable corporation to maintain books and records sufficient to demonstrate its compliance with the section 56A regulations, including the identification of the corporation's AFS, the determination of the corporation's FSI (including how FSI reconciles to consolidated FSI if determined under proposed § 1.56A–1(c)(3)), the substantiation of any adjustments required by the section 56A regulations, and the substantiation of AFS basis and CAMT basis. Proposed § 1.56A–1(h) would require an annual return on Form 4626, *Alternative Minimum Tax-Corporations*, setting forth information in the form and manner as the form or instructions prescribe.

II. Proposed § 1.56A–2: Applicable Financial Statement (AFS)

Pursuant to the authority granted by section 56A(b), (c)(15), and (e), proposed § 1.56A–2 would provide rules under section 56A(b) regarding the meaning and identification of an “applicable financial statement” and under section 56A(c)(2)(A) regarding the priority of consolidated financial statements.

A. Defining and Identifying an AFS

Section 56A(b) generally defines an “applicable financial statement” (AFS) for any taxable year as an applicable financial statement as defined in section 451(b)(3) or as specified by the Secretary in regulations or other guidance. Section 451(b)(3) and § 1.451–3(a)(5), which implements section 451(b)(3), generally provide that a taxpayer's AFS is the taxpayer's financial statement listed therein that has the highest priority. The financial statements listed in § 1.451–3(a)(5) are financial statements certified as being prepared in accordance with GAAP or IFRS, or financial statements filed with the Federal or a State government, an agency thereof, or a self-regulatory organization. Under § 1.451–3(a)(5), the financial statements that

would take the highest priority are those prepared in accordance with GAAP, followed by those prepared in accordance with IFRS, followed by those filed with certain Federal, State, and foreign governments or agencies thereof.

Consistent with sections 56A(b) and 451(b)(3), proposed § 1.56A–2(b) generally would provide that the term “AFS” means a CAMT entity's financial statement listed in proposed § 1.56A–2(c) that has the highest priority. Proposed § 1.56A–2(c) generally would adopt the list of financial statements and their order of priority set forth in section 451(b)(3) and § 1.451–3(a)(5).

However, proposed § 1.56A–2(c)(3) would expand the list of financial statements to include certain certified financial statements prepared in accordance with accounting standards other than GAAP and IFRS but issued by an accounting standards board charged with developing accounting standards for one or more jurisdictions. Because these statements have been certified, they would take a higher priority than financial statements filed with governments or agencies thereof, which are not subject to a certification requirement. However, these statements would take a lower priority than financial statements certified as being prepared in accordance with GAAP or IFRS.

Additionally, proposed § 1.56A–2(c)(5) and (6) would add two additional categories of financial statements of lower priority: (i) financial statements that are unaudited (or audited but not certified) and that are prepared using accepted accounting standards for an external non-tax purpose; and (ii) the CAMT entity's Federal income tax return or information return. These categories would be added to ensure CAMT entities that do not prepare a financial statement described in any of the other categories can perform the necessary AFSI computations required under sections 56A and 59(k), including for purposes of determining whether a corporation is an applicable corporation under section 59(k) or determining the AFSI of an applicable corporation under section 56A.

As discussed previously, the list of financial statements in proposed § 1.56A–2(c) would include certain certified financial statements that are used for a substantial non-tax purpose. Proposed § 1.56A–2(h) would provide examples illustrating the presence or absence of a substantial non-tax purpose. Comments are requested on whether additional examples are necessary to illustrate other cases in

which a financial statement is used for a substantial non-tax purpose.

A stakeholder requested guidance on what it means for a financial statement to be “certified,” as section 451(b)(3) and § 1.451–3(a)(5) do not address this issue. Proposed § 1.56A–2(d) would provide that a financial statement is certified for purposes of proposed § 1.56A–2(c) if it is: (i) certified by an independent financial statement auditor to present fairly the financial position and results of operations of a CAMT entity or financial statement group in conformity with the relevant financial accounting standards (that is, an unqualified or unmodified “clean” opinion); (ii) subject to a qualified or modified opinion by an independent financial statement auditor that the financial statement presents fairly the financial position and results of operations of a CAMT entity or financial statement group in conformity with the relevant financial accounting standards, except for the effects of the matter to which the qualification or modification relates (that is, a qualified or modified “except for” opinion); or (iii) subject to an adverse opinion by an independent financial statement auditor, but only if the auditor discloses the amount of the disagreement with the statement. This definition of the term “certified” generally follows the Public Company Accounting Oversight Board’s rules governing an audit opinion of an independent financial statement auditor and the definition of a “certified audited” financial statement in former § 1.56–1(c)(1)(ii) (see TD 8307, 55 FR 33671, 33679 (August 17, 1990)) (1990 Regulations). See AS 3101, *The Auditor’s Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion*; AS 3105, *Departures from Unqualified Opinions and Other Reporting Circumstances*; SEC Release No. 34–81916 (October 23, 1917).

Consistent with § 1.451–3(a)(5)(iv), proposed § 1.56A–2(e) and (f) would provide additional rules for prioritizing a restated financial statement over an original financial statement if the restated financial statement is issued prior to the date the CAMT entity files its original Federal income tax return for that taxable year, and for prioritizing annual financial statements over periodic financial statements.

B. Priority of a Consolidated Financial Statement

Section 56A(c)(2)(A) provides that, if a taxpayer’s financial results are reported on the AFS for a group of entities (that is, a financial statement group), rules similar to the rules in

section 451(b)(5) apply. Section 451(b)(5) provides that, in such a situation, the AFS for the financial statement group is treated as the AFS of the taxpayer. The rules in § 1.451–3(h) generally provide that the AFS for the group is treated as the AFS of the taxpayer, unless the taxpayer has a separate financial statement that is of equal or higher priority than the AFS for the financial statement group.

Proposed § 1.56A–2(g)(1) would provide general rules for determining a CAMT entity’s AFS if the financial results of the CAMT entity are included in a consolidated financial statement (that is, a financial statement that consolidates the financial results of more than one CAMT entity to treat such CAMT entities as if they were a single economic unit). This section generally would provide that, if a CAMT entity’s financial results are included in one or more consolidated financial statements described in proposed § 1.56A–2(c)(1) through (5) (that is, financial statements other than a tax return), the CAMT entity’s AFS is the consolidated financial statement with the highest priority within those sections. However, if the CAMT entity’s financial results are also reported on one or more separate financial statements that are of equal or higher priority to the highest priority consolidated financial statement (as determined under proposed § 1.56A–2(c)), then the CAMT entity’s AFS is the separate financial statement with the highest priority under proposed § 1.56A–2(c).

Proposed § 1.56A–2(g)(2)(i) through (iv) would provide exceptions to the use of a separate financial statement if the CAMT entity is a member of a tax consolidated group.

Proposed § 1.56A–2(g)(2)(i) generally would require a CAMT entity that is a member of a tax consolidated group that has only one consolidated financial statement described in proposed § 1.56A–2(c)(1) through (5) that contains the financial results of all members of the tax consolidated group to use that consolidated financial statement as the CAMT entity’s AFS, even if the CAMT entity’s financial results also are reported on a separate financial statement (or a consolidated financial statement that has the financial results of some, but not all, members of the tax consolidated group) that is of equal or higher priority to that consolidated financial statement.

Proposed § 1.56A–2(g)(2)(ii) generally would provide that, if there is more than one consolidated financial statement described in proposed § 1.56A–2(c)(1) through (5) that contains the financial

results of all members of a tax consolidated group, then a CAMT entity that is a member of the tax consolidated group uses the consolidated financial statement with the highest priority, even if the CAMT entity’s financial results also are reported on a separate financial statement (or a consolidated financial statement that has the financial results of some, but not all, members of the tax consolidated group) that is of equal or higher priority to that consolidated financial statement. Proposed § 1.56A–2(g)(2)(iii) and (iv) would provide additional exceptions that apply if there are no consolidated financial statements that contain the financial results of all members of a tax consolidated group.

As noted previously, if the AFS of each member of a tax consolidated group is not the same consolidated financial statement after the application of proposed § 1.56A–2(g), proposed § 1.56A–1(c)(2) would provide rules for combining the different financial statements of the members of the tax consolidated group to form a single consolidated financial statement that is treated as the AFS of the tax consolidated group for purposes of determining FSI and AFSI of the tax consolidated group under the section 56A regulations.

The foregoing rules would be consistent with the treatment of the members of a tax consolidated group as a single corporation for purposes of the CAMT. See section 56A(c)(2)(B) and proposed § 1.1502–56A(a)(2). In addition, these proposed rules would alleviate the administrative burden of determining the FSI and AFSI of a tax consolidated group by pulling information from financial statements of different members using different accounting standards.

In order to minimize the inconsistent treatment of transactions between FPMG members computing AFSI based on different financial accounting standards, proposed § 1.56A–2(g)(2)(v) would provide an additional exception to the use of a separate financial statement for a CAMT entity that is a member of an FPMG. Proposed § 1.56A–2(g)(2)(v) would provide that, if the FPMG common parent (as defined in proposed § 1.56A–1(b)(25)) prepares a consolidated financial statement (FPMG consolidated AFS) that includes the CAMT entity, the CAMT entity uses the FPMG consolidated AFS as the CAMT entity’s AFS, regardless of whether the CAMT entity’s financial results also are reported on a separate financial statement that is of equal or higher priority to the FPMG consolidated AFS.

Proposed § 1.56A–9, discussed later, would provide rules for attributing

items of a disregarded entity or branch to its CAMT entity owner by treating them as a single CAMT entity. For this purpose, proposed § 1.56A–2(h) would provide that if the financial results of a disregarded entity or branch are reflected in the CAMT entity owner's AFS, the disregarded entity or branch may not determine its own AFS under the rules of § 1.56A–2 as if it were a separate CAMT entity (that is, the CAMT entity owner uses its AFS to determine its FSI and AFSI under the rules in proposed § 1.56A–9). Proposed § 1.56A–2(h) would further provide that if the financial results of a disregarded entity or branch are not reflected in the CAMT entity owner's AFS, the disregarded entity or branch determines its own AFS under the rules of proposed § 1.56A–2, as if it were a CAMT entity (however, *see* proposed § 1.56A–9(b)(3) for rules for determining the FSI and AFSI of a CAMT entity that owns a disregarded entity or branch that determines its own AFS).

Proposed § 1.56A–2 generally would be consistent with the guidance described in section 4 of Notice 2023–64, as modified and clarified in section 4 of Notice 2024–10.

III. Proposed § 1.56A–3: AFSI Adjustments for AFS Year and Taxable Year Differences

Pursuant to the authority granted by sections 56A(c)(1), (c)(15), and (e), proposed § 1.56A–3 would provide rules under section 56A(c)(1) regarding appropriate adjustments that are made to AFSI if an AFS covers a period other than the taxable year. If a CAMT entity's AFS is prepared on the basis of a financial accounting period that differs from the CAMT entity's taxable year, proposed § 1.56A–3(b) would require the CAMT entity to compute FSI and AFSI as if the financial reporting period were the same as the taxable year by conducting an interim closing of the books using the accounting standards the CAMT entity uses to prepare the AFS.

The Treasury Department and the IRS considered the methods in the 1990 Regulations and in § 1.451–3(h)(4), among other methods, in determining which adjustments are appropriate under section 56A(c)(1). Those methods included (i) performing an interim closing of the books, (ii) using pro rata amounts for each financial accounting year that includes any part of the taxable year, and (iii) in the case of an accounting year ending at least five months after the end of the taxable year, using the amount reported for the financial accounting year ending within the taxable year. The proposed

regulations would provide for adjustments based on an interim closing of the books because this method carries out the purposes of the statute by producing an accurate measurement of AFSI for the taxable year.

Proposed § 1.56A–3(b)(2) would provide examples illustrating the application of an interim closing of the books to determine FSI and AFSI when a CAMT entity's AFS is prepared on the basis of a financial accounting period that differs from the taxable year.

IV. Proposed § 1.56A–4: AFSI Adjustments and Basis Determinations With Respect to Foreign Corporations

A. Overview

Section 56A(c)(2)(C) provides that a taxpayer's AFSI with respect to a corporation that is not a member of the taxpayer's tax consolidated group generally only takes into account dividends (reduced to the extent provided by the Secretary in regulations or other guidance) and other amounts that are includible in gross income or deductible as a loss under chapter 1 (other than amounts required to be included under sections 951 and 951A or such other amounts as provided by the Secretary). Section 56A(c)(3)(A) provides that the AFSI of a taxpayer that is a U.S. shareholder of one or more CFCs is adjusted to also take into account the taxpayer's pro rata share of items taken into account in computing the net income or loss set forth on the AFS (as adjusted under rules similar to those that apply in determining AFSI) of each CFC with respect to which the taxpayer is a U.S. shareholder. *See* proposed § 1.56A–6 (AFSI adjustments with respect to CFCs).

Section 56A(c)(15) authorizes the Secretary to issue regulations or other guidance to provide for such adjustments to AFSI as the Secretary determines necessary to carry out the purposes of section 56A, including: (i) adjustments to prevent the omission or duplication of any item; and (ii) adjustments to carry out the principles of part II of subchapter C of chapter 1 (relating to corporate liquidations) and part III of subchapter C of chapter 1 (relating to corporate organizations and reorganizations). *See also* section 56A(e).

Pursuant to the authority granted by sections 56A(c)(2)(C), (c)(15), and (e), proposed § 1.56A–4 would provide rules concerning foreign corporations. More specifically, proposed § 1.56A–4 would provide rules under section 56A(c)(2)(C) for determining the amount of AFSI of a CAMT entity that results solely from the CAMT entity's

ownership of stock of a foreign corporation. Additionally, proposed § 1.56A–4 would provide (i) rules under section 56A(c)(15)(B) for determining the AFSI and CAMT basis consequences of certain transactions involving foreign corporations (referred to as covered asset transactions); (ii) rules regarding the treatment of elections made under section 338(g) of the Code for acquisitions of stock of foreign corporations; (iii) rules regarding the treatment of purchase accounting and push down accounting with respect to acquisitions of stock of foreign corporations; (iv) rules for adjusting AFSI in certain circumstances when basis in foreign stock received is determined under section 358 of the Code; (v) rules for adjusting modified FSI of a partnership in certain circumstances when the partnership distributes stock of a foreign corporation; and (vi) examples illustrating application of the rules in proposed § 1.56A–4.

The interaction of section 56A(c)(2)(C) and (c)(3) raises unique double-counting issues with respect to distributions by CFCs and transfers of stock of CFCs. For example, absent guidance, distributions by CFCs could result in earnings of CFCs being included in the AFSI of a U.S. shareholder of the CFC more than once. Specifically, a duplication of items may result if the U.S. shareholder includes in AFSI, under section 56A(c)(2)(C), the amount of a dividend received from earnings associated with adjusted net income or loss that the U.S. shareholder also includes in AFSI under section 56A(c)(3). A duplication of items may also result if an upper-tier CFC includes in adjusted net income or loss the amount of a dividend received from a lower-tier CFC from earnings associated with adjusted net income or loss that the U.S. shareholder includes in AFSI under section 56A(c)(3) with respect to the lower-tier CFC. Section 56A grants the Secretary broad authority to address this issue. *See* section 56A(c)(2)(C), (c)(15)(A), and (e).

The Treasury Department and the IRS considered various approaches to applying section 56A(c)(2)(C) to items that result solely from a CAMT entity's ownership of stock of a CFC. As indicated previously, the interaction of section 56A(c)(2)(C) and (c)(3) raises unique duplication concerns that are not present in the case of a CAMT entity's ownership of stock of a domestic corporation. In the regular tax context, similar duplication concerns relating to U.S. taxpayers owning the stock of CFCs have given rise to complex rules (*see, for example, sections 959 and 961*). Creating a similar

system for CAMT would be a substantial undertaking and an impediment to releasing timely guidance addressing this issue and would also increase taxpayers' compliance burden and the administrative burden on the IRS. To avoid these issues, the proposed regulations would require taxpayers to rely on existing regular tax rules with respect to CFCs within CAMT. Because the regular tax rules apply to both distributions by CFCs and transfers of stock of CFCs, the proposed regulations would require taxpayers to rely on certain regular tax rules for determining both the earnings and profits of foreign corporations and the basis of the stock of foreign corporations. Additionally, relying on the regular tax rules would be consistent with the statutory language of section 56A(c)(2)(C). *See* for example, the statutory language of section 56A(c)(2)(C) (referring to "other amounts which are includible in gross income or deductible as a loss under this chapter").

The Treasury Department and the IRS also are of the view that ownership of stock of all foreign corporations should be subject to the same rules under proposed § 1.56A-4 to avoid the need for, and complexity arising from, rules addressing foreign corporations' transition into and out of CFC status. Accordingly, proposed § 1.56A-4 would apply to the ownership of stock of any foreign corporation, regardless of whether the foreign corporation is a CFC. Compare the discussion in part XVIII of this Explanation of Provisions of the rules under section 56A(c)(2)(C) regarding investments in domestic corporations that are not members of the CAMT entity's tax consolidated group and the rules under section 56A regarding certain transactions involving domestic corporations.

B. General Rule for Ownership of Foreign Stock

Proposed § 1.56A-4(c)(1) would provide for adjustments to a CAMT entity's AFSI as a result of direct ownership of stock of a foreign corporation. Specifically, consistent with Notice 2024-10, proposed § 1.56A-4(c)(1)(i) would require a CAMT entity, in calculating AFSI, to disregard any items of income, expense, gain, and loss resulting from ownership of stock of the foreign corporation, including any such items that result from acquiring or transferring such stock, reflected in the CAMT entity's FSI. Proposed § 1.56A-4(c)(1)(ii) would generally require the CAMT entity to include in AFSI any items of income, deduction, gain, and loss for regular tax purposes resulting from ownership of stock of the foreign

corporation, including any items that result from acquiring or transferring such stock (for example, transaction costs). Proposed § 1.56A-4(e) would provide that if a partnership directly owns stock of a foreign corporation, then in determining the AFSI of a CAMT entity that is a partner in the partnership (or an indirect partner, in the case of tiered partnerships), the partner takes into account the tax items described in proposed § 1.56A-4(c)(1)(ii) (described in the preceding sentence) that are allocated to the partner for regular tax purposes. However, proposed § 1.56A-4(c)(1)(i) (disregarding certain items reflected in FSI) would apply at the partnership level because the partnership, as the direct owner of the stock of the foreign corporation, may have reflected certain items resulting from the ownership of stock of the foreign corporation in its FSI.

As one illustration of proposed § 1.56A-4(c)(1), the AFSI of a CAMT entity that is a domestic corporation would not reflect any inclusion with respect to a dividend received from a foreign corporation if the CAMT entity is eligible for a dividends-received deduction under section 245A of the Code for the entire amount of the dividend, because the item of FSI with respect to the dividend would be disregarded, and the regular tax income item with respect to the dividend would be offset by an item of deduction resulting from the receipt of the dividend. As another example, the AFSI of a CAMT entity that is a domestic corporation would generally not reflect any inclusion with respect to a distribution of previously taxed earnings and profits (PTEP) (described in section 959 of the Code) by a foreign corporation to the CAMT entity because the item of FSI with respect to the distribution would be disregarded and section 959(a) excludes the regular tax amount of the distribution of PTEP from the CAMT entity's gross income. *See also* proposed § 1.56A-6(c)(2) (applying similar rules in the context of dividends received by a CFC from a foreign corporation) and part VI of this Explanation of Provisions (regarding AFSI adjustments with respect to CFCs). Also, under proposed § 1.56A-4(c)(1)(ii), the AFSI of a CAMT entity that is a shareholder of a passive foreign investment company (as defined in section 1297 of the Code) would include regular tax items resulting from the ownership of the stock of the passive foreign investment company, including any amounts under sections 1291, 1293, and 1296 of the Code. The Treasury

Department and the IRS are considering whether additional rules should be included in the final regulations to address passive foreign investment companies, including rules that would specifically address adjustments to AFSI with respect to the ownership of stock in a section 1291 fund and the indirect ownership of stock in a lower-tier passive foreign investment company. In addition, the Treasury Department and the IRS are considering whether rules specific to passive foreign investment companies would be appropriate in § 1.59-4 (CAMT foreign tax credit), including rules similar to the rules in section 1291(g)(1)(C)(ii) in respect of foreign taxes paid by section 1291 funds and rules similar to the rules in section 1293(f) in respect of foreign taxes paid by qualifying electing funds. The Treasury Department and the IRS request comments on this topic.

Under proposed § 1.56A-4(c)(1)(ii), no adjustment to AFSI would be made for amounts included in a CAMT entity's gross income under sections 951 and 951A. *See* section 56A(c)(2)(C). Furthermore, because a deduction under section 250 of the Code arises with respect to a foreign corporation only in connection with an income inclusion under section 951A, no adjustment is made to AFSI for amounts deducted under section 250. Additionally, because adjusted net income or loss of a CFC is computed without regard to foreign income taxes (*see* proposed §§ 1.56A-8(b) and 1.56A-6(c)(1)), no adjustment would be made for the gross-up for deemed-paid foreign tax credits under section 78 of the Code.

The items described in proposed § 1.56A-4(c)(1)(ii) are determined under regular tax rules, including subchapter C of chapter 1 (subchapter C), taking into account the CAMT entity's basis in the stock of the foreign corporation for regular tax purposes and the foreign corporation's earnings and profits for regular tax purposes. Accordingly, any AFSI consequences of a distribution in respect of, or transfer of, stock of a foreign corporation would be determined, as applicable, by reference to the earnings and profits of the foreign corporation for regular tax purposes or the basis in such stock for regular tax purposes. *See*, for example, proposed § 1.56A-4(d)(5) (CAMT basis in foreign stock is equal to its basis for regular tax purposes). Further, CAMT retained earnings are not relevant in determining AFSI in respect of ownership of stock of foreign corporations. Certain earnings and profits of a foreign corporation for regular tax purposes carry over to a domestic corporation under section 381(c)(2) of the Code for purposes of

determining that domestic corporation's CAMT retained earnings. *See* § 1.367(b)–3(f)(1) (providing the extent to which earnings and profits of a foreign corporation carryover to a domestic corporation in an inbound nonrecognition transaction); proposed § 1.56A–4(h)(8) (*Example 8*); and proposed § 1.56A–18(c)(7)(i). CAMT retained earnings of a domestic corporation would not carry over to a foreign corporation under section 381(c)(2) because CAMT retained earnings are not relevant in determining AFSI in respect of ownership of stock of foreign corporations. This is the case even though earnings and profits of a domestic corporation may carry over to a foreign corporation under section 381(c)(2) for purposes of determining the foreign corporation's earnings and profits for regular tax purposes.

While proposed § 1.56A–4(c)(1)(ii) would determine the AFSI consequences resulting from ownership of stock of a foreign corporation by reference to the basis in that stock for regular tax purposes and the foreign corporation's earnings and profits for regular tax purposes, the rules in proposed §§ 1.56A–18 and 1.56A–19 generally would determine the AFSI consequences resulting from ownership of stock of a domestic corporation by reference to the CAMT basis in that stock and the domestic corporation's CAMT retained earnings.

C. Covered Asset Transactions

Pursuant to the authority granted by section 56A(c)(15)(B), proposed § 1.56A–4 would incorporate certain rules under subchapter C for determining the AFSI and CAMT basis consequences of certain transactions involving foreign corporations (referred to as covered asset transactions). However, the proposed rules would use the CAMT basis of transferred assets to determine the AFSI consequences of such transfers and that basis may be different than the basis for regular tax purposes, except in the case of foreign stock. Using CAMT basis for assets other than foreign stock is consistent with the general rule in proposed § 1.56A–1 and appropriate because the duplication concerns that exist for foreign stock are not present.

Proposed § 1.56A–4(b), which would provide definitions that apply for purposes of proposed § 1.56A–4, would define the term covered asset transaction. The definition of covered asset transaction uses the concept of a component transaction (within the meaning of proposed § 1.56A–18(b)(6)) to distinguish the fact patterns in which the rules of proposed § 1.56A–4 (which

apply to ownership of foreign stock) apply versus the rules of proposed §§ 1.56A–18 and 1.56A–19 (which generally apply to ownership of domestic stock). The rules of proposed §§ 1.56A–18 and 1.56A–19 apply on a component transaction-by-component transaction basis. Covered asset transactions include two categories of transactions.

The first category of covered asset transactions involves a transfer of an asset to, or by, a foreign corporation. More specifically, this first category includes a component transaction in which one or more assets are: (i) transferred by a foreign corporation in a transfer to which section 311 of the Code applies; (ii) transferred by a foreign corporation in a transfer that is part of a complete liquidation to which sections 332 and 337 of the Code apply; (iii) transferred to a foreign corporation in a transfer to which section 351 or section 361 of the Code applies; (iv) transferred by a foreign corporation in a transfer to which section 361 applies; (v) stock, or stock and securities, of a domestic corporation described in section 355(a)(1)(A) of the Code and transferred by a foreign corporation in a transfer to which section 355 applies; or (vi) securities of a foreign corporation that is a party to a reorganization described in section 368(a)(1) and transferred in a transfer to which section 354 or 356 applies.

The second category of covered asset transactions involves a transfer of foreign stock to or by a domestic corporation. That is, this second category includes a component transaction in which one or more assets, at least one of which is stock of a foreign corporation, are: (i) transferred by a domestic corporation in a transfer to which section 311 applies; (ii) transferred by a domestic corporation in a transfer that is part of a complete liquidation to which sections 332 and 337 apply; (iii) transferred to a domestic corporation in a transfer to which section 351 or section 361 applies; (iv) transferred by a domestic corporation in a transfer to which section 361 applies; (v) stock, or stock and securities, of a foreign corporation described in section 355(a)(1)(A) and transferred by a domestic corporation in a transfer to which section 355 applies; or (vi) securities of a domestic corporation that is a party to a reorganization described in section 368(a)(1) and transferred in a transfer to which section 354 or 356 applies, provided the securities are exchanged for stock or securities of a foreign corporation that is a party the reorganization.

Proposed § 1.56A–4(c)(2) would provide for adjustments to a CAMT entity's AFSI as a result of a transfer of an asset other than stock of a foreign corporation in a covered asset transaction. Specifically, proposed § 1.56A–4(c)(2)(i) would require a CAMT entity, in calculating AFSI, to disregard any items of income, expense, gain, and loss with respect to the transferred asset resulting from the covered asset transaction reflected in the CAMT entity's FSI. Proposed § 1.56A–4(c)(2)(ii) would require the CAMT entity to include any items of income, deduction, gain, and loss for regular tax purposes with respect to the transferred asset resulting from the covered asset transaction; however, for this purpose, the amount of each such item would be computed by substituting the CAMT entity's CAMT basis in the transferred asset for the CAMT entity's basis in the transferred asset for regular tax purposes.

Proposed § 1.56A–4(d)(1) would provide rules for determining the CAMT basis in an asset that is transferred in a covered asset transaction. The rules for determining CAMT basis would rely on the principles of the Code that apply to these transactions for determining basis for regular tax purposes, but use CAMT basis instead of regular tax basis as applicable. If the asset is transferred in a covered asset transaction described in section 311, the transferee's CAMT basis in the asset would be determined in the manner described in section 301(d) of the Code. If the asset is transferred in a covered asset transaction described in sections 332 and 337, the transferee's CAMT basis in the asset would be determined in the manner described in section 334(b) of the Code, substituting the transferor's CAMT basis in the asset for the transferor's basis in the asset for regular tax purposes. If the asset is transferred in a covered asset transaction described in section 351 or 361, the transferee's CAMT basis in the asset would be determined in the manner described in section 362 of the Code, substituting the transferor's CAMT basis in the asset for the transferor's basis in the asset for regular tax purposes and substituting the amount of gain included in the transferor's AFSI for the amount of gain recognized to the transferor for regular tax purposes. However, if the transferor is not a CAMT entity, the transferee's CAMT basis in the asset would be equal to the transferee's basis in the asset for regular tax purposes. Thus, if an individual transfers an asset to a foreign corporation in a transaction described in section 351, this rule would apply to the

extent the individual is not a CAMT entity (that is, an individual that does not operate a trade or business that would not be required to determine AFSI for any purpose under the section 56A regulations).

If the asset transferred is stock or securities of a domestic corporation described in section 355(a)(1)(A) and the asset is transferred by a foreign corporation in a covered asset transaction to which section 355 applies, the transferee's CAMT basis in the transferred stock or securities of the domestic corporation would be equal to the transferee's basis in the stock or securities for regular tax purposes. If the asset transferred is stock or securities of a foreign corporation described in section 355(a)(1)(A) and the asset is transferred by a domestic corporation in a covered asset transaction to which section 355 applies, the transferee's CAMT basis in the stock or securities of the domestic corporation would be determined by applying section 358, substituting the transferee's CAMT basis in the stock or securities of the domestic corporation for the transferee's basis in the stock of the domestic corporation for regular tax purposes. If the asset transferred is securities of a foreign corporation that is a party to a reorganization described in section 368(a)(1) and the asset received in exchange for the securities is not stock of a foreign corporation that is a party to the reorganization, the transferee's CAMT basis in the asset received would be determined by applying section 358, substituting the transferee's CAMT basis in the securities of the foreign corporation for the transferee's basis in such securities for regular tax purposes. If the asset transferred is securities of a domestic corporation that is a party to a reorganization described in section 368(a)(1) and the asset received in exchange for the securities is not stock of a foreign corporation that is a party to the reorganization, the transferee's CAMT basis in the asset received would be determined by applying section 358, substituting the transferee's CAMT basis in the securities of the domestic corporation for the transferee's basis in such securities for regular tax purposes.

D. Section 338(g) Transactions

Proposed § 1.56A-4(c)(3) would provide adjustments to the AFSI of a foreign corporation the stock of which is purchased in a transaction where the purchaser makes an election under section 338(g) (a section 338(g) transaction), consistent with the general principles underlying the rules in proposed § 1.56A-4 to follow regular tax rules for foreign stock and transactions

involving foreign corporations. Specifically, proposed § 1.56A-4(c)(3) would require such a foreign corporation, when calculating AFSI, to include any net gain or loss that results for regular tax purposes with respect to all assets the foreign corporation is treated as selling by reason of the section 338(g) transaction; however, for this purpose, the amount of gain or loss with respect to each asset that the foreign corporation is deemed to have sold by reason of the section 338(g) transaction is computed by substituting the foreign corporation's CAMT basis in the asset for the foreign corporation's basis in the asset for regular tax purposes. Proposed § 1.56A-4(d)(2) would provide a parallel rule that if stock of a foreign corporation is acquired in a section 338(g) transaction, immediately after the section 338(g) transaction, the foreign corporation's CAMT basis in the assets it is deemed to have purchased by reason of the section 338(g) transaction is equal to the foreign corporation's basis in those assets for regular tax purposes. *See* proposed § 1.56A-18(g)(2) and (4) (addressing AFSI consequences to a domestic target corporation and CAMT basis in the target corporation's assets in a transaction where there is an election under section 336(e), 338(g), or 338(h)(10) of the Code).

E. Purchase Accounting and Push Down Accounting Adjustments

Proposed § 1.56A-1(c)(4)(ii) would provide that, except as otherwise provided, any purchase accounting and push down accounting adjustments, as applicable, are required to be reflected in the CAMT entity's AFSI basis, balance sheet accounts, and FSI. Proposed § 1.56A-4(c)(4) would provide an exception to this general rule such that any purchase accounting or push down accounting adjustments, as applicable, with respect to an acquisition of the stock of a foreign corporation by a CAMT entity would be disregarded for purposes of determining the CAMT entity's AFSI. Proposed § 1.56A-4(d)(4) would provide a parallel rule that any purchase accounting or push down accounting adjustments, as applicable, with respect to an acquisition of the stock of a foreign corporation by a CAMT entity would be disregarded for purposes of determining the CAMT basis in the foreign corporation's assets. *See* proposed § 1.56A-18(c)(3) (addressing purchase accounting and push down accounting adjustments where the stock of a domestic corporation is acquired).

F. AFSI Adjustments in Certain Cases in Which Basis in Foreign Stock Is Determined Under Section 358

CAMT basis in stock of a foreign corporation is equal to the basis in the stock for regular tax purposes. *See* proposed § 1.56A-4(d)(5). If stock of a foreign corporation is received in a transaction subject to section 358, the recipient CAMT entity's basis in the foreign stock received for regular tax purposes is determined in whole or in part by reference to the basis in other property for regular tax purposes, which may be different than the CAMT basis in such property. For example, if the stock of a foreign corporation is received by reason of an asset transferred to the foreign corporation in a transaction described in section 351(a), the transferor's basis in the stock of the foreign corporation received is determined under section 358 by reference to the transferor's basis in the asset transferred. As another example, if the stock of a foreign corporation is received in a distribution described in section 355, the distributee's basis in the stock of the foreign corporation received is determined under section 358 by reference to the distributee's basis in the stock of the distributing corporation.

Proposed § 1.56A-4(f) would provide rules that apply to certain cases in which a CAMT entity receives stock of a foreign corporation in a covered asset transaction and the CAMT entity's basis in the stock of the foreign corporation for regular tax purposes is determined under section 358. These rules compare the CAMT basis in the stock of the foreign corporation (which equals its basis for regular tax purposes) with what the CAMT basis would have been had it been determined under section 358, substituting the CAMT basis for the basis for regular tax purposes in the property by reference to which the basis of the foreign stock for regular tax purposes is determined in whole or in part (such amount, the hypothetical CAMT basis). To the extent a CAMT entity's basis in the stock of the foreign corporation received for regular tax purposes exceeds its hypothetical CAMT basis in that stock (referred to as basis disparity in this part IV of this Explanation of Provisions), the CAMT entity increases its AFSI for the taxable year in which the foreign stock is received if either of two requirements is satisfied.

The first requirement is satisfied if a principal purpose of the covered asset transaction is to avoid treatment of the CAMT entity or another CAMT entity as an applicable corporation or to reduce or otherwise avoid a liability under

section 55(a) (principal purpose rule). The second requirement is satisfied if within two years of the date the stock of the foreign corporation is received, the basis in such stock of the foreign corporation is taken into account, in whole or in part, in determining the AFSI of the recipient CAMT entity or another CAMT entity (two-year rule). The principles of the two-year rule apply with respect to any asset whose basis for regular tax purposes is determined in whole or in part by reference to the basis of the foreign stock received. For example, if stock of the foreign corporation received is subsequently transferred in a transaction described in section 351(a) to another foreign corporation in exchange for stock of such other foreign corporation (or if the foreign stock received is exchanged under section 354 of the Code for stock in another foreign corporation), then the two-year rule applies to both the stock of the foreign corporation received in the initial transfer as well as the stock of the other foreign corporation received in the subsequent transfer.

To illustrate the principal purpose rule, consider the following fact pattern. USP, a domestic corporation, owns all the stock of a controlled foreign corporation (CFC1), which has a functional currency of the U.S. dollar. CFC1 owns Asset A, with a basis for regular tax purposes of \$10x, a CAMT basis of \$4x, and fair market value of \$20x. The intent is for CFC1 to sell Asset A. For CAMT purposes, if CFC1 were to sell Asset A, CFC1 would include \$16x in adjusted net income or loss under proposed § 1.56A–6 (fair market value of \$20x, less CAMT basis of \$4x) and USP's pro rata share of CFC1's adjusted net income or loss would take into account the \$16x. With a principal purpose of reducing CFC1's adjusted net income or loss and USP's pro rata share, Asset A is contributed to a newly formed foreign corporation (CFC2) in exchange solely for stock of CFC2 in a transaction that qualifies under section 351(a) for regular tax purposes and therefore is a covered asset acquisition (asset transfer). CFC1's CAMT basis in the stock of CFC2 received is equal to \$10x (the amount of CFC1's basis in the stock of CFC2 for regular tax purposes), and CFC1's hypothetical CAMT basis in the stock of CFC2 is \$4x. In a transaction purported to be separate from the asset transfer for purposes of qualifying the asset transfer under section 351, CFC1 then subsequently sells the stock of CFC2 to a third party in exchange for cash, and the CAMT basis for purposes of

determining the amount included in CFC1's adjusted net income or loss is \$10x. Under the principal purpose rule, CFC1's adjusted net income or loss is increased by the \$6x basis disparity (the excess of the basis in the stock of CFC2 for regular tax purposes and CAMT purposes (\$10x) over the hypothetical CAMT basis (\$4x)) for the taxable year in which the asset transfer occurs.

The Treasury Department and the IRS considered alternatives to addressing the basis disparity concern. One alternative is to adjust (increase or decrease) the recipient CAMT entity's AFSI in all cases in which there is a basis disparity, including if the basis disparity arises when a CAMT entity's basis in stock of the foreign corporation received for regular tax purposes is less than the hypothetical CAMT basis. However, in this case, if the CAMT entity and the foreign corporation whose stock is received are related, the decrease in AFSI would be allowed only when the recipient CAMT entity and the foreign corporation are no longer related. Another alternative is to implement an account system whereby the basis disparity would be tracked and taken into account as an increase or decrease to AFSI, as applicable, as the basis in the stock of the foreign corporation received is taken into account, for example, upon a taxable sale or a return of basis distribution under section 301. A concern with an account tracking system is that it would introduce complexity, including the need to track the account reflecting stock of each foreign corporation for a potentially significant period and address subsequent transactions that duplicate basis in the foreign stock (transactions in which basis in another asset is determined by reference to the basis in the foreign stock, including section 351 transfers of the foreign stock). The Treasury Department and the IRS welcome comments on the proposed rule and whether alternatives should be further considered.

G. Adjustments to AFSI When Certain Foreign Stock Is Distributed by a Partnership

Proposed § 1.56A–4(g) would provide rules for distributions of certain stock of a foreign corporation by a partnership to a related CAMT entity. If a partnership distributes stock of a foreign corporation and the distributee partner increases its basis in the stock pursuant to section 732(b) of the Code for regular tax purposes, section 734(b)(2)(B) of the Code generally requires the partnership to reduce the basis of its remaining property for regular tax purposes if either the partnership has an election

under section 754 of the Code in effect or the distribution results in a substantial basis reduction as defined in section 734(d). There is no similar mechanism under CAMT, however, for the partnership to reduce its basis in remaining property, other than its basis in any remaining foreign stock to the extent the basis in such stock is reduced for regular tax purposes. As a result, if the distributee partner were to subsequently dispose of the foreign stock, there would be an omission from AFSI in the amount of the basis increase under section 732(b) that did not result in a corresponding basis decrease under section 734(b)(2)(B) to any remaining foreign stock held by the partnership.

The Treasury Department and the IRS are concerned that related parties might abuse the rules relating to the CAMT basis of foreign stock distributed by a partnership to create omissions from AFSI. Accordingly, proposed § 1.56A–4(g)(1) would provide that if a partnership distributes stock of a foreign corporation to a partner that is a related CAMT entity, and the basis for regular tax purposes in the foreign stock to the related CAMT entity distributee is increased pursuant to section 732(b) (distributee step-up amount), and the distributee step-up amount is greater than the amount, if any, that the distributing partnership is required to decrease its basis for regular tax purposes in any remaining foreign stock pursuant to section 734(b)(2)(B) (partnership basis decrease amount), the distributing partnership must increase its modified FSI for the taxable year of the distribution by any excess of the distributee step-up amount over the partnership basis decrease amount. For purposes of this rule, a partner would be a related CAMT entity if immediately before the distribution, the partner is related to the distributing partnership or any partner in the distributing partnership within the meaning of sections 267(b) or 707(b)(1) of the Code, without regard to section 267(c)(3).

The proposed rule would be limited to related party partnerships and basis increases in order to address potentially abusive transactions. The Treasury Department and the IRS request comments on proposed § 1.56A–4(g), including whether it is appropriate to limit the rule to related party partnerships and whether rules are needed to prevent duplications to AFSI for distributions of foreign stock by a partnership where the distributee partner decreases the basis for regular tax purposes of the distributed foreign stock pursuant to section 732(a)(2) or (b).

V. Proposed § 1.56A-5: AFSI Adjustments for Partner's Distributive Share of Partnership AFSI

Pursuant to the authority granted by section 56A(c)(2)(D)(i), (c)(15), and (e), proposed § 1.56A-5 would provide rules under section 56A(c)(2)(D) regarding a partner's distributive share of partnership AFSI. Section 56A(c)(2)(D)(i) provides that, except as provided by the Secretary, if the taxpayer is a partner in a partnership, AFSI of the taxpayer with respect to such partnership is adjusted to only take into account the taxpayer's distributive share of AFSI of such partnership. Section 56A(c)(2)(D)(ii) provides that, for the purposes of the CAMT, the AFSI of a partnership is the partnership's net income or loss set forth on the partnership's AFS adjusted under rules similar to the rules of section 56A.

Stakeholders have suggested various approaches to determining a CAMT entity's distributive share of AFSI from a partnership investment (that is, a CAMT entity's interest in a partnership). One suggested approach is a "top-down" method that would start with the FSI amount reported by the CAMT entity on its AFS and adjustments to this amount under section 56A. Under a top-down method, a CAMT entity's distributive share of AFSI from a partnership investment generally would be based on the CAMT entity's method used to account for the investment for AFS purposes.

Another suggested approach is a "bottom-up" method. Under this method, a partnership would calculate its AFSI and allocate each partner a "distributive share" of the partnership's AFSI. Stakeholders have suggested that a partner's "distributive share" of a partnership's AFSI could be based on tax principles (for example, section 704(b) or (c) of the Code) or financial accounting principles (for example, the equity method (as described in proposed § 1.56A-1(b)(15))). Other suggested approaches included allowing CAMT entities to use their regular tax income amounts from a partnership investment as their distributive share amount of AFSI from such investment.

A bottom-up approach is consistent with the statute and is more conducive to taking into account section 56A adjustments. A bottom-up approach supports the framework of section 56A(c)(2)(D)(ii), which suggests that a partnership calculates its AFSI prior to determining the partners' distributive shares of such AFSI. Additionally, a bottom-up approach allows for a consistent methodology to be used to calculate a CAMT entity's distributive

share of partnership AFSI regardless of the method used by a CAMT entity to account for its partnership investment for AFS purposes. For example, if a CAMT entity accounts for a partnership investment by using the fair value method for AFS purposes (as described in proposed § 1.56A-1(b)(17)), a top-down approach would require the CAMT entity to report a mark-to-market amount with respect to that partnership investment for purposes of its FSI, although making applicable adjustments to that amount under section 56A in a precise manner might not be possible. As a result, under a top-down approach, multiple methodologies might be required to calculate the applicable adjustments under section 56A, depending on the CAMT entity's method to account for its partnership investment for AFS purposes. Under a bottom-up approach, all CAMT entities would calculate their distributive share amounts of AFSI from a partnership investment using a consistent methodology, which is referred to in proposed § 1.56A-5(c) as the "applicable method."

Additionally, under a bottom-up approach, a CAMT entity's distributive share of AFSI generally should be based on the income it reports for AFS purposes with respect to its partnership investment rather than the amount of its taxable income with respect to the partnership investment. Accordingly, under proposed § 1.56A-5, a CAMT entity's distributive share of AFSI from a partnership investment generally would be based on the share of the partnership's FSI that the CAMT entity reports on its AFS with respect to such investment, rather than on the CAMT entity's allocations of partnership items for regular tax purposes. This rule comports with the structure of the CAMT, which generally imposes a tax that is based on book income with certain adjustments. Proposed § 1.56A-5 would provide certain exceptions that would be consistent with the statute's adjustments to FSI.

A. General Rule

Proposed § 1.56A-5 would provide rules for the applicable method (that is, a bottom-up approach) to determine a CAMT entity's distributive share of AFSI with respect to its partnership investment. In a tiered partnership structure, each partnership would be a CAMT entity with respect to the partnership in which it is a partner and would be required to compute its distributive share of AFSI with respect to its interest in the lower-tier partnership.

Proposed § 1.56A-5(b) generally would provide that, if a CAMT entity is a partner in a partnership, its AFSI with respect to its partnership investment is adjusted as required under the applicable method in proposed § 1.56A-5(c) and the rules in proposed § 1.56A-20 (concerning AFSI adjustments to apply certain principles of subchapter K of chapter 1 (subchapter K)) to take into account its distributive share of the partnership's AFSI. A CAMT entity must use the applicable method described in proposed § 1.56A-5(c) to determine its AFSI adjustment regardless of the CAMT entity's method used to account for its partnership investment for AFS purposes.

B. Applicable Method

Under the applicable method in proposed § 1.56A-5(c), a CAMT entity would compute its distributive share of AFSI with respect to its partnership investment by first disregarding any amount the CAMT entity reflects in its FSI with respect to that investment for the taxable year (for example, under the fair value method or the equity method), except as provided in proposed § 1.56A-5(d). See proposed § 1.56A-5(c)(1). The CAMT entity then would include its "distributive share amount" (as determined under proposed § 1.56A-5(e)) for the taxable year in its AFSI with respect to its investment in the partnership. See proposed § 1.56A-5(c)(2).

C. Amounts Not Disregarded

The statutory directive in section 56A(c)(2)(D) to take into account only the taxpayer's distributive share of a partnership's AFSI does not mean that a CAMT entity may disregard all amounts with respect to a partnership investment that are outside the scope of the "distributive share amount," as computed under proposed § 1.56A-5(e), in determining its FSI with respect to that investment. Section 56A(c)(2)(D) and the applicable method implementing this statutory provision address only a CAMT entity's AFSI amount based on a partnership's AFSI. FSI amounts resulting from transactions such as a transfer, sale or exchange, or deconsolidation of a partnership investment are not covered by section 56A(c)(2)(D). Accordingly, proposed § 1.56A-5(d) would clarify the amounts of FSI with respect to the CAMT entity's partnership investment that may not be disregarded in applying the applicable method under proposed § 1.56A-5(c). Under proposed § 1.56A-5(d), a CAMT entity may not disregard any FSI amounts attributable to a transfer, sale or exchange, contribution, distribution,

dilution, deconsolidation, change in ownership, or any other transaction between any partners (including the CAMT entity) and the partnership, or between any partners (including the CAMT entity), that are not derived from, and included in, the partnership's FSI. As a result, such amounts are not excluded from a CAMT entity's AFSI under the applicable method. However, these amounts may be subject to adjustment under proposed §§ 1.56A–1(d)(4) (concerning redetermination of FSI gains and losses) and 1.56A–20 (concerning AFSI adjustments to apply certain subchapter K principles). In addition, in the case of a CAMT entity and a partnership that are members of the same financial statement group, proposed § 1.56A–5(d) would provide that the FSI of the CAMT entity with respect to the partnership investment is determined under proposed § 1.56A–1(c)(3)(iii) (concerning elimination journal entries).

D. Distributive Share Amount

The rules for computing the distributive share amount included in a CAMT entity's AFSI with respect to its partnership investment under proposed § 1.56A–5(c)(2) are contained in proposed § 1.56A–5(e). Proposed § 1.56A–5(e)(1) would provide that a CAMT entity's distributive share amount is computed for each taxable year based on the following four steps: (i) the CAMT entity determining its distributive share percentage; (ii) the partnership determining its modified FSI; (iii) the CAMT entity multiplying its distributive share percentage by the modified FSI of the partnership (as reported by the partnership); and (iv) the CAMT entity adjusting the product of the amount determined in (iii) for certain separately stated section 56A adjustments.

Proposed § 1.56A–5(e)(2) would provide rules for how a CAMT entity determines its distributive share percentage. As described previously in this part V of the Explanation of Provisions, determining a CAMT entity's distributive share percentage based on the amount of FSI it reports on its AFS with respect to its partnership investment, and not on its economic interest for regular tax purposes, is appropriate because the CAMT is a tax based on income reported by a CAMT entity for AFS purposes.

Accordingly, proposed § 1.56A–5(e)(2) would provide that a CAMT entity's distributive share percentage is a fraction, the numerator of which is the FSI amount that is disregarded under the applicable method (but redetermined based on the partnership's

taxable year if the taxable year of the partnership and the CAMT entity are different), and the denominator of which depends on the method of accounting the CAMT entity uses for AFS purposes, but in each case, as determined by the CAMT entity for AFS purposes.

In the case of a CAMT entity and a partnership that are members of the same financial statement group, or in the case of a CAMT entity that uses the equity method to account for its partnership investment (including the hypothetical liquidation at book value method under the equity method), the denominator would be 100 percent of the partnership's FSI for the partnership's taxable year. *See* proposed § 1.56A–5(e)(2)(i). In the case of a CAMT entity that uses the fair value method to account for its partnership investment, the denominator would be the total change in the fair value of the partnership during the partnership's taxable year as determined by the CAMT entity for inclusion of its share of the total change in its AFS. *See* proposed § 1.56A–5(e)(2)(ii). In the case of a CAMT entity that treats its partnership investment as other than equity for AFS purposes (for example, as debt) (a non-AFS partner), the denominator would be 100 percent of the partnership's FSI for the taxable year plus the FSI amount included in the numerator of the distributive share percentage for the taxable year. *See* proposed § 1.56A–5(e)(2)(iii). In the case of a CAMT entity that treats itself as owning 100 percent of the equity in the partnership for AFS purposes because the CAMT entity treats all other partners as non-AFS partners, the denominator would be 100 percent of the partnership's FSI for the taxable year plus the sum of any amounts reflected in the partnership's FSI that are treated as paid or accrued to the other partners for the partnership's taxable year. *See* proposed § 1.56A–5(e)(2)(iv). In the case of a CAMT entity that uses any other method of accounting to account for its partnership investment, the denominator would be an amount determined under the principles set forth in proposed § 1.56A–5(e)(2)(i) and (ii) that is reasonable under the facts and circumstances and reflective of the proportionate amount of the partnership's FSI the CAMT entity is reporting for AFS purposes. *See* proposed § 1.56A–5(e)(2)(v).

It is possible for the distributive share percentage to be a negative number. This situation may arise if a partner is using the equity method to account for its partnership investment and the partnership's FSI is positive but the

CAMT entity is reporting a negative FSI amount. In such cases, the negative distributive share percentage is multiplied by the partnership's modified FSI. If the distributive share percentage is negative and the partnership's modified FSI is positive, the result for the CAMT entity's share of modified FSI will be a negative amount. Similarly, if the distributive share percentage is negative and the partnership's modified FSI is negative, the result for the CAMT entity's share of modified FSI will be a positive amount. Examples under proposed § 1.56A–5 would include illustrations on computing the distributive share percentage. *See* proposed § 1.56A–5(k). The Treasury Department and the IRS appreciate that the calculation methodology provided for in proposed § 1.56A–5(e)(2) may produce imprecise results under certain circumstances, particularly in the case of a CAMT entity that uses the hypothetical liquidation at book value method under the equity method to account for its partnership investment for AFS purposes, treats itself as a non-AFS partner, or treats itself as owning 100 percent of the equity in the partnership because the CAMT entity treats all other partners in the partnership as non-AFS partners. The Treasury Department and the IRS request comments on more precise methods that could be used to calculate a CAMT entity's distributive share percentage, including in the circumstances described in the previous sentence. The Treasury Department and the IRS also request comments on whether AFSI with respect to a non-AFS partner's partnership investment should be determined other than by use of a distributive share percentage and the applicable method, including in situations where more than one CAMT entity is a non-AFS partner in the partnership.

The second step in the distributive share amount computation is for the partnership to determine its modified FSI. To facilitate this computation, proposed § 1.56A–5(e)(3) would provide that a partnership starts with its FSI for its taxable year (as determined under proposed § 1.56A–1(c)) and makes all AFSI adjustments provided for in the section 56A regulations that are applicable to partnerships, with certain enumerated exceptions.

The third step in the distributive share amount computation is for the CAMT entity to multiply its distributive share percentage by the partnership's modified FSI, as reported by the partnership to the CAMT entity. *See* proposed § 1.56A–5(e)(1)(iii).

The fourth and final step in the distributive share amount computation is for the CAMT entity to adjust the amount determined in the previous sentence (that is, in the third step) by certain AFSI items that are separately stated to the CAMT entity and not taken into account by the partnership in determining its modified FSI. See proposed § 1.56A–5(e)(1)(iv) and (e)(4)(ii). Separately stated AFSI items that adjust a CAMT entity's distributive share amount would include certain AFSI items with respect to basis adjustments under section 743(b) and § 1.1017–1(g)(2) attributable to section 168 property or qualified wireless spectrum and would be based on the CAMT entity's distributive share of the items for regular tax purposes. See proposed §§ 1.56A–15(d)(2)(ii) and (iv) and 1.56A–16(d)(2)(ii) and (iv).

Separately stated AFSI items that adjust a CAMT entity's distributive share amount would also include certain amounts resulting from a disposition of section 168 property or qualified wireless spectrum by a partnership to which the CAMT entity had a basis adjustment under section 743(b) or § 1.1017–1(g)(2) in place, as provided under proposed §§ 1.56A–15(e)(3)(iii) and (iv) and 1.56A–16(e)(3)(iii) and (iv). See proposed §§ 1.56A–15(e)(3)(iii) and (iv) and 1.56A–16(e)(3)(iii) and (iv).

Lastly, separately stated AFSI items that adjust a CAMT entity's distributive share amount would include the CAMT entity's distributive share of deferred distribution gain or loss described in proposed § 1.56A–20(d)(1)(ii), which would be equal to the CAMT entity's allocable share of the items as provided in proposed § 1.56A–20(d)(2)(i), taking into account any acceleration event under proposed § 1.56A–20(d)(1)(iii) and (d)(2)(ii).

Under proposed § 1.56A–5(e)(4)(iii), certain AFSI items would be separately stated by the partnership but would not be taken into account as adjustments to a CAMT entity's distributive share amount. Instead, these AFSI items would be taken into account by a CAMT entity in determining its AFSI. These AFSI items include items described in proposed § 1.56A–4(c)(1)(ii) with respect to stock of foreign corporations owned by the partnership, as provided under proposed § 1.56A–4(e); items described in proposed § 1.56A–6(c)(2)(iii) with respect to stock of foreign corporations owned by the partnership, as provided under proposed § 1.56A–6(c)(2)(iv); items described in proposed § 1.56A–8(c) with respect to creditable foreign tax expenditures of a partnership, as

provided under proposed § 1.56A–8(c); and the item described in proposed § 1.56A–21(e)(2)(iii) with respect to discharge of indebtedness income reflected in the partnership's FSI, as provided under proposed § 1.56A–21(e)(2)(ii). Although proposed § 1.56A–5(e)(4)(iii) refers to the items described in § 1.56A–6(c)(2)(iii) as “AFSI items,” these items represent adjustments to the adjusted net income or loss of a CFC. See § 1.56A–6(c)(1) (generally providing that for purposes of determining a CFC's adjusted net income or loss, references to AFSI in other sections of the section 56A regulations are treated as references to adjusted net income or loss).

The adjustment to AFSI described in proposed § 1.56A–6(b) is not included as a separately stated item because, under proposed § 1.56A–6(b)(1) (which incorporates the principles of section 951(a)(2)), a partnership is not treated as owning stock of a CFC for purposes of proposed § 1.56A–6(b)(1), and therefore proposed § 1.56A–6(b) does not result in an adjustment to modified FSI of a partnership. Rather, in the case of a partnership that owns stock of a CFC, a partner that is a U.S. shareholder with respect to the CFC determines its own pro rata share of the adjusted net income or loss of the CFC and makes an appropriate adjustment to its AFSI directly under proposed § 1.56A–6(b)(1). See proposed § 1.56A–6(e)(3) (*Example 3*).

Proposed § 1.56A–5(e)(5) would provide rules coordinating the effect of equity method basis adjustments for AFS purposes with a CAMT entity's adjustments to a partnership's modified FSI under the applicable method. If a CAMT entity includes in its FSI amortization of an equity method basis adjustment with respect to a partnership investment that is attributable to section 168 property or qualified wireless spectrum held by the partnership, and if the CAMT entity has a basis adjustment under section 743(b) with respect to the same property that affects the CAMT entity's distributive share amount, then the CAMT entity adjusts its AFSI to disregard any such FSI amortization. The rule in proposed § 1.56A–5(e)(5) is intended to remove the potential for a duplicative reduction to AFSI for an equity method basis adjustment and section 743(b) basis adjustment that relates to the same property.

Proposed § 1.56A–5(e)(6)(i) would provide rules for determining a CAMT entity's distributive share amount if the partnership treats as its AFS its Federal income tax return pursuant to proposed § 1.56A–2(c)(6). In such case, a CAMT entity's distributive share amount with

respect to its partnership investment would be equal to the amount of FSI disregarded under proposed § 1.56A–5(c)(1) of the applicable method further adjusted to disregard any items described in proposed §§ 1.56A–4(b)(1) and 1.56A–8(b) that are reflected in such amount. Additionally, the AFSI items described in proposed § 1.56A–5(e)(4)(iii)(A) through (C) would still apply to determine the CAMT entity partner's AFSI, but not the AFSI item described in proposed § 1.56A–5(e)(4)(iii)(D) since the AFSI item in proposed § 1.56A–5(e)(4)(iii)(D) is dependent on the partnership's FSI and, pursuant to § 1.56A–5(e)(6)(i), the partnership effectively does not have an FSI amount if it treats as its AFS its Federal income tax return. See proposed § 1.56A–21(e)(2)(iii).

Proposed § 1.56A–5(f) would provide that, in the case of a tiered entity structure, if a CAMT entity is a partner in a partnership (UTP) that directly or indirectly owns an investment in a lower-tier partnership (LTP), each partnership, starting with the lowest-tier partnership and continuing in order up the chain of ownership, must use the applicable method to determine the distributive share amounts of each CAMT entity partner in the tiered-partnership chain. Because each UTP determines its own distributive share amount, amounts separately stated under proposed § 1.56A–5(e)(4)(ii) to an UTP are included in determining the UTP's modified FSI under the applicable method in proposed § 1.56A–5(c). Under proposed § 1.56A–5(g), the distributive share amount required to be included in a CAMT entity's AFSI for a taxable year with respect to a partnership investment under proposed § 1.56A–5(c)(2) is based on the modified FSI of the partnership for any taxable year of the partnership ending within or with the taxable year of the CAMT entity.

E. Reporting and Filing Requirements—Partner

Proposed § 1.56A–5(h) would provide rules on the reporting and filing requirements for a CAMT entity that is a partner in a partnership. The Treasury Department and the IRS are aware that, in order to compute its distributive share of a partnership's AFSI, a CAMT entity may require information from the partnership. To facilitate information reporting by partnerships, the proposed regulations would require a partnership to provide the information to the CAMT entity if the CAMT entity cannot determine its distributive share of the partnership's AFSI without the

information and the CAMT entity makes a timely request for the information.

Under proposed § 1.56A–5(h)(1), if a CAMT entity cannot determine its distributive share of a partnership's AFSI without receiving certain information from the partnership, the CAMT entity would be required to request the information from the partnership by the 30th day after the close of the partnership's taxable year to which the information request relates. The information, and the requests made for the information, would be required to be maintained by the CAMT entity in its books and records. The partnership would be required to continue to provide the information to the CAMT entity for each subsequent taxable year unless the partnership receives written notification from the CAMT entity that the information is not required.

The Treasury Department and the IRS are aware that a CAMT entity might not timely receive the requested information from the partnership. Under proposed § 1.56A–5(h)(2)(i), a CAMT entity that does not timely receive the requested information from the partnership would be required to make a good-faith estimate of its distributive share of the partnership's AFSI. Except as provided in proposed § 1.56A–5(h)(2)(iii)(B), once the CAMT entity receives the information from the partnership, the CAMT entity (if not also an applicable corporation) should report the information to its partners, including any UTP (which would then report the information to its partners), until the information is received by an applicable corporation. *See* proposed § 1.56A–5(h)(2)(ii) and (iii)(B).

In the case of a partnership subject to the centralized partnership audit regime in subchapter C of chapter 63 of the Code (BBA partnership), if making the required estimate requires the CAMT entity to treat a partnership-related item (PRI) in a manner that is inconsistent with the BBA partnership's treatment of the PRI, the CAMT entity must follow the procedures for filing a notice of inconsistent treatment with respect to the PRI. *See* proposed § 1.56A–5(h)(2)(iii)(A). If, as part of providing a CAMT entity with information under proposed § 1.56A–5(h)(1), the BBA partnership must change a PRI reported on its partnership return for a taxable year and the due date for filing the return has passed, the BBA partnership must file an administrative adjustment request (AAR) under section 6227 of the Code to adjust the PRI. Pursuant to the centralized partnership audit regime, the adjustment is determined and taken into account under section 6227 and the

regulations thereunder. *See* proposed § 1.56A–5(h)(2)(iii)(B).

F. Reporting and Filing requirements—Partnerships

Proposed § 1.56A–5(i) would provide rules for a partnership that receives a request from a CAMT entity for information to determine the CAMT entity's distributive share amount, including information necessary to determine the denominator for the distributive share percentage as described in proposed § 1.56A–5(e)(2), the partnership's modified FSI as described in proposed § 1.56A–5(e)(3), and for the CAMT entity to make the AFSI adjustments as described in proposed § 1.56A–5(e)(4). The partnership would be required to file the information with the IRS in forthcoming forms, instructions, or other guidance, as described in proposed § 1.56A–5(i)(1).

Proposed § 1.56A–5(i)(2) would provide special rules for tiered partnership structures. These rules would require an UTP that has a reporting and filing requirement under proposed § 1.56A–5(i) to request the information from an LTP, which then must file the requested information with the IRS and furnish it to the UTP as described in proposed § 1.56A–5(i)(1). The information would be required to be requested by the UTP by the later of the 30th day after the close of the taxable year to which the information request relates or 14 days after the date the UTP receives an information request from another UTP.

Under proposed § 1.56A–5(i)(3), the partnership would be required to provide the requested information by the date prescribed under section 6031(b) of the Code. However, under proposed § 1.56A–5(i)(3)(iii) a partnership would not be required to furnish information to a CAMT entity until it has received a notice of request. A partnership would be considered to have received a notice of request when it receives the request either electronically or in the manner agreed to by the parties, or the partnership has an obligation to continue providing information to a CAMT entity due to the CAMT entity's request in a prior taxable year.

Under proposed § 1.56A–5(i)(4), the information would be requested electronically or in the manner agreed to by the parties. Under proposed § 1.56A–5(i)(5), the partnership would be required to retain in its books and records a copy of the information request and the date it was received. Under proposed § 1.56A–5(i)(6), a partnership that fails to furnish the

requested information would be subject to penalties under section 6722 of the Code.

The Treasury Department and the IRS request comments on whether exceptions to the reporting requirements should apply for partnerships that meet certain criteria. For example, such criteria may include the fair market value of the partnership's assets or whether the partnership is controlled (either directly or indirectly) by an applicable corporation. If a partnership is exempt from some or all of the reporting requirements outlined in proposed § 1.56A–5(i), the Treasury Department and the IRS request comments on how a partner in the partnership would determine its distributive share of AFSI with respect to its partnership investment. The Treasury Department and the IRS also request comments regarding the application of the requirement in proposed § 1.56A–5(i)(3) that a partnership provide information requested by a partner by the date prescribed under section 6031(b) of the Code for filing its partnership return when the partnership to which the request is made is a UTP or LTP in a tiered partnership structure.

G. Limitation on Allowance of Negative Distributive Share Amount

Proposed § 1.56A–5(j)(1) would provide a rule limiting the amount of a CAMT entity's negative distributive share amount from a partnership investment for a taxable year that can be included in the CAMT entity's AFSI for such taxable year in a manner similar to the rule in section 704(d) that applies for regular tax purposes. This rule would provide that, if a CAMT entity's distributive share amount with respect to a partnership investment for a taxable year, as determined under proposed § 1.56A–5(e), is negative, such distributive share amount for the taxable year would include only the negative distributive share amount that does not exceed the CAMT entity's CAMT basis in its partnership investment as of the end of the partnership's taxable year. Ordering rules similar to the rules in § 1.704–1(d)(2) apply in computing a CAMT entity's CAMT basis in its partnership investment for purposes of applying the loss limitation rule for negative distributive share amounts. The Treasury Department and the IRS request comments regarding the application of the ordering rule in § 1.704–1(d)(2) and whether more specific ordering rules are needed for purposes of applying the loss limitation rule for negative distributive share amounts.

Proposed § 1.56A–5(j)(2) would provide that any excess negative distributive amount that is disallowed for a taxable year under proposed § 1.56A–5(j)(1) is carried forward and may be used by the CAMT entity in a subsequent taxable year to the extent such negative amount does not exceed a CAMT entity's CAMT basis in its partnership investment in the subsequent taxable year.

Proposed § 1.56A–5(j)(3) would provide rules for determining a CAMT entity's CAMT basis in a partnership investment. These rules would be similar to the rules in section 705 of the Code that apply for regular tax purposes.

A CAMT entity's CAMT basis in a partnership investment would start with the basis of the investment for AFS purposes as of the first day of the partnership's first taxable year ending after December 31, 2019 in which the CAMT entity held its interest in the partnership and would reflect certain adjustments for each taxable year of the partnership ending after December 31, 2019 (but not adjustments that would make the CAMT basis less than zero). *See* proposed § 1.56A–5(j)(3).

VI. Proposed § 1.56A–6: AFSI Adjustments With Respect to Controlled Foreign Corporations

A. General Rule for Adjusting AFSI Under Proposed § 1.56A–6(b)

Pursuant to the authority granted by section 56A(c)(5), (c)(15), and (e), proposed § 1.56A–6 would provide rules under section 56A(c)(3) regarding an adjustment to the AFSI of a CAMT entity for any taxable year in which the CAMT entity is a U.S. shareholder of one or more CFCs. Under proposed § 1.56A–6(b)(1), if a CAMT entity is a U.S. shareholder of a CFC, the CAMT entity's AFSI is generally adjusted for its pro rata share of the CFC's adjusted net income or loss, which generally means the CFC's FSI for the CFC's taxable year, adjusted for all AFSI adjustments provided under the section 56A regulations (except as provided under proposed § 1.56A–6(c)(2) through (5), which are described later in this Explanation of Provisions). More specifically, proposed § 1.56A–6(b)(1) would provide that, except as provided in proposed § 1.56A–6(b)(3) (concerning an aggregate negative adjustment), for any taxable year, a CAMT entity that is a U.S. shareholder of one or more CFCs makes a single adjustment to the CAMT entity's AFSI that is equal to the sum of the CAMT entity's pro rata shares of the adjusted net income or loss of each such CFC, with such aggregate amount

reduced as provided in proposed § 1.56A–6(b)(2) (reduction for taxes if an applicable corporation does not claim foreign tax credits) and (4) (reduction for utilization of a CFC adjustment carryover, as defined in proposed § 1.56A–6(b)(6)). The CAMT entity's pro rata share of the adjusted net income or loss of a CFC is determined for the taxable year of the CFC that ends with or within the taxable year of the CAMT entity and is determined under the principles of section 951(a)(2). These principles include, for example, rules similar to those described in section 951(a)(2)(A) and (B) and the aggregation rules in § 1.958–1(d).

A single adjustment under section 56A(c)(3) is consistent with the statutory language. *See* section 56A(c)(3)(B) (which refers to “the adjustment determined under subparagraph (A)” rather than multiple “adjustments”) and section 59(l) (which refers to “the adjustment under section 56A(c)(3)” in the singular and provides for the aggregation of an applicable corporation's pro rata share of creditable taxes paid or accrued by each CFC). Accordingly, to calculate the adjustment under section 56A(c)(3) for a U.S. shareholder of several CFCs, the net loss of a CFC may offset net income of another CFC in the same taxable year under proposed § 1.56A–6(b). This rule would be consistent with the guidance provided in section 7.02(2) of Notice 2023–64. If the sum of the pro rata share of the adjusted net income or loss of each CFC of which the CAMT entity is a U.S. shareholder produces a negative amount, this amount is carried to the succeeding taxable year, as described subsequently in more detail.

For purposes of determining inclusions of subpart F income and global intangible low-taxed income under sections 951 and 951A, a domestic partnership is not treated as owning stock of a foreign corporation within the meaning of section 958(a) of the Code and therefore has no inclusions under section 951 or 951A with respect to any stock of a CFC it owns. *See* §§ 1.951–1(a)(4) (directing taxpayers to § 1.958–1(d) for rules regarding the ownership of stock of a foreign corporation through a domestic partnership for purposes of section 951) and 1.958–1(d) (providing generally that for purposes of applying sections 951 and 951A, a domestic partnership is not treated as owning stock of a foreign corporation). Accordingly, because a CAMT entity's pro rata share of the adjusted net income or loss of a CFC is determined under the principles of section 951(a)(2), a domestic partnership would have no pro rata

share with respect to the adjusted net income or loss of any stock of a CFC it owns and no adjustment would be made to the partnership's modified FSI under proposed § 1.56A–6(b)(1). However, if a partner in the partnership is a U.S. shareholder with respect to the CFC, the partner would determine its own pro rata share of the adjusted net income or loss of the CFC and would make an appropriate adjustment to its AFSI directly under proposed § 1.56A–6(b)(1). *See* proposed § 1.56A–6(e)(3) (*Example 3*).

B. Additional Mechanics for Adjusting AFSI Under Proposed § 1.56A–6(b)

Solely for purposes of determining AFSI under section 56A (and not under section 59(k)), proposed § 1.56A–6(b)(2) would require an applicable corporation that is not claiming foreign tax credits for the taxable year to reduce the amount of the adjustment determined under proposed § 1.56A–6(b)(1) by its share of eligible current year taxes of CFCs for the taxable year (calculated under proposed § 1.59–4(d)(3) as if the applicable corporation had claimed foreign tax credits for the taxable year). For this purpose, the applicable corporation's share of eligible current year taxes of CFCs is reduced to reflect the suspensions and disallowances described in proposed § 1.59–4(b)(1) that apply at the level of the U.S. shareholder for purposes of determining foreign income taxes eligible for the CAMT FTC. Finally, the proposed regulations would not permit a reduction to the amount of the adjustment under proposed § 1.56A–6(b)(1) for taxes deemed paid by the applicable corporation on distributions of PTEP under section 960(b) (PTEP taxes).

Proposed § 1.56A–6(b)(3) would provide that, if the amount of the adjustment determined under proposed § 1.56A–6(b)(1) with respect to a taxable year of a U.S. shareholder would be negative (after taking into account the tax reduction provided under proposed § 1.56A–6(b)(2) but before taking the CFC adjustment carryovers under proposed § 1.56A–6(b)(4) into account), then there is no adjustment under proposed § 1.56A–6(b)(1) for the taxable year. This would-be negative adjustment amount would give rise to a CFC adjustment carryover generated in the taxable year. Proposed § 1.56A–6(b)(4) would provide that if the adjustment determined under proposed § 1.56A–6(b)(1) with respect to a taxable year of a U.S. shareholder would be positive (after taking into account the tax reduction provided under proposed § 1.56A–6(b)(2) but before taking

proposed § 1.56A–6(b)(4) into account), then the adjustment under proposed § 1.56A–6(b)(1) (after taking into account the tax reduction provided under proposed § 1.56A–6(b)(2)) is reduced by the aggregate amount of CFC adjustment carryovers to the taxable year, but not below zero. Proposed § 1.56A–6(b)(5) would provide rules describing the ordering and use of CFC adjustment carryovers, which parallel similar rules for FSNOL carryovers in proposed § 1.56A–23(d).

Proposed § 1.56A–6(b)(7) would provide that members of a tax consolidated group are treated as a single entity for purposes of proposed § 1.56A–6(b). *See also* proposed § 1.1502–56A(h) for rules regarding the use of CFC adjustment carryovers by a tax consolidated group.

C. Definition of Adjusted Net Income or Loss

Proposed § 1.56A–6(c)(1) generally would define the term adjusted net income or loss with respect to any CFC, for any taxable year of the CFC, as the FSI of the CFC, adjusted for all AFSI adjustments provided under the section 56A regulations, except as provided in proposed § 1.56A–6(c)(2) through (5). Adjusted net income or loss of a CFC must be expressed in U.S. dollars. Accordingly, items not expressed in U.S. dollars that are taken into account in determining the CFC's adjusted net income or loss must be translated to U.S. dollars. This translation may be required where the reporting currency used for a CFC's AFS is not the U.S. dollar, because in that case the CFC's FSI (the starting point in determining the CFC's adjusted net income or loss) will not be expressed in U.S. dollars. It may also be required where an adjustment made in determining the CFC's adjusted net income or loss references an amount as determined for regular tax purposes, because that regular tax amount may be denominated in the CFC's functional currency for regular tax purposes, which may not be the U.S. dollar (and may also be different from the reporting currency used for the CFC's AFS). In any case in which currency translation is required under proposed § 1.56A–6(c)(1), it is undertaken using the weighted average exchange rate, as defined in § 1.989(b)–1, for the CFC's taxable year. For purposes of translating a CFC's adjusted net income or loss to U.S. dollars, the rules described in proposed § 1.56A–6(c)(1) apply in lieu of the rules described in proposed § 1.56A–1(e)(1).

The adjustments in proposed § 1.56A–6(c)(2) are intended to address certain potential duplications of items and

would be generally consistent with, but expand upon, the guidance provided in Notice 2024–10. *See* part IV.A of this Explanation of Provisions describing a potential duplication of items when an upper-tier CFC owns stock of a lower-tier CFC. Proposed § 1.56A–6(c)(2) would provide adjustments to a CFC's adjusted net income or loss relating to the CFC's ownership of stock of a foreign corporation, in lieu of the adjustments described in proposed § 1.56A–4(c)(1). Proposed § 1.56A–6(c)(2)(ii) would exclude from a CFC's adjusted net income or loss any items of income, expense, gain, and loss resulting from ownership of stock of a foreign corporation, including from acquiring or transferring such stock, reflected in the CFC's FSI. Proposed § 1.56A–6(c)(2)(iii) would include in a CFC's adjusted net income or loss any items of income, deduction, gain, and loss resulting from the CFC's ownership of stock of a foreign corporation, including from acquiring or transferring such stock, for regular tax purposes, except for the amount of any dividend received from another foreign corporation to the extent the dividend is a CAMT excluded dividend. Proposed § 1.56A–6(d) would define the term “CAMT excluded dividend” to mean a dividend received by a CFC to the extent the dividend is excluded from (i) the recipient CFC's gross income under section 959(b), or (ii) both (A) the recipient CFC's foreign personal holding company income under section 954(c)(3) or (c)(6) of the Code, and (B) the recipient CFC's gross tested income under § 1.951A–2(c)(1)(iv).

Because a CFC's adjusted net income or loss reflects all AFSI adjustments provided under the section 56A regulations, except as provided in proposed § 1.56A–6(c)(2) through (5), if a CFC is a partner in any partnership or the owner of any disregarded entity, the items taken into account in computing the CFC's adjusted net income or loss generally include the CFC's distributive share amount of modified FSI from any such partnership (*see* proposed § 1.56A–5) and the AFSI of any such disregarded entity (*see* proposed § 1.56A–9). This would be consistent with the guidance provided in section 7.02(3) of Notice 2023–64. Proposed § 1.56A–6(c)(2)(iv) would further provide that if a partnership directly owns stock of a foreign corporation, then in determining the adjusted net income or loss of a CFC that is a partner in the partnership (or an indirect partner in the case of tiered partnerships), the partner takes into account the items described in proposed § 1.56A–6(c)(2)(iii) (including taking

into account the exception for CAMT excluded dividends) that are reported to the partner by the partnership for regular tax purposes.

Section 56A(c)(3)(A) provides that the AFSI of a CAMT entity that is a U.S. shareholder of a CFC should be adjusted to take into account a pro rata share of CFC items under rules similar to the rules under section 951(a)(2). Reading section 56A(c)(3) as limited only to the pro rata share of CFC items that would be taken into account in computing AFSI under section 56A(c)(4) and proposed § 1.56A–7 (that is, items of income that are effectively connected with the conduct of a trade or business within the United States and deductions connected with such income) would be underinclusive. Thus, proposed § 1.56A–6(c)(3) would provide that a CFC's adjusted net income or loss is not limited to amounts taken into account in determining AFSI under proposed § 1.56A–7, which would generally limit the AFSI of a foreign corporation to taxable income that is effectively connected with the conduct of a trade or business within the United States.

Moreover, where an amount is subject to CAMT under section 56A(c)(4) and proposed § 1.56A–7 because a CFC is itself an applicable corporation, such amount should be excluded from a U.S. shareholder's adjustment under 56A(c)(3) to prevent double counting of the same income of the CFC. Thus, proposed § 1.56A–6(c)(3) would provide that, if a CFC is an applicable corporation, the CFC's adjusted net income or loss is reduced by the amount of AFSI of the CFC (with such AFSI determined by taking proposed § 1.56A–7 into account). The rule in proposed § 1.56A–6(c)(3) would be consistent with the guidance provided in section 7.02(5) of Notice 2023–64.

Proposed § 1.56A–6(c)(4) would provide that the AFSI adjustment provided under proposed § 1.56A–8(c) does not apply in computing a CFC's adjusted net income or loss. Proposed § 1.56A–8(c) generally would provide a reduction in the AFSI of an applicable corporation by the amount of foreign income taxes deducted by the applicable corporation, if the applicable corporation does not choose to claim foreign tax credits for the taxable year.

Proposed § 1.56A–6(c)(5) would provide that the AFSI adjustment provided under proposed § 1.56A–23(c) (providing a reduction to AFSI for FSNOL carryovers) does not apply in computing a CFC's adjusted net income or loss. Allowing a CFC to make the adjustment for FSNOL carryovers provided by proposed § 1.56A–23(c) when determining the CFC's adjusted

net income or loss, while also allowing for the use of CFC adjustment carryovers to reduce a U.S. shareholder's adjustment to AFSI under proposed § 1.56A–6(b)(1), would lead to an improper double counting of loss carryovers.

VII. Proposed § 1.56A–7: AFSI Adjustments With Respect to Effectively Connected Income

Pursuant to the authority granted by section 56A(c)(15) and (e), proposed § 1.56A–7 would provide rules under section 56A(c)(4) for applying the principles of section 882 to determine a foreign corporation's AFSI. As amended by section 10101 of the IRA, section 882(a)(1) provides, in part, that a foreign corporation engaged in a trade or business within the United States during the taxable year is taxable under the CAMT on its taxable income which is effectively connected with the conduct of a trade or business within the United States.

In determining taxable income for purposes of section 882(a)(1), gross income includes only gross income which is effectively connected with the conduct of a trade or business within the United States (ECI). *See* section 882(a)(2). Deductions are generally allowed for these purposes only if and to the extent they are connected with income which is ECI. *See* section 882(c)(1)(A). Accordingly, proposed § 1.56A–7(b) would provide that, for purposes of section 56A(c)(4), the AFSI of a foreign corporation is adjusted to include only amounts and items of FSI that would be included in ECI or allowable as a deduction by such corporation for purposes of section 882(c) had such amount or item accrued for regular tax purposes in the taxable year.

Section 7.02(5) of Notice 2023–64 provides guidance under which, for purposes of applying section 56A(c)(4), in the case of a foreign corporation that qualifies for and claims the benefits of the business profits provisions of an applicable income tax treaty, the principles of those provisions would apply in determining the foreign corporation's AFSI. This guidance was intended to clarify that a foreign corporation entitled to benefits under an income tax treaty may apply the treaty to determine its AFSI. After further consideration, the Treasury Department and the IRS are of the view that it is not necessary to make this clarification in the proposed regulations, because section 894(a) of the Code already provides that the Code is applied with due regard to any income tax treaty obligation of the United States that

applies to a taxpayer, and nothing in the IRA changes the normal operation of U.S. income tax treaties in this context.

VIII. Proposed § 1.56A–8: AFSI Adjustments for Certain Federal and Foreign Income Taxes

Section 56A(c)(5) provides that AFSI is appropriately adjusted to disregard any Federal income taxes or income, war profits, or excess profits taxes (within the meaning of section 901) with respect to a foreign country or possession of the United States which are taken into account in the taxpayer's AFS. Further, the statute provides a grant of authority to the Secretary to provide an exception to this rule for a taxpayer that does not choose to claim foreign tax credits for a taxable year. Finally, section 56A(c)(5) authorizes the Secretary to prescribe such regulations or other guidance as may be necessary or appropriate to provide for the proper treatment of current and deferred taxes for purposes of section 56A(c)(5), including the time at which the taxes are properly taken into account.

Pursuant to the authority granted by section 56A(c)(5), (c)(15), and (e), proposed § 1.56A–8(b)(1) would adjust AFSI to disregard any applicable income taxes, as defined in proposed § 1.56A–8(b)(2), that are taken into account in a CAMT entity's AFS. The proposed regulations would define applicable income taxes as Federal income taxes and foreign income taxes that are taken into account in a CAMT entity's AFS as current tax expense (or benefit), as deferred tax expense (or benefit), or through increases or decreases to other AFS accounts of the CAMT entity (for example, AFS accounts used to account for FSI from investments in other CAMT entities, AFS accounts used to account for section 168 property, or AFS accounts used to account for other items of income and expense). *See* proposed § 1.56A–8(b)(2). Additionally, the proposed regulations would define Federal income taxes to mean any taxes imposed by subtitle A of the Code and to include amounts allowed as credits against taxes imposed by subtitle A, including credit amounts that are generated by a partnership and passed through to a partner. *See* proposed § 1.56A–1(b)(18). Proposed § 1.56A–1(b)(23) would define foreign income tax to have the meaning provided in § 1.901–2.

AFSI is relevant in determining both whether a corporation is an applicable corporation and the amount of an applicable corporation's CAMT liability under section 55(a). For purposes of determining whether a corporation is an

applicable corporation, the Treasury Department and the IRS are of the view that AFSI should be determined on a pre-tax basis for all taxpayers, regardless of whether the taxpayer chooses to claim foreign tax credits for the taxable year. This ensures that all taxpayers determine whether a corporation is an applicable corporation using the same metric (pre-tax AFSI) and ensures that the choice of whether to claim foreign tax credits has no effect on the determination of whether a corporation is an applicable corporation.

For purposes of determining the amount of an applicable corporation's CAMT liability under section 55(a), however, the Treasury Department and the IRS are of the view that it is an appropriate exercise of the regulatory authority granted under section 56A(c)(5) to allow a reduction to AFSI (similar to the deduction for regular tax purposes under section 164 of the Code) for foreign income taxes if an applicable corporation does not choose to claim foreign tax credits for the taxable year and thus is not eligible to claim a CAMT FTC under section 59(l).

Accordingly, proposed § 1.56A–8(c) would provide that an applicable corporation that does not choose to claim a foreign tax credit for the taxable year would reduce its AFSI by the amount of foreign income taxes which the applicable corporation deducts for regular tax purposes under section 164 (taking into account all other relevant provisions) for the taxable year, including foreign income taxes of a disregarded entity of which the applicable corporation is the owner for regular tax purposes and any creditable foreign tax expenditures (within the meaning of § 1.704–1(b)(4)(viii)) allocated to the applicable corporation as a partner or indirect partner in a tiered partnership or other type of pass-through entity. This adjustment is disregarded in applying the average annual AFSI tests described in § 1.59–2(c) to determine whether a corporation is an applicable corporation. *See* § 1.59–2(c)(1)(ii)(B) and (c)(2)(ii)(B).

An applicable corporation that chooses to claim a foreign tax credit for the taxable year, however, would not reduce its AFSI by the amount of foreign income taxes that the applicable corporation deducts in the taxable year (for example, foreign income taxes paid to specified foreign countries under section 901(j)). *See* proposed § 1.56A–8(e)(2) (*Example 2*). The Treasury Department and the IRS are of the view that this approach is consistent with the grant of regulatory authority provided in section 56A(c)(5).

Proposed § 1.56A–6(b)(2) provides a rule similar to proposed § 1.56A–8(c) that would reduce the pro rata share adjustment provided under proposed § 1.56A–6(b)(1) for certain foreign income taxes of CFCs if an applicable corporation does not choose to claim foreign tax credits for the taxable year.

Proposed § 1.56A–8(d) would provide that, for purposes of proposed §§ 1.56A–8(b) and 1.59–4, applicable income taxes are considered taken into account in an AFS of a CAMT entity if any journal entry has been recorded in the books and records used to determine an amount in the AFS of the CAMT entity for any year, or in another AFS that includes the CAMT entity, to reflect such taxes. Applicable income taxes are considered taken into account in an AFS of a CAMT entity even if the taxes do not increase or decrease the CAMT entity's FSI at the time of the journal entry. Further, if applicable income taxes are taken into account in a partnership's AFS, they also are considered taken into account in any AFS of the partnership's partners.

IX. Proposed § 1.56A–9: AFSI Adjustments for Owners of Disregarded Entities or Branches

Pursuant to the authority granted by section 56A(c)(15) and (e), proposed § 1.56A–9 would provide rules under section 56A(c)(6) and (15) for determining the AFSI of a CAMT entity that owns a disregarded entity or branch. Section 56A(c)(6) provides that AFSI is adjusted to take into account any AFSI of a disregarded entity owned by the taxpayer.

Proposed § 1.56A–9(b)(1) would provide that, for purposes of the section 56A regulations, a disregarded entity or branch and the CAMT entity that owns the disregarded entity or branch, including through other disregarded entities or branches, (CAMT entity owner) are treated as a single CAMT entity. As a result, the CAMT entity owner would be treated as directly owning the assets of, being directly liable for the liabilities of, and directly earning or incurring any income, expense, gain, loss, or other similar item of the disregarded entity or branch. Further, proposed § 1.56A–9(b)(2) would provide that transactions between the disregarded entity or branch and the CAMT entity owner (or between disregarded entities or branches owned by the same CAMT entity) and any balance sheet account or income statement account that reflects the CAMT entity owner's investment in the disregarded entity or branch (or a disregarded entity's investment in another disregarded entity or branch

that is ultimately owned by the same CAMT entity owner) would be disregarded. Proposed § 1.56A–9(b)(3) would provide that if a disregarded entity or branch is required to determine its own AFS under § 1.56A–2(h), the CAMT entity owner of the disregarded entity or branch treats such separate AFS of the disregarded entity or branch as part of the CAMT entity owner's own AFS.

Financial accounting does not have the concept of a disregarded entity. For financial accounting purposes, a single member limited liability corporation, for instance, may have a financial statement (or be a separate member of a financial statement group) and, thus, is treated the same as any other corporation. Section 56A(c)(6) affirms the application of regular tax principles to the treatment of disregarded entities. Accordingly, these proposed rules would apply regular tax principles for the treatment of disregarded entities and branches, rather than treating disregarded entities and branches as independently calculating AFSI and then adding that AFSI to the AFS of the owner.

X. Proposed § 1.56A–10: AFSI Adjustments for Cooperatives

Pursuant to the authority granted by section 56A(c)(15) and (e), proposed § 1.56A–10 would provide rules under section 56A(c)(7) regarding the determination of AFSI for a cooperative. Proposed § 1.56A–10(b) would provide that, in the case of a cooperative to which section 1381 of the Code applies, AFSI of the cooperative is reduced by the amounts referred to in section 1382(b) of the Code and the regulations under section 1382(b) (relating to patronage dividends and per-unit retain allocations), but only to the extent such amounts were not otherwise taken into account in determining the AFSI of the cooperative.

XI. Proposed § 1.56A–11: AFSI Adjustments for Alaska Native Corporations

Pursuant to the authority granted by section 56A(c)(15) and (e), proposed § 1.56A–11 would provide rules under section 56A(c)(8) regarding Alaska Native Corporations. Section 56A(c)(8) provides for two adjustments to the AFSI of Alaska Native Corporations. First, section 56A(c)(8)(A) provides that cost recovery and depletion attributable to certain property that is allowed for regular tax purposes is allowed in calculating AFSI. Section 21(c) of the ANCSA (43 U.S.C. 1620(c)) describes land and interests in land that Alaska Native Corporations receive pursuant to

certain provisions of the ANCSA. Such property interests have a basis equal to their fair market value either at the time the corporation receives the property or at the time the corporation first commercially develops the property. Proposed § 1.56A–11(c) would provide that the AFSI of an Alaska Native Corporation (i) is reduced for cost recovery and depletion attributable to such property to the extent of the amount recovered for regular tax purposes, and (ii) is adjusted to disregard any cost recovery or depletion attributable to such property that is reflected in the corporation's FSI. In other words, proposed § 1.56A–11(c) allows an Alaska Native Corporation to use the basis of such property for regular tax purposes in lieu of the AFSI basis of such property for all depletion and cost recovery computations (including gain or loss computations) with respect to such property that apply in determining AFSI.

Second, section 56A(c)(8)(B) provides that deductions for certain amounts payable under the ANCSA are allowed in calculating AFSI only at the time the deductions are allowed for regular tax purposes. Section 7(i) and (j) of the ANCSA (43 U.S.C. 1606(i) and (j)) requires the Regional Corporations (within the meaning of 43 U.S.C. 1606) to divide a portion of their revenues among all Regional Corporations, and to distribute at least a minimum percentage of their revenues to shareholders. Proposed § 1.56A–11(d) would provide that the AFSI of an Alaska Native Corporation (i) is reduced by regular tax deductions for payments under section 7(i) and 7(j) of the ANCSA at the time they are deducted for regular tax purposes, and (ii) is adjusted to disregard expenses for specified payments reflected in the corporation's FSI.

XII. Proposed § 1.56A–12: AFSI Adjustments With Respect to Certain Tax Credits

Pursuant to the authority granted by section 56A(c)(15) and (e), proposed § 1.56A–12 would provide rules under section 56A(c)(9) and (c)(15) regarding AFSI adjustments for certain credits. Proposed § 1.56A–12(b)(1) would provide that AFSI is adjusted to disregard any amount treated as a payment against the tax imposed by subtitle A pursuant to an election under section 48D(d) or 6417, provided that this amount is not otherwise disregarded under proposed § 1.56A–8 (concerning taxes). This provision would permit the exclusion of certain credit amounts from AFSI, which would

follow their treatment for regular tax purposes.

For regular tax purposes, an eligible taxpayer that elects to transfer an eligible credit, as those terms are defined in section 6418(f) of the Code, excludes from gross income amounts received from the transfer of the credit. Section 6418(b)(2). Pursuant to the Secretary's authority under section 56A(c)(15), and consistent with the treatment of similar credits for which an election under section 6417 (a companion provision to section 6418) is made, proposed § 1.56A-12(b)(2) would provide that AFSI is adjusted to disregard any amount received from the transfer of an eligible credit that is not included in the gross income of the CAMT entity under section 6418(b) or that is treated as tax exempt income under section 6418(c)(1)(A), provided that the amounts are not otherwise disregarded under proposed § 1.56A-8. In addition, proposed § 1.56A-12(b)(3) would provide that AFSI is adjusted to disregard amounts received pursuant to a direct pay election under section 48D(d)(2) or 6417(c) that is treated as tax exempt income for regular tax purposes, provided that the amounts are not otherwise disregarded under proposed § 1.56A-8. The rules in proposed § 1.56A-12(b)(1) through (3) would be consistent with section 6 of Notice 2023-7.

Pursuant to the Secretary's authority under section 56A(c)(15), proposed § 1.56A-12(c) would provide rules for the treatment of purchasers (transferees) of an eligible credit for purposes of determining their AFSI. For regular tax purposes, under section 6418(a) and § 1.6418-2(f)(2), a transferee does not have gross income as a result of utilizing a purchased credit with a value in excess of the amount paid for the purchased credit. Consistent with this regular tax treatment, proposed § 1.56A-12(c)(2) would provide that, to the extent FSI of a transferee reflects income from the utilization of a purchased credit, AFSI is adjusted to disregard the income if it is not otherwise disregarded under proposed § 1.56A-8.

For regular tax purposes, section 6418(b)(3) provides that the transferee cannot deduct the cash payment it makes to purchase the credit. Consistent with that regular tax treatment, proposed § 1.56A-12(c)(1) would provide that, for a transferee taxpayer that is a CAMT entity, AFSI is adjusted to disregard the cash payment the transferee taxpayer made to purchase the credit, if the expense is not otherwise disregarded under proposed § 1.56A-8.

Both the direct pay election provisions and the credit transfer provisions of the Code reference the basis reduction and credit recapture provisions in section 50 of the Code. *See* sections 48D(d)(5), 6417(g), and 6418(g)(3), respectively. For regular tax purposes, liability for credit recapture would represent nondeductible tax. To ensure that the CAMT treatment of a credit recapture is not more advantageous than the regular tax treatment, proposed § 1.56A-12(d) would provide that, to the extent FSI reflects a decrease for a credit recapture under sections 48D(d)(5), 50(a)(3), 6417(g), or 6418(g)(3) that is not otherwise disregarded under proposed § 1.56A-8, AFSI is adjusted to disregard the decrease to FSI.

XIII. Proposed § 1.56A-13: AFSI Adjustments for Covered Benefit Plans

Pursuant to the authority granted by section 56A(c)(11)(A), (c)(15), and (e), proposed § 1.56A-13 would provide rules under section 56A(c)(11) regarding adjustments to AFSI with respect to covered benefit plans. As defined in proposed § 1.56A-13(c), the term "covered benefit plan" would include: (i) a qualified defined benefit pension plan that is a defined benefit plan described in section 401(a) with a trust that is exempt from tax under section 501(a), and that is not a multiemployer plan described in section 414(f); (ii) a qualified foreign plan described in section 404A(e); or (iii) another plan if, under the accounting standards that apply to the AFS, the plan is treated as a defined benefit plan that provides post-employment benefits other than pension benefits.

The definition of the third type of covered benefit plan in proposed § 1.56A-13(c)(4) would be consistent with a recommendation from stakeholders that a welfare plan providing post-retirement benefits should be treated as a covered benefit plan if it is accounted for on a defined benefit basis. For example, if the accounting standards that apply to the AFS are GAAP, then a plan that provides post-employment benefits other than pension benefits and that is accounted for under the rules of Accounting Standards Codification (ASC) 715-60 would be treated as a covered benefit plan.

A defined benefit pension plan with a trust created or organized in Puerto Rico is a qualified defined benefit pension plan described in proposed § 1.56A-13(c)(2)(i) only if an election described in section 1022(i)(2)(A) of the Employee Retirement Income Security Act of 1974, Public Law 93-406, 88 Stat.

829, and § 1.401(a)-50(a) has been made with respect to the plan for its trust to be treated as created or organized in the United States for purposes of section 401(a) of the Code. A defined benefit pension plan with a trust created or organized in any other possession specified in section 937(a)(1) of the Code is not a qualified defined benefit pension plan under proposed § 1.56A-13(c)(2)(i).

Proposed § 1.56A-13(b) would provide that AFSI: (i) is adjusted to disregard any amount of income, cost, expense, gain, or loss that otherwise would be included on a CAMT entity's AFS in connection with any covered benefit plan; (ii) is increased by any amount of income in connection with any covered benefit plan that is included in gross income for the taxable year under any provision of chapter 1; and (iii) is reduced by deductions allowed for the taxable year under any provision of chapter 1 with respect to any covered benefit plan.

XIV. Proposed § 1.56A-14: AFSI Adjustments for Tax-Exempt Entities

Pursuant to the authority granted by section 56A(c)(15) and (e), proposed § 1.56A-14 would provide rules under section 56A(c)(12) regarding tax-exempt entities. Section 56A(c)(12) states that, in the case of an organization subject to tax under section 511 (generally, a tax-exempt entity), AFSI must be appropriately adjusted to only take into account any AFSI (i) of an unrelated trade or business (as defined in section 513) of such organization, or (ii) derived from debt-financed property (as defined in section 514) to the extent that income from such property is treated as unrelated business taxable income.

For most organizations described in section 501(c), unrelated business taxable income (UBTI) is defined in section 512(a)(1) of the Code as the gross income derived by any exempt organization from any unrelated trade or business (as defined in section 513) regularly carried on by it, less the deductions allowed by chapter 1 that are directly connected with the carrying on of such trade or business, both computed with the modifications provided in section 512(b).

The modifications in section 512(b) generally exclude from UBTI income from passive sources, such as dividends, interest, annuities, and certain other items (section 512(b)(1)), royalties (section 512(b)(2)), certain rents (section 512(b)(3)), and certain capital gains (section 512(b)(5)). However, notwithstanding section 512(b)(1), (2), (3), and (5), section 512(b)(4) includes as an item of gross income derived from an

unrelated trade or business the amount of income determined under section 514(a)(1) that is derived from debt-financed property, as defined in section 514(b). Section 512(a)(3) provides an alternate definition of UBTI for certain organizations that is computed without regard to the modifications in section 512(b)(1), (2), (3), and (5).

Stakeholders have requested clarification that the modifications in section 512(b) apply for purposes of section 56A(c)(12). One stakeholder stated that section 56A(c)(12)(B), which specifically includes income from debt-financed property, would be unnecessary if section 56A(c)(12)(A) already included such income (as would be the case if section 512(b) did not apply).

For the reason mentioned by the stakeholder, the modifications in section 512(b) should apply for purposes of section 56A(c)(12). Therefore, proposed § 1.56A–14(b) would provide that, in the case of an organization subject to tax under section 511, AFSI is adjusted to take into account any AFSI of an unrelated trade or business of such organization, subject to the applicable modifications to UBTI found in section 512(b), including AFSI derived from debt-financed property to the extent that income from such property is treated as UBTI.

XV. Proposed § 1.56A–15: AFSI Adjustments for Section 168 Property

Pursuant to the authority granted by section 56A(c)(13)(B)(ii), (c)(15), and (e), proposed § 1.56A–15 would provide rules under section 56A(c)(13) for determining the AFSI adjustments for property to which section 168 applies (section 168 property). To implement section 56A(c)(13), the proposed regulations would mimic the regular tax treatment of all section 168 property to the extent of the timing and amount of regular tax basis recovery with respect to the section 168 property, regardless of when the section 168 property is placed in service, whether and how the costs with respect to section 168 property are recognized in FSI, and whether gain or loss with respect to section 168 property is recognized in FSI. As a result, proposed § 1.56A–15 applies the principle that the application of section 56A(c)(13) should not provide the CAMT entity with a better result with respect to section 168 property for AFSI purposes than for regular tax purposes.

Proposed § 1.56A–15(b) would provide definitions that generally follow the definitions in sections 2 and 4 of Notice 2023–7, as modified and clarified by sections 5 and 9.02 of Notice 2023–64. A new defined term, covered book

inventoriable depreciation, would be added to explain a simplified method for a CAMT entity to determine depreciation in ending inventory for purposes of determining the tax COGS depreciation and covered book COGS depreciation adjustments, as discussed in part XV.B of this Explanation of Provisions. In addition, new defined terms, tax capitalization method change and tax capitalization method change AFSI adjustment, would be added for changes in methods of accounting for regular tax purposes involving a change from capitalizing and depreciating costs as section 168 property to deducting the costs (or vice versa), as discussed in part XV.B of this Explanation of Provisions. Further, the definition of the term tax depreciation section 481(a) adjustment would be expanded to include an adjustment (or portion thereof) required under section 481(a) for any other change in method of accounting (other than a tax capitalization method change) that impacts the timing of taking into account depreciation of section 168 property in computing taxable income (for example, a change in method of accounting involving a change from deducting depreciation of section 168 property to capitalizing such depreciation under section 263A or another capitalization provision, or vice versa). These additional or expanded definitions for changes in methods of accounting would prevent depreciation of section 168 property from being duplicated in, or omitted from, AFSI.

A. Section 168 Property

1. In General

Proposed § 1.56A–15(c)(1) generally would define section 168 property to mean: (i) MACRS property, as defined in § 1.168(b)–1(a)(2), that is depreciable under section 168; (ii) computer software that is qualified property, as defined in § 1.168(k)–1(b)(1) or 1.168(k)–2(b)(1), and is depreciable under section 168; and (iii) certain other intangible property that is depreciable under section 168, is qualified property as defined in § 1.168(k)–2(b)(1), and is described in § 1.168(k)–2(b)(2)(i)(E), (F), or (G). Property described in § 1.168(k)–2(b)(2)(i)(E), (F), or (G) includes: (i) a qualified film or television production, or a qualified live theatrical production, for which a deduction otherwise would be allowable under section 181 of the Code and which was initially released, broadcast, or staged live, respectively, after September 27, 2017; or (ii) a specified plant for which the taxpayer has properly made an election to apply section 168(k)(5) and that is planted, or grafted to a plant that has already been

planted, by the taxpayer in the ordinary course of the taxpayer's farming business, as defined in section 263A(e)(4) of the Code.

As explained previously, section 168 property includes computer software and certain other intangible property that is “qualified property”. The term “qualified property” is defined in § 1.168(k)–1(b)(1) or 1.168(k)–2(b)(1) as depreciable property that meets the following four requirements: (i) the depreciable property is of a specified type; (ii) the original use of the depreciable property commences with the taxpayer, or used depreciable property meets the acquisition requirements of section 168(k)(2)(E)(ii); (iii) the depreciable property is placed in service by the taxpayer within a specified time period or is planted or grafted by the taxpayer before a specified date; and (iv) the depreciable property is acquired by the taxpayer after September 27, 2017.

2. Property Depreciable Under Section 168

The definition of “Section 168 Property” in section 4.04 of Notice 2023–7 includes only property “depreciable” under section 168. The Treasury Department and the IRS have further considered the interim guidance in Notice 2023–7 in response to stakeholder feedback. Accordingly, the proposed regulations would interpret the adjustment under section 56A(c)(13) to include property “depreciable” under section 168 even if the property is not ultimately depreciated under section 168, but only to the extent of the depreciation allowed under section 167. Accordingly, proposed § 1.56A–15(c)(1) would expand the definition of “Section 168 Property” to include property “depreciable” under section 168. As a result, section 168 property would include property that has not yet been placed in service but that would be property “depreciable” under section 168 once placed in service. Additionally, section 168 property would include property eligible for the additional first year depreciation deduction, even if the taxpayer makes the election out under section 168(k)(7). See proposed § 1.56A–15(c)(5). However, proposed § 1.56A–15(c)(2) would clarify that the adjustments under section 56A(c)(13) apply only to the portion of the cost of property depreciable under sections 167 and 168, and not the portion deductible under section 181 or recovered under any other section of the Code.

Proposed § 1.56A–15(c)(3) would provide that the adjustments under section 56A(c)(13) do not apply to

deductible expenditures (such as deductible repair expenditures) that are made with respect to section 168 property, and proposed § 1.56A–15(c)(4) would clarify that property that is not depreciable under section 168 for regular tax purposes does not give rise to adjustments under section 56A(c)(13). These items would not be depreciable under section 168, and therefore are not within the scope of section 56A(c)(13). However, stakeholders have recommended that the AFSI adjustments under section 56A(c)(13) with respect to section 168 property take into account repair expenditures with respect to such property that are deductible for regular tax purposes, but which are capitalized and depreciated for AFS purposes. Stakeholders commented that this approach would simplify the computation of AFSI and would reduce the compliance burden on taxpayers. In addition, stakeholders noted that certain industries (for example, regulated utilities) are subject to industry-specific GAAP or IFRS rules that increase the disparity between the amount of repair expenditures expensed for AFS purposes compared to the deductible repair expenditures for regular tax purposes, and, thus, such industries may have increased amounts of AFSI after application of the adjustments under section 56A(c)(13). The Treasury Department and the IRS continue to study this issue. Comments are requested on whether the AFSI adjustments with respect to section 168 property should take into account or otherwise reflect the repair expenditures with respect to section 168 property that are deducted for regular tax purposes but capitalized and depreciated for AFS purposes.

Proposed § 1.56A–15(c)(6) would provide that section 56A(c)(13) applies to property placed in service in any taxable year, including taxable years beginning before January 1, 2023 (that is, the effective date of the CAMT). This rule is based on section 56A(c)(13), which does not limit the depreciation adjustments to property placed in service in certain years or under certain conditions. In contrast, *see* section 56A(d)(3), which limits the net loss set forth on a taxpayer's AFS to taxable years ending after December 31, 2019.

B. AFSI adjustments for Depreciation

Proposed § 1.56A–15(d)(1) would provide the AFSI adjustments for depreciation that are required under section 56A(c)(13). Proposed § 1.56A–15(d)(2) would provide special rules for section 168 property held by a partnership, and proposed § 1.56A–15(d)(3) would provide special rules for

determining the adjustments under proposed § 1.56A–15(d)(1) if depreciation is an inventoriable cost for AFS or regular tax purposes. Finally, proposed § 1.56A–15(d)(4) would provide adjustment periods for tax capitalization method change AFSI adjustments.

More specifically, under proposed § 1.56A–15(d)(1), AFSI of a CAMT entity would be reduced by: (i) tax cost of goods sold (tax COGS) depreciation (that is, tax depreciation capitalized under section 263A to inventory or to the basis of property described in section 1221(a)(1) that is not inventory), but only to the extent of the amount recovered as part of cost of goods sold in computing gross income for the taxable year or as part of the computation of gain or loss from the sale or exchange of non-inventory property described in section 1221(a)(1) of the Code that is included or deducted in computing taxable income for the taxable year; (ii) deductible tax depreciation (that is, depreciation deductions allowed under section 167, or another provision of the Code, with respect to section 168 property), but only to the extent of the amount that is allowed as a deduction in computing taxable income for the taxable year; and (iii) any tax depreciation section 481(a) adjustment (that is, an adjustment for regular tax purposes under section 481(a) of the Code with respect to a change in method of accounting for depreciation for section 168 property or any other change in method of accounting (other than a tax capitalization method change) that impacts the timing of taking into account depreciation with respect to section 168 property in computing taxable income) that is negative, but only to the extent of the amount of such adjustment that is taken into account in computing taxable income for the taxable year.

AFSI of a CAMT entity also would be adjusted to disregard covered book cost of goods sold (book COGS) depreciation, covered book depreciation expense, covered book expense, and any AFS basis recovery with respect to section 168 property that is reflected in FSI following the date such property is disposed of for regular tax purposes. Covered book COGS depreciation includes depreciation expense, other recovery of AFS basis (including from an impairment loss) that occurs prior to the taxable year in which the disposition of section 168 property occurs for regular tax purposes, or impairment loss reversal that is taken into account as cost of goods sold (or as part of the computation of gain or loss

from the sale or exchange of property held for sale) in FSI with respect to section 168 property. Covered book depreciation expense includes depreciation expense, other recovery of AFS basis (including from an impairment loss) that occurs prior to the taxable year in which the disposition of section 168 property occurs for regular tax purposes, or impairment loss reversal that is taken into account in FSI with respect to section 168 property and is not included in covered book COGS depreciation. Covered book expense includes an amount other than covered book COGS depreciation and covered book depreciation expense that reduces FSI and is reflected in the unadjusted depreciable basis, as defined in § 1.168(b)–1(a)(3), of section 168 property for regular tax purposes.

AFSI of a CAMT entity (i) would be increased by any tax depreciation section 481(a) adjustment that is positive, but only to the extent of the amount of such adjustment that is taken into account in computing taxable income for the taxable year, and (ii) would be increased or decreased, as appropriate, by any tax capitalization method change AFSI adjustment. The tax capitalization method change AFSI adjustment is determined as of the beginning of the tax year of change and equals the difference between (i) the cumulative amount of adjustments made to AFSI with respect to the cost(s) subject to the tax capitalization method change and (ii) the cumulative amount of adjustments to AFSI that would have been made if the new method of accounting had been applied for those taxable years. As provided in the definition in proposed § 1.56A–15(b)(11), the tax capitalization method change AFSI adjustments include only amounts with respect to taxable years beginning after December 31, 2019, because generally AFSI adjustments are not made for earlier periods. *See also* proposed § 1.56A–1(d)(3). The IRS may publish IRB guidance that provides for other AFSI adjustments under section 56A(c)(13). *See* proposed § 1.56A–15(d)(1).

These proposed regulations generally would follow the adjustments described in section 4.03 of Notice 2023–7, as modified by section 9.02(5) and (6) of Notice 2023–64, with certain modifications.

The proposed regulations also would include special rules for section 168 property held by partnerships under proposed § 1.56A–15(d)(2). If section 168 property is held by a partnership, the adjustments provided in proposed § 1.56A–15(d)(1) (excluding the covered book adjustments in proposed § 1.56A–

15(d)(1)(iii)) would include amounts resulting from any basis adjustment under section 734(b) attributable to section 168 property that is treated as an increase or decrease to tax depreciation or a tax depreciation section 481(a) adjustment for regular tax purposes. *See* proposed § 1.56A–5(e)(3) for the manner in which the adjustments provided for in proposed § 1.56A–15(d)(1) are taken into account by a partnership in computing modified FSI.

However, if section 168 property is held by a partnership, the adjustments provided in proposed § 1.56A–15(d)(1) would not include amounts resulting from any basis adjustment under section 743(b) of the Code. Additionally, the adjustments provided in proposed § 1.56A–15(d)(1) would not include any decreases in tax depreciation or income amounts for regular tax purposes resulting from any basis adjustment under § 1.1017–1(g)(2) attributable to section 168 property held by a partnership (as calculated under § 1.743–1(j)(4)(ii)). Instead, the adjustments provided in proposed § 1.56A–15(d)(2)(ii) and (iv) for amounts resulting from basis adjustments under section 743(b) and § 1.1017–1(g)(2) that would have been included in the adjustments provided in § 1.56A–15(d)(1) would be separately stated to the partnership's CAMT entity partners for inclusion in their distributive amounts. *See* proposed § 1.56A–5(e)(4) for the manner in which the adjustments provided for in proposed § 1.56A–15(d)(2)(ii) and (iv) are taken into account by a CAMT entity partner.

Stakeholders also requested an adjustment to reduce AFSI for amounts of depreciation that are capitalized under section 263A during the taxable year, regardless of the period in which the capitalized amount is recovered, similar to the methodology under § 1.163(j)–1(b)(1)(iii). This approach is inconsistent with section 56A(c)(13)'s directive to mimic the regular tax treatment of all section 168 property to the extent of the timing and amount of regular tax basis recovery with respect to the section 168 property, and therefore the application of section 56A(c)(13) should not provide the taxpayer with a better result for AFSI than for regular tax purposes. However, the Treasury Department and the IRS continue to study the viability of this and other simplifying safe harbors. In addition, the proposed regulations would include special rules to determine tax COGS depreciation and covered book COGS depreciation adjustments, as well as simplifying methods for FIFO and LIFO method taxpayers to determine depreciation in

ending inventory for purposes of computing the tax COGS depreciation and covered COGS depreciation adjustments to AFSI. *See* proposed § 1.56A–15(d)(3).

In addition, stakeholders requested guidance on potential adjustments to AFSI to account for a change in method of accounting made for regular tax purposes from deducting a cost as an expense to capitalizing and depreciating that cost under sections 167 and 168, and vice versa (proposed § 1.56A–15(b)(10) would define this type of change in method of accounting as a tax capitalization method change). As a result of a tax capitalization method change, the cost at issue would be reclassified to or from section 168 property beginning with the taxable year the tax capitalization method change is effective (depending on the particular tax capitalization method change), and therefore the CAMT entity would be required to begin or cease making adjustments under section 56A(c)(13) beginning in that year of change. Accordingly, proposed § 1.56A–15(d)(1)(vi) would require adjustments to AFSI to prevent any omission or duplication that would otherwise result from the CAMT entity being required to begin or cease making adjustments under section 56A(c)(13) as a result of a tax capitalization method change (proposed § 1.56A–15(b)(11) would define these adjustments as the “tax capitalization method change AFSI adjustment”). For example, if a CAMT entity changes its method of accounting for regular tax purposes from capitalizing and depreciating a cost under sections 167 and 168 to deducting that cost as a repair under section 162, adjustments under section 56A(c)(13) would no longer be required beginning in the year of change as the cost would no longer constitute section 168 property and a tax capitalization method change AFSI adjustment would be made to adjust the cumulative amount of AFSI as of the beginning of the year of change to reflect the cumulative amount of adjustments to AFSI that would have been made in prior years under the new method of accounting. Proposed § 1.56A–15(d)(4) would provide that, in general, a negative tax capitalization method change AFSI adjustment reduces AFSI in the tax year of change by the full amount of the adjustment, and a positive tax capitalization method change AFSI adjustment increases AFSI ratably over four taxable years beginning with the tax year of change. For purposes of proposed § 1.56A–15(d)(4), a short taxable year would be treated as

if it were a full 12-month taxable year. If, in any taxable year, a CAMT entity ceases to engage in the trade or business to which the tax capitalization method change AFSI adjustment relates, proposed § 1.56A–15(d)(4) would require the CAMT entity to include in its AFSI for such taxable year any portion of the adjustment not included in AFSI for a previous taxable year.

Examples in proposed § 1.56A–15(d)(5) would illustrate the adjustments to AFSI that would be required by proposed § 1.56A–15(d).

C. Disposition of Section 168 Property

1. In General

To prevent duplications or omissions of AFSI, proposed § 1.56A–15(e)(1) generally would provide that, if a CAMT entity disposes of section 168 property for regular tax purposes, the CAMT entity must adjust AFSI for the year of the disposition to redetermine the gain or loss taken into account in the CAMT entity's FSI on the disposition by reference to the CAMT basis in the property (in lieu of the AFS basis). For this purpose, the CAMT basis in the property would be determined by adjusting the AFS basis in the property on the disposition date by the amounts described in proposed § 1.56A–15(e)(2). Proposed § 1.56A–15(e)(1) would clarify that, to the extent the CAMT basis of section 168 property is negative (for example, if regular tax basis exceeds AFS basis), such negative amount is recognized as AFSI gain upon disposition of the section 168 property. Proposed § 1.56A–15(e)(7) would provide that, in the case of a disposition for regular tax purposes in an intercompany transaction defined in § 1.1502–13(b)(1)(i), the timing of taking into account the AFSI adjustment under proposed § 1.56A–15(e)(1) is deferred until the taxable year in which the FSI of the tax consolidated group includes the selling member's FSI gain or loss. The calculation of FSI of a tax consolidated group is further discussed in part XXXI.C of this Explanation of Provisions, and the treatment of tax items relating to intercompany transactions is further discussed in part XXXI.G of this Explanation of Provisions.

Proposed § 1.56A–15(e)(2)(i) would provide that the CAMT basis of the section 168 property as of the disposition date is the AFS basis of the section 168 property as of that date: (i) decreased by the full amount of the tax depreciation with respect to such property (regardless of whether any amount of the tax depreciation was capitalized for regular tax purposes and

not yet taken into account as a reduction to AFSI through an adjustment described in proposed § 1.56A–15(d)(1)(i) or (ii) as tax COGS depreciation or deductible tax depreciation); (ii) increased by the amount of any covered book expense with respect to the property; (iii) increased by the amount of any covered book COGS depreciation and covered book depreciation expense that reduced the AFS basis of such property as of the date of disposition, including covered book COGS depreciation and covered book depreciation expense with respect to AFS basis that are otherwise disregarded for AFSI and CAMT basis purposes (for example, AFS basis increases that are disregarded for AFSI and CAMT basis purposes under proposed § 1.56A–18 or 1.56A–19 (concerning corporate transactions)); (iv) decreased by any reductions to the CAMT basis of such property under proposed § 1.56A–21(c)(4) and (5) (concerning CAMT attribute reductions for troubled companies); (v) decreased by any amount allowed as a credit against tax imposed by subtitle A with respect to such property, but only to the extent of the amount that reduces the tax basis of such property for regular tax purposes; and (vi) increased or decreased, as appropriate, by the amount of any adjustments to AFS basis that are disregarded for AFSI and CAMT basis purposes under other sections of the section 56A regulations with respect to such property (for example, AFS basis decreases that are disregarded for AFSI and CAMT basis purposes under § 1.56A–8 and AFS basis adjustments that are disregarded for AFSI and CAMT basis purposes under § 1.56A–18 or 1.56A–19).

These proposed regulations generally would follow the adjustments described in section 4.07 of Notice 2023–7, as modified by section 9.02(5) and (7) of Notice 2023–64, with certain modifications for Federal tax credits that reduce the basis of section 168 property for regular tax purposes. Proposed § 1.56A–15(e)(2)(i)(E) would provide for an adjustment to decrease CAMT basis upon disposition by any amount allowed as a Federal tax credit to the extent of the amount that reduces the basis of section 168 property for regular tax purposes. Because Federal tax credits can offset an applicable corporation's CAMT liability under section 55(a), this adjustment would provide parity with the regular tax rules that generally apply a “no excess benefit” principle such that the adjusted basis of property is reduced, in whole or in part, if a Federal tax credit is

determined with respect to such property. Accordingly, this adjustment would prevent an applicable corporation from obtaining an excess benefit for CAMT purposes upon disposition through a recovery of additional CAMT basis equal to the amount of the credit. This adjustment is also consistent with the implementation of section 56A(c)(13) in these proposed regulations by mimicking the regular tax treatment of all section 168 property to the extent of the timing and amount of regular tax basis recovery.

Proposed § 1.56A–15(e)(2)(ii) and (e)(3) would provide special rules regarding adjustments to the AFS basis of section 168 property. Proposed § 1.56A–15(e)(2)(ii)(A) would provide that, for section 168 property placed in service prior to the effective date of CAMT (that is, January 1, 2023), the adjustments in proposed § 1.56A–15(e)(2)(i) include amounts attributable to all taxable years beginning before January 1, 2023. This would be consistent with the implementation of section 56A(c)(13) in these proposed regulations by mimicking the regular tax treatment of all section 168 property to the extent of the timing and amount of regular tax basis recovery such that unrecovered pre-effective date AFS basis is not recovered upon disposition when regular tax basis recovery already occurred. In the case of section 168 property acquired in a transaction that is a covered recognition transaction, as defined in proposed § 1.56A–18, with respect to at least one party to the transaction, or in a partnership transaction described in proposed § 1.56A–20, proposed § 1.56A–15(e)(2)(ii)(B) would provide that the adjustments in proposed § 1.56A–15(e)(2)(i) include only amounts attributable to the period following the transaction. The adjustments in proposed § 1.56A–15(e)(2)(i) are not required for the period prior to a covered recognition transaction or a partnership transaction described in proposed § 1.56A–20 because gain or loss was included in AFSI at the time of the transaction (using CAMT basis in lieu of AFS basis). Accordingly, for a subsequent disposition of section 168 property after a covered recognition transaction or a partnership transaction described in proposed § 1.56A–20, the adjustments in proposed § 1.56A–15(e)(2)(i) that pre-date the transaction are not needed to determine the CAMT basis and redetermine gain or loss for purposes of adjusting AFSI for the subsequent disposition.

Proposed § 1.56A–15(e)(2)(ii)(C), which contains a special rule for coordination with section 56A(c)(5),

would provide that the adjustment for tax credits described in proposed § 1.56A–15(e)(2)(i)(E) applies regardless of the treatment of the tax credit for AFS purposes. In addition, proposed § 1.56A–15(e)(2)(ii)(D) would provide a rule for determining CAMT basis of section 168 property following a change in method for depreciation or a tax capitalization method change. Under the rule, adjustments under § 1.56A–15(e)(2)(i) would be determined as though the CAMT entity used the method of accounting to which it changed under the corresponding method change when making the adjustments under § 1.56A–15(d)(1) in all taxable years prior to the taxable year in which the disposition of the section 168 property occurs. This special rule would be needed to prevent income or deductions from being duplicated or omitted because of the accounting method change.

Proposed § 1.56A–15(e)(2)(ii)(E) would provide that the adjustments described in proposed § 1.56A–15(e)(2)(i)(B) (covered book expense) and (C) (covered book COGS depreciation and covered book depreciation expense) would include only the covered book expense, covered book COGS depreciation, and covered book depreciation expense amounts that were actually disregarded by the CAMT entity under proposed § 1.56A–15(d)(1)(iii) in computing its AFSI, modified FSI, or adjusted net income or loss for the relevant taxable years. However, for a taxable year ending on or before December 31, 2019, or for a taxable year in which the CAMT entity satisfies the simplified method under proposed § 1.59–2(g) (including a taxable year included in the relevant three-taxable-year period), the CAMT entity is deemed to have disregarded the appropriate amounts under proposed § 1.56A–(d)(1)(iii). This rule prevents a CAMT entity that did not disregard the appropriate amounts in prior years from receiving a double benefit on disposition given that the rules in proposed § 1.56A–15(e)(2) otherwise would include these amounts in the CAMT basis of the section 168 property disposed of.

Proposed § 1.56A–15(e)(3) would provide special rules for section 168 property disposed of by a partnership. If a partnership disposes of section 168 property, the partnership must adjust its modified FSI (described in proposed § 1.56A–5(e)(3)) for the taxable year in which the disposition occurs to redetermine any gain or loss taken into account in the partnership's FSI by reference to the CAMT basis (in lieu of the AFS basis) of the section 168

property. For purposes of this calculation, adjustments to a partnership's AFS basis of section 168 property disposed of by the partnership include any tax depreciation (including any reduction in tax depreciation) relating to a section 734(b) basis adjustment. Accordingly, tax depreciation relating to a section 734(b) basis adjustment would be required in all cases to be recaptured upon a disposition of the section 168 property by a partnership unless a corresponding adjustment was made to the AFS basis of the property as a result of the transaction that gave rise to the section 734(b) basis adjustment.

Adjustments to a partnership's AFS basis of section 168 property disposed of by a partnership do not include any tax depreciation (including any reduction in tax depreciation) or adjustments to the partnership's AFS basis in the section 168 property with respect to a basis adjustment under § 1.1017-1(g)(2). However, if a partner in the partnership is subject to the attribute reduction rules under proposed § 1.56A-21(c)(4) and (5) for discharge of indebtedness income realized through the partnership, the partner must increase its distributive share amount (under proposed § 1.56A-5(e)(4)(ii)(A)) for the taxable year of the disposition of the section 168 property by the amount of any remaining basis adjustment under § 1.1017-1(g)(2) with respect to the section 168 property that has not yet been taken into account for regular tax purposes. *See* § 1.1017-1(g)(2)(v) and proposed § 1.56A-5(e)(4)(ii)(A).

Adjustments to a partnership's AFS basis of section 168 property disposed of by a partnership also do not include any tax depreciation (including any reduction in tax depreciation) or adjustments to the partnership's AFS basis in the section 168 property with respect to a basis adjustment under section 743(b). However, if a partner in the partnership has a section 743(b) adjustment with respect to section 168 property held by the partnership that is disposed of by the partnership for regular tax purposes, the partner must increase its distributive share amount (under proposed § 1.56A-5(e)(4)(ii)(B)) for the taxable year of the disposition of the section 168 property by an amount equal to the total amount of any tax depreciation or tax depreciation section 481(a) adjustments (including negative amounts) with respect to a section 743(b) basis adjustment that decreased the partner's distributive share amount under proposed § 1.56A-5(e)(1)(iv) and (e)(4)(ii)(A) for taxable years prior to the disposition. Likewise, the partner must

decrease its distributive share amount (under proposed § 1.56A-5(e)(4)(ii)(B)) for the taxable year of the disposition of the section 168 property by an amount equal to the total amount of any tax depreciation or tax depreciation section 481(a) adjustments with respect to a section 743(b) basis adjustment that increased the partner's distributive share amount under proposed § 1.56A-5(e)(1)(iv) and (e)(4)(ii)(A) for taxable years prior to the disposition. Thus, tax depreciation or tax depreciation section 481(a) adjustments relating to a section 743(b) basis adjustment that adjusted a partner's distributive share amount would be required in all cases to be recaptured by the partner upon a disposition of the section 168 property by the partnership.

Section 56A(a) provides that the term "AFSI" means, for any corporation for any taxable year, the net income or loss of the taxpayer set forth on its AFS for the taxable year, adjusted as provided in section 56A. Section 56A(c)(13) does not expressly include an adjustment to AFSI to apply nonrecognition or gain deferral provisions that apply to certain dispositions of section 168 property for regular tax purposes. However, under the authority granted by section 56A(c)(15), the Secretary may provide for such an adjustment in certain situations (for example, *see* proposed §§ 1.56A-18 and 1.56A-19, which would provide for an adjustment to AFSI if section 168 property is disposed of in a covered nonrecognition transaction).

Accordingly, proposed § 1.56A-15(e)(4) would provide that except as otherwise provided in other sections of the section 56A regulations, the nonrecognition and gain deferral rules of the Code would not apply when a CAMT entity recognizes gain or loss from the disposition of section 168 property in its FSI, regardless of whether or when any gain or loss on the disposition is taken into account for regular tax purposes. These rules would be consistent with sections 9.02 and 9.03 of Notice 2023-64 and with section 56A(c)(13)'s directive to mimic the regular tax treatment of all section 168 property to the extent of the timing and amount of regular tax basis recovery, which does not extend to the timing and amount of disposition proceeds received upon the disposition of section 168 property that are taken into account in determining gain or loss in FSI (unless otherwise provided in other sections of the section 56A regulations).

Proposed § 1.56A-15(e)(6) also follows the principle applied in interpreting section 56A(c)(13) by providing a special rule that, if section

168 property is disposed of for regular tax purposes before it is treated as disposed of for AFS purposes, the CAMT entity continues to make AFSI adjustments under proposed § 1.56A-15(d)(1)(iii) to disregard any AFS basis recovery that is reflected in FSI following the disposition of the section 168 property for regular tax purposes. Finally, proposed § 1.56A-15(e)(5) would provide that the unit of property determination under § 1.263(a)-3(e) does not apply for purposes of determining the appropriate asset to ascertain whether section 168 property has been disposed of. Instead, CAMT entities would be required to follow section 168 and the regulations under section 168. *See* § 1.168(i)-8(c)(4).

Proposed § 1.56A-15(e)(7) would provide examples to illustrate these rules.

XVI. Proposed § 1.56A-16: AFSI Adjustments for Qualified Wireless Spectrum

Pursuant to the authority granted by section 56A(c)(14)(A)(ii)(II), (c)(15), and (e), proposed § 1.56A-16 would provide rules under section 56A(c)(14) regarding qualified wireless spectrum. The principles of interpretation and rules applied would be consistent with the principles and rules for section 168 property discussed in part XV of this Explanation of Provisions, except for certain rules that are not applicable to qualified wireless spectrum (for example, the definition of section 168 property and the rules for tax depreciation that is capitalized under section 263A to inventory or to the basis of property under section 1221(a)(1) that is not inventory). Therefore, section 56A(c)(14) would be interpreted to mimic the regular tax treatment of all qualified wireless spectrum to the extent of the timing and amount of regular tax basis recovery with respect to the qualified wireless spectrum, regardless of when placed in service and regardless of whether gain or loss with respect to qualified wireless spectrum is recognized in FSI.

The definitions, rules for adjusting AFSI for amortization and other amounts with respect to qualified wireless spectrum, and rules upon disposition of qualified wireless spectrum are therefore not discussed. Instead, only rules or definitions within proposed § 1.56A-16 that differ or are unique from the section 168 property rules (that is, the definition of qualified wireless spectrum) are discussed in this section. Proposed § 1.56A-16(c)(1) would define "qualified wireless spectrum" as wireless spectrum that: (i) is used in the trade or business of a

wireless telecommunications carrier; (ii) is an amortizable section 197 intangible under section 197(c)(1) and (d)(1)(D); and (iii) was acquired after December 31, 2007, and before August 16, 2022. This definition would be consistent with the definition in section 10.02(4) of Notice 2023–64.

XVII. Proposed § 1.56A–17: AFSI Adjustments To Prevent Certain Duplications and Omissions

Pursuant to the authority granted by section 56A(c)(15) and (e), proposed § 1.56A–17 would provide rules under section 56A(c)(15) to prevent certain duplications and omissions.

A. Only Specified Adjustments to AFSI Are Allowed

Section 56A(c)(15)(A) authorizes the Secretary to issue regulations or other guidance to provide for adjustments to AFSI that the Secretary determines necessary to carry out the purposes of section 56A, including adjustments to prevent the duplication or omission of any item. Consistent with Notice 2023–64 and proposed § 1.56A–1(d)(2), proposed § 1.56A–17(b) would provide that, to prevent duplications or omissions of items of income, expense, gain or loss, AFSI is adjusted for those items identified in proposed § 1.56A–17(c) through (e) and any other items identified in the section 56A regulations. Accordingly, CAMT entities would not be allowed to self-identify items they believe to be duplications or omissions and make AFSI adjustments for such items. The Treasury Department and the IRS request comments on whether additional adjustments are necessary to prevent duplications or omissions of items under section 56A.

B. Adjustment for Changes in Accounting Principles

New accounting standards commonly are implemented retrospectively through an adjustment to the beginning balance of a CAMT entity's retained earnings in the AFS for the year in which the new standards are implemented, which may result in a duplication of AFSI or an omission from AFSI. For example, a duplication would arise if a new accounting standard were to recognize income or expense in a later year than the prior standard (as that amount would be taken into account in FSI under both the prior standard and the new standard, thus necessitating an offsetting adjustment to retained earnings). Conversely, an omission would arise if the new standard were to recognize income or expense in a prior year whereas the old

standard would have recognized such amount in a future year (as that amount would not be taken into account in FSI under either standard, thus necessitating an adjustment to retained earnings to account for the economic effect of that amount in the financial statements).

To prevent these duplications or omissions, and consistent with Notice 2023–64, proposed § 1.56A–17(c)(1) generally would require a CAMT entity to adjust its AFSI by the “accounting principle change amount,” as described in proposed § 1.56A–17(c)(2)(i), if the CAMT entity implements a change in accounting principle in its AFS. Under proposed § 1.56A–17(c)(2)(i), the accounting principle change amount would be equal to the net cumulative adjustment to the CAMT entity's beginning retained earnings resulting from the change in accounting principle. The accounting principle change amount would also be subject to further adjustment if any portion of the amount relates to any FSI items to which other AFSI adjustments apply, such as taxes under section 56A(c)(5) and proposed § 1.56A–8, and to disregard any portion of the cumulative adjustment attributable to taxable years beginning on or before December 31, 2019.

Proposed § 1.56A–17(c)(2)(ii) also provides rules for determining the accounting principle change amount when a CAMT entity is treated as having a change in accounting principle under proposed § 1.56A–1(c)(5) because the priority of the CAMT entity's AFS for the taxable year (as determined under proposed § 1.56A–2(c)) is different from the priority of the CAMT entity's AFS for the immediately preceding taxable year. In such a case, the accounting principle change amount would be equal to the difference between the CAMT entity's beginning retained earnings reflected on the current AFS as of the beginning of the taxable year and the ending retained earnings reflected on the former AFS as of the end of the immediately preceding taxable year. The accounting principle change amount would also be subject to further adjustment if any portion of the amount relates to any FSI items to which other AFSI adjustments apply, such as taxes under section 56A(c)(5) and proposed § 1.56A–8, and to disregard any portion of the cumulative adjustment attributable to taxable years beginning on or before December 31, 2019.

Proposed § 1.56–17(c)(3) would provide rules consistent with Notice 2023–64 for spreading accounting principle change amounts across

multiple taxable years. Different spread period rules would apply depending on whether a net adjustment to AFSI prevents the duplication or prevents the omission of an amount. Because the same accounting principle change amount could prevent a duplication of an item and prevent the omission of another item, proposed § 1.56–17(c)(3) would require a CAMT entity to determine the appropriate spread period rules based on whether the accounting principle change amount prevents a net duplication or a net omission due to the accounting principle change.

Proposed § 1.56A–17(c)(3)(i)(A) generally would provide that, if an accounting principle change adjustment prevents a net duplication for AFSI purposes, the adjustment must be taken into account in the CAMT entity's AFSI ratably over four taxable years, beginning with the taxable year the change in accounting principle is implemented in the CAMT entity's AFS. However, stakeholders have observed that duplicated items could be taken into account in FSI over a shorter or longer period of time. Moreover, a distortion could occur if the duplicated items were significant and taken into account in FSI over a different period than the corresponding AFSI adjustment. A spread period other than four years may be appropriate to prevent such distortions but have abuse and administrability concerns associated with allowing excessively long spread periods. Accordingly, proposed § 1.56A–17(c)(3)(i)(B) would provide that the spread period is capped at 15 years, which should be sufficient to prevent undue distortions. If a CAMT entity can demonstrate that a net duplication is reasonably anticipated to be taken into account in FSI over a period other than 4 years, proposed § 1.56A–17(c)(3)(i)(B) would allow such CAMT entity to take the AFSI adjustment into account ratably over a spread period, not to exceed 15 years, that matches the period that the net duplication is taken into account in the AFS under the new accounting principle (regardless of whether the duplicated amount is taken into account ratably over that period). The Treasury Department and the IRS request comments about whether a spread period greater than 15 years is necessary for an accounting principle change amount that prevents duplication.

In contrast, if an adjustment prevents a net omission for AFSI purposes, proposed § 1.56A–17(c)(3)(ii) would require (i) adjustments that result in an increase to AFSI to be taken into account in AFSI ratably over four taxable years, beginning with the

taxable year that the change in accounting principle is implemented in the CAMT entity's AFS, and (ii) adjustments that result in a decrease to AFSI to be taken into account in AFSI in full in the taxable year the change in accounting principle is implemented in the CAMT entity's AFS. Unlike items that were duplicated in AFSI, items that would be omitted from AFSI (but for the accounting principle change adjustment) already would have been taken into account in FSI under the new accounting principle. Accordingly, there is no need to defer any portion of the AFSI adjustment to future taxable years in order to match its timing with the related FSI items, as the omitted item would have already been taken into account in FSI in a prior period under the new accounting principle. Nonetheless, the spread period rules for amounts omitted from AFSI would follow the spread period rules used for section 481(a) adjustments for regular tax purposes, consistent with the description immediately preceding.

Proposed § 1.56A-17(c)(4) would provide, consistent with Notice 2023-64, that any portion of an accounting principle change amount not included in AFSI for a previous taxable year must be taken into account in AFSI in the taxable year the CAMT entity ceases to engage in the trade or business that is the subject of the change in accounting principle. The Treasury Department and the IRS request comments on proposed § 1.56A-17(c)(4) and whether and to what extent the rules and concepts provided in Rev. Proc. 2015-13, 2015-5 I.R.B. 419, that accelerate the recognition of a section 481(a) adjustment in certain circumstances should apply to accelerate the recognition of an accounting principle change amount (without suggesting that an accounting principle change is inherently also a tax accounting method change).

C. Adjustment for Restatement of a Prior Year's AFS

Proposed § 1.56A-2(e) would provide rules for the restatement of FSI for a taxable year on a CAMT entity's restated AFS (restatement) issued prior to the date that the CAMT entity files its original Federal income tax return for such taxable year. Proposed § 1.56A-17(d) would provide rules for a restated AFS issued on or after the date that the CAMT entity files its original Federal income tax return. Consistent with Notice 2023-64, proposed § 1.56A-17(d)(1) generally would require the CAMT entity to adjust its AFSI to account for the restatement (AFSI restatement adjustment). Unlike Notice

2023-64, which required the adjustment to be taken into account in the first taxable year for which the CAMT entity had not filed an original return as of the restatement date, proposed § 1.56A-17(d)(1)(i) would require that the adjustment be made for the taxable year during which the restated AFS is issued. This change was made because of a concern that the rule in Notice 2023-64 might not provide CAMT entities with enough time to take into account the restatement if it were issued shortly before the next due date for filing an original return. Providing an adjustment for the taxable year during which the restated AFS is issued is intended to minimize the instances in which a CAMT entity would file an amended return or an administrative adjustment request (AAR) under section 6227 of the Code as a result of a restatement. However, proposed § 1.56A-17(d)(2) would require a CAMT entity that has a restatement, and that files an amended return or AAR to adjust taxable income as a result of the restatement, to use the restated AFS to determine AFSI on the amended return or AAR instead of making the AFSI restatement adjustment.

The AFSI restatement adjustment would be equal to the cumulative effect of the restatement on the CAMT entity's FSI for the restatement year, including any restatement of the CAMT entity's beginning retained earnings. The AFSI restatement adjustment would also be subject to further adjustment if any portion of the amount relates to any FSI items to which other AFSI adjustments apply, such as taxes under section 56A(c)(5) and proposed § 1.56A-8, and to disregard any portion of the cumulative adjustment attributable to taxable years beginning on or before December 31, 2019. A spread period for the adjustment, as in the case of an adjustment for a change in accounting principle, was not considered appropriate in the case of restatements, which are corrections in the application of such principles.

Proposed § 1.56A-17(d)(3) would provide that a CAMT entity is treated as if it restated its AFS for the preceding taxable year, and subject to the AFSI restatement adjustment rules discussed previously, if (i) a CAMT entity adjusts the beginning balance of retained earnings on its AFS for the current taxable year to be different from the ending balance of retained earnings on its AFS for the preceding taxable year without restating the AFS (for example, as the result of a prior period adjustment), (ii) the difference is attributable to items that otherwise would be reflected in the CAMT entity's

FSI under the relevant accounting standards used to prepare the CAMT entity's AFS, and (iii) the CAMT entity is not otherwise subject to § 1.56A-17(c), (d)(1) or (2).

D. Adjustment for Amounts Disclosed in an Auditor's Opinion

Auditors' opinions that are described in proposed § 1.56A-2(d)(2) (a qualified or modified "except for" opinion) or (d)(3) (an adverse opinion in which the auditor discloses the amount of the disagreement) identify situations in which a CAMT entity's accounting treatment of an item diverges from the relevant accounting standard. Consistent with Notice 2023-64, proposed § 1.56A-17(e) would require AFSI to be adjusted to take into account amounts disclosed in such a qualified or adverse auditor's opinion if those amounts would have increased the CAMT entity's FSI had the amounts been reported in the CAMT entity's AFS. However, no AFS adjustment would be required if the disclosed amount were already included in FSI for a prior year. If FSI for a subsequent year includes amounts included in AFSI due to an adjustment under proposed § 1.56A-17(e), AFSI for the subsequent year is adjusted to prevent any duplication of income. These proposed rules would follow the rules for such adjustments in the 1990 Regulations.

E. No Adjustment for Timing Differences

Stakeholders requested an adjustment to prevent perceived distortions caused by timing differences, particularly in situations in which items are included in FSI before the effective date of the CAMT but included in taxable income thereafter, or vice versa. These timing differences do not create a duplication or omission of AFSI within the meaning of section 56A(c)(15) of the Code and are precisely the types of financial accounting and taxable income differences that the CAMT was intended to capture. Although proposed § 1.56A-17(b) prevents such adjustments, for the avoidance of doubt and consistent with Notice 2023-64, proposed § 1.56A-17(f) would not permit any adjustment to account for differences between the period an item is taken into account in FSI and the period it is taken into account for regular tax purposes. This proposed regulation would adopt the approach taken in the 1990 Regulations, which was upheld in *CSX Corp. v. United States*, 124 F.3d 643 (4th Cir. 1997).

XVIII. Proposed §§ 1.56A–18 and 1.56A–19: AFSI, CAMT Basis, and CAMT Retained Earnings Resulting From Certain Corporate Transactions Involving Domestic Corporations

Pursuant to authority granted by section 56A(c)(2)(C), (c)(15), and (e), proposed § 1.56A–18 would provide rules regarding investments in domestic corporations that are not members of the CAMT entity's tax consolidated group. Pursuant to authority granted by sections 56A(c)(15) and 56A(e), proposed §§ 1.56A–18 and 1.56A–19 also would provide rules under section 56A regarding transactions involving domestic corporations. The rules in proposed §§ 1.56A–18 and 1.56A–19 would not apply to investments in stock in foreign corporations and transactions involving foreign corporations described in proposed § 1.56A–4.

A. Overview

1. Equity Investments in Domestic Corporations That Are Not Members of the Shareholder's Tax Consolidated Group

Section 56A(c)(2)(C) provides, in part, that a taxpayer's AFSI with respect to a corporation that is not a member of the taxpayer's tax consolidated group only takes into account dividends received from that corporation (reduced to the extent provided by the Secretary) and other amounts that are includible in gross income or deductible as a loss under chapter 1 (other than amounts provided by the Secretary) with respect to that corporation.

The financial accounting consequences of an investment in a domestic corporation differ considerably from the Federal income tax consequences of such an investment. Under the Code, a shareholder generally has income or deductions upon the occurrence of a realization event with respect to the shareholder's stock (typically, a distribution from the corporation or an exchange of the stock). The Code specifies the shareholder's tax consequences when such an event occurs, including capital gain or loss, dividend income, a dividends received deduction, or some other result.

In contrast, financial statement income often includes gain or loss with respect to stock even if there has been no realization event for Federal income tax purposes. For example, financial statement income may include unrealized appreciation or depreciation in stock prices, a proportionate share of the corporation's income or loss, or loss from impairment.

2. Subchapter C Transactions

Section 56A(c)(15) authorizes the Secretary to issue regulations or other guidance to provide for such adjustments to AFSI as the Secretary determines necessary to carry out the purposes of section 56A, including adjustments to carry out the principles of part II of subchapter C (relating to corporate liquidations) and part III of subchapter C (relating to corporate organizations and reorganizations) of chapter 1. *See* section 56A(c)(15)(B).

For Federal income tax purposes, a taxpayer generally recognizes gain or loss on the exchange of property if the property received differs in material kind or extent from the property exchanged. The purpose of the corporate liquidation, organization, and reorganization provisions in parts II and III of subchapter C is to provide nonrecognition treatment for certain specifically described distributions or exchanges incident to certain readjustments of corporate structures made in one of the particular ways specified in the Code that are required by business exigencies and that effect only a readjustment of a continuing interest in property in modified corporate form. *See*, for example, § 1.368–1(b).

Parties to nonrecognition transactions under subchapter C generally take the acquired assets with a carryover basis (that is, the assets' basis in the hands of the party from whom the assets were acquired) and take the qualifying property (that is, property that is permitted to be received under section 354 or 355 without the recognition of gain or loss) received in the transaction with an exchanged basis (that is, the basis in the property exchanged for qualifying property). If the assets being transferred include stock of another corporation, the basis in the assets of that other corporation generally is not affected by the transaction.

Business combinations and dispositions are treated differently under financial accounting principles than under Federal income tax principles. Under financial accounting principles, acquisitions of entities or lines of business generally are recorded on the AFS at fair value, with the acquiring corporation (acquiror) valuing the assets and liabilities of the acquired entity or line of business at their fair value as of the acquisition date (that is, purchase accounting). *See*, for example, ASC 805–20–25–1. Additionally, an acquired CAMT entity may elect to adjust the carrying value of its assets and liabilities and the assets and liabilities of any lower-tier entities to

fair value as of the date the entity is acquired (that is, push-down accounting). *See*, for example, ASC 805–20–25–4. In contrast, Federal income tax principles generally preclude adjustments to the basis in the assets of acquired corporations, whether or not gain or loss was recognized in the transaction.

Additionally, although entities generally have separate books and records for financial accounting purposes, financial consolidation generally eliminates the effects of multiple tiers of ownership and disregards the ownership of stock of lower-tier entities as such. Instead, financial consolidation looks through separate legal entities in order to present the financial results as if all of the items of income, expense, gain, and loss of the members of the financial consolidation were the items of a single corporation. In contrast, domestic corporations that are not members of a tax consolidated group generally are treated as separate entities for Federal income tax purposes.

Certain non-pro rata distributions also result in financial accounting gain or loss (*see* ASC 845–10–30–12), regardless of whether such transactions would be eligible for nonrecognition treatment under subchapter C.

B. Section 3 of Notice 2023–7

Section 3 of Notice 2023–7 provides guidance under section 56A(c)(15) by describing adjustments to carry out the principles underlying the corporate liquidation, organization, and reorganization provisions of subchapter C. Section 2.01(3)(a) of Notice 2023–7 provides that the financial accounting treatment of corporate transactions controls the determination of AFSI resulting from a transaction unless the treatment is modified as described in Notice 2023–7. For example, under Notice 2023–7, the treatment of a disposition of property that results in gain or loss for Federal income tax purposes (that is, a covered recognition transaction) would be governed by financial accounting principles. As a result, the acquired entities or lines of business generally would be recorded on the AFS at fair value.

However, section 3.03 of Notice 2023–7 further provides, in part, that if a transaction results in no gain or loss for Federal income tax purposes to the party to a transaction under sections 332, 337, 351, 354, 355, 357, 361, 368, or 1032 of the Code (that is, a covered nonrecognition transaction), (i) the party does not take into account the financial accounting gain or loss resulting from the transaction to compute its AFSI, and

(ii) to the extent the party does not take into account AFSI resulting from the transaction under Notice 2023–7, any increase or decrease in the financial accounting basis of the assets transferred to the party in the transaction is not taken into account to compute that party's AFSI. In determining whether a transaction is a covered nonrecognition transaction, section 3.02(5)(b) of Notice 2023–7 provides that each component transaction of a larger transaction is evaluated separately.

C. Proposed Regulations

1. In General

Section 56A(a) generally requires AFSI to be determined based on the taxpayer's AFS unless an adjustment provided in section 56A applies. Accordingly, except as otherwise provided in the section 56A regulations, the section 56A regulations generally implement the CAMT by following financial accounting principles. For example, *see* proposed § 1.56A–1(d)(1) (generally providing that Federal income tax treatment is not relevant for determining a CAMT entity's AFSI except as otherwise provided in the section 56A regulations).

a. Section 56A(c)(2)(C) and Investments in Domestic Corporations

Section 56A(c)(2)(C) constitutes an exception to the general rule in section 56A(a) concerning the determination of AFSI by a CAMT entity with respect to a corporation that is not included on a tax consolidated return with the CAMT entity. In the context of a CAMT entity that is a shareholder in a domestic corporation, section 56A(c)(2)(C) is implemented by providing that, if a CAMT entity's role in a transaction is purely as a shareholder of a domestic corporation (and not as a party to the transaction), regular tax rules govern the CAMT entity's determination of its AFSI, using CAMT inputs (such as CAMT earnings and CAMT basis) where applicable. In other words, in the context of a CAMT entity that is a shareholder in a domestic corporation, section 56A(c)(2)(C) should apply with respect to situations in which the CAMT entity holds stock in the domestic corporation. Such situations include, for example, dividend distributions (*see* section 301), redemptions (*see* sections 302 and 303 of the Code), stock distributions (*see* section 305 of the Code), or certain distributions and exchanges as part of a corporate reorganization (*see* sections 354 through 356 of the Code)). In contrast, taking into account the structure of the statute

and the grant of regulatory authority in section 56A(c)(15)(B), section 56A(c)(2)(C) generally should not apply if the CAMT entity is a party to a transaction involving the stock of the domestic corporation (such as a section 351 exchange, a disposition or acquisition of stock, or a transfer of property by a distributing corporation to a controlled corporation in a transaction to which sections 355 and 368(a)(1)(D) apply). Proposed § 1.56A–18(c) would provide guidance regarding investments in domestic corporations that are not members of the CAMT entity's tax consolidated group.

In the case of a domestic corporation that is not included in a CAMT entity's tax consolidated group, section 56A(c)(2)(C) is implemented to mean that it applies solely to transactions with respect to holding the corporation's stock (and not to transactions to which the CAMT entity is a party), for several reasons. First, this approach would give effect to the statutory exception in section 56A(c)(2)(C) with due regard for the broad statutory requirement in section 56A(a) that a corporate CAMT entity's AFSI must be determined starting with financial accounting net income or loss. Second, construing section 56A(c)(2)(C) so broadly as to result in the general application of regular tax rules to all transactions involving corporations that are not members of the same tax consolidated group is inconsistent with Congress's grant of authority to the Secretary in section 56A(c)(15)(B) to incorporate the principles of parts II and III of subchapter C.

While this approach is an appropriate implementation of section 56A(c)(2)(C) in the context of investments in domestic corporations, additional considerations are present in the case of investments in foreign corporations that call for a different application of section 56A(c)(2)(C) in that context (for instance, the interaction of section 56A(c)(2)(C) and (c)(3), which raises unique double-counting issues with respect to distributions by CFCs and transfers of stock of CFCs). *See* the discussion of the application of section 56A(c)(2)(C) with respect to investments in foreign corporations in part IV.A of this Explanation of Provisions.

b. Section 56A(c)(15)(B) and Certain Transactions Involving Domestic Corporations

Proposed §§ 1.56A–18 and 1.56A–19 would clarify and expand the guidance in Notice 2023–7 concerning covered recognition transactions and covered nonrecognition transactions (collectively, covered transactions).

Under proposed §§ 1.56A–18 and 1.56A–19, a CAMT entity would use financial accounting rules to determine its AFSI resulting from a corporate transaction unless the entity qualifies for an exception under proposed § 1.56A–18 or 1.56A–19. *See* proposed § 1.56A–18(c)(2)(ii)(A). This rule reflects, and would be consistent with, the general rule in section 56A(a). The rules for covered transactions described in this part XVIII of the Explanation of Provisions do not apply to determine the CAMT consequences of either a corporate transaction involving domestic corporations that are members of the same tax consolidated group while those corporations remain members of the group or a corporate transaction involving a foreign corporation described in proposed § 1.56A–4. For ease of discussion, the remainder of this part XVIII of the Explanation of Provisions does not repeat these exclusions when discussing the rules for covered transactions.

More specifically, under proposed §§ 1.56A–18 and 1.56A–19, the CAMT consequences of corporate transactions would be determined under financial accounting principles (using CAMT inputs, such as CAMT retained earnings) unless the CAMT entity qualifies solely for nonrecognition treatment under the relevant Code section. In other words, if a transaction results in the recognition of any amount of gain or loss for regular tax purposes with regard to that CAMT entity (the so-called “cliff effect”), the CAMT entity would apply the relevant financial accounting principles (and not the applicable section of the Code) to the covered recognition transaction. *See* the definition of a “covered recognition transaction” in proposed § 1.56A–18(b)(10).

In contrast, if the CAMT entity qualifies solely for nonrecognition treatment with respect to a transaction, the CAMT entity would determine its AFSI from the transaction by applying regular tax rules with CAMT inputs. Accordingly, the transaction would result in a deferral of AFSI to the CAMT entity, but a stepped-up basis in the assets transferred in the transaction would be prohibited to ensure that such AFSI could be recognized in the future. *See* the definition of a “covered nonrecognition transaction” in proposed § 1.56A–18(b)(9).

The proposed approach to covered transactions is based upon the following principles. First, the grant of authority in section 56A(c)(15)(B) to provide for such adjustments as the Secretary determines necessary to carry out the principles of parts II and III of

subchapter C is an exception to the general rule requiring a CAMT entity's AFSI to be computed based on financial accounting principles. However, section 56A(c)(15)(B) does not refer to, or consequently require, the wholesale importation of Federal income tax rules from, or tax items computed under, parts II and III of subchapter C. In contrast, *see* section 56A(c)(13)(A), which expressly requires AFSI to be reduced by depreciation deductions allowed under section 167 with respect to section 168 property to the extent of the amount allowed as deductions in computing taxable income for the taxable year. In the case of covered transactions, the Treasury Department and the IRS are of the view that wholly replacing financial accounting principles with the subchapter C rules is not "necessary to carry out the purposes of" section 56A. *See* section 56A(c)(15).

Second, the proposed approach reflects the long-standing principle of parts II and III of subchapter C that a taxpayer should not recognize gain or loss on its investment unless it "cashes out" its investment. *See* section 202 of the Revenue Act of 1918 (1918); *see also* the discussion in part XVIII.A.2 of this Explanation of Provisions. Accordingly, the proposed approach distinguishes between transactions in which the CAMT entity has wholly retained its investment (that is, covered nonrecognition transactions) and transactions in which the CAMT entity has not (that is, covered recognition transactions).

The Treasury Department and the IRS considered several alternatives to the proposed "cliff effect" approach with respect to covered transactions. Under one alternative, the regular tax rules of parts II and III of subchapter C would be incorporated wholesale, using CAMT inputs (such as CAMT basis) in lieu of regular tax inputs. However, as noted previously, section 56A(c)(15)(B) does not compel the wholesale importation of the regular tax rules of parts II and III of subchapter C with respect to covered transactions. Additionally, this alternative approach would not adequately implement section 56A(a), which generally requires the use of financial accounting net income or loss.

Under another alternative, financial accounting principles would be incorporated in proportion to the amount of "boot" (that is, money or property received in a corporate transaction other than stock and securities permitted to be received without the recognition of gain or loss under the applicable Code section(s)) in a transaction that otherwise qualifies for

nonrecognition treatment to the CAMT entity. However, such a "proportionate" approach would be inappropriate because many aspects of the financial accounting treatment of corporate transactions are not easily proportioned. For example, under GAAP, a corporate transaction may be recharacterized to reverse the identity of the acquiror and the target corporation, or the direction of a spin-off may be reversed such that the parent corporation is the one whose stock is treated as distributed for GAAP purposes. These types of characterizations are binary in effect (that is, they are either applied or not applied).

Proposed § 1.56A–18(b) and (c) would provide definitions and operating rules, respectively, for purposes of proposed §§ 1.56A–18 and 1.56A–19. Proposed §§ 1.56A–18(d) through (h) and 1.56A–19 would provide rules to determine the CAMT consequences of various types of covered transactions.

2. Equity Ownership in Domestic Corporations That Are Not Members of the Shareholder's Tax Consolidated Group

a. In General

As discussed in part XVIII.C.1.a of this Explanation of Provisions, section 56A(c)(2)(C) conforms the treatment of investments in the stock of domestic corporations for purposes of section 56A to Federal income tax principles during the period in which the shareholder holds the stock. Accordingly, proposed § 1.56A–18(c)(2) would provide that, in computing AFSI, CAMT entities disregard any FSI resulting from equity ownership of domestic corporations that are not members of the CAMT entity's tax consolidated group, except with respect to amounts that result from a transaction described in proposed § 1.56A–18 or 1.56A–19. For example, a shareholder CAMT entity would disregard FSI that otherwise would result from applying the equity method or the fair value method to the CAMT entity's investment in stock of the subsidiary domestic corporation. Instead, CAMT entities would be required to follow Federal income tax principles to determine AFSI resulting from equity ownership of subsidiary domestic corporations.

Proposed § 1.56A–18(c)(2) also would provide that a CAMT entity disregards any adjustments to carrying values or retained earnings on the CAMT entity's AFS, and instead adjusts CAMT basis in the stock and adjusts CAMT retained earnings as provided in proposed § 1.56A–18 or 1.56A–19. In other words, CAMT entities would adjust the CAMT

basis in stock when required by the applicable provision of the Code, and CAMT entities would adjust the CAMT retained earnings based on AFSI.

Compare part IV of this Explanation of Provisions, describing AFSI adjustments and basis determinations with respect to foreign corporations.

b. Alternative Approach Considered

The Treasury Department and the IRS considered an alternative approach under which Federal income tax principles would determine *whether* there is an inclusion in AFSI for purposes of section 56A(c)(2)(C) (as in proposed §§ 1.56A–18 and 1.56A–19), but financial accounting principles would determine the amount of the inclusion (that is, unadjusted financial accounting carrying values would be used in AFSI computations). However, because of the significant differences in timing and amount of inclusions for Federal income tax and financial accounting purposes, such an approach would risk the omission or duplication of items of income, deduction, gain, and loss.

The Treasury Department and the IRS request comments on whether additional guidance is needed under proposed §§ 1.56A–18 and 1.56A–19 for shareholders in corporations that appear on the same consolidated AFS as the shareholder but that do not file a consolidated Federal income tax return with the shareholder.

3. Purchase Accounting and Push-Down Accounting

The proposed regulations would provide that purchase accounting and push-down accounting adjustments are disregarded in computing any aspect of AFSI resulting from covered transactions that are stock acquisitions, including for purposes of determining the acquiror corporation's CAMT basis and CAMT earnings. *See* proposed § 1.56A–18(c)(3). In other words, the proposed regulations would treat stock in lower-tier corporations as an asset, and covered nonrecognition transactions generally would not affect the inside basis of a lower-tier corporation's assets. *See* proposed § 1.56A–18(c)(1) and (c)(4)(ii). Respecting tiers of stock ownership and eliminating purchase accounting and push-down accounting (and thereby preserving two-levels of tax—one at the corporate level, and another at the shareholder level) is consistent with the principles of parts II and III of subchapter C.

4. CAMT Basis in Domestic Stock

Proposed § 1.56A–18(c)(6) would provide that a CAMT entity's CAMT basis in domestic corporate stock is equal to the CAMT entity's adjusted basis in the stock for regular tax purposes as of the first day of the CAMT entity's first taxable year beginning after December 31, 2019, adjusted as required by proposed § 1.56A–18 or 1.56A–19, rather than the carrying value of the stock on the CAMT entity's AFS on that day. Because the carrying value of the stock reflects adjustments under financial accounting principles that do not require a realization event, adopting the carrying value as the CAMT basis may lead to the duplication or omission of income with respect to domestic corporate stock. Additionally, the Treasury Department and the IRS understand that the carrying value of stock is not always maintained for financial accounting purposes because it is not relevant for the preparation of the AFS (for example, if the shareholder and the corporation appear on the same consolidated AFS).

5. Covered Transactions

a. Overview

As discussed in part XVIII.C.1 of this Explanation of Provisions, the proposed regulations would provide that financial accounting treatment governs the computation of a domestic corporation's AFSI with respect to a covered transaction, but that the AFSI computation is modified if the covered transaction qualifies as a covered nonrecognition transaction. This proposed approach would be consistent with Notice 2023–7. Additionally, in certain cases, the proposed regulations would provide modified rules for computing AFSI from covered recognition transactions.

Under Notice 2023–7, the determination of whether a transaction qualifies as a covered nonrecognition transaction is made on a party-by-party and transaction-by-transaction basis. To clarify the treatment of the various parties to covered transactions, proposed §§ 1.56A–18(d) through (h) and 1.56A–19 would significantly expand the covered transaction guidance described in Notice 2023–7 to provide separate rules for the following types of covered transactions: (i) non-liquidating distributions; (ii) distributions for which an election under section 336(e) is made; (iii) corporate liquidations; (iv) taxable sales of stock and assets; (v) stock reorganizations; (vi) asset reorganizations; (vii) divisive transactions to which section 355

applies; (viii) single-corporation reorganizations; and (ix) corporate formations to which section 351 applies. The proposed rules for certain of these covered transactions are described in the remainder of this part XVIII.C.5 of the Explanation of Provisions.

The proposed regulations generally would require a CAMT entity that is a party to a covered nonrecognition transaction: (i) to disregard any gain or loss reflected in FSI resulting from the transaction; (ii) to determine AFSI resulting from the transaction by applying the relevant Code section (that is, no AFSI is recognized); (iii) to determine the basis consequences of the transaction by applying the relevant Code section (using CAMT basis in lieu of AFS basis); and (iv) to adjust CAMT earnings (in lieu of AFS retained earnings) by applying section 312 (and, if applicable, section 381(c)(2)). In other words, for covered nonrecognition transactions, proposed §§ 1.56A–18 and 1.56A–19 would provide that financial accounting gain or loss with respect to such transactions is not taken into account in computing AFSI, and that the parties to the transaction take a carryover or exchange basis (rather than a fair value basis) in the assets or stock received.

In contrast, the proposed rules generally would require a CAMT entity that is a party to a covered recognition transaction: (i) to determine its AFSI by recomputing any gain or loss reflected in its FSI using the CAMT basis of any property transferred in the transaction (in lieu of AFS basis); (ii) to determine the CAMT basis in any property received in the transaction to be its AFS basis; and (iii) to adjust CAMT earnings (in lieu of AFS earnings) by the amount of AFSI resulting from the transaction. In other words, financial accounting principles generally would apply to covered recognition transactions, using CAMT inputs in lieu of financial accounting inputs.

For CAMT entities that are shareholders, the same general rules would apply to both covered nonrecognition transactions and covered recognition transactions. The proposed regulations would require such a CAMT entity: (i) to determine its AFSI by disregarding any gain or loss reflected in its FSI and applying the relevant Code section, using the distribution amount and CAMT basis, if relevant; (ii) to determine the characterization of the transaction by applying the relevant Code section based on CAMT earnings (in lieu of earnings and profits); (iii) to determine CAMT basis in stock or other property received by applying the relevant Code

section, using CAMT basis; and (iv) to adjust CAMT earnings (in lieu of AFS retained earnings) by applying section 312 based on AFSI.

b. Non-Liquidating Distributions

Proposed § 1.56A–18(d) reflects the application of the general approach described in part XVIII.C.5.a of this Explanation of Provisions to non-liquidating distributions by a CAMT entity, including the treatment of CAMT entity shareholders that receive such distributions. Under proposed § 1.56A–18(d), the distributing corporation in a transaction that is a covered nonrecognition transaction with respect to the distributing corporation generally would be required (i) to disregard any FSI resulting from the non-liquidating distribution, (ii) to compute AFSI by applying the relevant Code section (section 311(a)) (that is, no AFSI would be recognized), and (iii) to adjust CAMT earnings (in lieu of AFS retained earnings) resulting from the distribution by applying the relevant Code section (section 312). In contrast, if the distribution is a covered recognition transaction with respect to the distributing corporation, the distributing corporation would be required (i) to determine its AFSI by recomputing any gain or loss reflected in its FSI using the CAMT basis in the distributed property, and (ii) to adjust CAMT earnings (in lieu of AFS earnings) by the amount of AFSI resulting from the transaction.

Regardless of whether the non-liquidating distribution is a covered nonrecognition transaction or a covered recognition transaction, CAMT entities that are shareholders of the distributing corporation would be required (i) to disregard any FSI resulting from the non-liquidating distribution, (ii) to compute AFSI by applying the relevant Code section, using CAMT basis and CAMT earnings, and (iii) to adjust CAMT earnings resulting from the distribution by applying the relevant Code section (section 312). However, for administrability and to limit the burden on smaller entities, the proposed regulations would provide that the character of any distribution is determined based on regular tax earnings and profits of the distributing corporation or the target corporation unless the shareholder receiving the distribution owns more than 25 percent by vote or value of the distributing corporation or the target corporation and the distributing corporation or the target corporation itself would not qualify for the safe harbor for determining applicable corporation status in proposed § 1.59–2(g). See proposed § 1.56A–18(c)(2)(iii).

c. Taxable Stock and Asset Sales

Proposed § 1.56A–18(g) would address the treatment of taxable sales of domestic stock. Proposed § 1.56A–18(g)(1)(i) generally would require a target corporation shareholder in a taxable stock sale (that is, a covered recognition transaction), including a transaction to which section 304 applies, (i) to determine gain or loss resulting from the sale for AFSI purposes by using CAMT basis in lieu of AFS basis, (ii) to determine its CAMT basis in the property received in the transaction to be equal to the shareholder's AFS basis in that property (that is, the financial accounting treatment is unmodified), and (iii) to determine its CAMT current earnings based on its AFSI. Proposed § 1.56A–18(g)(3) would provide analogous rules for the acquiror corporation.

However, proposed § 1.56A–18(g)(1)(ii) would provide that, if an election is made for a disposition or purchase of domestic stock under sections 336(e) or 338, respectively, then the transfer of stock is disregarded, and the target corporation shareholder adjusts its CAMT current earnings to reflect the deemed liquidation of the target corporation. Proposed § 1.56A–18(g)(2) and (4) would further provide that, if an election is made for a sale or purchase, as applicable, of stock of a domestic target corporation under section 336(e), 338(g), or 338(h)(10), the target corporation's AFSI is computed under regular tax rules, using the CAMT basis in its assets, and the new target corporation's CAMT basis in the property deemed to be received from the target corporation equals the new target corporation's regular tax basis in that property as a result of that election.

Proposed § 1.56A–18(h) would address the treatment of taxable asset sales by a domestic corporation. Under these proposed rules, each of the acquiror corporation and the target corporation would (i) determine its AFSI resulting from the transaction by redetermining any gain or loss reflected in its FSI by reference to its CAMT basis (in lieu of AFS basis) in the transferred property, (ii) determine its CAMT basis in the property received to be equal to its AFS basis in that property, and (iii) adjust (to the extent applicable) its CAMT current earnings (in lieu of AFS retained earnings) based on its AFSI.

d. Acquisitive Reorganizations

In the case of covered nonrecognition transactions described in section 368(a)(1)(B) (B reorganizations), proposed § 1.56A–19(b)(1) would require the target corporation

shareholder or security holder: (i) to determine its AFSI by disregarding any resulting gain or loss reflected in its FSI and applying the relevant Code section (section 354) to the transfer (that is, no AFSI would be recognized by the target corporation shareholder or security holder); (ii) to determine its CAMT basis in the stock received from the acquiror corporation by applying the relevant Code section (section 358), using CAMT basis (in lieu of AFS basis); and (iii) to adjust its CAMT earnings (in lieu of AFS retained earnings) resulting from the transaction by applying section 312. Proposed § 1.56A–19(b)(3) would provide analogous rules for the acquiror corporation in a B reorganization.

If a stock acquisition fails to qualify as a B reorganization, the rules applicable to taxable stock sales or section 351(b) transactions would apply, as appropriate. *See* proposed § 1.56A–19(b)(2) and (4); *see also* parts XVIII.C.5.c and f, respectively, of this Explanation of Provisions. Proposed § 1.56A–19(b)(5) and (6) also would provide rules regarding the acquiror corporation parent in covered nonrecognition transactions and covered recognition transactions, respectively.

In the case of acquisitive reorganizations other than B reorganizations, proposed § 1.56A–19(c) would expand upon the approach described in Notice 2023–7. In a transaction that is a covered nonrecognition transaction with respect to the target corporation, proposed § 1.56A–19(c)(1) would require the target corporation: (i) to disregard any FSI resulting from the exchange of target corporation property for acquiror stock; (ii) to apply section 361(a) and (b) to the transfer (that is, the transaction would not result in AFSI to the target corporation); (iii) to determine the CAMT basis of the property received by applying section 358, using CAMT basis in lieu of AFS basis; and (iv) to adjust its CAMT earnings (in lieu of AFS retained earnings) resulting from the transaction by applying section 312. *See* proposed § 1.56A–19(c)(1)(i).

An additional rule would apply if the target corporation purges all “boot” received in the transaction (that is, if the target corporation distributes or transfers all non-qualifying property) and qualifies solely for nonrecognition treatment under section 361(c). *See* proposed § 1.56A–19(c)(1)(ii). Under this proposed rule, the target corporation would disregard any FSI resulting from gain or loss with respect to the boot and determine its AFSI by applying section 361(c) (that is, no AFSI would be recognized by the target

corporation). In other words, the aforementioned “cliff effect” (that is, the application of financial accounting principles rather than regular tax rules) would be inapplicable if the target corporation distributes all of the boot received to its shareholders in a manner that qualifies the target corporation solely for nonrecognition treatment under the regular tax rules.

Conversely, if the target corporation recognizes any gain or loss on the distribution or transfer of the boot to its shareholders or security holders, then the transaction would be a covered recognition transaction, and the target corporation would determine any gain or loss resulting from the distribution or transfer in its AFSI by reference to its CAMT basis (in lieu of AFS basis) in the distributed or transferred property. *See* proposed § 1.56A–19(c)(2).

Proposed § 1.56A–19(c)(3)(i) would provide that, in an acquisitive reorganization that is a covered nonrecognition transaction with respect to the domestic acquiror corporation, the acquiror corporation disregards any FSI resulting from the exchange of acquiror corporation stock or other property for target corporation assets, and instead applies section 1032(a) in determining AFSI (that is, the transaction would not result in AFSI to the acquiror corporation). Proposed § 1.56A–19(c)(3)(ii) would provide that the acquiror corporation takes a carryover basis in the assets acquired (*see* section 362(b)) using CAMT basis in lieu of AFS basis. Proposed § 1.56A–19(c)(3)(iii) and (iv) would further provide that the acquiror corporation adjusts CAMT retained earnings (in lieu of AFS retained earnings) resulting from the transaction by applying sections 312 and 381(c)(2), and succeeds to the target corporation's attributes under CAMT by applying section 381.

In contrast, if an acquisitive reorganization is a covered recognition transaction with respect to the acquiror corporation, the transaction would be treated in the same manner as a taxable asset sale. *See* proposed § 1.56A–18(h). Similarly, if an acquisitive reorganization is a covered recognition transaction with respect to a target corporation shareholder or security holder, the transaction would be treated in the same manner as a taxable stock sale or a section 351(b) transaction, as appropriate. *See* parts XVIII.C.5.c and f, respectively, of this Explanation of Provisions. Proposed § 1.56A–19(c)(5) and (6) also would provide rules regarding the acquiror corporation parent in covered nonrecognition transactions and covered recognition transactions, respectively.

e. Divisive Transactions

In the case of divisive transactions, proposed § 1.56A–19(d) would retain the general approach described in Notice 2023–7, with certain clarifications and other revisions. Proposed § 1.56A–19(d)(1) generally would provide that, in a divisive transaction that is solely a covered nonrecognition transaction with respect to the distributing corporation, the distributing corporation disregards any FSI resulting from (i) the transfer of assets and liabilities to the controlled corporation, (ii) the receipt of any controlled corporation securities or other consideration in the transaction, and (iii) the distribution of controlled corporation stock to the distributing corporation's shareholders in the transaction. The distributing corporation would compute its AFSI with respect to the transaction by applying sections 355 and 361 (that is, the transaction would not result in AFSI to the distributing corporation), would determine its basis in any property received from the controlled corporation by applying section 358 (using CAMT basis in lieu of AFS basis), and would adjust CAMT retained earnings (in lieu of AFS retained earnings) by applying section 312.

Proposed § 1.56A–19(d)(1)(ii) would further provide that, if all qualified property (within the meaning of section 355(c)(2)(B) or section 361(c)(2)(B), as appropriate) is distributed in a transaction that qualifies the distributing corporation solely for nonrecognition treatment under section 361(c), then the distributing corporation computes AFSI by disregarding any FSI relating to the distribution of the qualified property. In other words, the aforementioned “cliff effect” would be inapplicable if the distributing corporation distributes all of the boot received to its shareholders and security holders in a manner that qualifies the distributing corporation solely for nonrecognition treatment under the regular tax rules.

However, proposed § 1.56A–19(d)(2) would provide that, if a section 355 transaction causes the distributing corporation to recognize gain or loss, then the section 355 transaction is a covered recognition transaction to the distributing corporation, which would be required to determine its gain or loss resulting from the transaction by using CAMT basis in lieu of AFS basis. Similarly, if the distributing corporation recognizes any gain or loss on the distribution or transfer of property under section 361(c), then the distribution or transfer would be a

covered recognition transaction, and the distributing corporation would determine any gain or loss resulting from the distribution or transfer in its AFSI by reference to its CAMT basis (in lieu of AFS basis) in the distributed or transferred property.

As reflected in the foregoing paragraph, a distributing corporation that transfers property to a controlled corporation in a section 355 transaction is treated as a party to the transaction. Therefore, the rule for shareholders in proposed § 1.56A–18(c)(2)—under which Federal income tax principles rather than financial accounting principles would apply—is inapplicable. However, as mentioned previously, the applicable Code provision(s) would govern the transaction so long as the distributing corporation “purges” all of the boot received in the transaction to its shareholders and securities (that is, if the transaction qualifies as a covered nonrecognition transaction to the distributing corporation).

Under proposed § 1.56A–19(d)(3), the treatment of the distributing corporation's shareholders or security holders generally would follow the regular tax treatment, except that basis consequences would be determined using CAMT basis in lieu of AFS basis, and CAMT retained earnings would be adjusted using AFSI.

Proposed § 1.56A–19(d)(4) would provide that, if a controlled corporation transfers solely its stock to the distributing corporation in a transaction that qualifies as a covered nonrecognition transaction with respect to the controlled corporation, the controlled corporation does not include in AFSI any FSI with respect to the transfer. Instead, the controlled corporation would apply section 1032(a) to the transfer (that is, no AFSI would be recognized by the controlled corporation), would determine the basis of any property received from the distributing corporation using CAMT basis (in lieu of AFS basis), and would adjust CAMT earnings by applying section 312. In contrast, if a controlled corporation transfers money or other property (in addition to stock) to a distributing corporation as part of a section 355 transaction, proposed § 1.56A–19(d)(5)(i)(A) would treat the transfer as a covered recognition transaction to the controlled corporation, unless the distributing corporation purges all boot received in the transfer and qualifies solely for nonrecognition treatment under section 361(b). See proposed § 1.56A–19(d)(5).

Proposed § 1.56A–18(e) would clarify the AFSI computation for a distributing

corporation and a target corporation if a distributing corporation makes an election under section 336(e), as described in § 1.336–2(b)(1).

f. Corporate Formations

Proposed § 1.56A–19(g) would address the treatment of covered transactions to which section 351 applies. For purposes of proposed § 1.56A–19(g), a section 351 transferor is treated as a party to the section 351 exchange. Therefore, the rule for shareholders in proposed § 1.56A–18(c)(2)—under which Federal income tax principles rather than financial accounting principles would apply—is inapplicable. Additionally, unlike the target corporation in an acquisitive reorganization or the distributing corporation in a section 355 transaction, the section 351 transferor cannot preclude the recognition of gain or loss (and, thus, the aforementioned “cliff effect”) by distributing any non-stock consideration to its shareholders as part of the transaction, because such an outcome is not permitted under the regular tax rules. *Cf.* section 361.

Proposed § 1.56A–19(g)(1) would clarify that a section 351 exchange can be a covered nonrecognition transaction with respect to the section 351 transferee and certain section 351 transferors and also be a covered recognition transaction with respect to the section 351 transferee and other section 351 transferors. Treatment of the component transactions of the section 351 exchange as a covered nonrecognition transaction or a covered recognition transaction would be tested separately with respect to each party to the section 351 exchange. Each component transaction of the section 351 exchange in which the section 351 transferee transfers solely stock (including nonqualified preferred stock described in section 351(g)(2) (NQPS)) to a section 351 transferor would be a covered nonrecognition transaction with respect to the section 351 transferee. Each component transaction of the section 351 exchange in which the section 351 transferee transfers money or other property in addition to its stock to a section 351 transferor would be a covered recognition transaction with respect to the section 351 transferee. A component transaction of a section 351 transferor that is a party to the section 351 exchange would be a covered nonrecognition transaction with respect to the section 351 transferor if section 351(a) would apply to the section 351 transferor and would be a covered recognition transaction with respect to the section 351 transferor if section 351(b) would apply to the section 351

transferor, including by reason of section 351(g).

Proposed § 1.56A–19(g)(2) and (4) would provide the CAMT consequences of A component transactions of a section 351 exchange that are covered nonrecognition transactions with respect to section 351 transferors and section 351 transferees, respectively. Proposed § 1.56A–19(g)(2) would provide that, if a section 351 exchange is a covered nonrecognition transaction with respect to the section 351 transferor, then the section 351 transferor disregards any FSI resulting from the exchange, computes its AFSI by applying section 351 to the exchange (that is, the transaction would not result in AFSI to the section 351 transferor), and determines its CAMT basis in the stock received by applying section 358, using CAMT basis in lieu of AFS basis. Similarly, if a component transaction of a section 351 exchange is a covered nonrecognition transaction with respect to the section 351 transferee, then proposed § 1.56A–19(g)(4) would provide that the section 351 transferee would disregard any FSI resulting from the exchange, would compute its AFSI by applying section 1032(a) to the exchange (that is, the transaction would not result in AFSI to the section 351 transferee), and generally would determine CAMT basis in the property received by applying section 362(a)(1), using CAMT basis in lieu of AFS basis and CAMT recognized gain (relevant only if the exchange involves NQPS, which is “stock” for purposes of section 1032 but is treated as “other property” for purposes of section 351(b)), subject to the special CAMT basis rule in proposed § 1.56A–19(g)(4)(iii).

The special CAMT basis rule in proposed § 1.56A–19(g)(4)(iii) is an application of the authority granted in section 56A(c)(15)(A) to adjust CAMT basis to prevent the duplication or omission of CAMT items through the receipt of a relatively small amount of NQPS by a CAMT-irrelevant section 351 transferor to increase the section 351 transferor’s CAMT basis in the transferred property that could result under proposed § 1.56A–19(g)(4)(ii). Under proposed § 1.56A–19(g)(4)(iii), a section 351 transferee would determine its CAMT basis in the property received from a section 351 transferor by redetermining the amount of any CAMT gain recognized by the section 351 transferor to include only the amount, if any, by which the fair market value of the portion of the property transferred by the section 351 transferor in exchange for NQPS exceeds the section 351 transferor’s CAMT basis in that portion of the transferred property. This

special CAMT basis rule would apply if (i) the section 351 transferor is not an applicable corporation and its AFSI otherwise is not required to be taken into account by any applicable corporation for the taxable year in which qualification of the component transaction as a covered recognition transaction with respect to the section 351 transferor otherwise would be determined under the section 56A regulations, (ii) the section 351 transferee solely transfers its stock to that section 351 transferor, and (iii) the fair market value of the NQPS is 10 percent or less of the aggregate fair market value of the stock (including the NQPS) transferred by the section 351 transferee to the section 351 transferor in the section 351 exchange.

However, if a section 351 transferor receives money or other property from the section 351 transferee in a section 351 exchange, then the section 351 exchange would be a covered recognition transaction with respect to both the section 351 transferor under proposed § 1.56A–19(g)(3) and the section 351 transferee under proposed § 1.56A–19(g)(5) (unless no money is received and the “other property” is solely NQPS, in which case the exchange would be a covered recognition transaction with respect to the section 351 transferor under proposed § 1.56A–19(g)(3) but a covered nonrecognition transaction with respect to the section 351 transferee under proposed § 1.56A–19(g)(4)). Proposed § 1.56A–19(g)(3) would provide that the section 351 transferor (i) determines its gain or loss on the exchange for AFSI purposes by using CAMT basis in lieu of AFS basis, (ii) determines its CAMT basis in the property received as equal to its AFS basis in the property transferred, and (iii) adjusts its CAMT retained earnings based on its AFSI. Proposed § 1.56A–19(g)(5) would provide analogous rules for the section 351 transferee, subject to the special CAMT basis rule in proposed § 1.56A–19(g)(5)(iii).

The special CAMT basis rule in proposed § 1.56A–19(g)(5)(iii) is an application of the authority granted in section 56A(c)(15)(A) to adjust CAMT basis to prevent the duplication or omission of CAMT items through the transfer of a relatively small amount of money or other property by a section 351 transferee to increase the section 351 transferee’s CAMT basis in the transferred property that could result under proposed § 1.56A–19(g)(5)(ii). Under proposed § 1.56A–19(g)(5)(iii), a section 351 transferee would determine its CAMT basis in the property received from a section 351 transferor by

redetermining the section 351 transferee’s AFS basis in that property to not exceed the sum of the amount of the section 351 transferor’s CAMT basis in the transferred property immediately before the section 351 exchange and the amount, if any, by which the fair market value of the portion of the property other than stock of the section 351 transferee that the section 351 transferee transfers to the section 351 transferor exceeds the section 351 transferee’s CAMT basis in that portion of the transferred property. This special CAMT basis rule would apply if (i) the section 351 transferor is not an applicable corporation and its AFSI otherwise is not required to be taken into account by any applicable corporation for the taxable year in which qualification of the component transaction as a covered recognition transaction with respect to the section 351 transferee otherwise would be determined under the section 56A regulations, (ii) the section 351 transferee transfers its stock and money or other property to that section 351 transferor, and (iii) the amount of money and fair market value of other property is 10 percent or less of the sum of the money and the aggregate fair market value of the stock and other property transferred by the section 351 transferee to the section 351 transferor in the section 351 exchange.

g. Complete liquidations

Proposed § 1.56A–18(f) would address the treatment of complete liquidations under section 331 or section 332 of the Code and other corporate dissolutions. In the case of a complete liquidation that is a covered nonrecognition transaction with respect to the liquidating corporation, proposed § 1.56A–18(f)(1) would provide that the liquidating corporation disregards any gain or loss in its FSI resulting from the liquidation and instead applies section 337(a) to the liquidating distributions (that is, the transaction would not result in AFSI to the liquidating corporation). In the case of a complete liquidation that is a covered recognition transaction with respect to the liquidating corporation, proposed § 1.56A–18(f)(2) would provide that the liquidating corporation determines any gain or loss from the liquidation or dissolution for AFSI purposes by using CAMT basis in lieu of AFS basis.

Proposed § 1.56A–18(f)(4) would provide that a liquidation recipient receiving a distribution in a covered nonrecognition transaction (i) disregards any gain or loss resulting from the distribution in its FSI, (ii) applies section 332 to the liquidating distributions received (that is, the

transaction would not result in AFSI to the liquidation recipient), (iii) determines the CAMT basis of any property received from the liquidating corporation under section 334(b) using CAMT basis in lieu of AFS basis, (iv) adjusts CAMT retained earnings by applying sections 381(c)(2) and 312 of the Code, and (v) succeeds to the liquidating corporation's attributes under CAMT by applying section 381. Proposed § 1.56A–18(f)(5) would provide that a liquidation recipient in a covered recognition transaction determines any gain or loss resulting from the distribution for AFSI purposes using its CAMT basis in lieu of AFS basis.

Proposed § 1.56A–18(f)(3) would clarify that a single liquidation or other corporate dissolution can be a covered nonrecognition transaction with respect to the liquidating corporation and one liquidation recipient and also be a covered recognition transaction with respect to the liquidating corporation and other liquidation recipients.

XIX. Proposed § 1.56A–20: AFSI Adjustments to Apply Certain Subchapter K Principles

Pursuant to the authority granted by section 56A(c)(2)(D)(i), (c)(15), and (e), proposed § 1.56A–20 would provide rules under section 56A(c)(15)(B), which authorizes the Secretary to issue regulations or other guidance to provide for such adjustments to AFSI as the Secretary determines necessary to carry out the purposes section 56A, including adjustments to carry out the principles of part II of subchapter K.

The guidance concerning Covered Nonrecognition Transactions and Covered Recognition Transactions described in section 3 of Notice 2023–7 apply to certain partnership transactions. For contributions of property by a partner to a partnership to which nonrecognition treatment under section 721 of the Code applies in whole, section 3 of Notice 2023–7 provides that any FSI resulting for AFS purposes to a partnership or a partner to a transaction is not taken into account in the partnership's or the partner's AFSI (partnership contribution rule). For distributions of property by a partnership to a partner to which nonrecognition treatment under section 731 of the Code applies in whole, section 3 of Notice 2023–7 provides that any FSI resulting for AFS purposes to a partnership or a partner to a transaction is not taken into account in the partnership's or the partner's AFSI (partnership distribution rule; together with the partnership contribution rule,

the partnership covered nonrecognition rules).

A. Scope of Rules and General Operating Rule

Proposed § 1.56A–20(a)(2) would provide that the rules in proposed § 1.56A–20 apply to contributions to or distributions from a partnership, but not with respect to stock of a foreign corporation except in the limited circumstance of the effect on the CAMT basis of a partnership investment for a distribution of foreign stock that is distributed in the same transaction as other property. Proposed § 1.56A–20(b) would provide a general operating rule for transactions between a CAMT entity and a partnership in which it holds an investment. This general operating rule would require each of the CAMT entity, any other partners in that partnership, and the partnership itself to include in its AFSI any income, expense, gain, or loss reflected in its FSI as a result of the transaction, except as otherwise provided in proposed § 1.56A–20 (which would apply after the application of § 1.56A–1(c) and (d)).

B. Contributions of Property

According to stakeholders, one possible approach to the partnership contribution rule would be to import certain rules into the CAMT that apply to partnership contributions for regular tax purposes, such as section 704(c) or the so-called “mixing bowl” rules under sections 704(c)(1)(B) and 737 of the Code, to prevent the shifting of built-in gains or losses inherent in contributed property from contributing partners subject to the CAMT to partners that are not subject to the CAMT. Some stakeholders proposed incorporating section 704(c) principles in their entirety, while other stakeholders proposed alternative methods of preventing the shifting of gains or losses between partners without incorporating the complexity of section 704(c) into the CAMT.

One alternative proposed by stakeholders as a means of avoiding much of the complexity associated with incorporating the existing section 704(c) methodologies, including the ceiling rule described in § 1.704–3(b)(1), into the CAMT, is a deferred sale approach based on former proposed § 1.704–3(d) (see 57 FR 61353 (December 24, 1992)). Under this approach, a contribution of property that results in a gain or loss in the contributing partner's FSI would be deferred by the contributing partner and included in its AFSI over time. This approach would differ from the treatment of partnership Covered Nonrecognition Transactions under

Notice 2023–7. However, according to stakeholders, this approach would be more consistent with financial accounting principles and would reduce the administrative and compliance burdens on partnerships and the IRS by having all gains or losses resulting from a contribution of property to which section 721(a) applies accounted for by the contributing partner rather than by the partnership.

Rules are needed to prevent the shifting of built-in gain or loss away from the contributing partner. However, the Treasury Department and the IRS believe that importing section 704(c) as well as sections 704(c)(1)(B) and 737 in their entirety into the CAMT would create significant complexity and administrative burden for taxpayers, partnerships, and the IRS.

Pursuant to the authority granted by section 56A(c)(15) and (e), as an alternative to importing these subchapter K rules in their entirety into the CAMT, the proposed regulations would adopt a deferred sale method. More specifically, proposed § 1.56A–20(c)(1) generally would provide that, if property (other than stock in a foreign corporation) is contributed by a CAMT entity (contributor) to a partnership in a transaction to which section 721(a) applies (subject to special rules in proposed § 1.56A–20(e) and (f) for determining section 721(a) treatment), any gain or loss reflected in the contributor's FSI from the property transfer is included in the contributor's AFSI in accordance with the deferred sale approach set forth in proposed § 1.56A–20(c)(2). The deferred sale approach would not apply to disregard any other FSI amount resulting to the contributor or the partnership from the transaction (for example, FSI gain or loss resulting from a deconsolidation or a dilution) for purposes of determining AFSI. See proposed § 1.56A–20(c)(1).

Under proposed § 1.56A–20(c)(2)(i), a contributor would be required to include the amount of gain or loss reflected in its FSI (deferred sale gain or loss) resulting from the contribution of the property to a partnership in a transaction described in proposed § 1.56A–20(c)(1) (deferred sale property) in its AFSI ratably, on a monthly basis, over the applicable recovery period beginning on the first day of the month that the deferred sale property is contributed to the partnership, unless the special rule in proposed § 1.56A–20(c)(2)(i)(E) would apply to the timing of the inclusion. If the contribution is treated as a sale for AFS purposes, the gain or loss resulting from the transaction would be redetermined by reference to the contributor's CAMT

basis in the deferred sale property at the time of the contribution rather than the contributor's AFS basis in the deferred sale property. *See* proposed § 1.56A–20(c)(2)(i)(A). For example, if the FSI resulting from the contribution is calculated for AFS purposes by subtracting the AFS basis of the deferred sale property from its fair market value, the result would be redetermined by reference to the CAMT basis of the deferred sale property rather than the contributed property's AFS basis.

The applicable recovery period for the deferred sale property would depend on the type of deferred sale property contributed to a partnership. For deferred sale property that is section 168 property or qualified wireless spectrum and placed in service by the contributor in a taxable year prior to the taxable year in which the property becomes deferred sale property, the applicable recovery period would be the full recovery period that was assigned to the property by the contributor in the taxable year such property was placed in service for purposes of depreciating or amortizing the property for regular tax purposes. *See* proposed § 1.56A–20(c)(2)(i)(B). For deferred sale property that is section 168 property or qualified wireless spectrum and that is either placed in service and contributed to the partnership in the same taxable year it is placed in service, or is contributed and placed in service by the partnership in the same taxable year as the contribution, the applicable recovery period would be the recovery period used by the partnership to depreciate or amortize the deferred sale property for regular tax purposes. *See* proposed § 1.56A–20(c)(2)(i)(C).

For deferred sale property subject to depreciation or amortization for AFS purposes that is not section 168 property or qualified wireless spectrum in the hands of the contributor or the partnership, the applicable recovery period would be the recovery period used by the partnership to depreciate or amortize the deferred sale property for AFS purposes. *See* proposed § 1.56A–20(c)(2)(i)(D). For deferred sale property that is section 168 property or qualified wireless spectrum but is not subject to depreciation because it has not been placed in service before it is contributed to the partnership, but is placed in service by the partnership in the immediately subsequent taxable year and thus is subject to depreciation in that year, the applicable recovery period would be the recovery period for regular tax purposes used by the partnership in the immediately subsequent taxable year, and the inclusion of the deferred sale gain or loss by the contributor

would begin in the first month of that subsequent taxable year. *See* proposed § 1.56A–20(c)(2)(i)(E). For property that is not described in proposed § 1.56A–20(c)(2)(i)(B) through (E), the applicable recovery period would be 15 years. *See* proposed § 1.56A–20(c)(2)(i)(F).

Under proposed § 1.56A–20(c)(2)(ii), a contributor would accelerate a portion of its deferred sale gain or loss into its AFSI upon the occurrence of certain events. If a contributor's distributive share percentage in the partnership decreases by more than one-third following its contribution of the deferred sale property (whether by sale or exchange, liquidation of all or a part of the contributor's interest in the partnership, dilution, deconsolidation, or otherwise), the contributor would include in its AFSI for the taxable year in which the decrease occurs an amount of the remaining deferred sale gain proportionate to the percentage change in the contributor's distributive share percentage. Any remaining deferred sale gain would continue to be included in the contributor's AFSI ratably on a monthly basis over the remaining applicable recovery period of the deferred sale property. *See* proposed § 1.56A–20(c)(2)(ii)(D). Under proposed § 1.56A–20(c)(2)(ii), a contributor's deferred sale loss would not be accelerated into its AFSI upon a decrease in its distributive share percentage unless the decrease is the result of the contributor disposing of its entire investment in the partnership. In contrast, if the partnership sells, distributes, or otherwise disposes of the deferred sale property (including by distribution to the contributor or the partnership's contribution of the deferred sale property to another CAMT entity in a recognition or nonrecognition transaction), the contributor would accelerate all of the remaining deferred sale gain or loss into its AFSI for the taxable year of the disposition. *See* proposed § 1.56A–20(c)(2)(iii).

If the contributor defers gain upon a contribution to which section 721(c) applies in accordance with the gain deferral method described in § 1.721(c)–3, and if the deferred sale approach under proposed § 1.56A–20(c)(2) applies, then additional acceleration rules would apply. Under proposed § 1.56A–20(c)(2)(iv), if an acceleration event described in § 1.721(c)–4(b) occurs, the contributor must include in its AFSI for the contributor's taxable year of the event the amount of any deferred sale gain with respect to the deferred sale property that has not yet been included in the contributor's AFSI as of the date of the acceleration event. If a partial acceleration event described

in § 1.721(c)–5(d) occurs, then the contributor would include in its AFSI in the taxable year of the event an amount of deferred sale gain that bears the same ratio to the total amount of any deferred sale gain that has yet to be included in the contributor's AFSI immediately before the event, that the taxable gain required to be recognized under § 1.721(c)–5(d)(2) or (3) bears to the total amount of remaining built-in gain (as defined in § 1.721(c)–1(b)(13)) with respect to section 721(c) property, as computed for regular tax purposes. The amount (if any) of deferred sale gain with respect to deferred sale property remaining after application of proposed § 1.56A–20(c)(2)(iv) would continue to be included in the contributor's AFSI ratably on a monthly basis over the remaining applicable recovery period of the deferred sale property.

If a contribution of property to a partnership would result in section 721(a) not applying (and, thus, would result in the recognition of gain or loss for regular tax purposes (for example, under section 721(b) or (c)), then the CAMT entity would include in its AFSI in the taxable year of contribution all FSI resulting from the contribution. However, if the CAMT entity defers gain upon a contribution to which section 721(c) applies in accordance with the gain deferral method described in § 1.721(c)–3, then the deferred sale approach in proposed § 1.56A–20(c)(2) would apply.

If the contributor is a partnership for Federal tax purposes, the deferred sale gain or loss included in the AFSI of the contributor partnership (that is, the UTP) for a taxable year in accordance with the deferred sale approach would be included in the distributive share amounts of the partners of the contributor partnership (whether or not they were partners at the time of contribution) in proportion to their distributive share percentages for that taxable year, as determined under proposed § 1.56A–5(e)(2). *See* proposed § 1.56A–20(c)(2)(v).

Proposed § 1.56A–20(c)(3) would provide basis rules for contributions of property. Proposed § 1.56A–20(c)(3)(i) would provide that the partnership's initial CAMT basis in contributed property would be the partnership's initial AFS basis in the contributed property at the time of contribution, regardless of whether section 721(a) applies, in whole or in part, to the contribution.

Proposed § 1.56A–20(c)(3)(ii) would provide that the contributor's initial CAMT basis in its partnership investment upon a contribution of property to the partnership to which

section 721(a) applies is the contributor's AFS basis in the acquired partnership investment, decreased by any deferred sale gain or increased by any deferred sale loss that is required to be included in the contributor's AFSI in accordance with the deferred sale approach. The contributor's initial CAMT basis in the acquired partnership investment would be subsequently increased or decreased: (i) on the last day of each taxable year during the applicable recovery period by an amount equal to the deferred sale gain or loss, respectively, required to be included in AFSI in such year in accordance with the deferred sales approach (without duplication of any increases or decreases to CAMT basis described in the following clause (ii)); or (ii) immediately prior to an event causing all or a portion of the deferred sale gain to be accelerated into AFSI in accordance with proposed § 1.56A–20(c)(2)(ii) by an amount equal to the sum of (A) the deferred sale gain that accrued during the taxable year prior to the acceleration event, and (B) the amount required to be included in AFSI under proposed § 1.56A–20(c)(2)(ii).

C. Distributions of Property

A stakeholder recommended that section 731 generally should apply upon a distribution of property to prevent the recognition of gain or loss by the partnership or partners for purposes of the CAMT if gain or loss would not be recognized for regular tax purposes. Likewise, if a partner would have a stepped-up basis in distributed assets for AFS purposes, stakeholders recommended the inclusion of CAMT rules similar to the carryover basis rules of section 732 to prevent the omission of gains. Stakeholders also suggested that it may be appropriate to import other rules from subchapter K into the CAMT, such as basis adjustments under section 734(b) or the mixing bowl rules under sections 704(c)(1)(B) and 737 (as previously discussed), to prevent the omission of gains or losses or to prevent the shifting of built-in gains or losses among partners. However, given the complexity of importing basis adjustment or mixing bowl rules into the CAMT, the stakeholder also proposed either turning off section 731 entirely for purposes of the CAMT or adopting a deferred sales method at the partnership level.

If section 731(a) and (b) were imported into the CAMT in their entirety, then other rules that apply to partnership distributions for regular tax purposes also would need to be imported into the CAMT to prevent the omission of certain gains or losses or the

shifting of built-in gains or losses. However, the Treasury Department and the IRS believe that importing sections 731, 732, 734, 704(c)(1)(B), and 737 into the CAMT in their entirety would create significant complexity and an administrative burden.

Accordingly, pursuant to the authority granted by section 56A(c)(15) and (e), these proposed regulations would adopt a deferred distribution gain or loss approach (similar to the rules for contributions of property in proposed § 1.56A–20(c)(2)) to the gain or loss recognized by the partnership on a distribution of property to which section 731(b) applies. The proposed regulations would not alter the AFS results to a partner using the principles of section 731(a) because importing section 731(a) into the CAMT also would require importing the carryover basis rules under section 732(a)(2) and (b) and, thus, the basis adjustment rules under section 734(b). As such, the timing or amount of any FSI resulting to a CAMT entity partner from a distribution of partnership property would not be affected by these rules, except to the extent of the CAMT entity's distributive share amount of any deferred distribution gain or loss resulting from the distribution.

Proposed § 1.56A–20(d)(1)(i) generally would provide that, except as provided in proposed § 1.56A–20(f), if a partnership distributes property to a partner in a transaction to which section 731(b) applies, any gain or loss reflected in the partnership's FSI resulting from the distribution of property is disregarded for purposes of determining the partnership's modified FSI (as defined in proposed § 1.56A–5(e)(3)). Instead, any such gain or loss would be included by the partners in their distributive share amounts (as defined in proposed § 1.56A–5(e)) in accordance with the deferred distribution gain or loss approach in proposed § 1.56A–20(d)(1)(ii) and (iii) and (d)(2). The deferred distribution gain or loss approach would not apply to disregard any other FSI amount resulting from the transaction (for example, FSI gain or loss to a partner resulting from a deconsolidation or dilution) for purposes of determining AFSI. *See* proposed § 1.56A–20(d)(1)(i).

Under proposed § 1.56A–20(d)(1)(ii), the amount of gain or loss reflected in the partnership's FSI (deferred distribution gain or loss) resulting from the distribution of property (deferred distribution property) (i) would be allocated among the partners in proportion to their distributive share percentages for the taxable year in which the distribution occurs (as

determined under proposed § 1.56A–20(d)(2)(i)) (a partner's allocable share of deferred distribution gain or loss), and (ii) would be included by each partner in their respective distributive share amounts ratably, on a monthly basis, over the applicable recovery period for the deferred distribution property beginning on the first day of the month in which the distribution occurs.

If the distribution is treated as a sale for AFS purposes, the partnership would redetermine the amount of deferred distribution gain or loss by reference to the partnership's CAMT basis in the deferred distribution property at the time of the distribution rather than its AFS basis in the deferred distribution property. *See* proposed § 1.56A–20(d)(1)(ii)(A). For example, if the FSI resulting from the distribution is calculated for AFS purposes by subtracting the AFS basis of the deferred distribution property from its fair market value, the AFS basis would be replaced with the CAMT basis of the deferred distribution property.

The applicable recovery period for the deferred distribution property would depend on the type of property. For deferred distribution property that is section 168 property or qualified wireless spectrum and that was placed in service by the partnership in a taxable year prior to the taxable year in which the property becomes deferred distribution property, the applicable recovery period would be the full recovery period that was assigned to the property by the partnership in the taxable year such property was placed in service for purposes of depreciating or amortizing the property for regular tax purposes. *See* proposed § 1.56A–20(d)(1)(ii)(B). For deferred distribution property that is section 168 property or qualified wireless spectrum and that is either placed in service by a partnership and distributed by the partnership to a partner in the same taxable year it is placed in service, or is distributed by the partnership to a partner and placed in service by the partner in the same taxable year as the distribution, the applicable recovery period would be the recovery period used by the partner to depreciate or amortize the property for regular tax purposes. *See* proposed § 1.56A–20(d)(1)(ii)(C).

For deferred distribution property subject to depreciation or amortization for AFS purposes that is not section 168 property or qualified wireless spectrum, the applicable recovery period would be the recovery period for newly placed in service property that was used by the partnership to depreciate or amortize the deferred distribution property for AFS purposes. *See* proposed § 1.56A–

20(d)(1)(ii)(D). For deferred distribution property that is section 168 property or qualified wireless spectrum that is not placed in service in the same taxable year it is distributed to the partner but is placed in service by the partner in the immediately subsequent taxable year, the applicable recovery period would be the recovery period for regular tax purposes that is used by the partner for the deferred distribution property in the immediately subsequent taxable year. *See* proposed § 1.56A–20(d)(1)(ii)(E). For deferred distribution property that is not described in proposed § 1.56A–20(d)(1)(ii)(B) through (E), the applicable recovery period would be 15 years. *See* proposed § 1.56A–20(d)(1)(ii)(F).

Under proposed § 1.56A–20(d)(1)(iii), a partner would accelerate the remaining amount of its allocable share of deferred distribution gain or loss into its AFSI upon the occurrence of certain events. If a partnership (i) terminates under section 708(b)(1) of the Code as a result of a dissolution or liquidation, (ii) sells or exchanges all or substantially all of its assets, or (iii) merges or consolidates with one or more partnerships and is not the resulting partnership for regular tax purposes (as determined under § 1.708–1(c)), then for the taxable year in which the acceleration event occurs, each partner must include in its distributive share amount the amount of the partner's allocable share (if any) of deferred distribution gain or loss that has yet to be included in its distributive share amount as of the date immediately before the acceleration event. Similarly, if a partner disposes of its entire investment in the partnership, including through a liquidating distribution by the partnership, the partner must include in its distributive share amount for the partner's taxable year in which the disposition occurs the amount of the partner's allocable share (if any) of deferred distribution gain or loss that has yet to be included in the partner's distributive share amount as of the disposition date. *See* proposed § 1.56A–20(d)(2)(ii). The Treasury Department and IRS request comments on the events in the proposed regulations that require an acceleration of a partner's remaining deferred distribution gain or loss and whether additional rules are needed to determine whether a partnership has sold or exchanged substantially all of its assets.

If a distribution of property or money from a partnership to a partner results in any gain, loss, or other amount being reflected in the partner's FSI, that amount would be redetermined using the relevant CAMT basis, if applicable,

and included in the partner's AFSI in the year of the distribution. If the relevant CAMT basis is the partner's CAMT basis in its partnership investment, proposed § 1.56A–20(d)(2)(iii) would provide that (A) money distributed in the same transaction as property is treated as reducing CAMT basis, if applicable, prior to any distribution of property, (B) stock in a foreign corporation distributed in the same transaction is treated as reducing CAMT basis prior to any distribution of property other than stock in a foreign corporation, and (C) principles similar to § 1.731–1(a)(1)(ii) apply for purposes of calculating the effect of the distribution on the CAMT entity's AFSI.

If any partner of the distributing partnership is a partnership for Federal tax purposes, then proposed § 1.56A–20(d)(2)(iv) would provide that the deferred distribution gain or loss included in the partner's distributive share amount under proposed § 1.56A–20(d)(2)(i) is included in its partners' respective distributive share amounts (whether or not the partners were partners in the partnership at the time of the distribution) in proportion to their distributive share percentages for the taxable year, as determined under proposed § 1.56A–5(e)(2).

Proposed § 1.56A–20(d)(3) would provide basis rules for distributions of property. Proposed § 1.56A–20(d)(3)(i) would provide that a partner's initial CAMT basis of property distributed by a partnership is the partner's initial basis of the property for AFS purposes, determined immediately after the distribution. Proposed § 1.56A–20(d)(3)(ii) would provide that the CAMT basis of a partner's investment in a partnership following the partnership's distribution of property is increased or decreased (i) at the end of each taxable year during the applicable recovery period, by the amount required to be included in the partner's distributive share amount in each taxable year in accordance with proposed § 1.56A–20(d)(1)(ii), and (ii) immediately prior to an acceleration event described in proposed § 1.56A–20(d)(1)(iii) or (d)(2)(ii), by the amount of deferred distribution gain or loss not previously included in the partner's distributive share amount.

D. Treatment of Liabilities

One stakeholder suggested that, as part of importing sections 721 and 731 into the CAMT, section 752 of the Code should be fully imported into the CAMT to better align the treatment of contributions to and distributions from a partnership under the CAMT with

their treatment for regular tax purposes, to prevent resulting distortions, and to reduce the potential for tax avoidance. Another stakeholder suggested an alternative approach that would not import any aspect of section 752 into the CAMT, on the grounds that the alternative approach would provide administrative simplicity and be consistent with how liabilities are treated for financial accounting purposes.

Importing section 752 into the CAMT would create significant administrative complexity and generally would be inconsistent with how partner and partnership liabilities are treated for AFS purposes. Accordingly, proposed § 1.56A–20(e)(1) generally would provide that the treatment of partner and partnership liabilities for purposes of determining a partner's or partnership's AFSI is based on the treatment of such liabilities for AFS purposes and not how such liabilities are treated under section 752.

With regard to the treatment of liabilities upon a contribution or distribution of property to or from a partnership, proposed § 1.56A–20(e)(2) would provide that section 752 is inapplicable in determining the amount of gain or loss to be included in the AFSI of the partner or partnership. Accordingly, any rules relating to liabilities for regular tax purposes, such as those under §§ 1.707–5 and 1.707–6, would not apply for purposes of the CAMT. For example, if section 707 or section 752 of the Code would provide that gain or loss is not recognized for regular tax purposes upon a contribution of encumbered property, that rule would be disregarded in determining whether section 721(a) or 731(b) applies to a transaction for purposes of the CAMT.

E. Proportionate Deferred Sale Approach for Partial Nonrecognition Transactions Under Sections 721(a) and 731(b)

As previously described, the partnership Covered Nonrecognition Transaction guidance described in Notice 2023–7 applies only if no gain or loss is recognized on the transaction for regular tax purposes. Stakeholders recommended that these rules also apply to partnership contributions and distributions that are afforded partial nonrecognition treatment for regular tax purposes, and that AFSI generally should result from the transaction in proportion to the amount of gain or loss that is recognized for regular tax purposes.

As discussed in parts XIX.B and C of this Explanation of Provisions, proposed

§ 1.56A–20(c) and (d) would adopt a deferred sale approach and a deferred distribution gain or loss approach that provides for the deferral of AFSI resulting from a contribution of property to, or a distribution of property from, a partnership. These proposed rules would differ from the partnership Covered Nonrecognition Transaction guidance described in Notice 2023–7 by providing for the deferral of gain or loss. However, because the deferred sale approach and the deferred distribution gain or loss approach would require FSI resulting from a partnership contribution or distribution to be included in AFSI over a definite period of time, and because a “cliff effect” rule for partnership contributions and distributions could result in selective recognition of losses for purposes of the CAMT, it is appropriate to apply the deferred sale approach to a partial nonrecognition transaction to the extent section 721(a) or 731(b) applies to the transaction (after applying the special rules in proposed § 1.56A–20(e)).

Accordingly, proposed § 1.56A–20(f) would provide that, if a transfer of property by a partner to a partnership, or by a partnership to a partner, is not a nonrecognition transaction for regular tax purposes, in whole or in part, under section 721(a) or section 731(b), respectively (or would not be a nonrecognition transaction under these Code sections for regular tax purposes considering the application of proposed § 1.56A–20(e)), then the partner or partnership, as applicable, must include an amount in its AFSI for the taxable year of the transfer. The amount to be included is an amount (if any) of the FSI reflected on the partner’s or partnership’s AFS resulting from the transaction that (i) bears the same ratio to the total amount of gain or loss reflected in the partner’s or partnership’s FSI resulting from the transaction, as (ii) the taxable gain or loss that would be recognized on the transfer without the application of section 752 and the exceptions in §§ 1.707–5 and 1.707–6 bears to the taxable gain or loss realized on the transfer for regular tax purposes. Any FSI resulting from the transaction must be calculated using the CAMT basis of the property and not the AFS basis of the property. Any resulting FSI that is not included in AFSI in the taxable year of the transfer under the rule described in proposed § 1.56A–20(f) would be subject to the deferred sale approach or the deferred distribution gain or loss approach.

F. Maintenance of Books and Records and Reporting Requirements

Proposed § 1.56A–20(g) would provide rules relating to the maintenance of books and records and reporting requirements for a partnership and each CAMT entity that is a partner in the partnership. The Treasury Department and the IRS are aware that, for a CAMT entity partner to determine the timing of inclusion in its AFSI of any deferred sale gain or loss resulting from its contribution of deferred sale property, the CAMT entity partner will require information from the partnership. Similarly, a partnership may require information from a partner receiving a distribution of deferred distribution property to determine the timing of inclusion of deferred distribution gain or loss in the CAMT entities’ distributive share amounts. To facilitate compliance with the rules of proposed §§ 1.56A–20 and 1.56A–5, the proposed regulations would require partnerships and CAMT entity partners in such partnership to maintain certain information in their respective books and records and to report that information as appropriate.

Proposed § 1.56A–20(g)(1) would require a partnership and each CAMT entity that is a partner in the partnership to include in its respective books and records all information necessary for the partnership and each CAMT entity to comply with the rules of proposed §§ 1.56A–20 and 1.56A–5. As applicable for partnerships and CAMT entities to comply with their respective requirements under these proposed regulations, the information to be maintained in their separate books and records includes, without limitation, (i) the recovery periods used to depreciate deferred sale property and deferred distribution property for regular tax purposes; (ii) the properties contributed to the partnership that had a built-in gain or loss at the time of contribution and the amount of the built-in gain or loss with respect to each property for AFSI purposes; (iii) the CAMT basis of any property contributed to or distributed from the partnership; and (iv) the amount of deferred distribution gain or loss to be allocated among, and included in the distributive share amounts of, the partners of the partnership.

Proposed § 1.56A–20(g)(2)(i) would provide that partnerships must report to a CAMT entity the information required for the CAMT entity to comply with the rules of proposed §§ 1.56A–20 and 1.56A–5. The information to be reported to CAMT entities that are partners in a partnership to facilitate compliance

with these sections includes, without limitation, (A) the recovery periods used to depreciate deferred sale property, (B) the date on which the partnership sold, distributed, or otherwise disposed of deferred sale property; (C) the date on which an acceleration event described in § 1.721(c)–4(b) occurred; and (D) the amount of deferred distribution gain or loss resulting from a distribution of property that is included in the CAMT entity partner’s distributive share amount under proposed § 1.56A–20(d).

A partnership may report information to a CAMT entity partner in any reasonable manner sufficient for a CAMT entity to comply with the rules of proposed § 1.56A–20. However, if any information relates to the determination of a CAMT entity’s distributive share amount with respect to its investment in the partnership, the proposed regulations would require the partnership to report the information consistently with the rules of proposed § 1.56A–5(h). See proposed § 1.56A–20(g)(2)(ii).

XX. Proposed § 1.56A–21: AFSI Adjustments for Troubled Companies

Pursuant to the authority granted by section 56A(c)(15) and (e), proposed § 1.56A–21 would provide rules under section 56A regarding financially troubled companies.

A. Overview

The U.S. Bankruptcy Code (11 U.S.C. 101–1532) governs bankruptcies in the United States. The Bankruptcy Code and related authorities give debtors relief from debts they cannot repay to allow them to reorder their affairs and enjoy a “fresh start.” For example, bankruptcy gives otherwise viable business enterprises a chance to continue intact, thereby preserving jobs for employees and the availability of products and services for customers, and enhancing market competition and stability.

The Internal Revenue Code plays an important role in implementing the foregoing objective. Section 61(a)(11) of the Code provides that, except as otherwise provided in subtitle A, gross income includes income from the discharge of indebtedness in the year of the discharge. However, section 108(a)(1) of the Code provides that gross income does not include any amount that otherwise would be includible in gross income by reason of the discharge (in whole or in part) of indebtedness of the taxpayer, if the discharge occurs under circumstances specified in section 108(a)(1)(A) through (E), including in a title 11 case and if the

taxpayer is insolvent. See section 108(a)(1)(A) and (B), respectively.

Section 108(b) requires taxpayers that exclude income under section 108(a) to reduce certain specified tax attributes, including net operating losses (NOLs) and the minimum tax credit under section 53(b) of the Code. Section 108(b)(1) provides that the amount of income excluded under section 108(a) (excluded COD income, also referred to as discharge of indebtedness income) is applied to reduce the tax attributes of the taxpayer as provided in section 108(b)(2). Thus, section 108 effectively defers rather than excludes tax on excluded COD income.

Section 108(b)(2) generally provides that the following tax attributes are reduced in the following order: (i) any NOL; (ii) amounts used to determine the general business credit under section 38 of the Code; (iii) the minimum tax credit available under section 53(b); (iv) any net capital losses and any capital loss carryover under section 1212 of the Code; (v) the basis of the property of the taxpayer (see section 1017 of the Code for provisions for making this reduction); (vi) any passive activity loss or credit carryover of the taxpayer under section 469(b) of the Code; and (vii) any carryover to or from the taxable year of the discharge for purposes of determining the amount of the foreign tax credit allowable under section 27.

Any amount of excluded COD income that remains after attribute reduction under section 108(b) (so-called “black hole COD”) is not includible in income. See H.R. Rep. 96–833 at 11 (1980); S. Rep. No. 96–1035 at 12 (1980).

As under section 61(a)(11) of the Code, financial accounting principles generally require debtors to recognize gain on debt discharges. If debts are extinguished, GAAP requires gain to be recognized on the difference between the price at which the debt is satisfied and the carrying value of the debt. See ASC 470–50–40–2. Outside of bankruptcy, troubled companies recognize gain for financial accounting purposes upon the satisfaction of debt to the extent that the carrying value of the debt exceeds the fair value of the assets transferred to the creditor in satisfaction of the debt. See ASC 470–60–35–1. If a company enters bankruptcy, the carrying value of pre-petition debt is adjusted to the probable amount of the allowed claims for the debt, and gain is recognized in cases in which the former is higher than the latter. See ASC 852–10–45–6 and 852–10–45–9. (There is no corresponding income inclusion under section 61 to be excluded under section 108 because no realization event has occurred.) When liabilities subsequently

are settled in accordance with the plan of reorganization approved by the bankruptcy court, the difference between the fair value of the consideration a creditor receives and the allowed claim of the debt is recognized in the income statement. See ASC 405–20–40–1.

Both the Code and financial accounting principles also address a corporation’s emergence from bankruptcy. Section 368(a)(1)(G) provides nonrecognition treatment for the transfer by a corporation of its assets to another corporation in a title 11 or similar case, so long as certain requirements are satisfied. Taxpayers also may emerge from bankruptcy in a taxable transaction, with favorable rules that permit the use of tax attributes to offset gain prior to the attribute reduction required by section 108(b). See § 1.108–7(b).

Under GAAP, “fresh-start reporting” requires eligible companies to adjust the carrying values of assets and liabilities immediately before the emergence from bankruptcy. See ASC 852–10–45–21. Assets are marked to their fair value, with gain or loss reported in the amount of the change. See *id.* The settlement of liabilities for an amount different than that previously recorded on the company’s books and records results in gain or loss. Any retained earnings on the books of a company in bankruptcy are also eliminated upon its emergence. See *id.* Fresh-start reporting places the emerging company, which is treated as the successor to the bankrupt company under financial accounting principles, on a similar footing to that of a new company that acquired the bankrupt company’s assets.

B. CAMT and Troubled Companies

Section 56A does not specifically address the treatment of troubled companies for purposes of the CAMT. However, absent adjustments to AFSI for income from debt discharges and fresh-start reporting, troubled companies would have additional tax liabilities under the CAMT that could impede the companies from achieving solvency or emerging from bankruptcy. Avoiding this unnecessary harm also would protect the interests of the government in its tax collection efforts. Authority for such adjustments is provided in section 56A(c)(15) and (e).

C. Notice 2023–7 and Troubled Companies

Sections 3.06 and 3.07 of Notice 2023–7 provide guidance for the exclusion of discharge of indebtedness income and gain resulting from fresh-start reporting, respectively. Under

section 3.06(1) of Notice 2023–7, financial accounting gain equal to the amount of discharge of indebtedness income excluded under section 108(a) is not taken into account for purposes of calculating the AFSI of a financial statement group for the year in which the discharge of indebtedness occurs. Under section 3.06(2) of Notice 2023–7, financial statement groups with excluded income under section 3.06(1) reduce CAMT attributes to the extent of the reduction of regular tax attributes under section 108(b) using the principles and ordering rules of sections 108(b) and 1017. Section 3.07 of Notice 2023–7 provides that financial accounting gain or loss resulting from a financial statement group’s emergence from bankruptcy, and resulting changes to the financial accounting basis of property, are not taken into account for purposes of calculating the financial statement group’s AFSI.

D. Proposed Regulations

Proposed § 1.56A–21 would provide rules for determining AFSI with respect to events relating to the bankruptcy or insolvency of a CAMT entity. Proposed § 1.56A–21 also would provide rules for determining AFSI with respect to the receipt of Federal financial assistance (within the meaning of section 597(c) of the Code and § 1.597–1(b)).

1. Proposed Rules for Bankruptcy Exclusion

Consistent with section 3.06 of Notice 2023–7, proposed § 1.56A–21(c)(1)(i) would exclude from AFSI income from the discharge of indebtedness for CAMT entities in a title 11 case. This exclusion is intended to cover all FSI otherwise includible in AFSI that arises from an extinguishment or modification of a debt instrument during bankruptcy of the CAMT entity, regardless of the timing of the reporting of the item under financial accounting principles. The language of the proposed rule is similar to that of the bankruptcy exclusion in section 108(a)(1)(A), with modifications reflecting differences in the timing of the recognition of income for tax and financial accounting purposes.

2. Proposed Rules for Insolvency Exclusion

Consistent with section 3.06 of Notice 2023–7 and section 108(a)(1)(B), proposed § 1.56A–21(c)(2)(i) would exclude from AFSI income from the discharge of indebtedness for insolvent CAMT entities (including foreign corporations), but only to the extent of their insolvency. However, stakeholders have indicated that the amount of insolvency ordinarily is not measured as

part of the financial reporting process. Therefore, proposed § 1.56A–21(b)(6) would provide that the amount by which a CAMT entity is insolvent is determined under section 108(d)(3).

3. Disregarded Entities and Partnerships

Special rules would address the application of the bankruptcy and insolvency exclusions to disregarded entities and partnerships. Disregarded entities would be eligible for these exclusions only if their regarded owner is eligible. See proposed § 1.56A–21(c)(3) and (d)(5). For partnerships, eligibility for these exclusions would be determined at the partner level. See proposed § 1.56A–21(e).

4. Attribute Reduction

Consistent with section 3.06 of Notice 2023–7, proposed § 1.56A–21(c) would require CAMT entities that exclude income from a discharge of indebtedness under proposed § 1.56A–21(c)(1)(i) or (c)(2)(i) to reduce CAMT-specific assets in the order listed in proposed § 1.56A–21(c)(4)(iii). Under proposed § 1.56A–21(c)(4)(iii), the tax attributes subject to reduction (but not below zero) would be: (i) the CAMT basis of covered property, but only to the extent the basis of the covered property is reduced by the CAMT entity under section 108 for regular tax purposes; (ii) FSNOLs; (iii) CFC adjustment carryovers; (iv) the CAMT basis of property (other than covered property) that is depreciated or amortized for AFS purposes; (v) the CAMT basis of property (other than covered property) that is not depreciated or amortized for AFS purposes; (vi) CAMT foreign tax credits; and (vii) any remaining CAMT basis of covered property. For purposes of proposed § 1.56A–21, the term “covered property” would mean section 168 property, qualified wireless spectrum, and property whose regular tax basis is determined under section 21(c) of the ANCSA. See proposed § 1.56A–21(b)(2).

The attributes listed in clauses (i) through (v) and (vii) of the prior paragraph would be reduced by one dollar for each dollar excluded under proposed § 1.56A–21(c)(1)(i) and (c)(2)(i), subject to specified limitations for basis reductions. CAMT FTCs would be reduced under a conversion formula that takes into account the differing economic values of deductions and credits. See proposed § 1.56A–21(c)(5).

The proposed order and amount of the reduction of CAMT attributes generally would parallel the order and amount of tax attribute reductions in section 108(b). However, reductions to the CAMT basis of covered property

would be prioritized over reductions to other CAMT attributes to the extent the basis of such property has been reduced under section 108(b)(1) (proposed prioritization rule). Under section 56A(c)(8), (13), and (14), depreciation deductions claimed for regular tax purposes with respect to property whose basis is determined under section 21(c) of the ANCSA, Section 168 Property, and qualified wireless spectrum, respectively, are carried over into the CAMT. The proposed prioritization rule would align reductions to the CAMT basis of these three categories of property with the section 108(b)(1) reductions to the same property for regular tax purposes. This proposed rule is intended to minimize regular tax and CAMT basis mismatches in these categories that would make the CAMT harder to administer and enforce.

The proposed prioritization rule also would address a stakeholder's concern that, absent such a rule, taxpayers that have a reduction in depreciable basis in Section 168 Property under section 108(b)(1) would incur a double detriment if they also were required to reduce attributes other than the CAMT basis of the same property. This double detriment would result because AFSI is computed with regular tax depreciation taken on Section 168 Property. See section 56A(c)(13) and proposed § 1.56A–15. Reducing depreciable basis for regular tax purposes has the effect of not only increasing future regular taxable income, but also increasing future AFSI (because basis eligible for depreciation is no longer available). Therefore, if CAMT entities were required to reduce CAMT attributes other than depreciable basis after regular tax depreciable basis already has been reduced, their future AFSI would rise \$2 for every \$1 of excluded COD income: (i) the first \$1 increase in future AFSI would result from the loss of the depreciation deduction against AFSI that the CAMT entity otherwise would have received; and (ii) the second \$1 increase in future AFSI would result from the loss of an attribute other than CAMT depreciable basis.

To prevent this double detriment, the proposed prioritization rule would tie reductions in CAMT depreciable basis to the same reductions for regular tax purposes, just as depreciation and amortization deductions for purposes of the CAMT are aligned with regular tax depreciation and amortization deductions under section 56A(c)(13) and (14), respectively. Only when all other attributes have been reduced to zero would the basis of section 168 property (and other covered property) be reduced more than the basis of that

property is reduced under section 108(b)(1).

Under section 3.06(2) of Notice 2023–7, the amount of the CAMT attribute reduction is limited to the amount of tax attributes reduced under section 108(b). Stakeholders recommended eliminating this limitation because CAMT attributes are separate from, and arise out of, a different measure of income than the regular tax, and the attribute reduction limitation in Notice 2023–7 does not take this difference into account. Under these proposed regulations, the CAMT attribute reduction would be limited to the amount of CAMT attributes subject to reduction rather than to the amount of tax attributes reduced under section 108(b). See proposed § 1.56A–21(c)(4)(ii)(B).

5. Timing of Attribute Reduction

Proposed § 1.56A–21(c)(4)(iv)(A) would specify that attribute reductions for FSNOLs, CFC net loss carryforwards, and CAMT FTCs are made after the determination of CAMT liability in the taxable year of a discharge. This provision is similar to § 1.108–7(b), which provides an ordering rule for attribute use and reduction under section 108(b). Similarly, proposed § 1.56A–21(c)(4)(iv)(B) would specify that CAMT basis reductions are made immediately before the close of the taxable year of the discharge of indebtedness of the CAMT entity solely with regard to assets of the CAMT entity under that section that the CAMT entity will hold at the beginning of the immediately subsequent taxable year. Proposed § 1.56A–21(c)(4)(iv)(C) would provide that a CAMT entity must make CAMT basis reductions in the same manner as basis reductions for regular tax purposes.

6. Exclusion of Income From Fresh-Start Reporting

Proposed § 1.56A–21(d) would provide rules for the computation of AFSI for CAMT entities emerging from bankruptcy. Under proposed § 1.56A–21(d)(2)(i), gain or loss reflected in FSI resulting from a CAMT entity's emergence from bankruptcy would be disregarded, with corresponding adjustments to CAMT basis and CAMT earnings to eliminate financial accounting changes from the excluded gain or loss. This proposed rule would be consistent with section 3.07 of Notice 2023–7, with additional clarifications as to the scope of its application.

For example, stakeholders expressed uncertainty as to whether section 3.06 of Notice 2023–7 (concerning discharge of indebtedness income) or, rather, section 3.07 of Notice 2023–7 (concerning

emergence from bankruptcy) applies to debt discharges that occur upon a debtor's emergence from bankruptcy. Stakeholders also expressed uncertainty over whether section 3.06 of Notice 2023–7 is intended to cover all transactions in bankruptcy, including sales of assets prior to the emergence from bankruptcy and covered nonrecognition transactions prior to, or concurrent with, the emergence from bankruptcy. Some of these transactions may not give rise to income under fresh-start reporting even though they occur in bankruptcy and otherwise may increase a debtor's FSI.

To clarify that the discharge of indebtedness provisions take priority in cases involving the emergence from bankruptcy, proposed § 1.56A–21(d)(2)(ii) would provide that, in such cases, a CAMT entity would rely on proposed § 1.56A–21(c) to determine the CAMT consequences of a discharge of indebtedness. Proposed § 1.56A–21(d)(2)(iii) and (d)(3) would provide that, in the case of an emergence from bankruptcy in a covered transaction, the rules of §§ 1.56A–18 and 1.56A–19 would apply to determine the CAMT consequences of the emergence transaction.

7. Investments in Partnerships

Proposed § 1.56A–21(e) provides rules for determining the AFSI of a CAMT entity that is a partner in a partnership that realizes discharge of indebtedness income. Proposed § 1.56A–21(e)(2)(i) provides that any discharge of indebtedness income reflected in a partnership's FSI is disregarded for determining the partnership's AFSI. Instead, any exclusion from AFSI for a partnership's discharge of indebtedness income, and any resulting CAMT attribute reductions, are applied at the partner level in the manner as the rules in section 108(a) and section 108(b) are applied at the partner level for regular tax purposes. For purposes of applying the attribute reduction rules, proposed § 1.56A–21(e)(2)(ii)(B) provides that a CAMT entity treats its partnership investment as covered property to the extent the basis of covered property held by the partnership is reduced by the partnership for regular tax purposes under § 1.1017–1(g)(2). Additionally, if a CAMT entity that is a partner in a partnership treats its partnership investment as covered property, the basis adjustment rules under § 1.1017–1(g)(2) with respect to covered property held by the partnership apply for purposes of determining the CAMT entity's distributive share amount under proposed § 1.56A–5. Proposed § 1.56A–21(e)(2)(iii) provides that discharge of

indebtedness income reflected in a partnership's FSI is separately stated to the partners in accordance with their distributive share percentages for the taxable year in which the income is realized for AFS purposes. For purposes of determining whether a CAMT entity that is a partner in a partnership is insolvent, proposed § 1.56A–21(e)(3) provides that the CAMT entity includes its share of partnership's liabilities under section 752 of the Code in the same manner as its share of partnership liabilities would be included for regular tax purposes.

8. Exclusion of Financial Accounting Gain From Federal Financial Assistance

Stakeholders have expressed concern over the inclusion in AFSI of financial accounting gain attributable to amounts that constitute "Federal financial assistance" (FFA), as defined in proposed § 1.56A–21(b)(4), for regular tax purposes. FFA may arise in the context of an acquisition of a troubled financial institution. Financial accounting principles may require gain attributable to these amounts to be reported as gain on a CAMT entity's AFS and included in FSI when the relevant transaction is entered into (for example, as a result of bargain purchase gain). In contrast, for regular tax purposes, the recognition of gross income attributable to FFA may be deferred over multiple taxable years under section 597 and the regulations under section 597.

Stakeholders stated that this mismatch in timing of recognition of amounts attributable to FFA for AFSI purposes and regular tax purposes may cause or increase CAMT tax liability solely because of a CAMT entity's participation in transactions involving troubled financial institutions that the provision of FFA is otherwise intended to encourage. To address this mismatch in timing, proposed § 1.56A–21(f) would provide adjustments to AFSI so as not to include any financial accounting gain attributable to FFA any earlier than when the gain is included in gross income for purposes of section 597 and the regulations under section 597.

XXI. Proposed § 1.56A–22: AFSI Adjustments for Certain Insurance Companies and Other Specified Industries

Pursuant to the authority granted by section 56A(c)(15) and (e), proposed § 1.56A–22 would provide rules under section 56A regarding insurance companies and other specified industries.

A. AFSI Adjustments for Covered Variable Contracts

Some insurance companies issue insurance contracts (including variable contracts, as defined in section 817(d) of the Code) for which the insurance company's obligations to the contract holders (and the company's corresponding reserves) reflect (in whole or in part) the change in value of a designated pool of investment assets supporting the contracts. These contracts generally are accounted for on the insurance company's financial statements by including in its FSI both (i) the change in the unrealized gain or loss in the supporting assets, and (ii) the offsetting change in liability resulting from the related change in the company's obligation to the contract holders. See section 2.02 of Notice 2023–20.

In the absence of a special rule for insurance companies issuing this type of contract, AFSI would be determined by disregarding (i) the change in unrealized gain or loss on certain stock under section 56A(c)(2)(C) and proposed §§ 1.56A–4, 1.56A–18, and 1.56A–19, and (ii) the change in unrealized gain or loss on certain partnership interests (in whole or in part) under section 56A(c)(2)(D) and proposed §§ 1.56A–5 and 1.56A–20, even though the offsetting change in liabilities would be taken into account. This outcome would result in a mismatch that could significantly overstate or understate AFSI for these insurance companies relative to both taxable income and economic income.

Section 3 of Notice 2023–20 provides interim guidance that addresses this mismatch. Under section 3 of Notice 2023–20, for purposes of determining an insurance company's AFSI, the change in the obligation to holders of "Covered Variable Contracts", as defined in section 2.05(2) of Notice 2023–20, is disregarded to the extent the related gains or losses on assets supporting the contracts are both (i) taken into account in determining FSI, and (ii) excluded from AFSI under section 56A(c)(2)(C) or (c)(2)(D)(i).

A stakeholder suggested that "turning off" section 56A(c)(2)(C) and (c)(2)(D)(i) could achieve the same result as under Notice 2023–20 and would be simpler to administer, because no adjustments to an insurance company's AFSI would be needed to eliminate the mismatch. In contrast, the approach described in Notice 2023–20 requires two adjustments: first, section 56A(c)(2)(C) or (c)(2)(D)(i) is applied to exclude from AFSI certain gains and losses in the assets supporting the contracts; and

second, section 3.02 of Notice 2023–20 is applied to exclude from AFSI the offsetting change in the obligations to the contract holders.

To address the foregoing mismatch in a manner that is simple to administer, proposed § 1.56A–22(c)(1) generally would provide that proposed §§ 1.56A–4, 1.56A–5, and 1.56A–18 through 1.56A–20 (and, thus, any statutory AFSI adjustments implemented by these provisions) would not apply to exclude from an insurance company's AFSI any gains or losses on assets supporting covered variable contracts, as defined in proposed § 1.56A–22(b)(5), to the extent that (i) the gains and losses result in a change in the amount of the obligations to the contract holders, and (ii) this change is included in the insurance company's FSI.

A stakeholder also suggested that the definition of Covered Variable Contracts in Notice 2023–20 be broadened. Accordingly, proposed § 1.56A–22(b)(5) would define this term more generally rather than by including in the definition only specific types of identified contracts.

B. AFSI Adjustments for Covered Reinsurance Agreements

In certain types of reinsurance arrangements (namely, funds withheld reinsurance and modified coinsurance agreements), the ceding company retains the investment assets that support the obligations to the holders of the underlying insurance contracts. Under these agreements, the reinsurance operates like conventional reinsurance, but from a legal title and financial accounting perspective, the ceding company retains these investment assets as security for the reinsurer's obligations under the reinsurance agreement (and for modified coinsurance, the ceding company also retains the reserves). *See* Credit for Reinsurance Model Law (MO–785), NAIC Model Laws, Regulations, Guidelines, & Other Resources, section 3 (2019); NAIC, *Accounting Practice & Procedures Manual*, SSAP 61R, Life, Deposit-Type and Accident and Health Reinsurance (2023). The ceding company records a liability to the reinsurer to reflect the assets it has retained.

Under GAAP and IFRS, the change in unrealized gains and losses on certain of these retained assets generally is accounted for in the ceding company's OCI, and the change in a related and offsetting payable to the reinsurer is accounted for in the ceding company's FSI. *See* section 2.03 of Notice 2023–20. The definition of FSI in proposed § 1.56A–1(b)(20) would exclude OCI from AFSI. Accordingly, without a

special rule, the change in the payable would be included in the determination of AFSI, but the offsetting change in the unrealized gain or loss in the retained assets generally would not be included.

Section 4 of Notice 2023–20 provides interim guidance that addresses this mismatch. Section 4 of Notice 2023–20 also provides related guidance to the reinsurer, guidance in the case of a retrocession, and guidance if the insurance company elects to account for parts of the reinsurance arrangement at fair value.

The rules in proposed § 1.56A–22(d) generally would be consistent with section 4 of Notice 2023–20. Proposed § 1.56A–22(d)(1) generally would provide that (i) the ceding company in a “covered reinsurance agreement”, as defined in proposed § 1.56A–22(b)(4), excludes from AFSI any changes in the amount of the payable to the reinsurer that correspond to the unrealized gains and losses in the withheld assets to the extent the unrealized gains and losses are not included in AFSI, and (ii) the reinsurer in a covered reinsurance agreement excludes from AFSI any changes in the amount of the receivable from the ceding company that correspond to the unrealized gains and losses in the assets withheld by the ceding company.

However, the rule in proposed § 1.56A–22(d)(3), related to accounting for the reinsurance arrangement at fair value, would “turn off” the general rule in proposed § 1.56A–22(d)(1) if the insurance company either (i) makes an election for AFS purposes to account for the covered reinsurance agreement at fair value in its FSI, or (ii) otherwise accounts for both the payable (for the ceding company) or the receivable (for the reinsurer) and the covered reinsurance agreement at fair value in its FSI. Accordingly, proposed § 1.56A–22(d)(3) would apply only if the covered reinsurance agreement is accounted for at fair value in FSI. Comments are requested on whether the rule in proposed § 1.56A–22(d)(3) appropriately describes the circumstances (under GAAP, IFRS, and other generally accepted accounting standards) in which the general rule in proposed § 1.56A–22(d)(1) should not apply.

C. Use of Fresh Start Basis

Various Acts of Congress fully subjected to Federal taxation certain entities that previously had been exempt from Federal taxation (in whole or in part). *See* section 2.04 of Notice 2023–20. These Acts provided special rules for determining the adjusted basis of an asset held by any of these entities on the day it became fully subject to

Federal taxation. These rules generally provided that, for certain purposes, the adjusted basis of any asset held by the entity on the day it became fully subject to Federal taxation is equal to the fair market value of the asset on that day, providing a “fresh start” for these entities.

Consistent with section 5 of Notice 2023–20, proposed § 1.56A–22(e) would provide that, for purposes of determining AFSI, the adjusted basis of any asset held by the entity since the date it became fully taxable is determined in accordance with the particular Act that fully subjected the entity to Federal taxation.

XXII. Proposed § 1.56A–23: AFSI Adjustments for Financial Statement Net Operating Losses and Other Attributes

Pursuant to the authority granted by section 56A(c)(15) and (e), proposed § 1.56A–23 would provide rules under section 56A(d) for determining the AFSI adjustment for financial statement net operating loss (FSNOL) carryovers, built-in losses, and other attributes.

A. General FSNOL Rules

Section 56A(d)(1) provides that AFSI is reduced by an amount equal to the lesser of (i) the aggregate amount of FSNOL carryovers to the taxable year, or (ii) 80 percent of AFSI computed without regard to the FSNOL adjustment. Section 56A(d)(2) provides that an FSNOL for any taxable year is a financial statement net operating loss carryover to each taxable year following the taxable year of the loss. The portion of the FSNOL carried to subsequent taxable years is the amount of the FSNOL remaining after subtracting the adjustments under section 56A(d)(1) for previous years. Section 56A(d)(3) defines an “FSNOL” as the amount of the net loss set forth on a corporation's applicable financial statement as adjusted by section 56A(c), and without regard to the FSNOL deduction, for taxable years ending after December 31, 2019.

Proposed § 1.56A–23(c) would provide that, if the AFSI of a corporation for a taxable year is positive (determined after application of the section 56A regulations), the corporation's AFSI is reduced by an amount equal to the lesser of (i) the aggregate amount of FSNOL carryovers to the taxable year, or (ii) 80 percent of the AFSI of the corporation (determined after application of the section 56A regulations and without regard to proposed § 1.56A–23). Proposed § 1.56A–23(d)(1) would provide that an FSNOL for any taxable year is carried

forward to each taxable year following the taxable year of the loss, and that any remaining FSNOL is carried forward to the subsequent taxable year. An example in proposed § 1.56A–23(d)(2) would clarify that the rules in proposed § 1.56A–23(d) apply even if the corporation was not an applicable corporation in a prior taxable year. The statute generally requires AFSI adjustments related to pre-effective date years that affect post-effective date years to be made. This is consistent with the rules described in proposed § 1.56A–1(d)(3), which provides that the AFSI adjustments described in the section 56A regulations are made for taxable years ending after December 31, 2019. Proposed § 1.56A–23(c) and (d) would be consistent with the rules described in section 12 of Notice 2023–64.

The section 56A(d) rules regarding the use of FSNOLs generally match the rules regarding the use of NOLs applicable to most corporations for regular tax purposes under section 172 in that both FSNOLs and NOLs generally (i) may be carried forward for an indefinite number of years but may not be carried back and (ii) may be used to reduce only 80 percent of AFSI (as described in section 56A(d)(1)) or taxable income (as described in section 172(a)(2)), respectively. However, section 172 provides exceptions to the general rule for nonlife insurance companies that are not in section 56A(d). In particular, section 172 provides that a nonlife insurance company's NOLs may be carried back for two years and carried forward 20 years and also that the NOLs are not subject to the 80 percent limit described in section 172(a)(2). See section 172(b)(1)(C) and (f). Stakeholders have observed that this disparity could create a substantial mismatch between AFSI and regular taxable income for nonlife insurance companies that does not exist for other corporations. The Treasury Department and the IRS request comments on how substantial this mismatch may be and the severity of the economic effects of such mismatch, whether rules should be provided to address this potential mismatch, and how the rules might operate.

B. Limitation on FSNOLs and Built-in Losses Acquired in Successor Transactions

The existence of FSNOLs and built-in losses may incentivize acquisitions for Federal income tax reasons in a manner inconsistent with the purposes of section 56A. Accordingly, proposed § 1.56A–23(e) and (f) would limit the use of FSNOLs and built-in losses, respectively, to which an applicable

corporation succeeds (i) in a reorganization or liquidation described in section 381(a), or (ii) after a stock acquisition (including a stock acquisition in which the target corporation becomes a member of a tax consolidated group) (collectively, successor transactions, as defined in proposed § 1.56A–23(e)(3)). The proposed limitation is intended to replicate the target corporation's ability to use the CAMT attributes prior to the transaction.

Proposed § 1.56A–23(e) would limit the use of FSNOLs after a successor transaction. Under proposed § 1.56A–23(e)(2), a successor corporation or successor group could use the FSNOLs of an acquired business to offset the successor's AFSI only if the acquired business is separately tracked in the successor's books and records, and only to the extent of the AFSI generated by the separately tracked business after the successor transaction (separately tracked income). Proposed § 1.56A–23(e)(2)(ii) would provide rules for determining separately tracked income for purposes of proposed § 1.56A–23(e), proposed § 1.56A–23(e)(3)(iii) would provide rules regarding the separation of an acquired business from the associated acquired FSNOLs, and proposed § 1.56A–23(e)(3)(iv) would provide rules regarding the integration of an acquired business with the successor's business.

Proposed § 1.56A–23(f) would provide rules regarding the use of built-in losses after a successor transaction. Under proposed § 1.56A–23(f), built-in losses that are recognized after a successor transaction would be treated as if they were acquired FSNOLs for purposes of proposed § 1.56A–23(e). This rule is intended to ensure that acquired built-in losses are treated similarly to acquired FSNOLs. For this purpose, “built-in losses” would be defined by reference to certain specified provisions in section 382 of the Code. See proposed § 1.56A–23(f)(2).

The foregoing limitations are modeled after the separate return limitation year rules in §§ 1.1502–15 and 1.1502–21(c). Stakeholders also had recommended applying section 382 to limit the use of FSNOLs and other CAMT attributes after an acquisition. However, the Treasury Department and the IRS are not proposing to apply the limitation in section 382 to FSNOLs or other CAMT attributes due to complexities that would arise from importing the section 382 limitation into the CAMT system. Additionally, applying section 382 and the regulations under section 382 to the use of FSNOLs and other CAMT attributes is not necessary to carry out

the purposes of section 56A for two reasons: (i) the SRLY-like limitation in proposed § 1.56A–23(e) would operate to deter acquisitions undertaken to acquire FSNOLs and other CAMT attributes, and (ii) the administrative burden of applying section 382 and the regulations under section 382 to FSNOLs and other CAMT attributes would outweigh the benefits of applying the section 382 limitation to FSNOLs.

XXIII. Proposed § 1.56A–24: AFSI Adjustments for Hedging Transactions and Hedged Items

Pursuant to the authority granted by section 56A(c)(15) and (e), proposed § 1.56A–24 would provide rules under section 56A regarding hedging transactions and hedged items.

A. Overview

Depending on the relevant accounting standards, certain categories of assets and liabilities (for example, derivatives) may be required to be periodically measured and reflected in the AFS at fair value. Stakeholders expressed concern regarding the inclusion in a CAMT entity's AFSI of these periodic measurements of fair value, referred to by certain stakeholders as book or financial statement “mark-to-market” adjustments.

More specifically, some stakeholders expressed concern about situations in which an asset or a liability is periodically measured at fair value and reflected in FSI in a CAMT entity's AFS, but a related asset or liability is not. For example, in the case of a hedging transaction and the related item, the hedging transaction may be required to be periodically measured at fair value, but the related item may not. As a result, in situations involving hedging transactions, CAMT entities may have AFS mismatches between the hedging transaction and the related item, despite the hedging transaction and the related item offsetting each other economically. This mismatch may give rise to distortions in the determination of AFSI that should be alleviated with an adjustment to FSI to avoid the non-economic results that would arise absent an adjustment. The Joint Committee on Taxation has stated that Congress intended for mismatches involving certain hedging transactions to be addressed in the regulations.²

² See Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in the 117th Congress (JCS–1–23), December 2023, at page 171 (“For example, under new section 56A(c)(15) and (e), the Secretary is intended to exercise authority to provide that gains and losses with respect to derivative contracts used to manage business risks are to be included in AFSI when such gains and

These situations also may cause volatility in the determination of a CAMT entity's AFSI due to unrealized gain and loss on a hedging transaction or the related item in cases in which there may not be corresponding economic volatility for the hedging transaction and the related item. For example, a CAMT entity may manage risk with respect to price fluctuations of commodities for future customer delivery obligations by entering into hedging transactions with similar terms as those customer delivery obligations. The delivery obligations may not be periodically measured at fair value, but the hedging transaction generally would be required to be periodically measured at fair value. As a result, a CAMT entity could have volatility in the determination of AFSI attributable to fluctuations in commodities prices even if those fluctuations are hedged as an economic matter. Stakeholders have expressed concern that absent an adjustment for these hedging transactions used to manage business risks, there may be unintended cashflow constraints due to the inclusion of unrealized gain or loss in FSI in the context of hedging transactions in which there generally are not meaningful economic gains or losses.

Some stakeholders also expressed concern about the AFSI treatment of a hedging transaction entered into to manage the foreign currency exposure of a net investment in a foreign operation. In particular, stakeholders expressed concern that changes in the fair value of these hedges are included in equity accounts, such as retained earnings or OCI, and as a result not included in FSI. However, these hedges may be marked to market for regular tax purposes, resulting in a divergence between FSI and regular taxable income due to the manner in which changes in values with respect to these particular hedging transactions are required to be reported under applicable financial accounting principles.

B. Proposed Regulations

To address the mismatches and distortions described in part XXIII.A of this Explanation of Provisions, proposed § 1.56A–24 would provide certain adjustments to AFSI (determined without regard to proposed §§ 1.56A–23 and 1.56A–24, but after giving effect to all other sections of the section 56A regulations) for an AFSI hedge or the related item. Under proposed § 1.56A–24(b)(1), an “AFSI hedge” generally would include hedging transactions for

regular tax purposes (for example, those defined in § 1.1221–2(b), whether or not the character of gain or loss from the transaction is determined under § 1.1221–2) as well as hedging transactions for financial accounting purposes. However, an AFSI hedge would not include a hedging transaction entered into by an insurance company to hedge obligations to holders of life insurance or annuity contracts that take into account the value of one or more specified assets or indices (for example, contracts that have guaranteed minimum benefits or crediting rates), because the amount of the liabilities that corresponds to the hedging transaction is also included in the insurance company's FSI. See proposed § 1.56A–24(b)(1)(ii)(A). Under proposed § 1.56A–24(b)(4), the term “hedged item” would mean an asset or a liability that is reflected in a CAMT entity's AFS for which there is a risk of interest rate or price changes, currency fluctuations, or other risk that is eligible to be managed by an AFSI hedge and that is managed by one or more AFSI hedges.

Proposed § 1.56A–24(b)(3) would provide that the term “fair value measurement adjustment” means a change in the value of an asset or a liability due to required periodic determinations at least annually of the increases or decreases in fair value of that asset or liability included in a CAMT entity's FSI, regardless of whether the determinations are required due to the type of asset or liability or an election by the CAMT entity. A fair value measurement adjustment would not include an impairment loss or impairment loss reversal within the meaning of proposed § 1.56A–1(b)(29) and (30), respectively. Under the definition of the term fair value measurement adjustment, changes in the value of an asset or liability not included in a CAMT entity's FSI, such as those generally resulting from a cash flow hedge (as defined in Accounting Standards Codification paragraph 815–30–20 or IFRS 9 Chapter 6.5.11), do not constitute fair value measurement adjustments.

Under proposed § 1.56A–24(c)(2), a fair value measurement adjustment for an AFSI hedge or a hedged item for a taxable year would be disregarded by a CAMT entity for purposes of determining the CAMT entity's AFSI if the CAMT entity (i) has a fair value measurement adjustment with respect to an AFSI hedge but not the hedged item or (ii) has a fair value measurement adjustment with respect to a hedged item but not the AFSI hedge. However, in either situation, the fair value measurement adjustment would not be

disregarded if either the AFSI hedge or hedged item is marked to market for regular tax purposes. In these cases, the book and regular tax treatment of the AFSI hedge or hedged item are likely to correspond (for example, the hedged item may be marked-to-market for both book and regular tax purposes), so that no adjustment to AFSI is needed.

The adjustments to AFSI in proposed § 1.56A–24(c)(2) would delay the inclusion in AFSI of unrealized gain or loss attributable to fair value measurement adjustments for an AFSI hedge or a hedged item until the earlier of when the gain or loss on the corresponding hedged item or AFSI hedge (as applicable) is recognized for FSI purposes, or an “AFSI subsequent adjustment date” (as defined in proposed § 1.56A–24(b)(2)) otherwise occurs. These adjustments to AFSI are intended to address certain financial accounting mismatches between an AFSI hedge and a hedged item by coordinating the timing of recognition between AFSI hedges and hedged items in a manner similar to other rules involving economically integrated transactions, such as § 1.446–4.

The rules in proposed § 1.56A–24(c)(2) are intended to avoid the inclusion of unrealized gain or loss in AFSI that is offset economically by a hedged item or AFSI hedge (as applicable) but for which there are timing differences for recognition for financial accounting purposes. By doing so, these proposed rules also are intended to avoid situations in which a CAMT entity would have volatility in the determination of AFSI (and, potentially, in the determination of whether the CAMT entity is subject to the CAMT) because only one of an AFSI hedge or a hedged item is subject to fair value measurement adjustments included in net income, and there is no corresponding difference for regular tax purposes. In the commodities hedging example described in part XXIII.A of this Explanation of Provisions, if the requirements of proposed § 1.56A–24(c)(2) were satisfied, the hedging transaction would be an AFSI hedge for which fair value measurement adjustments would be disregarded until an AFSI subsequent adjustment date occurs, resulting in similar timing for the inclusion of gain or loss in AFSI between the AFSI hedge and the hedged item.

Proposed § 1.56A–24(d) would apply in situations in which a CAMT entity marks to market a “net investment hedge,” as defined in proposed § 1.56A–24(b)(5), for regular tax purposes. Under proposed § 1.56A–24(d), the CAMT entity would include the amount of

losses are recognized for regular Federal income tax purposes.”).

mark-to-market gain or loss for regular tax purposes in AFSI. This proposed rule is intended to result in greater conformity between the timing of the net investment hedge for financial accounting purposes and for regular tax purposes by including the unrealized gain or loss for the net investment hedge in AFSI.

Proposed § 1.56A–24(e)(1) would provide operative rules for the inclusion of certain taxable amounts in AFSI for fair value measurement adjustments disregarded from a CAMT entity's AFSI under proposed § 1.56A–24(c)(2). Under proposed § 1.56A–24(e)(1), if the fair value measurement adjustment includes items corresponding to items of income, gain, deduction, or loss for regular tax purposes, such as the accrual of original issue discount on a bond, those items would be taken into account for AFSI purposes.

Proposed § 1.56A–24(e)(2) would provide for subsequent adjustments for an AFSI hedge or a hedged item (as applicable) in the taxable year in which there is an AFSI subsequent adjustment date. In general, proposed § 1.56A–24(e)(2) would provide for the inclusion in AFSI of the cumulative fair value measurement adjustments previously disregarded in determining AFSI under proposed § 1.56A–24(c)(2) and for certain adjustments to CAMT basis. Proposed § 1.56A–24(e)(3) would provide for subsequent adjustments for a net investment hedge in the taxable year in which a net investment hedge matures or is sold, disposed of, or otherwise terminated, or the asset or liability that was a net investment hedge subject to § 1.56A–24(d) otherwise ceases to constitute a net investment hedge.

These proposed rules address the situations described by stakeholders in which one component of a transaction is periodically measured at fair value and reflected in FSI in a CAMT entity's AFS, but a related asset or liability is not, without a corresponding mismatch in treatment for regular tax purposes. The Treasury Department and the IRS invite comments on whether there are other similar situations potentially giving rise to a substantial mismatch for which a similar adjustment to AFSI may be appropriate.

XXIV. Proposed § 1.56A–25: AFSI Adjustments for Mortgage Servicing Income

Pursuant to the authority granted by section 56A(e), proposed § 1.56A–25 would provide rules under section 56A(c)(10)(A) regarding mortgage servicing income. CAMT entities that hold contracts to service mortgage assets

(mortgage servicing contracts) may have servicing assets or servicing liabilities related to those mortgage servicing contracts. For mortgage servicing contracts that are servicing assets, the relevant accounting standards (for example, ASC 860–50–35) generally require a CAMT entity to determine FSI by taking into account either changes in fair value of the mortgage servicing contracts or the amortization of the value of those contracts.

In general, for regular tax purposes, the treatment of certain sales of mortgages originated by a taxpayer and the income from related mortgage servicing contracts is determined under Rev. Rul. 91–46, 1991–2 C.B. 358 (for example, if the contract entitles the taxpayer to receive amounts that exceed reasonable compensation for the services to be performed, the income attributable to this excess is taken into account under the timing rules for stripped coupons in section 1286 of the Code). In addition, if the taxpayer is a dealer in securities under section 475 of the Code, the mark-to-market method of accounting generally applies to any securities, including any excess mortgage servicing rights treated as stripped coupons. As a result, the timing for the inclusion of items related to mortgage servicing contracts for financial accounting purposes may be different than the timing for the inclusion of items related to mortgage servicing contracts for regular tax purposes.

Consistent with section 56A(c)(10)(A), proposed § 1.56A–25 would provide that AFSI is adjusted so as not to include any item of income in connection with a mortgage servicing contract any earlier than the period in which such income is included in gross income under chapter 1. This proposed rule implements the statutory provision, which results in consistent treatment of items of income in connection with a mortgage servicing contract of a taxpayer for purposes of the CAMT and for regular tax purposes.

Section 56A(c)(10)(B) authorizes the Secretary to provide regulations to prevent the avoidance of taxes imposed by chapter 1 of subtitle A of the Code for amounts not representing reasonable compensation (as determined by the Secretary) with respect to a mortgage servicing contract. While this NPRM does not include proposed regulations under section 56A(c)(10)(B), the Treasury Department and the IRS continue to study the issue and invite comments concerning whether regulations should be issued pursuant to this specific grant of regulatory authority.

XXV. Proposed § 1.56A–26: AFSI Adjustments for Certain Related-Party Transactions and CAMT Avoidance Transactions

Pursuant to the authority granted by section 56A(c)(15) and (e), proposed § 1.56A–26 would provide rules regarding certain related-party transactions and CAMT avoidance transactions. The Treasury Department and the IRS are concerned that taxpayers may enter into transactions with related parties or enter into other transactions or arrangements in order to avoid the application of CAMT or to improperly reduce CAMT liability. Proposed § 1.56A–26(b) would defer AFSI losses resulting from transactions between related parties. Proposed § 1.56A–26(c) would provide an anti-abuse rule for arrangements undertaken with a principal purpose of avoiding CAMT, including avoiding treatment as an applicable corporation or reducing or otherwise avoiding a liability under section 55(a). Proposed § 1.56A–26(c) permits the Commissioner to disregard or recharacterize such arrangements to the extent necessary to carry out the purposes of CAMT. An arrangement includes, for example, the filing of a financial statement with the SEC or with an agency of a foreign government that is equivalent to the SEC, where such filing is not required and is made for the purpose of affecting which financial accounting standard is considered the applicable financial accounting standard under the FPMG rules in proposed § 1.59–3.

Proposed § 1.56A–26(d) would require income, expense, gain, or loss arising from transactions between commonly controlled CAMT entities to be clearly reflected for purposes of the CAMT, consistent with the principles of section 482 of the Code. More specifically, proposed § 1.56A–26(d) would require any item of income, expense, gain, or loss reflected in the FSI of a CAMT entity with respect to a controlled transaction or controlled transfer (as defined in § 1.482–1(i)(8)) between two or more CAMT entities to be adjusted to reflect the principles of section 482 and the regulations under section 482, regardless of whether section 482 otherwise is considered to apply. This proposed rule would clarify that the principles of section 482 apply to determine the effect of controlled transactions and controlled transfers on AFSI. No inference is intended regarding how section 482 applies to affect any amount required for the calculation of AFSI without regard to this proposed rule.

XXVI. Proposed § 1.56A–27: AFSI Adjustments for Foreign Governments

Pursuant to the authority granted by section 56A(c)(15) and (e), proposed § 1.56A–27 would provide rules under section 56A regarding AFSI adjustments for income of foreign governments. These proposed rules would provide for an adjustment to AFSI of a foreign government for any amount that, if it were properly treated as gross income for regular tax purposes, would be excluded from gross income and exempt from taxation under subtitle A pursuant to section 892 of the Code.

Under proposed § 1.56A–1(d)(2), except as provided in the section 56A regulations, a CAMT entity may not make any adjustments to its FSI in determining its AFSI. The Treasury Department and the IRS are of the view that any amount of FSI, if it were properly treated as gross income for regular tax purposes and would qualify for the exemption under section 892 for that person, should be excluded from that person's FSI when determining its AFSI only for purposes of determining CAMT liability. Therefore, proposed § 1.56A–27(b) would provide for an adjustment to AFSI for income of foreign governments that qualifies for treatment under section 892.

The adjustment in proposed § 1.56A–27 would apply only for purposes of determining CAMT liability, and not for purposes of determining whether a corporation is an applicable corporation under section 59(k). *See, for example,* proposed § 1.59–2(c)(1)(ii)(B).

XXVII. Proposed § 1.59–2: General Rules for Determining Applicable Corporation Status

Pursuant to the authority granted by section 59(k)(1)(C) and (k)(3), proposed § 1.59–2 would provide rules under section 59(k) for determining whether a corporation is an applicable corporation for purposes of sections 55 through 59. Proposed § 1.59–2(b) would provide definitions that apply for purposes of section 59, including the definition of an “applicable corporation.” For purposes of the special rules provided in proposed § 1.59–2(f) (*see* discussion in part XXVII.C of this Explanation of Provisions), proposed § 1.59–2(b) would provide definitions for “relevant relationship criteria,” “test group,” and “test group parent.” Proposed § 1.59–2(b)(4) would define “relevant relationship criteria” to mean the relationship criteria set forth in the rules for the average annual AFSI tests under proposed § 1.59–2(c)(1)(ii)(A), (c)(2)(ii)(A), or (c)(2)(iii)(A), as applicable. *See* discussion of the

average annual AFSI tests in part XXVII.A of this Explanation of Provisions. Proposed § 1.59–2(b)(5) would provide that the term “test group” means, with respect to a corporation, the corporation and all persons that are treated as related to such corporation under the relevant relationship criteria. Proposed § 1.59–2(b)(6) would provide that the term “test group parent” means the relevant person(s) as described in proposed § 1.59–2(b)(6)(i) through (vii). Terms used in proposed §§ 1.59–2 through 1.59–4 that are not defined in those sections have the meaning provided in proposed § 1.56A–1(b).

A. Average Annual AFSI Test

1. Corporation Is Not a Member of an FPMG

Proposed § 1.59–2(c)(1) describes the average annual AFSI test applied to a corporation that is not a member of an FPMG to determine whether such a corporation is an applicable corporation. Such a corporation meets the average annual AFSI test for a taxable year if its average annual AFSI for the 3-taxable-year period ending with such taxable year exceeds \$1,000,000,000. For this purpose, the AFSI of the corporation and the AFSI of all persons treated as a single employer with the corporation under section 52(a) or (b) would be treated as the AFSI of the corporation. *See* proposed § 1.59–2(c)(1)(ii)(A). Moreover, if a person treated as a single employer with a corporation has a taxable year that differs from the taxable year of the corporation, then the corporation's AFSI would include such person's AFSI for the taxable year of such person that ends with or within the taxable year of the corporation. *See* proposed § 1.59–2(c)(1)(ii)(A).

Consistent with section 59(k)(1), the AFSI of a corporation described in proposed § 1.59–2(c)(1)(i) and the AFSI of any person treated as a single employer with the corporation under section 52(a) or (b) would be determined without regard to certain specified AFSI adjustments. *See* proposed § 1.59–2(c)(1)(ii)(B). Certain of the specified adjustments would be disregarded according to the terms of the statute. These are the adjustment for FSNOLs in proposed § 1.56A–23, the adjustment for distributive share of partnership AFSI in proposed § 1.56A–5, and the adjustment for covered benefit plans in proposed § 1.56A–13. *See* section 59(k)(1)(B)(i) and (k)(1)(D)(i). In addition, the adjustments in proposed §§ 1.56A–6(b)(2) and 1.56A–8(c), which would decrease AFSI for foreign income taxes

when the foreign tax credit is not claimed for regular tax purposes, would be disregarded so that, for testing purposes, there is equal treatment of those choosing to claim, and those not choosing to claim, the foreign tax credit. The adjustment to apply certain subchapter K principles provided in proposed § 1.56A–20 would be disregarded to permit testing without the burden of determining that adjustment. Finally, the adjustment with respect to certain income of foreign governments provided in proposed § 1.56A–27 would be disregarded because it would be inappropriate to disregard the income for testing purposes.

To avoid the duplication of AFSI, if a partnership is treated as a single employer with a corporation under section 52(a) or (b), then the AFSI of any partner in the partnership that is either that corporation or treated as a single employer with that corporation would be determined without regard to any amounts reflected in the partner's FSI that is derived from, and included in, the FSI of the partnership. *See* proposed § 1.59–2(c)(1)(ii)(C).

To provide for the application of the rules relating to discharge of indebtedness income with respect to partnership investments, if a partnership is treated as a single employer with a corporation under section 52(a) or (b), then the exclusions from AFSI for discharge of indebtedness income in proposed § 1.56A–21(c) apply to the partnership's AFSI, but are based on a determination of whether the relevant partner meets any of the exclusions provided in proposed § 1.56A–21(c)(1) and (2), including the application of any resulting CAMT attribute reductions provided in proposed § 1.56A–21(c)(4) and (5). *See* proposed § 1.59–2(c)(1)(ii)(D).

2. Corporation is a Member of an FPMG

Proposed § 1.59–2(c)(2) describes the average annual AFSI test applied to a corporation that is a member of an FPMG for purposes of determining whether such corporation (FPMG corporation) is an applicable corporation. The FPMG corporation is subject to the two-prong average annual AFSI test described in proposed § 1.59–2(c)(2) if it is a member of an FPMG at the beginning or end of its taxable year. *See* proposed § 1.59–2(b)(3). Under the first prong, the average annual AFSI of the FPMG corporation for the 3-taxable-year period ending with such taxable year must exceed \$1,000,000,000. *See* proposed § 1.59–2(c)(2)(i)(A). For this purpose, the combined AFSI of the FPMG corporation and all relevant

aggregation entities (as defined in proposed § 1.59–2(b)(4)) is treated as the AFSI of the FPMG corporation. The relevant aggregation entities for an FPMG corporation are all members of the FPMG, other than the FPMG corporation itself, and any other person that is treated as a single employer with the FPMG corporation under section 52(a) or (b). If a relevant aggregation entity has a taxable year that differs from the taxable year of the FPMG corporation, then the FPMG corporation's AFSI includes such relevant aggregation entity's AFSI for the taxable year that ends with or within the taxable year of the FPMG corporation. If such relevant aggregation entity does not have a taxable year for regular tax purposes, its AFSI reporting year is treated as its taxable year. *See* proposed § 1.59–2(c)(2)(ii)(A).

Certain specified AFSI adjustments would be disregarded in applying the first prong of this test. In addition to those AFSI adjustments disregarded when applying the average annual AFSI test to corporations that are not members of an FPMG, the adjustments for income of CFCs and income effectively connected with a U.S. trade or business (*see* §§ 1.56A–6 and 1.56A–7, respectively) also would be disregarded, pursuant to section 59(k)(2)(A). *See* proposed § 1.59–2(c)(2)(ii)(B).

For purposes of applying the \$1,000,000,000 average AFSI threshold test in proposed § 1.59–2(c)(2)(i)(A), an FPMG corporation that is a foreign corporation and any relevant aggregation entity that is not a United States person (as defined in section 7701(a)(30)) would not make any AFSI adjustment described in the section 56A regulations that is dependent on the treatment of an item for regular tax purposes, such as for depreciation (*see* section 56A(c)(13) and proposed § 1.56A–15), if the FPMG corporation or relevant aggregation entity, as applicable, does not take such item into account for regular tax purposes. *See* proposed § 1.59–2(c)(2)(ii)(C). If an AFSI adjustment provides for disregarding an FSI item and replacing it with an amount taken into account for regular tax purposes, neither would be taken into account, with the result that the FSI amount is included in AFSI. To illustrate, assume the following facts: A foreign corporation (FP) directly owns all the stock of another foreign corporation (FC) and the stock of a domestic corporation (DC); FP and FC are not CFCs and do not have U.S. shareholders that own (within the meaning of section 958(a)) stock of FP or FC; FP and FC are not engaged in a

U.S. trade or business; and FP is the FPMG common parent of an FPMG, the members of which are FP, FC, and DC. Under this rule, with respect to FP's ownership of the stock of FC, the AFSI of FP is determined without regard to the adjustments described in proposed § 1.56A–4 (concerning AFSI adjustments with respect to stock of a foreign corporation). However, this rule does not preclude any adjustments described in proposed § 1.56A–26.

This rule is intended to lessen the burden of determining AFSI when there is no regular tax treatment of an item while ensuring that the item is taken into account. Absent such a rule, it would be necessary to determine the regular tax treatment of an item solely for CAMT purposes. This would present an added compliance burden while not achieving the purpose of conforming the CAMT treatment of an item to the regular tax treatment of an item, since there is no regular tax treatment of such item. Moreover, specifically in the context of the AFSI adjustments with respect to stock of a foreign corporation in proposed § 1.56A–4, the double counting concerns that support applying regular tax rules are not necessarily present in the case of a foreign corporation that does not take the item into account for regular tax purposes (such as a foreign corporation that is not a CFC that has U.S. shareholders that own (within the meaning of section 958(a)) stock of the foreign corporation). The Treasury Department and the IRS invite comment on the rule.

To avoid the duplication of AFSI, if a partnership is a relevant aggregation entity with respect to an FPMG corporation, then the AFSI of any partner in the partnership that is either the FPMG corporation or a relevant aggregation entity would be determined without regard to any amount reflected in the partner's FSI that is derived from, and included in, the FSI of the partnership. *See* proposed § 1.59–2(c)(2)(ii)(D).

To provide for the application of the rules relating to discharge of indebtedness income with respect to partnership investments, if a partnership is a relevant aggregation entity with respect to an FPMG corporation, then the exclusions from AFSI for discharge of indebtedness income in proposed § 1.56A–21(c) apply to the partnership's AFSI, but are based on a determination of whether the relevant partner meets any of the exclusions provided in proposed § 1.56A–21(c)(1) and (2), including the application of any resulting CAMT attribute reductions provided in

proposed § 1.56A–21(c)(4) and (5). *See* proposed § 1.59–2(c)(2)(ii)(E).

The proposed regulations provide a rule to avoid the duplication of AFSI in certain cases in which AFSI of a shareholder of a foreign corporation and AFSI of the foreign corporation would both be taken into account under the aggregation rules. *See* proposed § 1.59–2(c)(2)(ii)(F). Specifically, for purposes of the \$1,000,000,000 average AFSI threshold test in proposed § 1.59–2(c)(2)(i)(A), the AFSI of a shareholder of a foreign corporation that is the FPMG corporation or a relevant aggregation entity with respect to the FPMG corporation (corporate aggregation entity) would be determined without regard to any item reflected in the FSI of the shareholder that is attributable to FSI of the FPMG corporation or corporate aggregation entity and that, under proposed § 1.59–2(c)(2)(ii)(C) (concerning items that are not taken into account for regular tax purposes), is not disregarded, if either of two conditions is satisfied. First, the shareholder is the FPMG corporation and is a foreign corporation. Second, the shareholder is a relevant aggregation entity with respect to the FPMG corporation and is not a United States person (as defined in section 7701(a)(30) of the Code). Thus, proposed § 1.59–2(c)(2)(ii)(F) would apply only to the extent that, absent application of this rule, items would be included in the AFSI of multiple persons for purposes of applying the \$1,000,000,000 average AFSI threshold test in proposed § 1.59–2(c)(2)(i)(A) to the FPMG corporation. To illustrate, assume the following facts: A foreign corporation (FP) directly owns all the stock of another foreign corporation (FC) and the stock of a domestic corporation (DC); FP and FC are not CFCs that have U.S. shareholders that own (within the meaning of section 958(a)) stock of FP or FC; FP and FC are not engaged in a U.S. trade or business; FP is the FPMG common parent of an FPMG, the members of which are FP, FC and DC; FC has \$100x of FSI and AFSI; and for financial accounting purposes, FP accounts for its interest in FC under the equity method. Under proposed § 1.59–2(c)(2)(i)(C) (concerning items of certain foreign persons not taken into account for regular tax purposes), FP's AFSI is determined without regard to the adjustments described in proposed § 1.56A–4 (rules for foreign stock). Absent the application of this rule, FC's \$100x of FSI would be included in FC's AFSI and FP's FSI under the equity method of accounting and therefore FP's AFSI for purposes of the \$1,000,000,000

average AFSI threshold test in proposed § 1.59–2(c)(2)(i)(A). Under proposed § 1.59–2(c)(2)(ii)(F), the AFSI of FP is determined without regard to the \$100x of FSI of FC that is included in the FSI of FP in order to prevent double counting of the \$100x.

The Treasury Department and the IRS are studying whether additional guidance is needed to carry out the purposes of proposed § 1.59–2(c)(2)(ii)(F), including guidance on determining when an item is attributable to FSI. The Treasury Department and the IRS welcome comments on this matter.

Under the second prong, the average annual AFSI of an FPMG corporation for the 3-taxable-year period ending with the taxable year must be \$100,000,000 or more. *See* proposed § 1.59–2(c)(2)(i)(B). For this purpose, rules similar to those applicable to a corporation that is not a member of an FPMG with respect to aggregating AFSI, disregarding certain specified AFSI adjustments, avoiding the duplication of partnership income, and accounting for adjustments applicable to discharge of indebtedness income with respect to partnership investments, would apply. *See* proposed § 1.59–2(c)(2)(iii).

3. Corporation in Existence for Less Than Three Taxable Years

Proposed § 1.59–2(d) would implement the special rules in section 59(k)(1)(E) for applying the average annual AFSI test. If a corporation has been in existence for less than three taxable years, the average annual AFSI tests would be applied on the basis of the period during which the corporation, or any predecessor, was in existence. *See* proposed § 1.59–2(d)(1) and (3). Under proposed § 1.59–2(d)(2)(i), the AFSI for any taxable year of less than 12 months would be annualized by multiplying the AFSI for the short period by 12 and dividing the result by the number of months in the short period.

A stakeholder recommended that extraordinary items in a short taxable year be disregarded in annualizing income for a short period. Proposed § 1.59–2(d)(2)(ii) would provide that, in annualizing the income for a short period, items described as extraordinary items in § 1.6655–2(f)(3)(ii)(A) are disregarded, but the items are included in AFSI for the annualized 12-month period after the AFSI for the short period has been annualized.

B. Single Employer

Proposed § 1.59–2(e) would provide rules under section 59(k)(1)(D) for determining whether a corporation and

another person are treated as a single employer under section 52(a) or (b). Under these proposed rules, solely for purposes of determining whether a corporation is an applicable corporation, all AFSI of persons treated as a single employer with the corporation under section 52(a) or (b) would be treated as AFSI of that corporation.

In accordance with section 52(a), proposed § 1.59–2(e)(1) generally would provide that corporations that are members of a controlled group of corporations are treated as a single employer. Section 52(a) and proposed § 1.59–2(e)(1) would define a “controlled group of corporations” by reference to section 1563(a), except that “more than 50 percent” is substituted for “at least 80 percent” each place it appears in section 1563(a)(1). Section 1563(a)(1), (2), and (3) provide that a controlled group of corporations may be a parent-subsidiary controlled group, a brother-sister controlled group, or a combined group of corporations. Proposed § 1.59–2(e)(1)(iii) would provide the definition of brother-sister controlled group in accordance with section 1563(f)(5). A controlled group of corporations is determined by taking into account the ownership interests described in section 1563(d)(1) and (2), as applicable.

In accordance with section 52(b), proposed § 1.59–2(e)(2) generally would provide that trades or businesses that are under common control are members of a controlled group and are treated as a single employer. Section 52(b), which applies to partnerships, trusts, estates, corporations, and sole proprietorships, provides that the regulations under section 52(b) are to be based on principles similar to the principles that apply under section 52(a). Section 52(b) and § 1.52–1 provide rules similar to the rules under section 52(a), but with certain modifications to account for different types of ownership interests. The constructive ownership rules under section 1563(d) that apply for purposes of section 52(a) also apply for purposes of section 52(b).

Section 1018(s)(3)(A) of the Technical and Miscellaneous Revenue Act of 1988 amended section 1563(d)(1)(B) to expand the constructive ownership rules of section 1563(e) that apply for purposes of section 1563(d)(1) to include section 1563(e)(2) relating to attribution from partnerships and section 1563(e)(3) relating to attribution from estates or trusts.

A controlled group of corporations under section 52(a), which cross-references section 1563, is determined based on all of the applicable

constructive ownership rules of section 1563(e), including section 1563(e)(2) and (e)(3). By contrast, a group of trades or businesses under common control under section 52(b) is determined based on the constructive ownership rules in § 1.52–1(b) and (c). The constructive ownership rules in § 1.52–1(c)(1) were proposed to be revised to conform with the statutory amendment to section 1563(d)(1)(B) by a proposed regulation published in the **Federal Register** (88 FR 84770) on December 6, 2023. Specifically, that proposed regulation would revise § 1.52–1(c)(1) to include a reference to the constructive ownership rules in § 1.414(c)–4(b)(2), as revised by the same proposed regulation, that attribute ownership of stock directly or indirectly owned by or for a partnership, and a reference to the constructive ownership rules in § 1.414(c)–4(b)(3) that attribute ownership of stock directly or indirectly owned by or for an estate or trust.

These proposed regulations would apply the constructive ownership rules under section 52(b) that are set forth in § 1.52–1(c)(1) as revised by the proposed regulation published in the **Federal Register** at 88 FR 84770, and all references to § 1.52–1(c) should be understood to include those changes. Proposed § 1.59–2(e)(3) would provide that, in determining whether persons are treated as a single employer under section 52(a) or (b), section 1563(b) and § 1.1563–1(b) (relating to component members of a controlled group of corporations) are not taken into account. Therefore, a foreign corporation subject to income tax under section 881 of the Code may be a member of a controlled group of corporations or a group of trades or businesses that are under common control and treated as a single employer under section 59(k)(1)(D) for purposes of proposed § 1.59–2(c)(1)(ii)(A), (c)(2)(ii)(A), and (c)(2)(iii)(A).

Proposed § 1.59–2(e)(4) would provide that, although an S corporation, a RIC, or a REIT is excluded from the definition of an “applicable corporation,” the S corporation, RIC, or REIT is not excluded from being treated as a single employer under section 52(a) or (b) for purposes of proposed § 1.59–2(c)(1)(ii)(A), (c)(2)(ii)(A), and (c)(2)(iii)(A).

C. Aggregation Group

The Treasury Department and the IRS considered two approaches for applying the relevant aggregation rules necessary to determine a corporation’s AFSI for purposes of the average annual AFSI test. The first approach would require the corporation to determine its test

group as of the beginning of the taxable year for which the corporation is determining applicable corporation status and compute the AFSI of such test group for the relevant three-taxable-year period. Under this approach, the corporation would include in its AFSI for the three-taxable-year period the AFSI of the persons that were members of such test group regardless of whether the corporation was related to those persons under the relevant relationship criteria during the three-taxable-year period. The second approach would require the corporation to include in its AFSI for the three-taxable-year period only the AFSI of persons it was related to under the relevant relationship criteria during the three-taxable-year period (and for the period in which they were related). The Treasury Department and the IRS are of the view that the second approach better implements the language of the statute, as it would decrease the instances in which a person's AFSI is duplicated in more than one corporation's AFSI for the same three-taxable-year testing period. This approach is also consistent with rules provided by the Treasury Department and the IRS to determine the applicability of other sections of the Code, where such applicability is determined based on the size of the taxpayer.

Accordingly, proposed § 1.59–2(f)(1) would provide special rules for applying the average annual AFSI test if a corporation's test group changes. These rules generally would require that a corporation include in its AFSI for a taxable year the AFSI of all persons treated as related to the corporation under the relevant relationship criteria at any point during the taxable year. If a person is treated as related to the corporation under the relevant relationship criteria for only a portion of the taxable year, the corporation includes in its AFSI for that taxable year the AFSI of the person for only the portion of the taxable year in which the relevant relationship criteria is satisfied. Similar to the rules in proposed § 1.56A–3 for CAMT entities with a financial accounting period that differs from the CAMT entity's taxable year, the related person determines AFSI for the portion of the corporation's taxable year by performing an interim closing of its books. For example, if a corporation has the calendar year as its taxable year and a person becomes related to the corporation on April 1 and unrelated on November 1 of the taxable year, the person would perform an interim closing of its books at the end of the day on March 31 and October 31, and the

corporation would include the AFSI of that person on the person's books (after taking the interim closing of the books into account) from April 1 through October 31 for that year.

However, proposed § 1.59–2(f)(2) would provide additional rules if a corporation experiences a change in ownership during a taxable year. Proposed § 1.59–2(f)(2)(i) would provide that a corporation (that is not a test group parent) experiences a change in ownership during a taxable year if the corporation is no longer related under the relevant relationship criteria at the end of the taxable year to a test group parent it was related to as of the first day of the taxable year. If a corporation is treated as related to multiple test group parents under the relevant relationship criteria as of the first day of the taxable year, then the determination of whether the corporation experiences a change in ownership is made separately with respect to each test group parent. Therefore, such a corporation could experience a change in ownership during the taxable year with respect to one test group parent but not another. If a corporation experiences a change in ownership during a taxable year that results in the corporation and a person no longer being treated as related under the relevant relationship criteria, proposed § 1.59–2(f)(2)(i) would provide that the corporation does not include that person's AFSI in the corporation's AFSI for any period prior to the change in ownership to determine whether the corporation meets the average annual AFSI test described in proposed § 1.59–2(c) for the taxable year in which the change in ownership occurs or for any subsequent taxable year so long as the corporation and the person remain unrelated. In addition, if a corporation experiences a change in ownership during a taxable year that results in the corporation joining a tax consolidated group that is an applicable corporation for the taxable year that includes the corporation's first taxable year in which it is a member of the tax consolidated group, then the corporation is treated as an applicable corporation beginning with the first taxable year in which it is a member of the tax consolidated group. For the taxable years in which the corporation is a member of the tax consolidated group, the corporation's AFSI is included in the tax consolidated group's AFSI under § 1.1502–56A.

Stakeholders noted that the approach provided in section 3 of Notice 2023–7 would result in the AFSI of target and acquirer being double counted in determining the applicable corporation status of relevant corporations following the change in ownership. The Treasury

Department and IRS are of the view that section 59(k)(1)(C)(i)(I) (providing that the term “applicable corporation” does not include any corporation if the corporation has a change in ownership) contemplates that a corporation that experiences a change in ownership should be afforded a “fresh start” following the change in ownership, including in determining the applicable corporation status of the corporation following the change in ownership (regardless of whether the corporation was an applicable corporation at the time of the change in ownership). Accordingly, a corporation that experiences a change in ownership sheds the AFSI history of any persons to which it is no longer related due to the change in ownership in determining its applicable corporation status following the change in ownership.

D. Simplified Method

Section 59(k)(3)(A) authorizes the Secretary to issue regulations or other guidance providing a simplified method for determining whether a corporation is an applicable corporation subject to the CAMT. Under that authority, proposed § 1.59–2(g) would provide a simplified safe harbor method for determining applicable corporation status. Except as discussed in this part XXVII.D of this Explanation of Provisions, the proposed regulations regarding the simplified method would be consistent with section 5 of Notice 2023–7.

Proposed § 1.59–2(g)(2) would provide that, under the simplified method, the average annual AFSI tests are applied with specified modifications. Under these modifications, the dollar thresholds in proposed § 1.59–2(c)(1)(i) and (c)(2)(i)(A) would be reduced from \$1 billion to \$500 million, and the dollar threshold in proposed § 1.59–2(c)(2)(i)(B) would be reduced from \$100 million to \$50 million.

Some stakeholders suggested that these reduced dollar thresholds, which would be consistent with the thresholds under the simplified method in section 5 of Notice 2023–7, should be raised. Other stakeholders suggested that these thresholds could be lowered further if necessary to extend the applicability of the safe harbor method. The thresholds used in Notice 2023–7 are based on an analysis prepared by the Treasury Department to reduce the risk that entities that meet the simplified method thresholds would have been applicable corporations subject to CAMT liability under the statutory tests. Accordingly, the thresholds used in Notice 2023–7 and that would be provided under proposed § 1.59–2(g)(2) are not intended

to permit a corporation that would be an applicable corporation under the statutory tests to avoid that status by using the simplified method. The proposed regulations would retain these reduced thresholds but allow for further modifications in IRB guidance.

Proposed § 1.59–2(g)(2)(iii)(B) would further provide that, in determining AFSI under the simplified method, the only AFSI adjustments are those in proposed § 1.56A–8(b) (concerning taxes) and, solely for purposes of proposed § 1.59–2(c)(2)(i)(B) (the \$100 million second prong of the FPMG test), in proposed § 1.56A–7 (concerning effectively connected income). In determining the AFSI of a person whose financial results are reflected on a consolidated AFS, those members of a test group whose financial results are reflected on the consolidated AFS would be treated as a single CAMT entity for purposes of § 1.56A–1(c)(3) and (4) (regarding FSI of a CAMT entity whose financial results are reflected on a consolidated AFS). Thus, consolidation entries would be taken into account and would not be disregarded, except for consolidation entries that eliminate transactions between persons whose AFSI is not aggregated for purposes of the average annual AFSI tests (that is, persons that are neither treated as a single employer under section 52(a) or (b) nor members of an FPMG). See proposed § 1.59–2(g)(2)(iii)(A). Section 5.03(2)(c)(ii) of Notice 2023–7 did not extend single CAMT entity treatment to members of an FPMG. The proposed simplified method also would permit a corporation that has a financial reporting year (AFS year) that differs from its taxable year to determine its AFSI by using its AFS year. See proposed § 1.59–2(g)(2)(iv).

Under section 5.03(1) of Notice 2023–7, the simplified method applies only for the first taxable year beginning after December 31, 2022. Stakeholders recommended that the simplified method be extended to subsequent taxable years. The simplified method should be extended to apply for any taxable year for which applicable corporation status is relevant. See proposed § 1.59–2(g)(1).

E. Termination of Applicable Corporation Status

Proposed § 1.59–2(h) would provide rules regarding the termination of applicable corporation status under section 59(k)(1)(C). Under proposed § 1.59–2(h)(1)(i), a corporation's status as an applicable corporation would terminate following certain ownership changes described in proposed § 1.59–2(f)(2)(i) (generally, an ownership

change in which the corporation and its test group parent(s) no longer satisfy the relationship criteria under section 52(a) or (b) or section 59(k)(2)(A), as applicable). However, proposed § 1.59–2(h)(3)(ii) would provide that if a corporation whose status as an applicable corporation terminates for the taxable year due to a change in ownership that results in the corporation joining a tax consolidated group that is an applicable corporation for the tax consolidated group's taxable year that includes such taxable year, then the corporation is also treated as an applicable corporation for such taxable year and subsequent taxable years, as applicable.

Under proposed § 1.59–2(h)(1)(ii), a corporation's status as an applicable corporation also would terminate if the corporation did not meet the average annual AFSI test for five consecutive taxable years. As the determination of a corporation's status as an applicable corporation for a taxable year is based on average annual AFSI for a prior three-taxable-year period, a corporation with AFSI for a taxable year that is unusually high or inconsistent with historical levels or a corporation that is experiencing a consistent downward trend in AFSI for each taxable year would continue to remain an applicable corporation until such time that its average annual AFSI for the three taxable years either no longer includes an anomaly year or fully captures the downward trend AFSI. Accordingly, five taxable years is an appropriate period for determining whether the corporation's status should terminate under proposed § 1.59–2(h).

Finally, proposed § 1.59–2(h)(3)(i) would provide that, except for a corporation that joins a tax consolidated group that is already an applicable corporation, a corporation whose status as an applicable corporation is terminated under proposed § 1.59–2(h)(1) continues to apply the rules in proposed § 1.59–2 to determine whether it is an applicable corporation for the taxable year in which the status termination occurs (that is, the corporation may become an applicable corporation for the same taxable year in which its status terminates or for any taxable year thereafter).

F. Substantiation and Reporting Requirements

Proposed § 1.59–2(i) would require a corporation (other than an S corporation, a RIC, or a REIT) to maintain books and records sufficient to demonstrate whether the corporation is an applicable corporation for any taxable year, including the

identification of all persons treated as a single employer with the corporation under section 52(a) or (b) and whether the corporation is a member of an FPMG under § 1.59–3. Proposed § 1.59–2(j) would require a corporation (other than an S corporation, a RIC, or a REIT) to provide information to demonstrate whether the corporation is an applicable corporation in the form and manner as Form 4626 and other applicable forms (or any successor forms) or instructions prescribe.

XXVIII. Proposed § 1.59–3: Rules for Foreign-Parented Multinational Groups

Pursuant to the authority granted by section 59(k)(2)(B), (k)(2)(D), and (k)(3), proposed § 1.59–3 would provide rules under section 59(k) for determining whether a corporation is a member of an FPMG. As discussed in part XXVII of this Explanation of Provisions, the average annual AFSI tests that apply in determining whether a corporation is an applicable corporation depend on whether the corporation is a member of an FPMG.

A. FPMG

Proposed § 1.59–3(c) would define an FPMG with respect to any taxable year of a corporation as two or more entities, one of which is the corporation, if: (1) at least one of the entities is a domestic corporation and at least one of the entities is a foreign corporation; (2) the entities are included in the same applicable financial statement for that taxable year; and (3) one of the entities is an FPMG common parent.

Under the proposed regulations, an FPMG common parent would be an ultimate parent that is a foreign corporation. See proposed § 1.59–3(b)(9). An ultimate parent is an entity that has a controlling interest in at least one other entity and in which no entity has a controlling interest. See proposed § 1.59–3(b)(12). A controlling interest is generally based on the entity's applicable financial accounting standard. Both terms are described subsequently.

In general, a foreign corporation includes, in addition to a foreign corporation for regular tax purposes, a deemed foreign corporation. See proposed § 1.59–3(b)(7). A deemed foreign corporation is an ultimate parent that is not a corporation and that directly or indirectly owns, other than through a domestic corporation (excluding a deemed domestic corporation), (1) a foreign trade or business as defined in § 1.989(a)–1(c), or (2) an equity interest in a foreign corporation in which the ultimate parent has a controlling interest

(including through a domestic corporation). *See* proposed § 1.59–3(e). For example, if the ultimate parent is a partnership (PRS) that owns two assets, all the stock of a domestic corporation (DC) and 15 percent of the stock of a foreign corporation (FC), with the other 85 percent of the stock of FC owned by DC, and PRS has a controlling interest in FC, then PRS would be a deemed foreign corporation. However, if DC owned all the stock of FC, then PRS would not be a deemed foreign corporation. This rule reflects that, in some cases, the U.S. tax classification of the ultimate parent may have minimal or no U.S. tax relevance aside from CAMT and, without this rule, the FPMG rules could effectively be elective.

In general, a domestic corporation includes, in addition to a domestic corporation for regular tax purposes, a deemed domestic corporation. *See* proposed § 1.59–3(b)(5). For purposes of the FPMG determination under proposed § 1.59–3, a U.S. trade or business for purposes of section 882 of a foreign corporation (excluding a deemed foreign corporation) is treated as if it were a domestic corporation separate from, and wholly owned by, the foreign corporation. *See* proposed § 1.59–3(d). This allows the first prong of the FPMG definition (requiring at least one domestic corporation and at least one foreign corporation) to be met in the case of a single foreign corporation that is engaged in a U.S. trade or business. *See* proposed § 1.59–3(j)(1) (*Example 1*). A U.S. trade or business is treated as a separate deemed domestic corporation only for purposes of the FPMG determination.

The foreign corporation may be engaged, or treated as engaged, in a U.S. trade or business as a result of activities of one or more disregarded entities or pass-through entities in which the foreign corporation has a direct or indirect interest. For example, if a foreign corporation owns a disregarded entity and that disregarded entity owns an interest in a partnership that is engaged in a U.S. trade or business, the foreign corporation's U.S. trade or business resulting from its indirect ownership of the partnership interest will be treated as a separate domestic corporation that is wholly owned by the foreign corporation.

For purposes of the FPMG determination under proposed § 1.59–3, an entity is any CAMT entity and any deemed domestic corporation. Any disregarded entity or branch that is owned by a CAMT entity, including through ownership of one or more disregarded entities or branches, is treated as part of that CAMT entity,

except to the extent the disregarded entity or branch is a deemed domestic corporation. *See* proposed § 1.59–3(b)(6). For example, if a foreign corporation owns a disregarded entity that owns a second disregarded entity, both disregarded entities would be treated as part of the foreign corporation. If, instead, the foreign corporation owned a branch that was engaged in a U.S. trade or business for purposes of section 882, the U.S. trade or business would be treated as a separate domestic corporation that is wholly owned by the foreign corporation. As a result, even if there is only one legal entity, there may be two entities for purposes of proposed § 1.59–3, and that legal entity alone may qualify as an FPMG.

B. Controlling Interest

Whether an entity has a controlling interest is determined under proposed § 1.59–3(f). Under proposed § 1.59–3(f)(1) an entity (upper-tier entity) would have a controlling interest in another entity (lower-tier entity) if, under the applicable financial accounting standard (as described in part XXVIII.C of this Explanation of Provisions), the upper-tier entity's consolidated financial statement is required to reflect the assets, liabilities, equity, income, and expenses of the lower-tier entity. An upper-tier entity may have a controlling interest in a lower-tier entity without having a direct interest in that entity. Whether the upper-tier entity has a controlling interest under proposed § 1.59–3(f)(1) is based on the rules of the applicable financial accounting standard and therefore is not dependent on what is reflected in the entities' financial statements. For example, the analysis is not impacted by whether a consolidated financial statement is prepared and, if it is prepared, whether an entity's financial results are reflected in the consolidated financial statement. As a result, if a consolidated financial statement is not prepared, an upper-tier entity may nonetheless have a controlling interest in a lower-tier entity under the applicable financial accounting standard, or if a consolidated financial statement is prepared but erroneously excluded an entity, the upper-tier entity would still have a controlling interest in that erroneously excluded entity.

In addition, under proposed § 1.59–3(f)(2), there are three circumstances in which an upper-tier entity has a controlling interest in another entity even if there would not be a controlling interest under the applicable financial accounting standard. First, the upper-

tier entity has a controlling interest in any deemed domestic corporation that the upper-tier entity, or any foreign corporation in which the upper-tier entity has a controlling interest, is treated as owning under proposed § 1.59–3(d). For example, if the upper-tier entity is engaged in a U.S. trade or business and therefore is deemed to own a deemed domestic corporation under proposed § 1.59–3(d), the upper-tier entity would be treated as having a controlling interest in that deemed domestic corporation even if for accounting purposes there would be only one entity and therefore no consolidated financial statement. Similarly, if the upper-tier entity has a controlling interest in a foreign corporation that is engaged in a U.S. trade or business and therefore is deemed to own a deemed domestic corporation under proposed § 1.59–3(d), then the upper-tier entity is treated as having a controlling interest in that deemed domestic corporation even if that deemed domestic corporation does not exist under the applicable financial accounting standards. *See* proposed § 1.59–3(f)(2)(i).

Second, if an entity is owned, directly or indirectly, by a member of an FPMG without regard to this controlling interest rule and both entities are in the same section 52 group, then the member of the FPMG (and therefore the FPMG common parent) would have a controlling interest in the entity. A section 52 group, with respect to a person, means that person and the persons whose AFSI is required to be aggregated with the AFSI of that person under proposed § 1.59–2(c)(1)(ii)(A). *See* proposed § 1.59–3(b)(11). If a member of the FPMG has a controlling interest in an entity under this rule, any other member of the FPMG that has a controlling interest in that member (whether pursuant to this rule or another one) would also have a controlling interest in the entity that the member has a controlling interest in under this rule. The rule applies iteratively up the chain of entities with controlling interests, ending with the FPMG common parent. *See* proposed § 1.59–3(f)(3). This rule applies only to controlling interests under proposed § 1.59–3(f)(2)(ii) because the other controlling interest rules in proposed § 1.59–3(f)(2) apply accounting principles to determine controlling interests, which include direct and indirect controlling interests. For example, if a foreign corporation has a controlling interest in only one entity, which is a domestic subsidiary, under its applicable financial accounting

standard and no entity has a controlling interest in the foreign corporation, so the foreign corporation would be the FPMG common parent, then if either the foreign corporation or domestic subsidiary also owns an interest in another entity and that entity is part of either the foreign corporation's or domestic subsidiary's section 52 group, the foreign corporation or domestic subsidiary has a controlling interest in such other entity under this rule (and therefore, either way, the foreign corporation has a controlling interest in such entity). *See* proposed § 1.59–3(f)(2)(ii) and (f)(3).

Third, the upper-tier entity has a controlling interest in any entity in which it would have a controlling interest but for the fact that the entity is (or would be) excluded from the upper-tier entity's consolidated financial statement: (1) based on size or materiality; (2) because the entity is held for sale; (3) because the entity or business is being wound down, liquidating, or otherwise ceasing operations or being terminated or disposed of; or (4) because the entity is permitted but not required to be excluded under the applicable financial accounting standard from a consolidated financial statement of the upper-tier entity. For example, if a foreign corporation wholly owned a domestic corporation that was held for sale, even if the foreign corporation is not treated as having a controlling interest in the domestic corporation under the applicable financial accounting standard because the stock of the domestic corporation is held for sale, the foreign corporation would be treated as having a controlling interest in the domestic corporation.

The Treasury Department and the IRS are considering structures that may result in divergence between the financial accounting rules and economics (for example, where taxpayers own a significant economic interest in an entity but are not treated as having a controlling interest), as well as how to address structures that are linked, including multi-parented groups, companies with stapled stock, and dual listed companies, as those structures may present additional questions regarding which entity is the ultimate parent for purposes of determining whether there is an FPMG and who are the members of the FPMG under proposed § 1.59–3. Future guidance may include these structures for determining the FPMG and its members, including by treating more than one entity as an FPMG common parent of the FPMG.

C. Applicable Financial Accounting Standard

Under the general rule in proposed § 1.59–3(f)(1), the determination of whether an upper-tier entity has a controlling interest in a lower-tier entity would depend on the applicable financial accounting standard. The applicable financial accounting standard for this purpose would be GAAP unless an exception applies. *See* proposed § 1.59–3(g)(1). Proposed § 1.59–3(g)(2) would identify the exceptions, which can only apply in cases in which there is not a GAAP consolidated financial statement prepared that includes the ultimate parent (determined by treating GAAP as the applicable financial accounting standard). *See* the last sentence of proposed § 1.59–3(g)(2)(i).

The goal of these exceptions is, for cases in which a group prepares a consolidated financial statement that is of the ultimate parent and that is filed with the SEC or a foreign equivalent, to apply the controlling interest test based on the financial accounting standard used in preparing that consolidated financial statement. The Treasury Department and the IRS are of the view that this would appropriately reduce compliance burden because the controlling interest determination required under proposed § 1.59–3(f) would generally already have been made for purposes of preparing the consolidated financial statement and would increase reliability due to review by an external auditor and regulator.

For special cases, such as consolidated financial statements of the ultimate parent that are prepared under multiple financial accounting standards, there would be a prioritization of GAAP over IFRS and IFRS over other financial accounting standards. This order of priority is set forth in proposed § 1.59–3(g)(2)(i) through (iii). If there are no consolidated financial statements of the ultimate parent, if consolidated financial statements are prepared for only a sub-group that does not include the ultimate parent, or if there are multiple consolidated financial statements at the same priority but for different ultimate parents, GAAP would be the default financial accounting standard for purposes of applying the controlling interest test for FPMG determination purposes. *See* proposed § 1.59–3(g)(1).

Under the first exception, IFRS is the applicable financial accounting standard if the assets, liabilities, equity, income, and expenses of the corporation being tested for applicable corporation status (tested corporation) are reflected

in the consolidated financial statement described in § 1.56A–2(c)(2)(i) of its ultimate parent (determined by treating IFRS as the applicable financial accounting standard). *See* proposed § 1.59–3(g)(2)(ii). A consolidated financial statement is described in proposed § 1.56A–2(c)(2)(i) if it is prepared in accordance with IFRS and filed with the SEC or with an agency of a foreign government that is equivalent to the SEC. For example, if the assets, liabilities, equity, income, and expenses of the tested corporation are reflected only in consolidated financial statements described in proposed § 1.56A–2(c)(1) (GAAP) and (c)(2)(i) (IFRS) but the GAAP consolidated financial statement is not that of its ultimate parent, whereas the IFRS consolidated financial statement is that of its ultimate parent, then IFRS would be the applicable financial accounting standard. If, instead, the IFRS consolidated financial statement is not that of its ultimate parent, then the first exception would not apply and, because the second exception is not relevant under these facts, GAAP would be the applicable financial accounting standard.

Under the second exception, a financial accounting standard other than GAAP or IFRS would be the applicable financial accounting standard if the assets, liabilities, equity, income, and expenses of the tested corporation are reflected in a consolidated financial statement described in § 1.56A–2(c)(3)(i) prepared using the financial accounting standard and the consolidated financial statement is that of the ultimate parent (as determined under that financial accounting standard). *See* proposed § 1.59–3(g)(2)(iii)(A). A consolidated financial statement is described in § 1.56A–2(c)(3)(i) if it is prepared in accordance with another generally accepted accounting standard and filed with the SEC or with an agency of a foreign government that is equivalent to the SEC. If these conditions are met for more than one consolidated financial statement prepared under different financial accounting standards (other than GAAP or IFRS), then the exception applies only if the ultimate parent is the same under each financial accounting standard (otherwise, GAAP would be the applicable financial accounting standard). *See* proposed § 1.59–3(g)(2)(iii)(B).

In such cases, if the accounting standard used to prepare one of those consolidated financial statements was the applicable financial accounting standard in the prior taxable year, that accounting standard would be the applicable financial accounting

standard. *See* proposed § 1.59–3(g)(2)(iii)(B)(1). If none of the consolidated financial statements were prepared using the applicable financial accounting standard from the prior taxable year, the tested corporation would choose one of the accounting standards used to prepare those consolidated financial statements to be the applicable financial accounting standard, provided that the tested corporation specifies that choice on a statement attached to the Form 4626, *Alternative Minimum Tax-Corporations* (or any successor form), of the tested corporation or as otherwise directed in the instructions to the form for the first applicable tax year. If the tested corporation does not choose an accounting standard, chooses one that is not permitted, or fails to specify its choice as required, the Commissioner would have discretion to either treat GAAP as the applicable financial accounting standard (consistent with the default rule) or to treat the accounting standard used to prepare one of those consolidated financial statements as the applicable financial accounting standard. *See* proposed § 1.59–3(g)(2)(iii)(B)(2).

The exceptions apply in descending order and only if there is not a GAAP consolidated financial statement prepared that is that of the ultimate parent, as determined by treating GAAP as the applicable financial accounting standard. Therefore, if an exception under an earlier paragraph of proposed § 1.59–3(g)(2) applies, the later exceptions do not. *See* proposed § 1.59–3(g)(2)(i). For example, if proposed § 1.59–3(g)(2)(ii) applies (regarding IFRS), then proposed § 1.59–3(g)(2)(iii) (regarding financial accounting standards other than GAAP or IFRS) does not apply.

For purposes of the applicable financial accounting standard determination, the assets, liabilities, equity, income, and expenses of the tested corporation are treated as reflected in a consolidated financial statement if either they are reflected in the consolidated financial statement, or they would have been but for the tested corporation being excluded for a reason mentioned in the controlling interest test in proposed § 1.59–3(f)(2)(iii)(A) through (D). For example, if the assets, liabilities, equity, income, and expenses of the tested corporation would have been reflected in the consolidated financial statement but for the fact the stock of the tested corporation is held for sale, the assets, liabilities, equity, income, and expenses of the tested corporation would be treated as

reflected in the consolidated financial statement. *See* proposed § 1.59–3(g)(3).

The tested corporation is required to specify the financial accounting standard that is its applicable financial accounting standard on a statement attached to the Form 4626 (or any successor form) of the tested corporation or as otherwise directed in the instructions to the form each taxable year the applicable financial accounting standard is relevant in determining whether the tested corporation is a member of an FPMG. *See* proposed § 1.59–3(g)(4).

D. Included in the Same Applicable Financial Statement for That Taxable Year and FPMG Members

Under proposed § 1.59–3(h), the FPMG common parent and all entities in which the FPMG common parent has a controlling interest at any time during the taxable year would be included in the same applicable financial statement for that taxable year for purposes of proposed § 1.59–3. The relevant taxable year is dependent on who is applying the provision and would generally be the taxable year of the corporation determining if it is an applicable corporation. For purposes of determining which entities are included in the same applicable financial statement for that taxable year, it is not relevant whether a consolidated financial statement of the FPMG common parent is prepared or whether an entity is included in a consolidated financial statement of the FPMG common parent or would be if one was prepared. For example, if the FPMG common parent is treated as having a controlling interest in an entity under proposed § 1.59–3(f)(2) during the taxable year, that entity will be treated as included in the same applicable financial statement for that taxable year. The entities treated as included in the same applicable financial statement for that taxable year may differ from the entities included in the applicable financial statement(s) determined under proposed § 1.56A–2.

Each entity included in the same applicable financial statement for that taxable year under proposed § 1.59–3(h) as the FPMG common parent is a member of that FPMG (including the FPMG common parent). *See* proposed § 1.59–3(i). As with the determination of who is included in the same applicable financial statement for that taxable year, the members of the FPMG are not dependent on whether there is a consolidated financial statement or whether the entity is included on one. For example, if CP is the FPMG common parent and CP has a

controlling interest in A, B, and C during the taxable year and no consolidated financial statement is prepared, then all those entities (A, B, C, and CP) would be included in the same applicable financial statement for that taxable year for purposes of this test and would be members of the FPMG that has CP as its FPMG common parent.

XXIX. Proposed § 1.59–4: Rules for Determining the CAMT FTC

A. Overview

Under section 59(l), if an applicable corporation chooses to claim a foreign tax credit for any taxable year, the applicable corporation is allowed a CAMT foreign tax credit (CAMT FTC) for the taxable year. Section 59(l)(1) provides that the amount of the CAMT FTC for the applicable corporation for the taxable year equals the sum of:

(i) The lesser of (A) the aggregate of the applicable corporation's pro rata share (as determined under section 56A(c)(3)) of the amount of income, war profits, and excess profits taxes (within the meaning of section 901) imposed by any foreign country or possession of the United States that are taken into account in the AFS of each CFC with respect to which the applicable corporation is a U.S. shareholder, and paid or accrued (for Federal income tax purposes) by each such CFC, or (B) the product of the amount of the adjustment under section 56A(c)(3) and the percentage specified in section 55(b)(2)(A)(i) (currently, 15 percent); and

(ii) In the case of an applicable corporation that is a domestic corporation, the amount of foreign income taxes imposed by any foreign country or possession of the United States to the extent such taxes are taken into account in the applicable corporation's AFS and paid or accrued (for Federal income tax purposes) by the applicable corporation.

Section 59(l)(2) further provides that, if an applicable corporation's pro rata shares of foreign income taxes of the CFCs in which it is a U.S. shareholder exceeds 15 percent of the adjustment under section 56A(c)(3) (such excess, unused CFC taxes), then the unused CFC taxes are carried forward to any of the first five succeeding taxable years to the extent not absorbed in a prior taxable year. Finally, section 59(l)(3) authorizes the Secretary to issue regulations or other guidance as is necessary to carry out the purposes of section 59(l).

Pursuant to the authority granted by section 59(l)(3), proposed § 1.59–4 would provide rules under section 59(l)

for determining the amount of the CAMT FTC that may be claimed in a taxable year.

B. Eligible Taxes

Generally, under proposed § 1.59–4, a CAMT FTC would be available only with respect to an “eligible tax.” Under proposed § 1.59–4(b)(1), an “eligible tax” would include a foreign income tax other than a foreign income tax for which a credit is disallowed or suspended for regular tax purposes under sections 245A(d) and (e)(3), 901(e) and (f), 901(i) through (m), 907, 908, 909, 965(g), 999, and 6038(c) of the Code.

The Treasury Department and the IRS are of the view that the policies underlying these disallowances and suspensions for regular tax purposes apply equally in the context of the CAMT FTC. For instance, the Treasury Department and the IRS are of the view that CAMT FTCs should not be available with respect to taxes paid or accrued to specified foreign countries under section 901(j) based on the same foreign policy grounds that justify the disallowance for regular tax purposes. Accordingly, the Treasury Department and the IRS are exercising the authority under section 59(l)(3) to incorporate the specified disallowances and suspensions into CAMT to carry out the purposes of section 59(l). Incorporating the same amount of disallowances or suspensions for regular tax purposes, instead of creating a separate, parallel set of CAMT FTC rules, is intended to reduce taxpayers’ compliance burden and the IRS’s administrative burden.

C. Amount of CAMT FTC

Proposed § 1.59–4(c) would provide rules for determining the amount of the CAMT FTC an applicable corporation can claim if it chooses to claim the foreign tax credit under section 901. Generally, for an applicable corporation that is a domestic corporation, the amount of the CAMT FTC for the taxable year would equal the sum of: (i) the lesser of (A) the aggregate of the applicable corporation’s pro rata share of taxes of CFCs, as determined under proposed § 1.59–4(d), or (B) the product of the amount of the adjustment under proposed § 1.56–6(b)(1) and the percentage specified in section 55(b)(2)(A)(i) (currently, 15 percent), and (ii) the amount of eligible taxes paid by the applicable corporation during the taxable year, to the extent the taxes have been taken into account, within the meaning of proposed § 1.56A–8(d), on the applicable corporation’s AFS.

Proposed § 1.59–4(d) would provide rules for determining an applicable

corporation’s pro rata share of the taxes of a CFC in which the applicable corporation is a U.S. shareholder for a taxable year. Generally, under proposed § 1.59–4(d), an applicable corporation’s pro rata share of the taxes of a CFC in which the applicable corporation is a U.S. shareholder for the taxable year is the sum of two amounts: (i) the applicable corporation’s pro rata share of taxes under section 960(b) of the Code, and (ii) the applicable corporation’s pro rata share of eligible current year taxes, as defined in § 1.960–1(b)(5), of the CFC, in each case reduced to reflect the suspensions and disallowances described in the definition of “eligible tax” that apply at the level of the U.S. shareholder.

Specifically, under proposed § 1.59–4(d)(2), an applicable corporation may claim a CAMT FTC for the amount of foreign income taxes deemed paid by the applicable corporation under § 1.960–3(b) for its taxable year, to the extent the taxes have been taken into account, within the meaning of § 1.56A–8(d), on the AFS of the applicable corporation or any CFC with respect to which the applicable corporation is a U.S. shareholder. Under proposed § 1.59–4(d)(3), an applicable corporation may claim a CAMT FTC for its pro rata share of eligible current year taxes, as defined in § 1.960–1(b)(5), for a taxable year. The applicable corporation’s pro rata share of eligible current year taxes comprises: (i) the amount of eligible current year taxes that are deemed paid by the applicable corporation under § 1.960–2(b) for regular tax purposes (relating to foreign income taxes properly attributable to subpart F income) for the taxable year; (ii) the aggregate of the applicable corporation’s proportionate share of eligible current year taxes of the CFC for each tested income group within each section 904 category of the CFC, as determined under § 1.960–2(c)(5) for regular tax purposes for the taxable year; (iii) in the case of a subpart F income group or tested income group within a section 904 category of the CFC for which the denominator of the applicable corporation’s proportionate share fraction (as described in § 1.960–2(b)(3)(i) and (c)(5), respectively) is zero or less than zero (which may occur because the CFC has a loss in such income group or, in the case of a subpart F income group, because the denominator of the fraction is reduced under § 1.960–2(b) in respect of the current year E&P limitation or a chain deficit under section 952(c)(1)(A) or (C), respectively), the aggregate amount of eligible current year taxes of the CFC for

each such subpart F income group and tested income group within a section 904 category of the CFC multiplied by the pro rata share percentage, as defined in proposed § 1.59–4(b)(3), for the taxable year of the CFC that ends with or within the taxable year of the applicable corporation; and (iv) the aggregate amount of eligible current year taxes of the CFC for each residual income group of the CFC multiplied by the pro rata share percentage, as defined in proposed § 1.59–4(b)(3), for the taxable year of the CFC that ends with or within the taxable year of the applicable corporation. Finally, the applicable corporation can claim a CAMT FTC for its pro rata share of taxes of its CFC only to the extent the taxes have been taken into account, within the meaning of proposed § 1.56A–8(d), on the AFS of the CFC or the applicable corporation. As reflected in proposed § 1.59–4(d)(2), the Treasury Department and the IRS are of the view that providing a CAMT FTC for PTEP taxes deemed paid by the applicable corporation would be consistent with the purposes of section 59(l). Furthermore, as reflected in proposed § 1.59–4(d)(3), the Treasury Department and the IRS are of the view that a CAMT FTC generally should be provided with respect to taxes imposed on the earnings of a CFC regardless of the character of those earnings for regular tax purposes, because all the earnings of the CFC are taken into account for CAMT purposes under section 56A(c)(3). For instance, the proposed regulations would allow a CAMT FTC with respect to taxes imposed on the residual earnings of a CFC because such earnings of the CFC are included in AFSI of the U.S. shareholder of the CFC through the application of section 56A(c)(3). *But see* proposed § 1.59–4(b)(1) (incorporating certain FTC disallowances that apply for regular tax purposes, such as section 245A(d)). The Treasury Department and the IRS request comments on additional rules that may be appropriate in determining an applicable corporation’s pro rata share of eligible current year taxes where the applicable corporation takes into account a qualified deficit of a CFC under section 951(c)(1)(B) impacting the determination of eligible current year taxes that are deemed paid by the applicable corporation under § 1.960–2(b) for regular tax purposes.

Additionally, incorporating certain regular tax rules for determining an applicable corporation’s pro rata share of PTEP taxes and eligible current year taxes of CFCs, instead of creating a separate set of CAMT FTC rules, is intended to reduce taxpayers’

compliance burden and the administrative burden on the IRS. Notably, the proposed regulations do not apply the limitations under section 960(d) with respect to taxes imposed on tested income of the CFC because the underlying character of the CFC earnings generally are not relevant for CAMT purposes. Additionally, proposed § 1.59–4(d)(3)(iii) provides rules for determining the applicable corporation's pro rata share of taxes in the case of a subpart F income group or tested income group with a loss, and in certain cases where the current year E&P limitation or the chain deficit rule applies, as in these cases taxes of a CFC may not be credited under the regular tax rules. Similarly, proposed § 1.59–4(d)(3)(iv) provides rules for determining the applicable corporation's pro rata share of taxes imposed on the residual income of the CFC because the regular tax rules do not provide mechanics for doing so. *See also* proposed § 1.59–4(b)(3) (defining pro rata share percentage for such purpose). Finally, as reflected in proposed § 1.59–4, the CAMT FTC is not subject to the section 904 limitation.

D. Carryover of Unused CFC Taxes

Proposed § 1.59–4(b)(3) would define “unused CFC taxes” as the excess (if any) of (i) the aggregate of the applicable corporation's pro rata shares of taxes of CFCs, as determined under proposed § 1.59–4(d), over (ii) the product of the amount of the adjustment under proposed § 1.56A–6(b)(1) and the percentage specified in section 55(b)(2)(A)(i) (currently, 15 percent). If an applicable corporation chooses to claim the foreign tax credit under section 901 for regular tax purposes for a taxable year, any unused CFC taxes for the taxable year are carried to each of the five succeeding taxable years, in chronological order, to the extent not absorbed as taxes deemed paid in a prior taxable year. *See* proposed § 1.59–4(e)(1). Under proposed § 1.59–4(e)(1), the amount of taxes deemed paid under proposed § 1.59–4(e)(2) in a carryover taxable year is absorbed regardless of whether the taxpayer chooses to claim a foreign tax credit under section 904 of the Code for regular tax purposes for the carryover taxable year. Proposed § 1.59–4(e)(2) would provide rules determining the amount of the unused CFC taxes that are deemed paid in the carryover taxable year, and proposed § 1.59–4(e)(3) would provide an ordering rule requiring the unused CFC taxes from the fifth preceding taxable year to be absorbed first, followed sequentially by the unused CFC taxes from the fourth,

third, second, and first preceding taxable year.

E. Timing of the CAMT FTC

As reflected in proposed § 1.59–4, a foreign income tax may be claimed as a CAMT FTC in the taxable year in which the tax is paid, within the meaning of § 1.901–2(g)(5), to the extent the taxes have been taken into account, within the meaning of § 1.56A–8(d), in the AFS of the CFC or the applicable corporation, as applicable. In many instances, the timing of the CAMT FTC will align with the timing of the foreign tax credit for regular tax purposes. However, under proposed § 1.59–4(f), foreign income taxes paid or accrued as a result of a foreign tax redetermination, as defined in § 1.905–3(a), would be eligible to be claimed as a CAMT FTC only if the domestic corporation is an applicable corporation in the taxable year to which the foreign tax redetermination relates (relation-back year). A CAMT FTC with respect to such foreign income taxes may be claimed only in the relation-back year, even if the taxes are reflected in a journal entry of an AFS within a taxable year that is later than the relation-back year. *See* proposed § 1.59–4(f).

F. Treatment of Partnership Taxes

Under proposed § 1.59–4(g), for purposes of proposed § 1.59–4(c)(2), the amount of eligible taxes paid or accrued for the taxable year by an applicable corporation that is a direct or indirect partner in a partnership includes the amount of creditable foreign tax expenditures, within the meaning of § 1.704–1(b)(4)(viii), allocated to the applicable corporation for regular tax purposes, reduced by the suspensions and disallowances described in the definition of “eligible tax” that apply at the level of the partner. *See* proposed § 1.59–4(g). *See also* proposed § 1.59–4(d), which would address fact patterns where a CFC is a direct or indirect partner in a partnership.

G. Tax Consolidated Groups

Proposed § 1.59–4(h) would provide that members of a tax consolidated group are treated as a single U.S. shareholder for purposes of applying the CAMT FTC provisions in proposed § 1.59–4. For rules regarding the use of consolidated unused CFC taxes, *see* proposed § 1.1502–56A(i).

XXX. Proposed §§ 1.1502–2, 1.1502–3, 1.1502–53, and 1.1502–55: Computation of Tax Liability of a Tax Consolidated Group and Computation of Alternative Minimum Tax of Consolidated Groups

Proposed § 1.1502–2(a)(10) would add the alternative minimum tax imposed by section 55(a) to the list of taxes that are added together to determine the tax liability of a tax consolidated group for a consolidated return year.

Section 1.1502–3(d)(4) is proposed to be removed and reserved because it relates to the former corporate alternative minimum tax.

Pursuant to the authority granted by sections 53, 56A(e), and 1502, proposed § 1.1502–53 would provide rules under section 53 regarding the determination of a tax consolidated group's consolidated minimum tax credit. Proposed § 1.1502–53(b) would define the consolidated minimum credit and set out the application of the limitation in section 53(c) to consolidated groups, based on consolidated regular tax liability and consolidated tentative minimum tax.

Under proposed § 1.1502–53(c), a tax consolidated group's use of a member's minimum tax credits arising in separate return years (as defined in § 1.1502–1(e)) is limited to the member's contribution to the consolidated section 53(c) limitation. Proposed § 1.1502–53(c)(2) would specify how to calculate each member's contribution to the consolidated section 53(c) limitation. In general, a member's contribution to the consolidated section 53(c) limitation is determined by subtracting the member's share of consolidated tentative minimum tax from the member's share of consolidated net regular tax liability. A member's share of the consolidated tentative minimum tax would be determined by multiplying the consolidated tentative minimum tax by a fraction, the numerator of which is the member's positive separate AFSI, and the denominator of which is the tax consolidated group's AFSI. For years in which the group has CAMT liability, the member's contribution to the section 53(c) limitation would be reduced by the member's share of the group's CAMT liability under proposed § 1.1502–56A(j). *See* part XXXI.K of this Explanation of Provisions. The rule would also specify which years are included in the computation and how to coordinate these calculations with SRLY subgroup principles and section 383.

Proposed § 1.1502–53(d) would provide that, if any consolidated MTC that is attributable to a member may be carried to a separate return year of the member, the amount attributable to the

member is apportioned to the member and carried to the separate return year, and the apportioned MTC may not be carried over to an equivalent, or later, consolidated return year of the tax consolidated group. The amount attributable to the member would be determined in the same manner as under proposed § 1.1502–56A(j) (concerning consolidated CAMT liability). See part XXXI.K of this Explanation of Provisions.

The proposed method for allocating the consolidated MTC would be consistent with the approach suggested by certain stakeholders, who recommended allocating the consolidated MTC under the mechanisms of § 1.1502–21(b)(2) (with certain modifications, such as substituting “AFSI” for “taxable income”) in the interest of administrability. The proposed method would differ from, and would be simpler than, the allocation method in proposed regulations under section 55 that were published on December 30, 1992 (see 57 FR 62251–01) and that were never finalized due in part to concerns about their complexity and administrability.

Section 1.1502–55 is proposed to be removed and reserved because it relates to the former corporate alternative minimum tax.

XXXI. Proposed § 1.1502–56A: Application of CAMT to Consolidated Groups

Pursuant to the authority granted by section 56A(c)(2)(B), (c)(15), and (e), and section 1502, proposed § 1.1502–56A would provide rules under section 56A regarding the application of the CAMT to tax consolidated groups.

A. Overview

Section 56A(c)(2)(B) provides a general rule that, if the taxpayer is part of a tax consolidated group for any taxable year, AFSI for that group for that taxable year must take into account items on the group’s AFS that are properly allocable to members of that group. However, section 56A(c)(2)(B) authorizes the Secretary to prescribe by regulation exceptions to that general rule.

Proposed § 1.1502–56A would provide rules regarding the computation of the AFSI and CAMT liability of a tax consolidated group. The proposed rules would implement the single-entity computations inherent in section 56A(c)(2)(B) and would provide guidance for applying the AFSI computational rules in proposed § 1.56A–1(c) and (d) to tax consolidated groups.

Additionally, proposed § 1.1502–56A would provide rules regarding (i) the use of FSNOL, CFC adjustment, and unused CFC tax carryovers (including the limitations that apply for purposes of computing the AFSI of a tax consolidated group after a corporation joins the group), (ii) the computation of CAMT basis in member stock, (iii) tax items relating to intercompany transactions (as defined in § 1.1502–13(b)(1)(i)), and (iv) the allocation of CAMT liability, the consolidated minimum tax credit (consolidated MTC), and AFSI among members of a tax consolidated group.

B. Single-entity Treatment

Consistent with section 3.05 of Notice 2023–7, proposed § 1.1502–56A(a)(2) would provide that members of a tax consolidated group are treated as a single CAMT entity during their period of consolidation for purposes of determining AFSI and CAMT liability, except as otherwise provided in proposed § 1.1502–56A (for example, see the discussion in part XXXI.E of this Explanation of Provisions).

C. Calculation of FSI of a Tax Consolidated Group

Consistent with section 6.03(1) of Notice 2023–64, proposed § 1.1502–56A(c)(1) would provide that, if the consolidated AFS for a taxable year includes the income, expense, gain, and loss solely of members of a tax consolidated group, the group’s FSI for the year equals the FSI on the group’s consolidated AFS for the year, as determined under proposed §§ 1.56A–1(c) and 1.56A–2(g)(2). Consistent with section 6.03(2) of Notice 2023–64, proposed § 1.1502–56A(c)(2) would provide that, if a tax consolidated group’s consolidated AFS includes the income, expense, gain, or loss of one or more CAMT entities that are not members of the group, the group’s FSI for the taxable year is determined from the consolidated AFS by treating all members of the group as a single CAMT entity.

Thus, for example, a tax consolidated group’s FSI would be determined by taking into account each AFS consolidation entry regarding (i) a transaction between members and (ii) one member’s investment in another member. However, these consolidating entries would be taken into account only as long as the relevant members continue to be members of the same tax consolidated group at the end of the taxable year and if any relevant property continues to be held by the tax consolidated group at the end of the taxable year. The group’s FSI also would

be determined by disregarding each AFS consolidation entry regarding (i) a transaction between a member and a non-member, (ii) a member’s investment in a non-member, and (iii) a non-member’s investment in a member. See proposed § 1.1502–56A(c)(2) and (3).

D. Treatment of Captive Partnerships

Consistent with section 6.03(2) of Notice 2023–64, proposed § 1.1502–56A(c)(4) would clarify that treating a tax consolidated group as a taxpayer for purposes of proposed § 1.1502–56A does not change the Federal tax classification of an entity classified as a partnership that is owned only by members of the group.

E. Gain or Loss on Dispositions of Member Stock

Although proposed § 1.1502–56A generally would treat members of a tax consolidated group as a single CAMT entity for purposes of determining AFSI and CAMT liability, proposed § 1.1502–56A(d)(1) would provide that the group’s AFSI includes gain or loss from one member’s sale or exchange of stock of another member. For this purpose, gain or loss would be computed relative to the CAMT basis of the stock (as determined under proposed § 1.1502–56A(d)(3)). See proposed § 1.1502–56A(d)(2).

F. Basis of Member Stock

As discussed in part XVIII.C.4 of this Explanation of Provisions, the CAMT basis of stock generally equals the regular tax basis as of the beginning of the first taxable year beginning after December 31, 2019, adjusted as required by proposed §§ 1.56A–18 and/or 1.56A–19. Any stock of members of a tax consolidated group held as of the beginning of the first taxable year beginning after December 31, 2019, would be subject to this rule.

However, the group’s initial CAMT basis in any member stock acquired after that date would equal the CAMT basis of the stock in the hands of a shareholder member immediately after the acquisition (again adjusted as required by proposed §§ 1.56A–18 and/or 1.56A–19). See proposed § 1.1502–56A(d)(3)(i).

Adjustments would be made to the AFS basis of member stock on the consolidated AFS for the period during which the member is a member of the group, including adjustments to reflect all other adjustments to FSI under section 56A(c) and the section 56A regulations. See proposed § 1.1502–56A(d)(3)(ii). These adjustments are necessary because section 56A(c)(2)(B) and proposed § 1.1502–56A(a)(2)

effectively impose a single level of CAMT on the earnings and operations of a tax consolidated group. To ensure that the same economic income or loss is not duplicated in computing the AFSI of a tax consolidated group, the CAMT basis of subsidiary member stock would be adjusted to reflect the member's income or loss items for purposes of the CAMT.

Therefore, consistent with proposed § 1.1502–56A(c), financial accounting adjustments to the AFS basis of subsidiary member stock (as modified under section 56A and the section 56A regulations) would be respected for purposes of determining inclusions for CAMT purposes with regard to that stock. For example, the CAMT operating income or loss of a member of a tax consolidated group would be reflected for purposes of the CAMT in the CAMT basis of the member stock in the hands of its shareholder member. However, the AFS basis of the stock would include negative adjustments for deductions or losses of a subsidiary member only to the extent those items are absorbed by a member of the group under section 56A and the section 56A regulations. These proposed rules are in general conformity with the stock basis adjustment rules applicable for regular tax purposes. *See* § 1.1502–32.

G. Tax Items Relating to Intercompany Transactions

For purposes of computing AFSI, several provisions in section 56A(c) and the section 56A regulations disregard items that appear on a CAMT entity's AFS and replace them with regular tax items. *See* section 56A(c)(13) and proposed § 1.56A–15 (concerning certain depreciation deductions) and section 56A(c)(14) and proposed § 1.56A–16 (concerning certain amortization deductions).

Proposed § 1.1502–56A(e) would address the application of the foregoing provisions to tax items relating to intercompany transactions. These proposed rules are intended to clarify that intercompany transactions do not affect the tax items taken into account in determining a tax consolidated group's AFSI. *Cf.* § 1.1502–13(a)(1) (providing that the purpose of § 1.1502–13 is to provide rules to clearly reflect the taxable income (and tax liability) of a tax consolidated group as a whole by preventing intercompany transactions from creating, accelerating, avoiding, or deferring consolidated taxable income (or consolidated tax liability)).

The regular tax items substituted into AFSI under section 56A(c)(13) and (14) and proposed §§ 1.56A–15 and 1.56A–16 could be construed to include a member's increased depreciation or

amortization deductions as a result of an intercompany transaction. For example, if one member of a tax consolidated group sells section 168 property to another member at a gain, the asset may give rise to higher depreciation deductions in the hands of the buying member (which has a higher basis in the asset) than in the hands of the selling member. *Cf.* § 1.1502–13(c)(7)(ii)(D) (*Example 4*).

This outcome is inappropriate because it is inconsistent with the general treatment of a tax consolidated group as a single entity for purposes of computing AFSI. *See* proposed § 1.1502–56A(a)(2). Instead, section 56A(c)(13) and proposed § 1.56A–15, and section 56A(c)(14) and proposed § 1.56A–16, would substitute only the single-entity amount of tax depreciation or tax amortization, respectively. Accordingly, proposed § 1.1502–56A(e)(2) would clarify that, with regard to any regular tax item that is substituted into AFSI, increases or decreases in the amount of the regular tax items resulting from an intercompany transaction are disregarded. Proposed § 1.1502–56A(e)(3) would restore these increases or decreases when consolidating entries related to the transaction cease to be taken into account (for example, if one of the parties to the intercompany transaction leaves the tax consolidated group; *see* part XXXI.C of this Explanation of Provisions). While this proposal is intended to serve purposes similar to those of § 1.1502–13, the Treasury Department and the IRS did not believe it necessary to incorporate all of the complexities of § 1.1502–13, and so proposed § 1.1502–56A(e) reflects a simplified approach.

H. Use of FSNOL Carryovers

Stakeholders recommended that the proposed regulations allocate FSNOLs to members of a tax consolidated group under the mechanisms of § 1.1502–21(b)(2) (concerning the carryover and carryback of consolidated net operating losses (CNOLs), including rules regarding the allocation of CNOLs to corporations that cease to be members of a tax consolidated group), with certain modifications (such as substituting “AFSI” for “taxable income”).

The Treasury Department and the IRS tentatively have determined that consolidated FSNOLs (that is, the portion of an FSNOL that is attributable to a tax consolidated group) should be treated in a manner similar to CNOLs. Accordingly, under proposed § 1.1502–56A(f), the use of consolidated FSNOL carryovers to offset the AFSI of a tax consolidated group would be

determined under rules that are based upon, and that are intended to operate in a manner consistent with, the rules in § 1.1502–21(b).

Proposed § 1.1502–56A(f)(1) generally would provide that the amount of consolidated FSNOL carryovers of a tax consolidated group that can be used to offset the AFSI of the group for any consolidated return year is the aggregate of the group's consolidated FSNOL carryovers to that year. Proposed § 1.1502–56A(f)(2) would provide that consolidated FSNOL carryovers include both (i) any consolidated FSNOL of the consolidated group, and (ii) any FSNOLs of the members of the group arising in the respective separate return years of those members (to the extent available for use under proposed §§ 1.56A–23 and 1.1502–56A). Proposed § 1.1502–56A(f)(3) would provide rules regarding the application of the 80-percent limitation in section 56A(d)(1). Proposed § 1.1502–56A(f)(4) and (5) would provide detailed rules regarding the carryover of consolidated FSNOLs, including rules regarding situations in which one or more tax consolidated group members deconsolidate from the group.

Stakeholders also recommended that a tax consolidated group's absorption of the FSNOLs of a new member should be subject to the limitations under § 1.1502–21(c) (which provides rules limiting the use of NOLs arising in a separate return limitation year (SRLY)) and section 382 of the Code and the regulations under section 382, with modifications to align with the provisions of the CAMT.

The Treasury Department and the IRS are of the view that a limitation akin to the SRLY limitations in §§ 1.1502–21(c) and 1.1502–15(c) (which imposes a SRLY limitation on built-in losses) should apply to a tax consolidated group's absorption of FSNOLs. Accordingly, proposed § 1.56A–23(e), as described in part XXII of this Explanation of Provisions, would limit the use of FSNOLs acquired from outside the tax consolidated group.

However, as noted previously, the Treasury Department and the IRS do not propose to apply section 382 and the regulations under section 382 to limit the use of FSNOL carryovers. Although the Treasury Department and the IRS are concerned that taxpayers might have incentive to acquire a business that has generated FSNOLs even if there is no business reason for the acquisition, applying section 382 and the regulations under section 382 to the use of FSNOL carryovers is not necessary to carry out the purposes of section 56A for two reasons: (i) the SRLY-like limitation in

proposed § 1.56A–23(e) would operate to deter such transactions in many situations, and (ii) the administrative burdens of applying section 382 and the section 382 regulations to FSNOLs would outweigh the benefits of applying this limitation to FSNOLs.

I. Use of CFC Adjustment Carryovers

Consolidated CFC adjustment carryovers (that is, the portion of a CFC adjustment carryover that is attributable to a tax consolidated group) should generally be treated in a manner similar to FSNOL carryovers. Accordingly, under proposed § 1.1502–56A(h), the use of consolidated CFC adjustment carryovers to reduce the tax consolidated group's adjustment to AFSI under § 1.56A–6(b)(1) would be determined under rules that are based upon the rules in proposed § 1.1502–56A(f), with certain differences to reflect the differences in the rules for CFC adjustment carryovers as compared with the rules for FSNOL carryovers. For example, the 80-percent limitation in section 56A(d)(1) does not apply to CFC adjustment carryovers and is therefore not included in § 1.1502–56A(h).

Proposed § 1.1502–56A(h)(1) generally would provide that the amount of consolidated CFC adjustment carryovers of a tax consolidated group that can be used to reduce the group's adjustment to AFSI under proposed § 1.56A–6(b)(1) is the aggregate of the group's consolidated CFC adjustment carryovers to that year. Proposed § 1.1502–56A(h)(2) generally would provide that consolidated CFC adjustment carryovers include both (i) any consolidated CFC adjustment carryovers of the tax consolidated group, and (ii) any CFC adjustment carryovers of the members of the group arising in the respective separate return years of those members (to the extent available for use under proposed §§ 1.56A–6 and 1.1502–56A).

The Treasury Department and the IRS are of the view that a limitation akin to the SRLY limitations in § 1.1502–21(c) should also apply to a tax consolidated group's absorption of CFC adjustment carryovers. Because CFC adjustment carryovers can only be used to reduce a group's adjustment to AFSI under proposed § 1.56A–6(b)(1), SRLY limitations akin to § 1.1502–21(c) may be sufficient and the more expansive limitations in proposed § 1.56A–23(e), applicable to FSNOLs, may not be required. Accordingly, proposed § 1.1502–56A(h)(3) would generally provide that, in any consolidated return year, the aggregate amount of CFC adjustment carryovers from all separate return years of a member of a tax

consolidated group that can be used to reduce the group's adjustment to AFSI under proposed § 1.56A–6(b)(1) cannot exceed the adjustment to AFSI under proposed § 1.56A–6(b)(1) generated by the member. However, the Treasury Department and the IRS are considering whether CFC adjustment carryovers generated in a separate return year should be subject to more expansive limitations similar to the limitations in proposed § 1.56A–23(e), which currently are proposed to apply to FSNOLs and certain built-in items. The Treasury Department and the IRS welcome comments on this matter.

Proposed § 1.1502–56A(h)(4) would provide ordering rules for the use of CFC adjustment carryovers, generally following the rules that apply to FSNOL carryovers under proposed § 1.1502–56A(f)(4). Proposed § 1.1502–56A(h)(5) would provide rules regarding the carryover of CFC adjustment carryovers to separate return years, which apply when a member deconsolidates from a tax consolidated group. Consistent with the general approach of incorporating rules that apply to FSNOL carryovers, proposed § 1.1502–56A(h)(5) directs taxpayers to apply the principles of proposed § 1.1502–56A(f)(5).

J. Use of Consolidated Unused CFC Taxes

Proposed § 1.1502–56A(i)(1) generally would provide that the amount of consolidated unused CFC taxes of a tax consolidated group that can be used to determine the consolidated tentative minimum tax of the group for any consolidated return year is the aggregate of the group's unused CFC taxes in that year. Proposed § 1.1502–56A(i)(2) would provide that consolidated unused CFC taxes include both (i) any unused CFC taxes of the consolidated group to the extent available for use under the carryover rules in proposed § 1.59–4(e), and (ii) any unused CFC taxes of the members of the group arising in the respective separate return years of those members to the extent available for use under the carryover rules in proposed § 1.59–4(e). Proposed § 1.1502–56A(i)(3) would provide rules limiting the use of unused CFC taxes from separate return years of a member. Proposed § 1.1502–56A(i)(4) would provide rules regarding the amount of unused CFC taxes that can be used in a consolidated return year. Proposed § 1.1502–56A(i)(5) would provide rules regarding situations in which one or more members deconsolidate from the group.

The Treasury Department and the IRS are of the view that a limitation akin to the SRLY limitations in § 1.1502–21(c) should apply to a tax consolidated

group's absorption of unused CFC taxes. Accordingly, proposed § 1.1502–56A(i)(3) would limit, in any consolidated return year, the use of unused CFC taxes from all separate return years of a member of a tax consolidated group to an amount equal to (1) the product of (a) the AFSI adjustment with respect to CFCs described in proposed § 1.56A–6(b)(1) generated by the member and (b) 15 percent (the percentage specified in section 55(b)(2)(A)(i) for the consolidated year); less (2) the amount of the member's share of taxes of CFCs for which it is a U.S. shareholder, as determined under proposed § 1.59–4(d) for the consolidated return year.

K. CAMT Liability

Proposed § 1.1502–56A(j) would provide rules for allocating CAMT liability among members of a tax consolidated group. Proposed § 1.1502–56A(j)(1) would provide that liability for the tax imposed on a tax consolidated group under section 55(b)(2) for a consolidated return year is apportioned among members based on the percentage of AFSI attributable to each member for the year. Under proposed § 1.1502–56A(j)(2), the percentage of AFSI for the consolidated return year attributable to a member equals the separate positive AFSI of the member (determined by computing the AFSI by reference to only the member's items of income, gain, expense, and loss) for the consolidated return year, divided by the sum of the AFSI for that year of all members having positive AFSI for that year. This allocation rule is based upon, and is intended to operate in a manner consistent with, the allocation rules in § 1.1502–21(b)(2). See part XXX of this Explanation of Provisions for a similar allocation rule for the consolidated minimum tax credit.

L. Allocation of AFSI on Deconsolidation

The allocation of AFSI that would occur under proposed § 1.59–2 if a corporation's test group changes is intended to ensure that any future group of which the CAMT entity is a member accurately reflects the income-generating history of the members of the group following the acquisition. The accurate reflection of this history is no less important in cases in which the CAMT entity departing the test group is a member of a tax consolidated group.

Proposed § 1.1502–56A(k)(1) would provide that, on leaving a tax consolidated group, a member is allocated its AFSI for purposes of applying the average annual AFSI test under proposed § 1.59–2(c) as if the

member had been a separate taxpayer during the relevant years. The AFSI allocated to the departing member would not be subtracted from the AFSI of the tax consolidated group of which the corporation ceased to be a member. See proposed §§ 1.1502–56A(k)(2) and 1.59–2.

XXXII. CAMT Entities Subject to Tonnage Tax

The Treasury Department and the IRS are considering rules that would provide AFSI adjustments for a corporation that elects under section 1354(a) of the Code (electing corporation), or an electing group as defined in section 1355(a)(2) of the Code that includes an electing corporation, to be subject to the provisions of sections 1352 through 1359 of the Code (tonnage tax regime). The tonnage tax is imposed in lieu of the Federal corporate income tax that would otherwise be imposed under section 11 of the Code on the income of an electing corporation (or electing group) from qualifying shipping activities. See H.R. No. 108–548 Part 1 (2004) at 177.

Under section 1352, an electing corporation's qualifying shipping activities are subject to tax on a notional amount of shipping income, which is determined under section 1353(b) based on the net tonnage of qualifying vessels that the electing corporation operates in foreign trade during the taxable year. Section 1357(a) provides that the gross income of an electing corporation does not include its income from qualifying shipping activities. Section 1357(b) provides that gross income of a corporation (other than an electing corporation) that is a member of an electing group also does not include its income from qualifying shipping activities conducted by such member. Section 1355(a)(2) defines the term "electing group" to mean a controlled group that would be treated as a single employer under section 52(a) or (b) of the Code (without regard to section 52(a)(1) or (2)) and one or more members of which is an electing corporation. Under section 1357(c), items of loss, deduction, or credit of any taxpayer from activities giving rise to income excluded under section 1357 are disallowed, subject to limited exceptions for certain depreciation and interest.

The tonnage tax regime was enacted to bolster the U.S. shipping industry by eliminating a competitive disadvantage faced by operators of United States-flag vessels that otherwise would be subject to higher taxes than their foreign-based competition. H.R. No. 108–548 Part 1 (2004) at 177. By incentivizing United

States-flag shipping, the tonnage tax regime also supports the national security goals of the Maritime Security Program (MSP), which maintains a fleet of active, militarily-useful, privately-owned vessels to meet national defense and other security requirements and maintains a United States presence in international commercial shipping. See section 651 of the Merchant Marine Act, 1936, as modified by section 2 of Public Law 104–239, 110 Stat. 3118, 3118–3119 (October 8, 1996), commonly known as the Maritime Security Act of 1996.

The Treasury Department and the IRS received feedback from stakeholders noting that, unlike former section 56(g) of the Code, section 56A does not provide an AFSI adjustment for an electing corporation and requesting that an AFSI adjustment be provided, in part, to exclude income subject to the tonnage tax regime from AFSI (and therefore from the CAMT). Stakeholders noted that there is tension with applying the CAMT to income subject to the tonnage tax regime given that the regime's purpose is to encourage the use of United States-flag vessels in international shipping. These stakeholders also noted that maintaining United States-flag and United States-crewed merchant vessels for the MSP is important to United States national security, both in peacetime and during times of war. The stakeholders therefore suggested that subjecting such income to the CAMT could undermine the United States national security purpose of the tonnage tax regime.

The Treasury Department and the IRS are considering rules that would provide AFSI adjustments with respect to electing corporations and electing groups within the scope of the tonnage tax regime, including adjustments relating to income from qualifying shipping activities and other adjustments that may be necessary to prevent the imposition of duplicative alternative tax regimes that limit the benefit of certain deductions, NOLs, and credits. The Treasury Department and the IRS request comments on whether to provide such rules addressing the interaction of the CAMT and the tonnage tax, including comments on how best to provide AFSI adjustments to meet the United States national security policy goals of the tonnage tax regime and the MSP while appropriately imposing the CAMT with respect to other AFSI of such entities.

XXXIII. Transition Rules and AFSI-Only Change Procedures

A. Transition Rules To Implement Final Regulations

Pursuant to the authority granted by section 56A(c)(15), the Treasury Department and the IRS are considering transition rules to address AFSI and CAMT attribute adjustments necessary to implement the rules in final regulations if a CAMT entity accounted for and reported the AFSI adjustment or CAMT attribute in a manner inconsistent with the final regulations in prior taxable years. The Treasury Department and the IRS are considering three different transition approaches that may apply under the final regulations. The transition approach applied may vary based on the particular AFSI adjustment or CAMT attribute; thus, different transition approaches may be applied in specified circumstances under the transition rules in the final regulations. The transition rules would apply to the CAMT entity's first taxable year for which a particular final rule is applicable (transition year).

1. Transition Year Adjustment Approach

Under one potential transition approach, a CAMT entity would be required to redetermine as of the beginning of the transition year the cumulative amount of AFSI, and redetermine any relevant CAMT attribute, as if the entity had first applied the rules in the final regulations in its first taxable year beginning after December 31, 2019. The difference between the redetermined cumulative AFSI amount and the aggregate AFSI amounts reported in years prior to the transition year would result in an adjustment to AFSI (transition year adjustment). In conjunction with the transition year adjustment, any CAMT attribute previously determined using the prior treatment would be adjusted to equal the redetermined CAMT attribute as of the beginning of the transition year.

The transition year adjustment would be an adjustment to the CAMT entity's AFSI for the transition year. However, the Treasury Department and the IRS are also considering whether to allow CAMT entities to spread the transition year adjustment across multiple taxable years for AFSI purposes in specified circumstances. The Treasury Department and IRS are considering a rule that would allow a transition year adjustment that involves a change in the timing of when an AFSI adjustment amount is included in AFSI to be spread over periods similar to those for section

481(a) adjustments, while transition year adjustments that do not involve timing differences would be spread ratably over four taxable years, beginning with the transition year. The Treasury Department and the IRS request comments as to whether the transition year rules should address which AFSI adjustments represent an AFSI timing difference and how such determination should be made. The Treasury Department and the IRS also request comments as to whether there are circumstances where a transition year adjustment should be entirely taken into account, with no spread period, in the transition year.

The Treasury Department and the IRS are considering the scope of the final rules that should be subject to a transition year adjustment. For example, such rules may include, but would not be limited to, items similar to those included within the scope of AFSI-only changes (*see* discussion in part XXXIII.C of this Explanation of Provisions; for example, AFSI adjustments and determination of CAMT basis of section 168 property under proposed § 1.56A–15)), the determination of CAMT retained earnings, and the computation and carryforward of a FSNOL under proposed § 1.56A–23. The Treasury Department and the IRS request comments on the scope of AFSI adjustments, and related CAMT attributes, that should be subject to the transition year adjustment to prevent the duplication or omission of the CAMT entity's AFSI. In addition, to the extent transition rules are provided allowing transition year adjustments to be spread, the Treasury Department and IRS request comments as to whether the applicable spread period should be determined separately for each AFSI adjustment or if certain AFSI adjustments (for example, all adjustments to AFSI for section 168 property under proposed § 1.56A–15) should be combined into a net transition year adjustment for purposes of determining the applicable spread period.

As noted previously, while the transition year adjustment would be determined by recomputing prior year AFSI and CAMT attributes to reflect the final rules, the transition year adjustment is an adjustment to the CAMT entity's AFSI for the transition year (subject to proposed spread periods). Accordingly, with respect to a CAMT entity with a partnership investment, the partnership would not need to file an amended partnership return or file a request for an administrative adjustment under section 6227, as applicable, to revise the

amount of any partnership-related item relevant in determining the application of section 56A that was reported to the CAMT entity partner in prior taxable years. Instead, the transition rules would provide that the partnership should report additional information to the CAMT entity partner for the first taxable year in which a final rule is applicable to the extent necessary for the CAMT entity partner to determine its transition year adjustment for such partnership-related item. The Treasury Department and the IRS request comments on the application of this transition approach to a CAMT entity that is a partner in a partnership to which this approach would apply.

2. Cut-off Basis Transition Approach

Under a second potential transition approach, the transition to the final regulations for certain AFSI adjustments and CAMT attributes would be implemented on a cut-off basis similar to the approach provided in section 2.07 of Rev. Proc. 2015–13, 2015–5 I.R.B. 419. Accordingly, under a cut-off basis transition approach, there would be no transition year adjustment to AFSI for the transition year. In addition, under a cut-off basis transition approach, CAMT attributes (such as the CAMT basis of an asset) would not be redetermined as of the beginning of the transition year as if the CAMT entity had first applied the rules in the final regulations in its first taxable year beginning after December 31, 2019. The Treasury Department and the IRS are considering applying the cut-off basis transition approach to AFSI adjustments and CAMT attributes where the CAMT entity no longer holds the property and has already accounted for the disposition of such property in AFSI in a taxable year not subject to the final regulations (even if accounted for in a manner not consistent with the final regulations), for example, certain transactions subject to proposed § 1.56A–18, 1.56A–19, or 1.56A–20. In such situations, the Treasury Department and the IRS request comments as to whether special rules are needed for the transferor or transferee to prevent the duplication or omission of the transferor's or transferee's AFSI related to the transaction. The Treasury Department and the IRS also request comments on the scope of AFSI adjustments and CAMT attributes that should be subject to a cut-off basis transition approach and the application of such transition approach to a CAMT entity that is a partner in a partnership to which this transition approach would apply.

3. Fresh Start Transition Approach

Finally, under a third potential transition approach, the transition to the final regulations for certain rules would be implemented using a “fresh start” transition approach with the relevant CAMT attribute redetermined as of the beginning of the transition year as if the entity had first applied the rules in the final regulations in its first taxable year beginning after December 31, 2019. Accordingly, under a “fresh start” transition approach, there would be no transition year adjustment to AFSI as of the beginning of the transition year. For instances where the CAMT basis of an asset may be subject to a “fresh start” transition approach, the Treasury Department and the IRS request comments as to whether the CAMT basis should be based on amounts other than the amounts that should have been reflected in AFSI in prior years under the final rules, such as the actual amounts reflected in AFSI in prior years. For example, if AFSI in prior years reflected excess amortization because the CAMT basis of an amortizable asset exceeded what the CAMT basis would have been had the final regulations applied (for example, due to push down accounting which is disregarded under proposed §§ 1.56A–4(c)(4) and 1.56A–18(c)(3)), comments are requested as to whether the redetermined CAMT basis should reflect a reduction for the actual amortization reflected in AFSI in prior years or if the redetermined CAMT basis should instead reflect a reduction for the amortization that would have been reflected in AFSI under the final rules.

The Treasury Department and the IRS are considering the scope of the final rules that should be subject to a “fresh start” transition approach. For example, such items may include, but are not limited to, determination of CAMT basis of assets of a foreign corporation under proposed § 1.56A–4, CFC adjustment carryovers with respect to controlled foreign corporations under proposed § 1.56A–6, determination of CAMT basis of assets of a domestic corporation under proposed §§ 1.56A–18 and 1.56A–19, and any unused CFC taxes under proposed § 1.59–4. The Treasury Department and the IRS request comments on the scope of CAMT attributes that should be subject to a “fresh start” transition approach as well as the application of such an approach to a CAMT entity that is a partner in a partnership to which this transition approach would apply.

The Treasury Department and the IRS welcome comments on these three transition approaches, as well as other

approaches for handling changes in the treatment of an item to comply with the final regulations.

B. Transition Rules for Taxable Years Prior to the Final Regulations

The Treasury Department and the IRS are aware that a CAMT entity may have a duplication or omission of AFSI or a CAMT attribute if the CAMT entity accounted for and reported the AFSI adjustment or CAMT attribute in a taxable year in a manner inconsistent with the manner used to determine such item in a prior taxable year. To avoid creating undue administrative burden for CAMT entities, and to facilitate a less burdensome interim period before the final regulations are applicable, the Treasury Department and the IRS are of the view that transition rules, including transition adjustments to AFSI, are not appropriate to account for any potential duplication or omission of AFSI or a CAMT attribute for taxable years prior to the transition year. Accordingly, CAMT entities may not make any AFSI adjustments as a result of a redetermination of the cumulative amount of AFSI or redetermine any CAMT attribute as of the beginning of, or during, any taxable year prior to the first taxable year in which a final rule is applicable. *See* proposed § 1.56A–1(d)(2) (except as otherwise provided in the section 56A regulations, a CAMT entity may not make any adjustments to its FSI in determining its AFSI). Any difference between a redetermined AFSI amount and the AFSI amount previously determined using the CAMT entity's prior treatment does not result in an adjustment to AFSI for any taxable year prior to the transition year. Similarly, any difference between a redetermined CAMT attribute and the CAMT attribute previously determined using the prior treatment does not result in an adjustment to the CAMT attribute for any taxable year prior to the transition year.

C. Consent Procedures for Making AFSI-Only Changes

For taxable years beginning after the transition year (*see* discussion in part XXXIII.A of this Explanation of Provisions), the Treasury Department and the IRS are aware that a CAMT entity may need to make corrections to the treatment of an AFSI adjustment due to incorrect application of the final rules. Accordingly, the Treasury Department and the IRS are also considering rules and procedures to address a change in the treatment of an item for AFSI purposes under the final regulations that involves either determining the proper time for taking

the item into account or determining the proper amount of the item to prevent duplications or omissions of amounts in AFSI (AFSI-only change). For this purpose, an AFSI-only change would include a change to begin making an AFSI adjustment, a change to properly determine the amount of an AFSI adjustment, or a change to take the AFSI adjustment into account in the appropriate taxable year (AFSI-only items). For this purpose, AFSI adjustments that may be subject to the AFSI-only change procedures may include, but are not limited to, AFSI adjustments to a partner's distributive share of partnership AFSI under proposed § 1.56A–5, AFSI adjustments with respect to section 168 property under proposed 1.56A–15, and AFSI adjustments with respect to qualified wireless spectrum under proposed § 1.56A–16. An AFSI-only change would not include a change in method of accounting being made for regular tax purposes or an accounting principle change for an item in FSI subject to proposed § 1.56A–17(c). Similarly, an AFSI-only change would generally not include items for which an AFSI adjustment is already provided in the final regulations (for example, AFSI adjustments associated with tax capitalization method changes described in proposed § 1.56A–15(b)(10) or 1.56A–16(b)(7), as well as AFSI restatement adjustments and other AFSI adjustments to prevent duplications or omissions of income described in proposed § 1.56A–17(d) and (e)).

In order for a CAMT entity to make an AFSI-only change, the Treasury Department and the IRS are considering rules that would require a CAMT entity to follow consent procedures similar to those that apply for changes in method of accounting for regular tax purposes under sections 446 and 481. Similar to a change in method of accounting for regular tax purposes, a CAMT entity would not be permitted to make an AFSI-only change on an amended return or by filing an administrative adjustment request under section 6227. The AFSI-only change procedures would instead require that a CAMT entity request advance consent from the IRS before changing the item under consent procedures similar to those required under section 446(e) and Rev. Proc. 2015–13 (or successor) on a form similar to Form 3115. However, similar to Rev. Proc. 2015–13, automatic consent may be provided for certain changes. If automatic consent is provided for an AFSI-only change, the manner of obtaining automatic consent may involve reduced filing

requirements or certain streamlined procedures. In addition, the consent procedures for AFSI-only changes may also include the computation of a cumulative adjustment to AFSI resulting from the AFSI-only change, which the CAMT entity would include in AFSI over a prescribed number of taxable years beginning with the year of change. Finally, such consent procedures would provide audit protection to taxpayers that voluntarily request to make an AFSI-only change in certain circumstances. Applying procedures to AFSI-only changes that are similar to the change in method of accounting principles under section 446(e) may encourage voluntary compliance when a CAMT entity is inadvertently accounting for an AFSI-only item in an impermissible manner because the CAMT entity would be afforded audit protection and favorable spread periods.

Alternatively, the Treasury Department and the IRS are considering providing taxpayers with automatic consent for all AFSI-only changes, along with reduced filing requirements, that may only require that a statement or abbreviated form be attached to the CAMT entity's tax return for the year in which the AFSI-only change is made. While this alternative may streamline the process for a CAMT entity to correct its AFSI if it is accounting for an AFSI-only item in an impermissible manner, the Treasury Department and IRS are considering whether to provide the CAMT entity with audit protection under this type of procedure and whether more restrictive spread periods should apply.

The Treasury Department and the IRS are evaluating whether consent procedures similar to those required for changes in method of accounting under section 446(e) and Rev. Proc. 2015–13 should apply to an AFSI-only change and request comments on this issue, as well as other approaches for implementing AFSI-only changes. The Treasury Department and the IRS request comments on the scope of AFSI-only items that should be subject to the consent procedures. The Treasury Department and the IRS also request comments on the criteria to be applied by a CAMT entity to determine whether it has established a consistent treatment for an AFSI-only item and, thus, is eligible for an AFSI-only change (for example, whether a CAMT entity needs to treat an AFSI-only item in an impermissible manner for a single taxable year, or multiple taxable years, before it may apply the procedures for making an AFSI-only change). The Treasury Department and the IRS also request comments on the consent

procedure terms and conditions that should apply for making an AFSI-only change, including audit protection and the spread period of the corresponding adjustments to AFSI to implement the AFSI-only change.

Proposed Applicability Dates and Reliance on the Proposed Regulations

The provisions of the following sections are proposed to apply to taxable years ending after September 13, 2024: proposed §§ 1.56A–1 through 1.56A–4, 1.56A–6 through 1.56A–11, 1.56A–13, 1.56A–14, 1.56A–17, 1.56A–26, 1.56A–27, and 1.59–2 through 1.59–4 (together, with proposed § 1.56A–5(l)(2)(ii) and (iii), the specified regulations). The provisions of the following sections are proposed to apply to taxable years ending after [date of publication of final regulations in the **Federal Register**]: proposed §§ 1.56A–5 (other than 1.56A–5(l)(2)(ii) and (iii)), 1.56A–12, 1.56A–15, 1.56A–16, and 1.56A–18 through 1.56A–25. The provisions of proposed § 1.56A–5(l)(2)(ii) and (iii) are proposed to apply to taxable years ending after September 13, 2024 and on or before [date of publication of final regulations in the **Federal Register**] in order to coordinate with certain provisions of the specified regulations. In accordance with section 1503 of the Code, the provisions of the following sections are proposed to apply to consolidated return years for which the date of the income tax return (without extensions) is after [date of publication of final regulations in the **Federal Register**]: proposed §§ 1.1502–2, 1.1502–53, and 1.1502–56A.

The Treasury Department and the IRS request comments regarding whether a different applicability date should apply for purposes of applying any specific provision of the proposed regulations and will consider such comments along with all other comments received in response to this notice of proposed rulemaking.

Taxpayers may rely on the specified regulations for any taxable year ending on or before September 13, 2024, provided the taxpayer, and each member of its test group determined under proposed § 1.59–2 for that taxable year, consistently follow all of the specified regulations in their entirety in that taxable year and each subsequent taxable year (taking into account any changes to its test group determined under proposed § 1.59–2 for each subsequent taxable year) until the first taxable year in which the final regulations are applicable. In the case of rules described in proposed §§ 1.56A–4 and 1.56A–6 that apply to transfers (as defined in proposed § 1.56A–4(b)(3)),

taxpayers may rely on such rules for a transfer occurring on or before September 13, 2024, provided the taxpayer, and each member of its test group determined under proposed § 1.59–2 for the taxable year of the taxpayer that includes the date of the transfer, consistently follow all of the rules in proposed §§ 1.56A–4 and 1.56A–6 for all such transfers occurring on or before September 13, 2024, and if any such transfers occur in taxable years ending on or before September 13, 2024, must rely on the specified regulations for such taxable years.

Taxpayers may rely on one or more other sections of the proposed regulations for any taxable year ending on or before [date of publication of final regulations in the **Federal Register**], provided that, for each section on which the taxpayer relies, the taxpayer, and each member of its test group determined under proposed § 1.59–2 for that taxable year, consistently follow that section in its entirety and also follow all of the specified regulations in their entirety in that taxable year and each subsequent taxable year (taking into account any changes to its test group determined under proposed § 1.59–2) until the first taxable year in which the final regulations are applicable. Notwithstanding the prior sentence, a taxpayer may not rely on proposed §§ 1.56A–18, 1.56A–19, and 1.56A–21 in any taxable year unless the taxpayer and each member of its test group determined under proposed § 1.59–2 for that taxable year relies on each such section in its entirety. In addition, a taxpayer may not rely on proposed §§ 1.56A–5 (excluding 1.56A–5(l)(2)(ii) and (iii)) and 1.56A–20 in any taxable year unless the taxpayer and each member of its test group determined under proposed § 1.59–2 for that taxable year relies on each such section in its entirety.

Special Analyses

I. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) generally requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting

information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. 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 control number.

This proposed regulation contains reporting, third-party disclosure, and recordkeeping requirements that are required to identify applicable corporations and determine their liability for the CAMT. These collections of information would generally be used by the IRS for tax compliance purposes and by taxpayers to facilitate proper reporting and recordkeeping. The likely respondents to these collections are businesses.

This proposed regulation requires corporations to report their determinations regarding whether they are applicable corporations and, if so, report their CAMT liability by using Form 4626 and the applicable form in the Form 1120 series. These requirements and associated forms are already approved by OMB under 1545–0123. To the extent there is a change in burden as a result of this proposed regulation, the change in burden will be reflected in updated burden estimates for the referenced forms.

This proposed regulation requires partnerships that receive a request for information to provide the information to partners that are subject to the CAMT (or partners directly or indirectly owned by an applicable corporation) and to report the information to the IRS on Schedules K and K–1 of Form 1065. For taxable year 2023, a partnership that receives a request for information after the preparation of its Schedules K and K–1 may provide the information to the partner on a separate statement. This proposed regulation contains recordkeeping requirements associated with the foregoing reporting obligations. These requirements and associated forms are already approved by OMB under 1545–0123. To the extent there is a change in burden as a result of this proposed regulation, the change in burden will be reflected in updated burden estimates for the referenced forms.

This proposed regulation requires a corporation to maintain records sufficient to substantiate its determination regarding whether it is an applicable corporation, including the identification of all persons treated as a single employer with the corporation under section 52(a) or (b) and whether the corporation is a member of an FPMG under proposed § 1.59–3. This proposed

regulation requires a corporation that is an applicable corporation to maintain records sufficient to substantiate its determination of liability for the CAMT. This proposed regulation also requires a corporation or other entity whose financial results are reflected in a consolidated financial statement to maintain books and records sufficient to demonstrate how the entity's financial statement income reconciles to the income reported on the consolidated financial statement. The recordkeeping requirements within this proposed regulation are considered general tax records under § 1.6001-1(e). For PRA purposes, general tax records are already approved by OMB under 1545-0123 for business filers. To the extent there is a change in burden as a result of this proposed regulation, the change in burden will be reflected in updated burden estimates for Form 4626 and the applicable form in the Form 1120 series.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposal is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis (IRFA) of the proposed rule. The Treasury Department and the IRS have not determined whether the proposed rule, when finalized, would likely have a significant economic impact on a substantial number of small entities. This determination requires further study. However, because there is a possibility of economic impact on a substantial number of small entities, an IRFA is provided in these proposed regulations. The Treasury Department and the IRS invite comments on both the number of entities affected and the economic impact on small entities.

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel of the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

A. Need For and Objectives of the Rule

The proposed regulations would provide guidance for the application of the CAMT, which is based on the AFSI

of certain corporations for taxable years beginning after December 31, 2022. The proposed regulations would provide necessary definitions and rules that relate to the determination of AFSI, whether a corporation is an applicable corporation subject to the tax, and various statutory adjustments to AFSI, including rules regarding the application of the CAMT in the tax consolidated group, partnership, and international contexts. The Treasury Department and the IRS intend and expect that this guidance will allow corporations to determine whether they are subject to the tax and their total liability under the tax.

B. Affected Small Entities

The RFA directs agencies to provide a description of, and if feasible, an estimate of, the number of small entities that may be affected by the proposed rules, if adopted. The Small Business Administration's Office of Advocacy estimates in its 2023 Frequently Asked Questions that 99.9 percent of American businesses meet its definition of a small business. While the CAMT applies only to certain corporations averaging over \$1 billion of annual AFSI, referred to as applicable corporations, certain provisions in these proposed regulations apply irrespective of the size of the business, as defined by the Small Business Administration. As is described more fully in the preamble to this proposed regulation and in this IRFA, these proposed regulations may affect a variety of different businesses across several different industries.

These proposed regulations contain reporting, third-party disclosure, and recordkeeping requirements that are required to identify applicable corporations and to determine their liability for the CAMT. In determining whether a corporation is an applicable corporation, it may be necessary to aggregate its AFSI with the AFSI of other entities. Further, in determining the CAMT liability of an applicable corporation, it may be necessary to include in AFSI the applicable corporation's income from its investments in partnerships. In most cases, the AFSI of entities whose AFSI is aggregated with that of a corporation will be based on consolidated financial statements prepared by very large corporations that will bear this burden so that it should not be considered a burden imposed on small entities. However, under the proposed regulations, in order to determine the CAMT liability of an applicable corporation, partnerships would be compelled to provide information to their applicable corporation partners

(and, in the case of structures with tiers of partnerships, to partners that are directly or indirectly owned by the applicable corporation) regarding the partner's distributive share of the partnership's AFSI, and to keep associated records. We estimate that approximately 25,000 of the partnerships that would be affected by this burden are small entities.

The Treasury Department and the IRS expect to receive more information on the impact on small businesses through comments on these proposed regulations.

C. Impact of the Rules

The proposed regulations will impose recordkeeping and reporting requirements for partnerships directly or indirectly owned by applicable corporations. These proposed regulations require partnerships that receive a request for information to provide the information to partners that are subject to the CAMT (or to partners that are directly or indirectly owned by an applicable corporation) and to report the information to the IRS on Schedules K and K-1 of Form 1065. For taxable year 2023, a partnership that receives a request for information after the preparation of its Schedules K and K-1 may provide the information to the partner on a separate statement. The proposed regulations impose recordkeeping requirements associated with the foregoing reporting obligations.

D. Alternatives Considered

The Treasury Department and the IRS considered alternatives to the proposed regulations. As described in the Explanation of Provisions of this preamble, the Treasury Department and the IRS considered alternative approaches for computing an applicable corporation's distributive share of a partnership's AFSI. Under these approaches, an applicable corporation would generally have required a more limited amount of information from a partnership for the purpose of computing its distributive share of a partnership's AFSI.

One alternative approach considered was a "top-down" approach in which an applicable corporation would use the FSI reported on its AFS with respect to a partnership and adjust that amount by taking into account adjustments required under section 56A. The information necessary for an applicable corporation to compute these adjustments would need to be provided by the partnership. As this approach would still require the partnership to provide information to the partner, it did not substantially lessen the impact

of the rules adopted in the proposed regulations.

Another set of approaches considered was to use tax information otherwise required to be maintained for tax purposes. That is, a partner's distributive share of a partnership's AFSI would be an applicable corporation's distributive share of a partnership's book income computed in accordance with the section 704(b) rules, or an applicable corporation's distributive share of partnership taxable income as reported on Schedule K-1.

Yet another alternative considered was the addition of a safe harbor to the proposed approach that would allow applicable corporations to use their financial statement income without making adjustments for partnership investments under section 56A(c)(2)(D)(i). This safe harbor would be in lieu of having the partnership report the partner's distributive share of AFSI to the partners.

These alternative approaches were not adopted in the proposed regulations because the Treasury Department and the IRS are of the view that they are not consistent with the statutory language or its purpose of taxing an applicable corporation's book income, as adjusted under section 56A. In many cases, an applicable corporation would not be able to reasonably take into account the adjustments required under section 56A to compute AFSI, or the applicable corporation would have to rely heavily or exclusively on regular tax amounts, or both.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The proposed rule would not duplicate, overlap, or conflict with any relevant Federal rules. As discussed previously, the proposed regulations would provide rules for the application of the CAMT. The Treasury Department and the IRS invite input from interested members of the public about identifying and avoided overlapping, duplicative, or conflicting requirements.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million (updated annually for inflation). This proposed rule does not include any Federal mandate that may result in expenditures by State, local, or

Tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has Federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This proposed rule does not have Federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

VI. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments) prohibits an agency from publishing any rule that has Tribal implications if the rule either imposes substantial, direct compliance costs on Indian Tribal governments and is not required by statute, or preempts Tribal law, unless the agency meets the consultation and funding requirements of section 5 of the Executive order. These proposed regulations do not have a substantial direct effect on one or more Federally recognized Indian Tribes and do not impose substantial direct compliance costs on Indian Tribal governments within the meaning of the Executive order.

However, the Treasury Department and the IRS held consultation with Alaska Native Corporations on December 2, 2022, to address questions under the IRA, including the application of the CAMT to Alaska Native Corporations, which informed the development of these proposed regulations. The Treasury Department and the IRS also intend to conduct consultation with Alaska Native Corporations on these proposed regulations.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments regarding the notice of proposed rulemaking that are submitted timely to the IRS, as prescribed in this preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. All comments will be made available at [https://](https://www.regulations.gov)

www.regulations.gov. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

A public hearing has been scheduled for January 16, 2025 beginning at 10 a.m. EST, in the Auditorium at the Internal Revenue Building, 1111 Constitution Avenue NW, Washington DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively attend the public hearing by telephone.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic by December 12, 2024. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing. If no outline of the topics to be discussed at the hearing is received by December 12, 2024, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the **Federal Register**.

Individuals who want to testify in person at the public hearing must send an email to publichearings@irs.gov to have your name added to the building access list. The subject line of the email must contain the regulation number REG-112129-23 and the language TESTIFY in Person. For example, the subject line may say: Request to TESTIFY in Person at Hearing for REG-112129-23.

Individuals who want to testify by telephone at the public hearing must send an email to publichearings@irs.gov to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-112129-23 and the language TESTIFY Telephonically. For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG-112129-23.

Individuals who want to attend the public hearing in person without testifying must also send an email to publichearings@irs.gov to have your name added to the building access list. The subject line of the email must contain the regulation number REG-

112129–23 and the language ATTEND In Person. For example, the subject line may say: Request to ATTEND Hearing in Person for REG–112129–23. Requests to attend the public hearing must be received by 5 p.m. EST on January 14, 2025.

Individuals who want to attend the public hearing by telephone without testifying must also send an email to publichearings@irs.gov to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–112129–23 and the language ATTEND Hearing Telephonically. For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG–112129–23. Requests to attend the public hearing must be received by 5 p.m. EST on January 14, 2025.

Hearings will be made accessible to people with disabilities. To request special assistance during a hearing please contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to publichearings@irs.gov (preferred) or by telephone at (202) 317–6901 (not a toll-free number) by at least January 13, 2025.

Drafting Information

The principal authors of these regulations are Madeline Padner, Frank Dunham III, John Aramburu, James Yu, and C. Dylan Durham of the Office of Associate Chief Counsel (Income Tax and Accounting); Jeremy Aron-Dine, William W. Burhop, and John Lovelace of the Office of Associate Chief Counsel (Corporate); Diane Bloom, Seth Groman, and Chris Dellana of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes); Yosef Koppel, Elizabeth Zanet, and Brian Barrett of the Office of Associate Chief Counsel (Passthroughs and Special Industries); Daren J. Gottlieb, Dylan J. Steiner, Ryan Connery, John J. Lee, Michelle L. Ng, Joel Deuth, and Karen Walny of the Office of Associate Chief Counsel (International); Ian Follansbee and Vanessa Mekpong of the Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order for §§ 1.56A–1 through 1.56A–27, 1.59–2 through 1.59–4, 1.1502–53, and 1.1502–56A to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

* * * Section 1.56A–1 also issued under 26 U.S.C. 56A(c)(2)(B), 56A(c)(15), and 56A(e).

Section 1.56A–2 also issued under 26 U.S.C. 56A(b), 56A(c)(15), and 56A(e).

Section 1.56A–3 also issued under 26 U.S.C. 56A(c)(1), 56A(c)(15), and 56A(e).

Section 1.56A–4 also issued under 26 U.S.C. 56A(c)(2)(C), 56A(c)(15), and 56A(e).

Section 1.56A–5 also issued under 26 U.S.C. 56A(c)(2)(D)(i), 56A(c)(15), and 56A(e).

Section 1.56A–6 also issued under 26 U.S.C. 56A(c)(5), 56A(c)(15), and 56A(e).

Section 1.56A–7 also issued under 26 U.S.C. 56A(c)(15) and 56A(e).

Section 1.56A–8 also issued under 26 U.S.C. 56A(c)(5), 56A(c)(15), and 56A(e).

Sections 1.56A–9 through 1.56A–12 also issued under 26 U.S.C. 56A(c)(15) and 56A(e).

Section 1.56A–13 also issued under 26 U.S.C. 56A(c)(11)(A), 56A(c)(15), and 56A(e).

Section 1.56A–14 also issued under 26 U.S.C. 56A(c)(15) and 56A(e).

Section 1.56A–15 also issued under 26 U.S.C. 56A(c)(13)(B)(ii), 56A(c)(15), and 56A(e).

Section 1.56A–16 also issued under 26 U.S.C. 56A(c)(14)(A)(ii)(II), 56A(c)(15), and 56A(e).

Section 1.56A–17 also issued under 26 U.S.C. 56A(c)(15), and 56A(e).

Sections 1.56A–18 and 1.56A–19 also issued under 26 U.S.C. 56A(c)(2)(C), 56A(c)(15), and 56A(e).

Section 1.56A–20 also issued under 26 U.S.C. 56A(c)(2)(D)(i), 56A(c)(15), and 56A(e).

Sections 1.56A–21 through 1.56A–24 also issued under 26 U.S.C. 56A(c)(15) and 56A(e).

Section 1.56A–25 also issued under 26 U.S.C. 56A(e).

Sections 1.56A–26 and 1.56A–27 also issued under 26 U.S.C. 56A(c)(15) and 56A(e).

* * * * *

Section 1.59–2 also issued under 26 U.S.C. 59(k)(1)(C) and (k)(3).

Section 1.59–3 also issued under 26 U.S.C. 59(k)(2)(B) and (D) and 59(k)(3).

Section 1.59–4 also issued under 26 U.S.C. 59(l)(3).

* * * * *

Sections 1.1502–53 and 1.1502–56A also issued under 26 U.S.C. 53, 56A(C)(2)(B), 56A(c)(15), 56A(e), and 1502.

* * * * *

■ **Par. 2.** Remove the undesignated center heading “Tax Surcharge” immediately following § 1.51–1.

§ 1.53–1 [Removed and Reserved]

■ **Par. 3.** Remove and reserve § 1.53–1.

■ **Par. 4.** Add an undesignated center heading to read “Alternative Minimum Tax” above reserved § 1.53–1.

§§ 1.53–2 and 1.53–3 [Removed]

■ **Par. 5.** Remove §§ 1.53–2 and 1.53–3.

§ 1.56–0 [Removed]

■ **Par. 6.** Remove § 1.56–0.

■ **Par. 7.** Remove the undesignated center heading “Regulations Applicable to Taxable Years Beginning in 1969 and Ending in 1970” immediately before § 1.56(g)–0.

■ **Par. 8.** Remove the undesignated center heading “Tax Preference Regulations” immediately following § 1.56(g)–1.

■ **Par. 9.** Sections 1.56A–0 through 1.56A–27 are added to read as follows:

* * * * *

Sec.

1.56A–0 Table of contents.

1.56A–1 Definitions and general rules for determining adjusted financial statement income.

1.56A–2 Definition of applicable financial statement (AFS) and AFS priority rules.

1.56A–3 AFSI adjustments for AFS year and taxable year differences.

1.56A–4 AFSI adjustments and basis determinations with respect to foreign corporations.

1.56A–5 AFSI adjustments to partner's distributive share of partnership AFSI.

1.56A–6 AFSI adjustments with respect to controlled foreign corporations.

1.56A–7 AFSI adjustments with respect to effectively connected income

1.56A–8 AFSI adjustments for certain Federal and foreign income taxes.

1.56A–9 AFSI adjustments for owners of disregarded entities or branches.

1.56A–10 AFSI adjustments for cooperatives.

1.56A–11 AFSI adjustments for Alaska Native Corporations.

1.56A–12 AFSI adjustments with respect to certain tax credits.

1.56A–13 AFSI adjustments for covered benefit plans.

1.56A–14 AFSI adjustments for tax-exempt entities.

1.56A–15 AFSI adjustments for section 168 property.

1.56A–16 AFSI adjustments for qualified wireless spectrum property.

1.56A–17 AFSI adjustments to prevent certain duplications or omissions.

1.56A–18 AFSI, CAMT basis, and CAMT retained earnings resulting from certain corporate transactions.

1.56A–19 AFSI, CAMT basis and CAMT retained earnings resulting from certain corporate reorganizations and organizations.

1.56A–20 AFSI adjustments to apply certain subchapter K principles.

- 1.56A–21 AFSI adjustments for troubled companies.
- 1.56A–22 AFSI adjustments for certain insurance companies and other specified industries.
- 1.56A–23 AFSI adjustments for financial statement net operating losses and other attributes.
- 1.56A–24 AFSI adjustments for hedging transactions and hedged items.
- 1.56A–25 AFSI adjustments for mortgage servicing income.
- 1.56A–26 AFSI adjustments for certain related party transactions and CAMT avoidance transactions.
- 1.56A–27 AFSI adjustments for foreign governments.

* * * * *

§ 1.56A–0 Table of contents.

This section lists the table of contents for §§ 1.56A–1 through 1.56A–27.

§ 1.56A–1 Definitions and general rules for determining adjusted financial statement income.

- (a) Overview.
- (1) In general.
- (2) Scope of the section 56A regulations.
- (b) Definitions.
- (1) Adjusted financial statement income.
- (2) Adjusted net income or loss.
- (3) AFS basis.
- (4) AFS consolidation entries.
- (5) Applicable corporation.
- (6) Applicable financial statement.
- (7) CAMT basis.
- (8) CAMT entity.
- (9) CAMT foreign tax credit.
- (10) CFC adjustment carryover.
- (11) Change in accounting principle.
- (12) Consolidated financial statement.
- (13) Controlled foreign corporation.
- (14) Disregarded entity.
- (15) Equity method.
- (16) Equity method base adjustment.
- (17) Fair value method.
- (18) Federal income taxes.
- (19) Financial statement group.
- (20) Financial statement income.
- (21) Financial statement net operating loss.
- (22) For regular tax purposes.
- (23) Foreign income tax.
- (24) FPMG.
- (25) FPMG common parent.
- (26) FSNOL carryover.
- (27) GAAP.
- (28) IFRS.
- (29) Impairment loss.
- (30) Impairment loss reversal.
- (31) IRB guidance.
- (32) Modified FSI.
- (33) Partnership and tiered partnership.
- (34) Pass-through entity.
- (35) Purchase accounting.
- (36) Push down accounting.
- (37) Qualified wireless spectrum.
- (38) Restated AFS.
- (39) Section 56A regulations.
- (40) Section 168 property.
- (41) Separate financial statement.
- (42) Statutory references.
- (i) Chapter 1.
- (ii) Code.
- (iii) Subchapter K.
- (iv) Subtitle A.

- (43) Tax consolidated group.
- (44) United States shareholder.
- (c) General rules for determining FSI.
- (1) Federal income tax treatment not relevant for FSI.
- (2) Tax consolidated groups; CAMT entities that own disregarded entities.
- (i) Tax consolidated groups.
- (ii) CAMT entities that own a disregarded entity or branch.
- (3) Determining FSI from a consolidated AFS.
- (i) In general.
- (ii) No netting losses against income within the consolidated AFS.
- (iii) Elimination journal entries.
- (iv) Consolidation entries other than elimination entries.
- (v) Reconciliation requirement.
- (4) Determining AFS basis and balance sheet account amounts if the CAMT entity's AFS is a consolidated financial statement.
- (i) In general.
- (ii) Purchase accounting and push down accounting.
- (5) Coordination rule.
- (6) Examples.
- (i) Example 1: FSI of component members of a financial statement group.
- (ii) Example 2: Consolidation entries if an item is converted from one financial accounting standard to another.
- (d) General rules for determining AFSI.
- (1) Federal income tax treatment not relevant for AFSI except as otherwise provided in guidance.
- (2) Limitation on AFSI adjustments.
- (3) AFSI adjustments for taxable years beginning before January 1, 2023.
- (i) In general.
- (ii) Exception for AFSI adjustments that arise from transactions or events that occur in taxable years ending on or before December 31, 2019.
- (4) Redetermination of FSI gains and losses.
- (5) Tax consolidated groups.
- (6) CAMT entities that own disregarded entities.
- (e) Rules for translating AFSI to U.S. dollars.
- (f) Entity classification and treatment.
- (1) Entity classification.
- (2) Treatment of an entity as domestic or foreign.
- (g) Substantiation requirement.
- (1) In general.
- (2) Other CAMT entity recordkeeping requirements.
- (3) Applicable corporation determination record keeping requirements.
- (h) Reporting requirement.
- (1) Applicable corporations.
- (2) Applicable corporation determination reporting requirements.
- (3) Other reporting required for CAMT entities.
- (i) Special rules for reporting distributive shares of AFSI and application of subchapter K.
- (ii) Other reporting requirements.
- (i) Applicability date.

§ 1.56A–2 Definition of applicable financial statement (AFS) and AFS priority rules.

- (a) Overview.
- (b) Definition of applicable financial statement.

- (c) General financial statement priority.
 - (1) GAAP statements.
 - (2) IFRS statements.
 - (3) Financial statements prepared in accordance with other generally accepted accounting standards.
 - (4) Other government and regulatory statements.
 - (5) Unaudited external statements.
 - (6) Return.
 - (d) Certified financial statement.
 - (e) Restatements.
 - (f) Annual and periodic financial statements.
 - (g) AFS priority rules for consolidated financial statements.
 - (1) In general.
 - (2) Exceptions to use of separate AFS.
 - (i) Tax consolidated group member has only one consolidated financial statement that contains the financial results of all members of the tax consolidated group.
 - (ii) Tax consolidated group member has more than one consolidated financial statement that contains the financial results of all members of the tax consolidated group.
 - (iii) Tax consolidated group member has only one consolidated financial statement that contains its financial results and the financial results of some, but not all, members of the tax consolidated group.
 - (iv) Tax consolidated group member has more than one consolidated financial statement that contains its financial results and the financial results of some, but not all, members of the tax consolidated group.
 - (v) Members of an FPMG.
 - (h) Disregarded entities or branches.
 - (i) Examples.
 - (1) Example 1: No substantial non-tax purpose.
 - (2) Example 2: Substantial non-tax purpose.
 - (j) Applicability date.
- #### **§ 1.56A–3 AFSI adjustments for AFS years and taxable year differences.**
- (a) Overview.
 - (b) AFSI adjustment for mismatched years.
 - (1) In general.
 - (2) Examples.
 - (i) Example 1: Calendar-year taxpayer with fiscal annual financial accounting period.
 - (ii) Example 2: Fiscal year taxpayer with calendar-year financial accounting period.
 - (c) Applicability date.
- #### **§ 1.56A–4 AFSI adjustments and basis determinations with respect to foreign corporations.**
- (a) Overview.
 - (b) Definitions.
 - (1) Covered asset transaction.
 - (2) Section 338(g) transaction.
 - (3) Transfer.
 - (c) Adjustments to AFSI.
 - (1) Adjustments with respect to stock of a foreign corporation.
 - (2) Adjustments with respect to covered asset transactions.
 - (3) Adjustments with respect to section 338(g) transactions.
 - (4) Adjustments with respect to purchase accounting and push down accounting.
 - (d) Certain rules for determining CAMT basis.
 - (1) Covered asset transactions.

- (2) Section 338(g) transaction.
- (3) Transfers of stock of a foreign corporation involving a partnership.
- (4) Purchase accounting and push down accounting.
- (5) Stock of a foreign corporation.
- (e) Stock in a foreign corporation owned by a partnership.
- (f) AFSI adjustments when basis in foreign stock is determined under section 358.
 - (1) In general.
 - (i) Principal purpose rule.
 - (ii) Two-year rule.
 - (2) Hypothetical CAMT basis.
 - (g) AFSI adjustments when certain foreign stock is distributed by a partnership.
 - (1) In general.
 - (2) Related CAMT entity.
 - (h) Examples.
 - (1) Example 1: Dividend received from a foreign corporation.
 - (2) Example 2: Stock of a foreign corporation owned by a partnership.
 - (3) Example 3: Sale of stock of a foreign corporation.
 - (4) Example 4: Foreign corporation reported on equity method.
 - (5) Example 5: Section 351 transfer.
 - (6) Example 6: Section 351 transfer with boot.
 - (7) Example 7: Transfer subject to section 367(a).
 - (8) Example 8: Inbound liquidation subject to section 367(b).
 - (i) Applicability date.
 - (1) In general.
 - (2) Rule for transfers.

§ 1.56A-5 AFSI adjustments to partner's distributive share of partnership AFSI.

- (a) Overview.
- (b) In general.
- (c) Applicable method.
- (d) FSI amounts with respect to a partnership investment that are not disregarded under paragraph (c)(1) of this section.
 - (e) Distributive share amount.
 - (1) In general.
 - (2) Computing the distributive share percentage.
 - (3) Computing the modified FSI of the partnership.
 - (4) AFSI items that are separately stated.
 - (i) In general.
 - (ii) Adjustments to a partner's distributive share amount.
 - (iii) Adjustments to a partner's AFSI.
 - (5) Effect of equity method basis adjustments to a CAMT entity's FSI.
 - (6) Computing a partner's distributive share amount when the partnership's AFS is its Federal income tax return.
 - (i) In general.
 - (ii) Separately stated AFSI items.
 - (f) Computation in the case of tiered partnerships.
 - (g) Taxable year.
 - (h) Reporting and filing requirements for a CAMT entity that is a partner in a partnership.
 - (1) In general.
 - (2) Failure to obtain information.
 - (i) In general.
 - (ii) Required estimate.
 - (iii) Partnerships subject to subchapter C of chapter 63 of the Code.

- (i) Reporting and filing requirements for partnerships in which a CAMT entity is a partner.
 - (1) Requirement to file information with the IRS and to furnish information to a CAMT entity.
 - (2) Special rules for tiered structures.
 - (i) Requirement to request information.
 - (ii) Requirement to furnish and file information.
 - (iii) Timing of requesting information.
 - (3) Timing of furnishing information.
 - (i) In general.
 - (ii) Late requests.
 - (iii) Partnership not required to furnish information to a CAMT entity until it has notice of a request.
 - (4) Manner of furnishing information.
 - (5) Recordkeeping requirement.
 - (6) Penalties.
 - (j) Limitation on allowance of negative distributive share amount.
 - (1) In general.
 - (2) Carryover of suspended negative distributive share amount.
 - (3) CAMT basis in a partnership investment.
 - (k) Examples.
 - (1) Example 1: Adjustment of AFSI with respect to a partnership investment accounted for using the equity method.
 - (2) Example 2: Adjustment of AFSI with respect to a partnership investment accounted for using the hypothetical liquidation at book value under the equity method.
 - (3) Example 3: Adjustment of AFSI with respect to a partnership investment accounted for using the hypothetical liquidation at book value under the equity method and involving a loss on the investment.
 - (4) Example 4: Determining distributive share percentage for AFS non-partner.
 - (5) Example 5: Determining distributive share percentage for entity that treats itself as owning 100 percent of the equity in the partnership for AFS purposes because the CAMT entity treats all other partners in the partnership as AFS non-partners.
 - (6) Example 6: Adjustment of AFSI with respect to a partnership investment accounted for using the equity method in a tiered partnership structure.
 - (7) Example 7: Adjustment of AFSI with respect to a partnership investment accounted for using the equity method with a basis adjustment under section 743(b) related to section 168 property.
 - (8) Example 8: Adjustment of AFSI with respect to a partnership investment accounted for using the fair value method.
 - (9) Example 9: Computation of CAMT basis in partnership investment.
 - (10) Example 10: Limitation of negative distributive share amount in excess of CAMT basis.
 - (l) Applicability dates.
 - (1) In general.
 - (2) Exceptions
 - (i) Paragraph (d).
 - (ii) Coordination with certain other provisions during prior years.
 - (iii) Applicability dates for rules described in paragraph (l)(2)(ii).

§ 1.56A-6 AFSI adjustments with respect to controlled foreign corporations.

- (a) Overview.
- (b) Section 56A(c)(3) adjustment to AFSI.
 - (1) Aggregate adjustment.
 - (2) Tax reduction.
 - (3) Aggregate negative adjustment.
 - (4) Reduction for utilization of a CFC adjustment carryover.
 - (5) CFC adjustment carryover mechanics.
 - (6) Definition of CFC adjustment carryover.
 - (7) Tax consolidated groups.
 - (c) Computing the adjusted net income or loss of a controlled foreign corporation.
 - (1) In general.
 - (2) Adjustments relating to ownership of stock of a foreign corporation
 - (i) In general
 - (ii) Amounts relating to ownership of stock of a foreign corporation reflected in controlled foreign corporation's FSI.
 - (iii) Amounts relating to ownership of stock of a foreign corporation included for regular tax purposes.
 - (iv) Stock of a foreign corporation owned by a partnership.
 - (3) Controlled foreign corporations engaged in a U.S. trade or business.
 - (4) Foreign income tax expense.
 - (5) FSNOL carryovers.
 - (d) Definition of a CAMT excluded dividend.
 - (e) Examples.
 - (1) Example 1: Dividend received by a controlled foreign corporation from another foreign controlled corporation.
 - (2) Example 2: Sale of stock of lower-tier controlled foreign corporation.
 - (3) Example 3: Controlled foreign corporation held through a partnership.
 - (f) Applicability date.
 - (1) In general.
 - (2) Multiple United States shareholders with different taxable years.
 - (3) Transactions involving foreign stock.

§ 1.56A-7 AFSI adjustments with respect to effectively connected income.

- (a) Overview.
- (b) Adjusted financial statement income of foreign corporations.
- (c) Applicability date.

§ 1.56A-8 AFSI adjustments for certain Federal and foreign income taxes.

- (a) Overview.
- (b) AFSI adjustments for applicable income taxes.
 - (1) In general.
 - (2) Definition of applicable income taxes.
 - (c) Applicable corporations that choose not to credit foreign income taxes.
 - (d) Requirements for an applicable income tax to be considered taken into account in an AFS.
 - (e) Examples.
 - (1) Example 1.
 - (2) Example 2.
 - (3) Example 3.
 - (f) Applicability date.

§ 1.56A-9 AFSI adjustments for owners of disregarded entities or branches.

- (a) Overview.
- (b) Rules for determining the FSI and AFSI of a CAMT entity that owns a disregarded entity or branch.
 - (1) In general.
 - (2) Transactions disregarded.
 - (3) Certain disregarded entities or branches subject to the rules in § 1.56A-2(h).

- (c) Applicability date.
- § 1.56A-10 AFSI adjustments for cooperatives.**
- (a) Overview.
- (b) AFSI adjustments for cooperatives.
- (c) Applicability date.
- § 1.56A-11 AFSI adjustments for Alaska Native Corporations.**
- (a) Overview.
- (b) Definitions.
- (1) Alaska Native Corporation.
- (2) ANCSA property.
- (3) Specified payments.
- (c) Cost recovery and depletion.
- (d) Deduction for specified payments.
- (e) Applicability date.
- § 1.56A-12 AFSI adjustments with respect to certain tax credits.**
- (a) Overview.
- (b) Proceeds from certain credits excluded from AFSI.
- (c) Treatment of transferee taxpayer.
- (d) Recapture disregarded as expense in determining AFSI.
- (e) Applicability date.
- § 1.56A-13 AFSI adjustments for covered benefit plans.**
- (a) Overview.
- (b) Adjustments to AFSI for covered benefit plans.
- (c) Covered benefit plan.
- (1) General definition.
- (2) Qualified defined benefit pension plan.
- (3) Qualified foreign plan.
- (4) Other defined benefit plan.
- (d) Applicability date.
- § 1.56A-14 AFSI adjustments for tax-exempt entities.**
- (a) Overview.
- (b) AFSI adjustments for tax-exempt entities.
- (c) Applicability date.
- § 1.56A-15 AFSI adjustments for section 168 property.**
- (a) Overview.
- (b) Definitions.
- (1) Covered book inventoriable depreciation.
- (2) Covered book COGS depreciation.
- (3) Covered book depreciation expense.
- (4) Covered book expense.
- (5) Deductible tax depreciation.
- (6) Section 168 property.
- (7) Tax COGS depreciation.
- (8) Tax depreciation.
- (9) Tax depreciation section 481(a) adjustment.
- (10) Tax capitalization method change.
- (11) Tax capitalization method change AFSI adjustment.
- (c) Property to which section 168 applies.
- (1) In general.
- (2) Property to which section 168 applies includes only the portion of property for which a depreciation deduction is allowable under section 167.
- (3) Deductible expenditures are not property to which section 168 applies.
- (4) Property to which section 168 applies does not include property that is not depreciable under section 168 for regular tax purposes.
- (5) Effect of election out of additional first year depreciation.
- (6) Property placed in service in taxable years beginning before the CAMT effective date.
- (d) AFSI adjustments for depreciation and other amounts with respect to section 168 property.
- (1) In general.
- (2) Special rules for section 168 property held by a partnership.
- (i) In general.
- (ii) Basis adjustment under section 743(b) of the Code.
- (iii) Basis adjustment under section 734(b) of the Code.
- (iv) Basis adjustment under § 1.1017-1(g)(2).
- (3) Special rules for determining tax COGS depreciation and covered book COGS depreciation adjustments.
- (i) In general.
- (ii) Simplifying methods.
- (4) Adjustment period for tax capitalization method change AFSI adjustments.
- (5) Examples.
- (i) Example 1: Tax COGS depreciation and covered book COGS depreciation adjustments under FIFO method.
- (ii) Example 2: Tax COGS depreciation and covered book COGS depreciation adjustments under LIFO method.
- (iii) Example 3: Tax COGS depreciation and covered book COGS depreciation adjustments under LIFO method.
- (iv) Example 4: Net positive tax depreciation section 481(a) adjustment.
- (v) Example 5: Change in method of accounting to treat the replacement of a portion of section 168 property as a deductible repair.
- (vi) Example 6: Change in method of accounting to capitalize costs to section 168 property as required under section 263A.
- (vii) Example 7: Deductible tax depreciation under section 174.
- (viii) Example 8: Section 168 property treated as leased property for AFS purposes.
- (ix) Example 9: Basis adjustment under section 743(b) to section 168 property.
- (x) Example 10: Basis adjustment under section 734(b) to section 168 property.
- (e) AFSI adjustments upon disposition of section 168 property.
- (1) In general.
- (2) Adjustments to the AFS basis of section 168 property.
- (i) In general.
- (ii) Special rules regarding adjustments to the AFS basis of section 168 property.
- (A) Property placed in service prior to the effective date of CAMT.
- (B) Property acquired in certain transactions to which section 168(i)(7) applies.
- (C) Coordination with section 56A(c)(5).
- (D) Determination of CAMT basis of section 168 property following a change in method of accounting for depreciation or a tax capitalization method change.
- (E) Adjustments to the AFS basis of section 168 property include only the covered book amounts actually disregarded in determining AFSI.
- (3) Special rules for section 168 property disposed of by a partnership.
- (4) Treatment of amounts recognized in FSI upon the disposition of section 168 property.
- (5) Determining the appropriate asset.
- (6) Subsequent AFS dispositions.
- (7) Intercompany transactions.
- (8) Examples.
- (i) Example 1: Disposition of section 168 property.
- (ii) Example 2: Property acquired in a covered nonrecognition transaction.
- (iii) Example 3: Property acquired in a covered recognition transaction.
- (iv) Example 4: Property for which a tax credit was claimed.
- (v) Example 5: Disposition of property that was subject to a tax capitalization method change and is not section 168 property at time of disposition.
- (vi) Example 6: Disposition of property that was subject to a tax capitalization method change and is section 168 property at time of disposition.
- (vii) Example 7: Installment sale under section 453.
- (viii) Example 8: Like-kind exchange under section 1031.
- (ix) Example 9: Replacement property received in a like-kind exchange.
- (x) Example 10: Section 168 property disposed of by a partnership.
- (xi) Example 11: Section 168 property disposed of by a partnership with a section 743(b) basis adjustment in place.
- (f) Applicability date.
- § 1.56A-16 AFSI adjustments for qualified wireless spectrum property.**
- (a) Overview.
- (b) Definitions.
- (1) Covered book amortization expense.
- (2) Covered book wireless spectrum expense.
- (3) Deductible tax amortization.
- (4) Qualified wireless spectrum.
- (5) Tax amortization.
- (6) Tax amortization section 481(a) adjustment.
- (7) Tax capitalization method change for qualified wireless spectrum.
- (8) Tax capitalization method change AFSI adjustment for qualified wireless spectrum.
- (c) Qualified wireless spectrum.
- (1) In general.
- (2) Qualified wireless spectrum does not include wireless spectrum that is not depreciable under section 197 for regular tax purposes.
- (d) AFSI adjustments for amortization and other amounts with respect to qualified wireless spectrum.
- (1) In general.
- (2) Special rules for qualified wireless spectrum held by a partnership.
- (i) In general.
- (ii) Basis adjustment under section 743(b) of the Code.
- (iii) Basis adjustment under section 734(b) of the Code.
- (iv) Basis adjustment under § 1.1017-1(g)(2).
- (3) Adjustment period for tax capitalization method change AFSI adjustments for qualified wireless spectrum.
- (e) AFSI adjustments upon disposition of qualified wireless spectrum.
- (1) In general.
- (2) Adjustments to the AFS basis of qualified wireless spectrum.
- (i) In general.

(ii) Special rules regarding adjustments to the AFS basis of qualified wireless spectrum.

(A) Qualified wireless spectrum placed in service prior to the effective date of CAMT.

(B) Qualified wireless spectrum acquired in certain transactions to which section 197(f)(2) applies.

(C) Determination of CAMT basis of qualified wireless spectrum following a change in method of accounting for amortization or a tax capitalization method change for qualified wireless spectrum.

(D) Adjustments to the AFS basis of qualified wireless spectrum include only the covered book amounts actually disregarded in determining AFSI.

(3) Special rule for qualified wireless spectrum disposed of by a partnership.

(4) Treatment of amounts recognized in FSI upon the disposition of qualified wireless spectrum.

(5) Subsequent AFS dispositions.

(6) Intercompany transactions.

(7) Example.

(f) Applicability date.

§ 1.56A–17 AFSI adjustments to prevent certain duplications or omissions.

(a) Overview.

(b) In general.

(c) Change in accounting principle.

(1) In general.

(2) Accounting principle change amount.

(i) In general.

(ii) Change in AFS under paragraph (c)(5) of this section.

(3) Adjustment spread period rule.

(i) Duplications.

(ii) Omissions.

(iii) Short periods.

(4) Acceleration of accounting principle change amount.

(5) Use of different priority AFSs in consecutive taxable years.

(6) Examples.

(i) Example 1: Adjustment spread period: duplicated income spread over 2 years.

(ii) Example 2: Adjustment spread period: duplicated income spread over 10 years.

(iii) Example 3: Adjustment spread period: duplications expected over twenty-year period.

(d) Restatement of a prior year's AFS.

(1) In general.

(i) Adjustments to AFSI.

(ii) Further adjustments to AFSI.

(2) Exception for amended return.

(3) Reconciliation of retained earnings in AFS.

(4) Example.

(e) Adjustment for amounts disclosed in an auditor's opinion.

(1) In general.

(2) Further adjustments to AFSI.

(f) No adjustment for timing differences.

(g) Applicability date.

§ 1.56A–18 AFSI, CAMT basis, and CAMT retained earnings resulting from certain corporate transactions.

(a) Overview.

(1) Scope.

(2) Exceptions.

(3) Cross-references.

(i) Corporate reorganizations and organizations.

(ii) Transactions within a tax consolidated group.

(iii) Deferral of loss from disposition between certain members of a CAMT-related group.

(iv) Certain arrangements disregarded or recharacterized.

(v) Clear reflection of income requirement.

(vi) AFSI and CAMT attribute rules

regarding troubled corporations.

(vii) Financial statement net operating losses.

(viii) Minimum tax credits.

(ix) AFSI history.

(x) Certain stock owned by insurance companies.

(b) Definitions.

(1) Acquiror corporation.

(i) Covered nonrecognition transaction.

(ii) Covered recognition transaction.

(2) B reorganization.

(3) CAMT current earnings.

(4) CAMT earnings.

(5) CAMT retained earnings.

(i) In general.

(ii) Timing of determination.

(6) Component transaction.

(7) Controlled corporation.

(i) Covered nonrecognition transaction.

(ii) Covered recognition transaction.

(8) Corporate dissolution.

(9) Covered nonrecognition transaction.

(10) Covered recognition transaction.

(11) Covered transaction.

(12) Distributing corporation.

(i) Covered nonrecognition transaction.

(ii) Covered recognition transaction.

(13) Distributing corporation shareholder or security holder.

(14) Distribution recipient.

(15) E reorganization.

(16) F reorganization.

(17) Liquidating corporation.

(i) Covered nonrecognition transaction.

(ii) Covered recognition transaction.

(18) Liquidation recipient.

(19) Party.

(20) Property.

(21) Qualified property.

(22) Recapitalization corporation.

(i) Covered nonrecognition transaction.

(ii) Covered recognition transaction.

(23) Recapitalizing corporation shareholder or security holder.

(24) Resulting corporation.

(i) Covered nonrecognition transaction.

(ii) Covered recognition transaction.

(25) Section 351 exchange.

(26) Section 351 transferee.

(i) Covered nonrecognition transaction.

(ii) Covered recognition transaction.

(27) Section 351 transferor.

(i) Covered nonrecognition transaction.

(ii) Covered recognition transaction.

(28) Section 355 transaction.

(29) Target corporation.

(i) Covered nonrecognition transaction.

(ii) Covered recognition transaction.

(30) Target corporation shareholder or security holder.

(31) Transferor corporation.

(32) Transferor corporation shareholder or security holder.

(c) Operating rules for this section and § 1.56A–19.

(1) Treatment of stock.

(2) FSI resulting from stock investments.

(i) In general.

(ii) Exceptions.

(iii) Characterization of FSI resulting from stock investments.

(3) Purchase accounting and push down accounting for stock acquisitions.

(4) Purchase accounting and push down accounting for asset acquisitions.

(5) Determination of CAMT consequences of component transactions.

(i) Generally separate treatment.

(ii) Effect of other component transactions.

(6) CAMT stock basis transition rule.

(7) CAMT retained earnings following certain cross border transactions.

(i) Inbound liquidations and reorganizations.

(ii) Section 355 distributions.

(8) Examples.

(i) Example 1: Treatment of stock.

(ii) Example 2: FSI resulting from stock investments marked to market.

(iii) Example 3: FSI resulting from stock investments due to equity method annual inclusions.

(iv) Example 4: Remeasurement gain.

(v) Example 5: Purchase accounting and push down accounting.

(vi) Example 6: Identification of component transactions.

(vii) Example 7: Effect of component transaction on other component transactions.

(viii) Example 8: CAMT stock basis transition rule.

(ix) Example 9: CAMT retained earnings.

(d) CAMT consequences of certain non-liquidating stock and property distributions.

(1) Distributing corporation in covered nonrecognition transaction.

(2) Distributing corporation in covered recognition transaction.

(3) Section 355(c) distributions in covered recognition transactions.

(4) Distribution recipient.

(5) Examples.

(i) Example 1: Stock distribution.

(ii) Example 2: Property distribution.

(iii) Example 3: Redemption.

(iv) Example 4: Dividends received deduction.

(v) Example 5: Extraordinary dividend.

(e) Section 336(e) elections.

(1) Distributing corporation with regard to dispositions described in section 355(d)(2) or (e)(2).

(2) Target corporation with regard to dispositions described in section 355(d)(2) or (e)(2).

(3) Distributing corporation shareholder or security holder with regard to dispositions described in section 355(d)(2) or (e)(2).

(4) Distributing corporation with regard to distributions not described in section 355(d)(2) or (e)(2) for which a section 336(e) election is made.

(5) Target corporation with regard to distributions not described in section 355(d)(2) or (e)(2).

(6) New target corporation with regard to distributions not described in section 355(d)(2) or (e)(2).

(7) Example.

(f) CAMT consequences of certain liquidating distributions.

(1) Liquidating corporation in covered nonrecognition transaction.

(2) Liquidating corporation in covered recognition transaction.

(3) Component transactions of a liquidation consisting of covered recognition and covered nonrecognition transactions.

(4) Consequences to liquidation recipient in covered nonrecognition transaction.

(5) Consequences to liquidation recipient in covered recognition transaction.

(6) Examples.

(i) Example 1: Nonrecognition subsidiary liquidation.

(ii) Example 2: Component transactions.

(g) CAMT consequences of stock sales.

(1) Target corporation shareholder.

(i) In general.

(ii) Stock sales for which a section 336(e) or 338(h)(10) election is made.

(2) Target corporation.

(i) In general.

(ii) Stock sales for which a section 336(e), 338(g), or 338(h)(10) election is made.

(3) Acquiror corporation.

(4) New target corporation.

(5) Section 304 transactions.

(6) Examples.

(i) Example 1: Acquisition of stock of a target corporation.

(ii) Example 2: Covered recognition transaction stock sale: section 338(h)(10) election.

(iii) Example 3: Covered recognition transaction stock sale: section 336(e) election.

(h) CAMT consequences of asset sales.

(1) Target corporation.

(2) Acquiror corporation.

(3) Example.

(i) Applicability date.

§ 1.56A-19 AFSI, CAMT basis and CAMT retained earnings resulting from certain corporate reorganizations and organizations.

(a) Overview.

(b) CAMT consequences of B reorganizations.

(1) Target corporation shareholder or security holder in covered nonrecognition transaction.

(2) Target corporation shareholder or security holder in covered recognition transaction.

(3) Acquiror corporation in covered nonrecognition transaction.

(4) Acquiror corporation in covered recognition transaction.

(i) Failure to qualify as B reorganization.

(ii) Failure to qualify under § 1.1032-2(b).

(5) Acquiror corporation parent in covered nonrecognition transaction.

(6) Acquiror corporation parent in covered recognition transaction.

(i) Use of old and cold parent stock with qualifying B reorganization.

(ii) Use of parent stock with transaction that does not qualify as a B reorganization.

(7) Examples.

(i) Example 1: Covered nonrecognition transaction.

(ii) Example 2: Covered recognition transaction.

(c) CAMT consequences of certain acquisitive reorganizations.

(1) Target corporation in a covered nonrecognition transaction.

(i) Reorganization exchanges.

(ii) Section 361(c) distributions.

(2) Target corporation in covered recognition transaction.

(3) Acquiror corporation qualification for covered nonrecognition transaction.

(4) Acquiror corporation in covered recognition transaction.

(i) Failure to qualify as an asset reorganization.

(ii) Failure to qualify under § 1.1032-2(b).

(5) Acquiror corporation parent in covered nonrecognition transaction.

(6) Acquiror corporation parent in covered recognition transaction.

(i) Use of old and cold parent stock with qualifying acquisitive reorganization.

(ii) Use of parent stock in a transaction that does not qualify as an acquisitive reorganization.

(7) Target corporation shareholder or security holder in covered nonrecognition transaction.

(8) Examples.

(i) Example 1: Covered nonrecognition transaction.

(ii) Example 2: Covered nonrecognition transaction with nonqualifying consideration.

(d) CAMT consequences of section 355 transactions.

(1) Distributing corporation in covered nonrecognition transactions.

(i) Controlled contribution.

(ii) Section 361(c) distributions and transfers.

(iii) Section 355(c) distributions.

(2) Distributing corporation in covered recognition transactions.

(i) Controlled contribution.

(ii) Section 361(c) distribution.

(3) Distributing corporation shareholder or security holder.

(4) Controlled corporation in covered nonrecognition transaction.

(5) Controlled corporation in covered recognition transaction.

(i) Qualification.

(ii) CAMT consequences.

(6) Examples.

(i) Example 1: Covered nonrecognition transaction to distributing corporation and controlled corporation.

(ii) Example 2: Distributing corporation boot-purge exception.

(iii) Example 3: Covered recognition transaction to distributing corporation.

(e) CAMT consequences of recapitalizations.

(1) Recapitalizing corporation in covered nonrecognition transaction.

(2) Component transactions consisting of covered nonrecognition transaction and corporate distributions.

(3) Recapitalizing corporation shareholder or security holder.

(4) Examples.

(i) Example 1: Covered nonrecognition transaction.

(ii) Example 2: E Reorganization and corporate distribution.

(f) CAMT consequences of F reorganizations.

(1) Transferor corporation in covered nonrecognition transaction.

(2) Component transactions consisting of covered nonrecognition transaction and corporate distributions.

(3) Resulting corporation.

(4) Transferor corporation shareholder or security holder.

(5) Examples.

(i) Example 1: Covered nonrecognition transaction.

(ii) Example 2: Component transactions.

(g) CAMT consequences of section 351 exchanges.

(1) Component transactions consisting of covered recognition and covered nonrecognition transactions.

(2) Section 351 transferor in covered nonrecognition transaction.

(3) Section 351 transferor in covered recognition transaction.

(4) Section 351 transferee in covered nonrecognition transaction.

(i) Section 351 transferee's AFSI.

(ii) Section 351 transferee's CAMT basis in property.

(iii) Special CAMT basis rule.

(5) Section 351 transferee in covered recognition transaction.

(i) Section 351 transferee's AFSI.

(ii) Section 351 transferee's CAMT basis in property.

(iii) Special CAMT basis rule.

(iv) Section 351 transferee's CAMT retained earnings.

(6) Examples.

(i) Example 1: Covered nonrecognition transaction.

(ii) Example 2: Covered recognition transaction.

(iii) Example 3: Component transactions.

(iv) Example 4: Covered recognition transaction.

(h) Applicability date.

§ 1.56A-20 AFSI adjustments to apply certain subchapter K principles.

(a) Overview.

(1) In general.

(2) Scope of rules.

(b) General operating rules.

(c) Contributions of property.

(1) In general.

(2) Contribution of property with financial accounting built-in gain or loss.

(i) Deferred sale approach.

(ii) Inclusion of deferred sale gain or loss upon a decrease in contributor's distributive share percentage.

(iii) Inclusion of deferred sale gain or loss upon disposition of deferred sale property.

(iv) Inclusion of deferred sale gain upon an acceleration event described in § 1.721(c)-4(b).

(v) Tiered partnerships.

(3) Basis rules.

(i) Basis of property contributed to partnership.

(ii) Basis of partnership investment for contributed property.

(d) Distributions of property.

(1) Gain or loss recognized by partnership.

(i) In general.

(ii) Deferred distribution gain or loss approach.

(iii) Acceleration of deferred distribution gain or loss.

(2) Partner inclusions of deferred distribution gain or loss.

(i) Partners' allocable shares of deferred distribution gain or loss.

(ii) Acceleration of a partner's allocable share of deferred distribution gain or loss.

(iii) FSI resulting to a partner from a distribution of property or money.

- (iv) Tiered partnerships.
- (3) Basis rules.
- (i) Basis of distributed property.
- (ii) Basis of partner's investment in partnership.
- (e) Liability allocation rules.
- (1) General rule.
- (2) Application of rules to contributions and distributions.
- (f) Proportionate deferred sale approach for partial nonrecognition transactions under sections 721(a) and 731(b).
- (g) Maintenance of books and records and reporting requirements.
- (1) Information to be included in books and records.
- (2) Reporting requirements.
- (i) In general.
- (ii) Form of reporting.
- (h) Examples.
- (1) Example 1: Contribution of property to an existing partnership with no deferred sale gain or loss.
- (2) Example 2: Contribution of property to a new partnership with deferred sale gain.
- (3) Example 3: Acceleration of deferred sale gain upon disposition of a portion of CAMT entity's partnership investment.
- (4) Example 4: Partnership disposition of deferred sale property.
- (5) Example 5: Part disguised sale of property to partnership and part deferred sale gain.
- (6) Example 6: Contribution of encumbered property.
- (7) Example 7: Current distribution of section 168 property to partner.
- (8) Example 8: Acceleration of gain due to partnership dissolution.
- (9) Example 9: Acceleration of gain due to liquidation of partner's interest.
- (i) Applicability date.

§ 1.56A-21 AFSI adjustments for troubled companies.

- (a) Overview.
- (1) Scope.
- (2) AFS consequences resulting from disposition of property.
- (3) AFS consequences resulting from certain covered nonrecognition transactions.
- (4) Disregarded entities.
- (b) Definitions.
- (1) CAMT attribute.
- (2) Covered property.
- (3) Discharge of indebtedness.
- (i) In general.
- (ii) Adjustments to AFS basis.
- (iii) Scope of discharge of indebtedness.
- (4) Federal financial assistance.
- (5) Indebtedness.
- (6) Insolvent.
- (i) In general.
- (ii) Timing of determination.
- (7) Title 11 case.
- (c) Discharge of indebtedness income.
- (1) AFSI in title 11 cases.
- (2) AFSI in cases of insolvency.
- (3) Disregarded entities.
- (i) In general.
- (ii) Title 11 cases.
- (iii) Insolvency.
- (4) Attribute reduction.
- (i) Overview.
- (ii) Required attribute reduction amount.
- (iii) Attribute reduction.
- (iv) Timing and allocation of reductions.

- (v) Order of reductions.
- (5) Amount of attribute reduction.
- (i) CAMT basis, FSNOLs, and CFC adjustment carryovers.
- (ii) CAMT basis reduction limitation.
- (iii) Election under section 108(b)(5).
- (iv) CAMT foreign tax credits.
- (6) Examples.
- (i) Example 1: Bankruptcy emergence in a covered nonrecognition transaction.
- (ii) Example 2: Bankruptcy emergence in a covered recognition transaction.
- (iii) Example 3: Attribute reduction.
- (iv) Example 4: Excluded income from the discharge of indebtedness of insolvent taxpayer.
- (d) Fresh start accounting for emergence from bankruptcy.
- (1) Scope.
- (2) AFSI consequences resulting from emergence from bankruptcy.
- (i) General rule.
- (ii) Discharge of indebtedness.
- (iii) Covered transactions.
- (3) AFSI consequences of title 11 cases.
- (i) Covered recognition transactions.
- (ii) Covered nonrecognition transactions.
- (4) Discharge of indebtedness.
- (5) Disregarded entities.
- (6) Example.
- (e) Application to investments in partnerships.
- (1) Scope.
- (2) Discharge of indebtedness income of a partnership.
- (i) Calculation of partnership's AFSI.
- (ii) Exclusion from AFSI and attribute reduction at the partner level.
- (iii) Discharge of indebtedness income separately stated to partners.
- (3) Inclusion of partnership liabilities for purposes of determining insolvency.
- (f) Federal financial assistance.
- (1) In general.
- (2) Example.
- (g) Applicability date.

§ 1.56A-22 AFSI adjustments for certain insurance companies and other specified industries.

- (a) Overview.
- (b) Definitions.
- (1) Covered insurance company.
- (2) Covered investment pool.
- (3) Covered obligations.
- (4) Covered reinsurance agreement.
- (5) Covered variable contract.
- (6) Withheld assets.
- (7) Withheld assets payable.
- (8) Withheld assets receivable.
- (c) AFSI adjustments for covered variable contracts.
- (1) Non-application of certain provisions.
- (i) In general.
- (ii) Requirements.
- (2) Example.
- (d) AFSI adjustments for covered reinsurance agreements.
- (1) In general.
- (i) Ceding company.
- (ii) Reinsurer.
- (2) Effect of retrocession agreement.
- (3) Fair value accounting.
- (4) Examples.
- (i) Example 1: Covered reinsurance transaction.
- (ii) Example 2: Fair value accounting.

- (e) Use of fresh start basis.
 - (1) Federal Home Loan Mortgage Corporation.
 - (2) Existing Blue Cross or Blue Shield organizations.
 - (3) Certain pension business entities.
 - (f) Applicability date.
- § 1.56A-23 AFSI adjustments for financial statement net operating losses and other attributes.**
- (a) Overview.
 - (b) Definition of financial statement net operating loss.
 - (c) AFSI adjustments for the utilization of an FSNOL.
 - (d) FSNOL carryovers.
 - (1) In general.
 - (2) Example.
 - (e) Limitation on use of FSNOL carryovers following acquisitions.
 - (1) In general.
 - (i) Successor after stock acquisitions.
 - (ii) Tax consolidated groups.
 - (2) Successor transaction.
 - (3) Limitation.
 - (i) In general.
 - (ii) Separately tracked income.
 - (iii) Separation of predecessor business from related FSNOLs.
 - (iv) Integration of predecessor and acquirer businesses.
 - (v) Successor transaction involving multiple separately tracked businesses.
 - (4) Examples.
 - (i) Example 1: Acquisition of Target stock followed by contribution of assets.
 - (ii) Example 2: Acquisition of Target assets.
 - (iii) Example 3: Acquisition of multiple lines of business.
 - (iv) Example 4: Negative tracked register
 - (v) Example 5: Acquisition of subgroup
 - (vi) Example 6: Asset transfer to affiliate that is not a member of the transferor's tax consolidated group.
 - (f) Limitation of use of built-in losses following acquisitions.
 - (1) Scope.
 - (2) Operating rules.
 - (i) General rule.
 - (ii) Asset acquisition.
 - (iii) Association of built-in loss with separately tracked acquired business.
 - (iv) Ordering rule.
 - (v) Carryover of built-in loss not allowed in year of recognition.
 - (3) Built-in losses.
 - (i) Definition.
 - (ii) Timing rule.
 - (4) CAMT net unrealized built-in loss.
 - (i) Successor transaction results in a section 382 ownership change.
 - (ii) Successor transaction does not result in a section 382 ownership change.
 - (iii) Inapplicability of NUBIL limitation.
 - (iv) Successor transaction treated as ownership change.
 - (v) No consideration in excess of fair market value.
 - (5) Example: Determination of recognized built-in loss.
 - (g) Applicability date.
- § 1.56A-24 AFSI adjustments for hedging transactions and hedged items.**
- (a) Overview.
 - (b) Definitions.

- (1) AFSI hedge.
 - (i) In general.
 - (ii) Exception for certain insurance hedges.
- (2) AFSI subsequent adjustment date.
 - (i) In general.
 - (ii) Certain corporate and partnership transactions.
 - (A) Covered nonrecognition transactions.
 - (B) Covered recognition transactions and certain partnership transactions.
- (3) Fair value measurement adjustment.
- (4) Hedged item.
- (5) Net investment hedge.
- (c) Fair value measurement adjustments for an AFSI hedge or a hedged item.
 - (1) Scope.
 - (2) Treatment of fair value measurement adjustments for certain AFSI hedges or hedged items.
 - (3) Application to prior taxable years.
 - (d) Net investment hedge adjustments.
 - (e) Operative rules.
- (1) Inclusion of certain taxable amounts in AFSI.
 - (2) Subsequent adjustments for AFSI hedges and hedged items.
 - (3) Subsequent adjustments for net investment hedges.
 - (f) Examples.
 - (1) Example 1: Fair value measurement adjustment for an AFSI hedge.
 - (2) Example 2: AFSI hedge marked to market for regular tax purposes.
 - (3) Example 3: Fair value measurement adjustment for AFSI hedge and hedged item.
 - (4) Example 4: Net investment hedge marked to market.
 - (5) Example 5: Inclusion of original issue discount (OID) in AFSI.
 - (6) Example 6: Subsequent adjustments for AFSI hedge.
 - (7) Example 7: Subsequent adjustments for AFSI hedge with negative carrying value.
 - (g) Applicability date.

§ 1.56A–25 AFSI adjustments for mortgage servicing income.

- (a) Overview.
- (b) In general.
- (c) Applicability date.

§ 1.56A–26 AFSI adjustments for certain related party transactions and CAMT avoidance transactions.

- (a) Overview.
- (b) Deferral of loss from dispositions between or among certain related entities.
 - (1) CAMT-related group.
 - (2) Required deferral.
 - (c) General anti-abuse rule.
 - (d) Clear reflection of income requirement.
 - (1) In general.
 - (2) Appropriate adjustments.
 - (3) Example: Transfer accounted for at historical cost for accounting purposes.
 - (e) Applicability date.

§ 1.56A–27 AFSI adjustments for foreign governments.

- (a) Overview.
- (b) In general.
- (c) Applicability date.

§ 1.56A–1 Definitions and general rules for determining adjusted financial statement income.

(a) *Overview*—(1) *In general.* This section provides general definitions that

apply for purposes of the regulations provided in this section and §§ 1.56A–2 through 1.56A–27, 1.59–2 through 1.59–4, 1.1502–53, and 1.1502–56A and provides general rules under section 56A of the Code for determining financial statement income (FSI) and adjusted financial statement income (AFSI), which are relevant for determining whether, and to what extent, a corporation is subject to the corporate alternative minimum tax (CAMT) under section 55(a) of the Code. Paragraph (b) of this section provides general definitions that apply for purposes of this section and §§ 1.56A–2 through 1.56A–27 and 1.1502–56A (collectively, the section 56A regulations), as well as §§ 1.59–2 through 1.59–4 and 1.1502–53. Paragraph (c) of this section provides general rules for determining an entity's FSI, including for situations in which the financial results of an entity are consolidated with the financial results of one or more other entities in a consolidated financial statement. Paragraph (d) of this section provides general rules for determining an entity's AFSI. Paragraph (e) of this section provides rules for translating AFSI that is denominated in a currency other than the U.S. dollar. Paragraph (f) of this section provides rules for determining the classification of an entity for purposes of the section 56A regulations. Paragraph (g) of this section provides general substantiation requirements. Paragraph (h) of this section provides general reporting requirements. Paragraph (i) of this section provides the applicability date of this section.

(2) *Scope of the section 56A regulations.* The section 56A regulations apply to determine a CAMT entity's AFSI, modified FSI, or adjusted net income or loss, as applicable, for purposes of sections 55 through 59 of the Code. The section 56A regulations apply to any CAMT entity whose AFSI, modified FSI, or adjusted net income or loss, as applicable, is relevant for determining—

(i) Whether the CAMT entity or any other CAMT entity is an applicable corporation under section 59(k); or

(ii) The tentative minimum tax under section 55(b)(2)(A) of the CAMT entity or any other CAMT entity.

(b) *Definitions.* For purposes of the section 56A regulations:

(1) *Adjusted financial statement income.* The term *adjusted financial statement income* (AFSI) means:

(i) With respect to a corporate alternative minimum tax (CAMT) entity whose applicable financial statement (AFS) for the taxable year is not described in § 1.56A–2(c)(6), the CAMT

entity's FSI for the taxable year, adjusted as provided in the section 56A regulations. The IRS may publish IRB guidance that permits CAMT entities to make other AFSI adjustments.

(ii) With respect to a CAMT entity whose AFS for the taxable year is described in § 1.56A–2(c)(6)—

(A) For a CAMT entity that is a controlled foreign corporation, the amount described in paragraph (b)(20)(ii) of this section for the taxable year, adjusted as provided in the section 56A regulations;

(B) For a CAMT entity that is a partnership, the partnership's items of income, gain, loss, and deduction that are reflected on the partnership's return of partnership income for the taxable year and taken into account in determining the taxable income of each partner (without adjustment); and

(C) For a CAMT entity other than a controlled foreign corporation or a partnership, the CAMT entity's taxable income for the taxable year (without adjustment).

(2) *Adjusted net income or loss.* The term *adjusted net income or loss* means, with respect to a controlled foreign corporation for a taxable year, the amount provided in § 1.56A–6(c).

(3) *AFS basis.* The term *AFS basis* means the carrying value of an item for AFS purposes. See paragraph (c)(4) of this section for rules that apply to determine a CAMT entity's AFS basis in an item if the CAMT entity's AFS is a consolidated financial statement.

(4) *AFS consolidation entries.* The term *AFS consolidation entries* means the financial accounting journal entries that are made in preparing a consolidated financial statement for a financial statement group in order to present the financial results of that financial statement group as though all members of the financial statement group were a single economic entity, including journal entries—

(i) To eliminate the effect of transactions and investments between members of the financial statement group;

(ii) To report amounts that are not recorded in the separate books and records of one or more members of the financial statement group; and

(iii) To correct or otherwise adjust amounts that are reported in the separate books and records of one or more members of the financial statement group.

(5) *Applicable corporation.* The term *applicable corporation* has the meaning provided in § 1.59–2(b)(1).

(6) *Applicable financial statement.* The term *applicable financial statement*

(AFS) has the meaning provided in § 1.56A–2(b).

(7) *CAMT basis*. The term *CAMT basis* means the basis of an item for purposes of determining AFSI. Except as otherwise provided in the section 56A regulations (for example, §§ 1.56A–4(d)(5), 1.56A–15(e) and 1.56A–16(e)), the CAMT basis of an item is the AFS basis of the item, adjusted as provided in the section 56A regulations. See paragraph (d)(3) of this section for rules for determining the AFS basis of an item that arose in a taxable year beginning before January 1, 2023.

(8) *CAMT entity*. The term *CAMT entity* means any entity identified in section 7701 of the Code and the regulations under section 7701 other than a disregarded entity.

(9) *CAMT foreign tax credit*. The term *CAMT foreign tax credit* means the credit allowed to an applicable corporation under section 59(l), as computed under § 1.59–4(c).

(10) *CFC adjustment carryover*. The term *CFC adjustment carryover* has the meaning provided in § 1.56A–6(b)(6).

(11) *Change in accounting principle*. The term *change in accounting principle* means a change from using one accepted accounting principle or practice to another accepted accounting principle or practice for AFS purposes if there are two or more accepted accounting principles or practices that apply or if the original accepted accounting principle or practice is no longer accepted. A change in the method of applying an accepted accounting principle or practice for AFS purposes also is considered a change in accounting principle. See, for example, FASB Accounting Standards Codification (ASC) 250–10–20.

(12) *Consolidated financial statement*. The term *consolidated financial statement* means a financial statement that presents the assets, liabilities, equity, income, and expenses of more than one CAMT entity as those of a single economic entity.

(13) *Controlled foreign corporation*. The term *controlled foreign corporation* has the meaning provided under section 957 of the Code or, if applicable, section 953(c)(1)(B) of the Code.

(14) *Disregarded entity*. The term *disregarded entity* means an entity that is disregarded as separate from its owner under § 301.7701–3 of this chapter, a qualified subchapter S subsidiary within the meaning of section 1361(b)(3)(B) of the Code, and a qualified real estate investment trust subsidiary within the meaning of section 856(i)(2) of the Code.

(15) *Equity method*. The term *equity method* means the practice, under

financial accounting principles, of a CAMT entity (investor) initially recording its investment in the equity of another CAMT entity (investee) as an asset in the investor's AFS, generally, at cost and then adjusting the AFS basis of such asset by the investor's share of the earnings or losses of the investee for periods following the date of investment. See, for example, ASC 323. The equity method includes the hypothetical liquidation at book value (HLBV) method under which the investor uses a balance sheet approach to calculate the investor's share of investee earnings or losses based on the change in the investor's claim on the net assets of the investee.

(16) *Equity method basis adjustment*. The term *equity method basis adjustment* means the practice, under financial accounting principles, of a CAMT entity (investor) adjusting its AFS basis in an investment in the equity of another CAMT entity (investee) accounted for under the equity method to reflect amortization of the difference (or a portion of the difference) between the investor's proportionate share of the fair value of the investee's net assets and the investor's proportionate share of the carrying value of the investee's net assets as of the date investor acquired the investment. See, for example, ASC 323–10–35–13.

(17) *Fair value method*. The term *fair value method* means the practice, under financial accounting principles, of a CAMT entity (investor) recording its investment in the equity of another CAMT entity (investee) as an asset in the investor's AFS and adjusting the AFS basis of such asset as of each reporting date by reference to the investment's fair value (or by reference to the original cost of the investment, reduced for any impairment, if the fair value is not readily determinable). See, for example, ASC 321–10.

(18) *Federal income taxes*. The term *Federal income taxes* means taxes imposed by subtitle A of the Code (subtitle A). Federal income taxes include amounts allowed as credits against taxes imposed by subtitle A, including credit amounts that are generated by a partnership and passed through to a partner.

(19) *Financial statement group*. The term *financial statement group* means a group of CAMT entities whose financial results are consolidated and reported on the same consolidated financial statement.

(20) *Financial statement income*. The term *financial statement income* (FSI) means:

(i) With respect to a CAMT entity other than a CAMT entity described in

paragraph (b)(20)(ii) of this section for a taxable year, the net income or loss of the CAMT entity set forth on the income statement (sometimes referred to as the statement of earnings, the statement of operations, or the statement of profit and loss) included in the CAMT entity's AFS for the taxable year. FSI includes all the CAMT entity's items of income, expense, gain, and loss reflected in the net income or loss set forth on the income statement for the taxable year, including nonrecurring items and net income or loss from discontinued operations. FSI does not include amounts reflected elsewhere in the CAMT entity's AFS, including in equity accounts such as retained earnings and other comprehensive income (OCI). See paragraph (c) of this section for rules that apply to determine FSI of a CAMT entity.

(ii) With respect to a CAMT entity that is a controlled foreign corporation and whose AFS is the tax return under § 1.56A–2(c)(6), the amount determined under § 1.964–1(a)(1) for a taxable year without adjustment for § 1.964–1(a)(1)(iii).

(21) *Financial statement net operating loss*. The term *financial statement net operating loss* (FSNOL) has the meaning provided in § 1.56A–23(b).

(22) *For regular tax purposes*. The term *for regular tax purposes* means for purposes of computing a CAMT entity's regular tax liability, as defined under section 26(b) of the Code, or, if the CAMT entity is a pass-through entity or a controlled foreign corporation, the regular tax liability of a direct or indirect owner of the CAMT entity, as applicable.

(23) *Foreign income tax*. The term *foreign income tax* has the meaning provided in § 1.901–2.

(24) *FPMG*. The term *FPMG* (foreign-parented multinational group) has the meaning provided in § 1.59–3(c).

(25) *FPMG common parent*. The term *FPMG common parent* has the meaning provided in § 1.59–3(b)(9).

(26) *FSNOL carryover*. The term *FSNOL carryover* has the meaning provided in § 1.56A–23(d).

(27) *GAAP*. The term *GAAP* means United States Generally Accepted Accounting Principles, which are a common set of accounting rules, standards, and procedures that are generally issued by the Financial Accounting Standards Board (FASB) and, where applicable, the United States Securities and Exchange Commission (SEC).

(28) *IFRS*. The term *IFRS* means International Financial Reporting Standards, which are a common set of accounting rules, standards, and

procedures that are generally issued by the International Accounting Standards Board.

(29) *Impairment loss*. The term *impairment loss* means a loss reflected in a CAMT entity's FSI from the impairment write-down of the AFS basis of an asset (or a group of assets) to fair value while the asset (or group of assets) is still held by the CAMT entity. An impairment write-down occurs if an asset (or a group of assets) is tested for impairment and the asset (or group of assets) has an AFS basis that exceeds the fair value of the asset (or group of assets). The frequency with which an asset (or a group of assets) is tested for impairment is not relevant in determining whether an impairment loss has occurred.

(30) *Impairment loss reversal*. The term *impairment loss reversal* means the reversal of a prior-year impairment loss that is reflected in the current-year computation of FSI.

(31) *IRB guidance*. The term *IRB guidance* means guidance published in the Internal Revenue Bulletin (see § 601.601(d) of this chapter) after [DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

(32) *Modified FSI*. The term *modified FSI* means, with respect to a partnership for a taxable year, the amount provided in § 1.56A-5(e)(3).

(33) *Partnership and tiered partnership*. The term *partnership* has the meaning provided under sections 761(a) and 7701(a)(2) of the Code and the regulations under sections 761 and 7701. The term *tiered partnership* means a structure in which a partnership (upper-tier partnership) owns an interest in another partnership (lower-tier partnership).

(34) *Pass-through entity*. The term *pass-through entity* means a partnership, an S corporation as defined in section 1361(a)(1) of the Code, or any other CAMT entity other than a C corporation, as defined in section 1361(a)(2) of the Code, to the extent that the income or deductions of the entity are included in the income of one or more direct or indirect owners or beneficiaries of the entity for regular tax purposes.

(35) *Purchase accounting*. The term *purchase accounting* means the practice, under financial accounting principles, of a CAMT entity recording acquisitions of other CAMT entities or lines of business on its AFS at fair value, with the acquiring CAMT entity valuing the assets and liabilities of the acquired CAMT entity or line of business at their fair value as of the acquisition date. See, for example, ASC 805-20-25-1.

(36) *Push down accounting*. The term *push down accounting* means the practice, under financial accounting principles, of an acquired CAMT entity adjusting the AFS basis of its assets and liabilities and the assets and liabilities of any lower-tier entities to fair value as of the date the CAMT entity is acquired. See, for example, ASC 805-50-25-4.

(37) *Qualified wireless spectrum*. The term *qualified wireless spectrum* has the meaning provided in § 1.56A-16(b)(4).

(38) *Restated AFS*. The term *restated AFS* means an AFS for a specific accounting period that is revised and reissued to correct the original AFS issued for that accounting period. Adjustments to the financial results of a prior accounting period that are disclosed in an original AFS for comparison purposes (for example, in the case of a change in accounting principle) do not constitute a restated AFS for that prior accounting period.

(39) *Section 56A regulations*. The term *section 56A regulations* means the regulations provided in this section and §§ 1.56A-2 through 1.56A-27 and 1.1502-56A.

(40) *Section 168 property*. The term *section 168 property* has the meaning provided in § 1.56A-15(b)(6).

(41) *Separate financial statement*. The term *separate financial statement* means a financial statement that is not a consolidated financial statement and that presents the assets, liabilities, equity, income, and expenses of a single CAMT entity (including the assets, liabilities, equity, income, and expenses of that single CAMT entity with respect to its investment in other CAMT entities).

(42) *Statutory references*—(i) *Chapter 1*. The term *chapter 1* means chapter 1 of subtitle A.

(ii) *Code*. The term *Code* means the Internal Revenue Code.

(iii) *Subchapter K*. The term *subchapter K* means subchapter K of chapter 1.

(iv) *Subtitle A*. The term *subtitle A* means subtitle A of the Code.

(43) *Tax consolidated group*. The term *tax consolidated group* has the meaning given the term *consolidated group* in § 1.1502-1(h).

(44) *United States shareholder*. The term *United States shareholder* has the meaning provided under section 951(b) of the Code or, if applicable, section 953(c)(1)(A) of the Code.

(c) *General rules for determining FSI*—(1) *Federal income tax treatment not relevant for FSI*. FSI includes all items of income, expense, gain, and loss reflected in the net income or loss of a CAMT entity set forth in the income statement included in the CAMT

entity's AFS, regardless of whether the amounts are realized, recognized, or otherwise taken into account for regular tax purposes. For example, FSI includes income reported on the income statement included in a CAMT entity's AFS for a taxable year even if the income is not treated as AFS revenue for that taxable year for purposes of the AFS income inclusion rule under § 1.451-3(b). Similarly, FSI includes gain or loss reported on the income statement included in a CAMT entity's AFS for a taxable year even if the gain or loss is deferred or not recognized for regular tax purposes (for example, gain on a like-kind exchange that qualifies for nonrecognition treatment under section 1031 of the Code).

(2) *Tax consolidated groups; CAMT entities that own disregarded entities*—

(i) *Tax consolidated groups*. For purposes of the section 56A regulations, if the AFS of each member of a tax consolidated group is not the same consolidated financial statement after the application of § 1.56A-2(g), then the tax consolidated group combines the financial results of all CAMT entities reflected in the different AFSs of its members to form one consolidated financial statement that is treated as the AFS of the tax consolidated group (tax consolidated group AFS). For purposes of the preceding sentence, the financial results of each CAMT entity may not be included in the tax consolidated group AFS more than once, and the tax consolidated group makes any AFS consolidation entries not otherwise reflected in the AFS of any member that would have been made if the tax consolidated group AFS actually had been prepared. For additional rules for determining the FSI of a tax consolidated group, see § 1.1502-56A.

(ii) *CAMT entities that own a disregarded entity or branch*. For rules for determining the FSI of a CAMT entity that owns a disregarded entity or branch, see § 1.56A-9.

(3) *Determining FSI from a consolidated AFS*. If a CAMT entity's AFS is a consolidated financial statement under paragraph (c)(2)(i) of this section or § 1.56A-2(g) (consolidated AFS), the CAMT entity applies this paragraph (c)(3) to determine the amount of the net income or loss of the financial statement group set forth on the income statement included in the consolidated AFS (consolidated FSI) that is the CAMT entity's FSI. Except as provided in § 1.1502-56A(c), the CAMT entity's FSI is determined in accordance with this paragraph (c)(3).

(i) *In general*. The amount of consolidated FSI that is the CAMT

entity's FSI must be supported by the CAMT entity's separate books and records (including trial balances) used to create the consolidated AFS.

(ii) *No netting losses against income within the consolidated AFS.* Except as provided in paragraphs (c)(3)(iii)(B) and (C) of this section, the amount of consolidated FSI that is the CAMT entity's FSI is determined without regard to the financial results of other CAMT entities that are members of the financial statement group for which the consolidated AFS is prepared. Accordingly, if two or more CAMT entities are members of that financial statement group, the loss of one CAMT entity may not offset the income of another CAMT entity for purposes of determining the FSI of either CAMT entity, notwithstanding that the amounts are reflected in the consolidated FSI on a net basis.

(iii) *Elimination journal entries.* In determining the amount of consolidated FSI that is the CAMT entity's FSI:

(A) AFS consolidation entries that eliminate the effect of transactions between the CAMT entity and another CAMT entity that is a member of the financial statement group for which the consolidated AFS is prepared are disregarded.

(B) AFS consolidation entries that eliminate any income, loss, expense, asset, liability, or other item of the CAMT entity with respect to its investment in another CAMT entity (for example, an interest in a partnership or stock in a corporation) that is a member of the financial statement group for which the consolidated AFS is prepared are disregarded.

(C) If a CAMT entity has an investment in a partnership or a domestic corporation that is a member of the CAMT entity's financial statement group for which the consolidated AFS is prepared, the income or loss reflected in the FSI of the CAMT entity with respect to the investment (after the application of paragraph (c)(3)(iii)(B) of this section) and any balance sheet accounts reflected in the CAMT entity's separate books and records with respect to the investment are determined as though the CAMT entity prepared a separate financial statement in which the investment was properly accounted for under the relevant accounting standards for investments in other entities (for example, the Parent-Entity Financial Statement accounting standards described in ASC 810–10–45–11), if the CAMT entity does not so account for the investment in the CAMT entity's separate books and records used to prepare the consolidated AFS.

(iv) *Consolidation entries other than elimination entries.* AFS consolidation entries, other than elimination entries described in paragraphs (c)(3)(iii)(A) and (B) of this section, that relate to one or more CAMT entities that are members of the financial statement group for which the consolidated AFS is prepared and that are not reflected in the separate books and records of one or more of the CAMT entities are appropriately allocated or pushed down (or both), as applicable, to each CAMT entity to which the AFS consolidation entries relate and taken into account in each CAMT entity's FSI.

(v) *Reconciliation requirement.* The CAMT entity must maintain books and records sufficient to demonstrate how its FSI (as determined under this paragraph (c)(3)) reconciles to consolidated FSI.

(4) *Determining AFS basis and balance sheet account amounts if the CAMT entity's AFS is a consolidated financial statement—(i) In general.* If, under § 1.56A–2(g), a CAMT entity's AFS is a consolidated financial statement, and if the CAMT entity's balance sheet accounts or AFS basis in any item is relevant for determining the CAMT entity's AFSI, then the CAMT entity uses the balance sheet accounts or AFS basis reflected in the CAMT entity's separate books and records (including the CAMT entity's trial balance) used to create the consolidated financial statement. The balance sheet accounts or AFS basis are determined without regard to any AFS consolidation entries described in paragraphs (c)(3)(iii)(A) and (B) of this section, but with regard to paragraphs (c)(3)(iii)(C) and (c)(3)(iv) of this section.

(ii) *Purchase accounting and push down accounting.* In the case of a CAMT entity subject to the accounting standards for business combinations, the application of paragraphs (c)(3) and (c)(4)(i) of this section will result in any purchase accounting and push down accounting adjustments, as applicable, being reflected in the CAMT entity's AFS basis, balance sheet accounts, and FSI. However, the purchase accounting and push down accounting adjustments, as applicable, may be disregarded under other sections of the section 56A regulations for purposes of determining the CAMT entity's CAMT basis and AFSI (see, for example, §§ 1.56A–18(c)(3) and 1.56A–4(c)(4) and (d)(4)).

(5) *Coordination rule.* This paragraph (c) applies before paragraphs (d) and (e) of this section and before all other sections of the section 56A regulations other than § 1.56A–2. Accordingly,

references to AFS basis and FSI in paragraphs (d) and (e) of this section and in §§ 1.56A–3 through 1.56A–27 mean AFS basis and FSI as determined under this paragraph (c).

(6) *Examples.* The following examples illustrate the application of paragraph (c)(3) of this section.

(i) *Example 1: FSI of component members of a financial statement group—(A) General Facts.* X is a domestic corporation and Y is a domestic partnership. X is a general partner in Y with a 40% interest in Y. The financial results of X are consolidated with the financial results of Y on a consolidated AFS (XY Consolidated AFS) for the financial reporting period beginning January 1, 2024, and ending December 31, 2024. X and Y are the only CAMT entities whose financial results are reflected in the XY Consolidated AFS. Under § 1.56A–2(g), X's AFS and Y's AFS is the XY Consolidated AFS.

(B) *Facts: Consolidation entries.* The XY Consolidated AFS, which is prepared under GAAP, reflects consolidated FSI of \$1,650x. X's and Y's separate books and records used to prepare the XY Consolidated AFS disclose that X had net income of \$2,000x and that Y had a net loss of \$500x. Further, the \$2,000x net income of X includes \$1x of income for services rendered to Y and a loss of \$200x reflecting X's share of Y's net loss, which is consistent with the loss that X would have reported with respect to X's investment in Y had it prepared a nonconsolidated AFS in which X's investment in Y was accounted for under the Parent-Entity Statement accounting standards described in ASC 810–10–45–11. These amounts are eliminated from consolidated FSI through AFS consolidation entries made in preparing the XY Consolidated AFS. Y's loss of \$500x includes \$1x of expense that Y incurred for services provided by X. The \$1x expense is also eliminated from consolidated FSI through AFS consolidation entries made in preparing the XY Consolidated AFS. An AFS consolidation entry is also made to take into account in consolidated FSI \$50x of expenses incurred by X to a third party and not reflected in X's separate books and records. Accordingly, the information from X's and Y's source documents, the AFS consolidation entries, and consolidated FSI for the XY Consolidated AFS are summarized as follows (all amounts are stated in U.S. dollars):

TABLE 1 TO PARAGRAPH (c)(6)(i)(B)

	X	Y	AFS consolidation entries	Consolidated FSI
Net income or loss from transactions outside financial statement group	2,199x	(499x)	.....	1,700x
Income from transactions between X and Y (services)	1x	.....	(1x)	.....
Expenses from transactions between X and Y (services) .....	.....	(1x)	1x	.....
Investment in Y (X's 40% share of Y's 500,000,000 loss)	(200x)	.....	200x	.....
Expense of X recorded in consolidation .....	.....	.....	(50x)	(50x)
Net income or loss	2,000x	(500x)	150x	1,650x

(C) *Analysis: X's FSI.* X and Y determine their respective portions of the consolidated FSI set forth on the XY Consolidated AFS by applying the rules in paragraph (c)(3) of this section. Accordingly, the amount of consolidated FSI that is X's FSI is based upon X's separate books and records used in preparing the XY Consolidated AFS. These disclose net income of \$2,000x. In determining X's FSI, this amount is not reduced by the \$500x net loss reflected in Y's separate books and records (even though consolidated FSI is reduced by the net loss). Further, pursuant to paragraph (c)(3)(iii)(A) of this section, the AFS consolidation entries eliminating the \$1x of income from services rendered to Y and the \$200x loss from X's investment in Y is disregarded. That is, X's FSI includes

these two amounts. Additionally, because X accounts for X's investment in Y in X's separate books and records in a manner consistent with how the investment would have been accounted for had X prepared a nonconsolidated AFS in which X's investment in Y was accounted for under the Parent-Entity Statement accounting standards described in ASC 810–10–45–11, X is not required to further adjust the amount that it reports with respect to X's investment in Y under paragraph (c)(3)(iii)(B) of this section. Finally, pursuant to paragraph (c)(3)(iv) of this section, X reduces its FSI by \$50x, the AFS consolidation entry for administrative costs of X that were not reflected in X's separate books and records. Accordingly, the amount of

consolidated FSI that is X's FSI is \$1,950x (\$2,000x – \$50x).

(D) *Analysis: Y's FSI.* The amount of consolidated FSI that is Y's FSI is similarly determined. Y's separate books and records disclose a net loss of \$500x. In determining Y's FSI, this amount is not offset by any portion of X's net income (even though the amounts are netted in consolidated FSI). Further, pursuant to paragraph (c)(3)(iii)(A) of this section, the AFS consolidation entry eliminating \$1x of expense for services provided by X is disregarded. That is, such expense is included in Y's FSI. Accordingly, the amount of consolidated FSI that is Y's FSI is a net loss of \$500x. Pursuant to paragraph (c)(3) of this section, the amounts of consolidated FSI that are X's FSI and Y's FSI are determined as follows:

TABLE 2 TO PARAGRAPH (c)(6)(i)(D)

	FSI of X	FSI of Y
Separate net income or Loss	2,000x	(500x)
Expenses of X recorded in consolidation	(50x)	.....
FSI ¹	1,950x	(500x)

Given the application of paragraph (c)(3)(iii)(B) of this section to disregard the AFS consolidation entry eliminating the \$200x loss from X's investment in Y, the sum of the separate amounts of consolidated FSI that are X's FSI and Y's FSI (\$1,950x less 500x, or \$1,450x) is \$200x less than the consolidated FSI for the XY Consolidated AFS (\$1,650x).

(ii) *Example 2: Consolidation entries if an item is converted from one financial accounting standard to another—(A) Facts.* X is a domestic corporation and a wholly-owned subsidiary of FC, a foreign corporation. Each of X and FC uses the calendar year as its taxable year. The financial results of X are consolidated with the financial results of FC on a consolidated AFS (XFC Consolidated AFS) for the financial reporting period beginning January 1, 2024, and ending December 31, 2024. X and FC are the only CAMT entities whose financial results are reflected in the XFC Consolidated AFS (XFC financial statement group). Under § 1.56A–2(g), X's AFS and FC's AFS is the XFC Consolidated AFS. The XFC Consolidated AFS, which is prepared under IFRS, reflects consolidated FSI of \$2,000x. X maintains its separate books

and records under GAAP, which reflect that X had net income of \$500x, applying the last-in, first-out (LIFO) method of inventory identification as permitted under GAAP. FC's separate books and records reflect net income of \$1,400x as reported under IFRS. The XFC financial statement group records AFS consolidation entries to convert X's separate books and records from GAAP to IFRS, which requires the use of the FIFO method of inventory identification. The entries result in an additional \$100x of net income to the XFC financial statement group. The additional \$100x of net income is not reflected in the separate books and records of X.

(B) *Analysis.* X applies paragraph (c)(3)(iv) of this section to determine the amount of consolidated FSI that is X's FSI. Accordingly, the amount of

consolidated FSI that is X's FSI is based upon X's separate books and records used in preparing the XFC Consolidated AFS. Although X's separate books and records reflected net income of \$500x under GAAP, X increases its FSI by \$100x pursuant to paragraph (c)(3)(iv) of this section to reflect the AFS consolidation entries to convert X's books and records from GAAP to IFRS. Accordingly, the amount of consolidated FSI that is X's FSI is \$600x (\$500x + \$100x).

(d) *General rules for determining AFSI—(1) Federal income tax treatment not relevant for AFSI except as otherwise provided in guidance.* Except as otherwise provided in section 56A of the Code or the section 56A regulations, AFSI includes all items of income, expense, gain, and loss reflected in a CAMT entity's FSI regardless of whether

those items are realized, recognized, or otherwise taken into account for regular tax purposes. For example, if FSI reflects gain or loss from a transaction that qualifies for nonrecognition treatment for regular tax purposes, and if no provision in the section 56A regulations provides for an adjustment to apply nonrecognition treatment for AFSI purposes, then the gain or loss is included in AFSI.

(2) *Limitation on AFSI adjustments.* Except as otherwise provided in the section 56A regulations, a CAMT entity may not make any adjustments to its FSI in determining its AFSI.

(3) *AFSI adjustments for taxable years beginning before January 1, 2023*—(i) *In general.* Except as otherwise provided in the section 56A regulations, the AFSI adjustments described in the section 56A regulations, including those adjustments that affect the CAMT basis of an item, are made for taxable years ending after December 31, 2019.

(ii) *Exception for AFSI adjustments that arise from transactions or events that occur in taxable years ending on or before December 31, 2019.* Except as otherwise provided in the section 56A regulations (for example, in § 1.56A–15(c)(6) and (e)(2)(ii)(A) for AFSI adjustments for section 168 property, § 1.56A–16(e)(2)(ii)(A) for AFSI adjustments for qualified wireless spectrum, and § 1.56A–24(c)(3) for AFSI adjustments for hedging transactions and hedged items), for purposes of paragraph (d)(3)(i) of this section, any AFSI adjustment described in the section 56A regulations that arises from an event or a transaction that occurs in a taxable year that ends on or before December 31, 2019, is not made in determining AFSI for taxable years ending after December 31, 2019.

(4) *Redetermination of FSI gains and losses.* Except as otherwise provided in the section 56A regulations, if a gain or loss is reflected in FSI with respect to an item that has a CAMT basis that is different from its AFS basis, and if the gain or loss is recognized for AFSI purposes under the section 56A regulations, then the gain or loss reflected in FSI is redetermined for AFSI purposes by reference to the CAMT basis of the item.

(5) *Tax consolidated groups.* For rules for determining the AFSI of a tax consolidated group, see § 1.1502–56A.

(6) *CAMT entities that own disregarded entities.* For rules for determining the AFSI of a CAMT entity that owns a disregarded entity, see § 1.56A–9.

(e) *Rules for translating AFSI to U.S. dollars.* AFSI must be expressed in U.S. dollars. A CAMT entity whose AFSI is

not expressed in U.S. dollars must translate its AFSI, after having made all other applicable adjustments under the section 56A regulations except for those adjustments that already are expressed in U.S. dollars, to U.S. dollars using the weighted average exchange rate, as defined in § 1.989(b)–1, for the CAMT entity's taxable year. See § 1.56A–6(c)(1) for separate rules that apply for translating a controlled foreign corporation's adjusted net income or loss to U.S. dollars.

(f) *Entity classification and treatment*—(1) *Entity classification.* The classification of an entity for regular tax purposes applies for purposes of the section 56A regulations, regardless of whether the entity is classified differently for AFS purposes. For example, if an entity is classified as a partnership for regular tax purposes, the entity is classified as a partnership for purposes of the section 56A regulations, regardless of whether the entity is classified as a partnership for AFS purposes. As another example, if an entity is classified as a disregarded entity for regular tax purposes, the entity is classified as a disregarded entity for purposes of the section 56A regulations, regardless of whether the entity is treated as a regarded entity for AFS purposes.

(2) *Treatment of an entity as domestic or foreign.* The treatment of an entity as domestic or foreign for regular tax purposes applies for purposes of the section 56A regulations, regardless of whether the entity is treated differently for AFS purposes. For example, if an entity created or organized under the law of a foreign jurisdiction is treated as a domestic corporation for regular tax purposes under section 1504(d) (regarding subsidiaries formed to comply with foreign law) or section 7874(b) of the Code (regarding inverted corporations), the entity is treated as a domestic corporation for AFS purposes.

(g) *Substantiation requirement*—(1) *In general.* In accordance with § 1.6001–1(a), a corporation that is an applicable corporation for any taxable year must maintain books and records sufficient to demonstrate how it complies with the section 56A regulations, including:

(i) The identification of the corporation's AFS;

(ii) The determination of the corporation's FSI, including how its FSI (if determined under paragraph (c)(3) of this section) reconciles to consolidated FSI as required pursuant to paragraph (c)(3)(v) of this section;

(iii) The substantiation of any AFSI adjustments required by the section 56A regulations, including those required under § 1.56A–6 in determining the

adjusted net income or loss of a CFC in which the corporation is a shareholder; and

(iv) The substantiation of AFS basis and CAMT basis.

(2) *Other CAMT entity recordkeeping requirements.* See §§ 1.56A–5(h), 1.56A–5(i), and 1.56A–20(g) for recordkeeping requirements for partnerships and their CAMT entity partners.

(3) *Applicable corporation determination record keeping requirements.* See § 1.59–2(i) for recordkeeping requirements related to the determination of whether a corporation is an applicable corporation.

(h) *Reporting requirement*—(1) *Applicable corporations.* A corporation that is an applicable corporation for any taxable year must make an annual return on Form 4626, *Alternative Minimum Tax—Corporations* (or any successor form), for such year, setting forth the required information in the form and manner as the Form 4626 (or any successor form) or its instructions prescribe. Returns on Form 4626 (or any successor form) for a taxable year must be filed with the corporation's Federal income tax return on or before the due date (taking into account extensions) for filing the corporation's Federal income tax return. See § 1.6011–1 and 601.602 of this chapter.

(2) *Applicable corporation determination reporting requirement.* See § 1.59–2(j) for reporting requirements related to the determination of whether a corporation is an applicable corporation.

(3) *Other reporting required for CAMT entities*—(i) *Special rules for reporting distributive shares of AFSI and application of subchapter K.* See §§ 1.56A–5(h)(1), 1.56A–5(i), and 1.56A–20(g)(2) for reporting requirements for partnerships and their CAMT entity partners.

(ii) *Other reporting requirements.* Forms filed for CAMT entities pursuant to sections 6011, 6031, 6038, and 6038A of the Code and the regulations under these sections (for example, Form 5471, *Information Return of U.S. Persons with Respect to Certain Foreign Corporations*) must set forth and furnish the required information in the form and manner as the applicable form or its instructions prescribe, including information relevant to the determination of an applicable corporation's tentative minimum tax under section 55(b)(2)(A).

(i) *Applicability date.* This section applies to taxable years ending after September 13, 2024.

§ 1.56A–2 Definition of applicable financial statement (AFS) and AFS priority rules.

(a) *Overview.* This section provides rules under section 56A(b) of the Code for determining the applicable financial statement (AFS) of a CAMT entity. Paragraph (b) of this section provides the definition of an AFS for purposes of the section 56A regulations. Paragraph (c) of this section provides a priority listing of financial statements for purposes of the AFS definition. Paragraph (d) of this section describes what it means for a financial statement to be certified. Paragraph (e) of this section provides rules for prioritizing a restated financial statement over an original financial statement. Paragraph (f) of this section provides rules for prioritizing an annual financial statement over a financial statement that covers a period of less than 12 months. Paragraph (g) of this section provides rules for determining whether a separate financial statement should be prioritized over a consolidated financial statement. Paragraph (h) of this section provides rules with respect to disregarded entities or branches. Paragraph (i) of this section provides examples illustrating the application of the rules in this section. Paragraph (j) of this section provides the applicability date of this section.

(b) *Definition of applicable financial statement.* Subject to paragraphs (d) through (g) of this section, for purposes of the section 56A regulations, the term *applicable financial statement* (AFS) means a CAMT entity's financial statement listed in paragraph (c) of this section that has the highest priority, including priority within paragraphs (c)(1), (c)(1)(ii), (c)(2), (c)(2)(ii), (c)(3), (c)(3)(ii), and (c)(5) of this section. For example, a financial statement listed in paragraph (c)(1)(ii)(A) of this section has priority over a financial statement listed in paragraph (c)(1)(ii)(B) of this section.

(c) *General financial statement priority.* For purposes of paragraph (b) of this section, the financial statements are, in order of descending priority—

(1) *GAAP statements.* An audited financial statement, other than a tax return, that is certified, within the meaning of paragraph (d) of this section, as being prepared in accordance with GAAP and is—

(i) A financial statement included with Form 10-K (or any successor form), or annual statement to shareholders, filed with the SEC;

(ii) Used for—

(A) Credit purposes;

(B) Reporting to shareholders, partners, or other proprietors, or to beneficiaries; or

(C) Any other substantial non-tax purpose; or

(iii) Filed with the Federal Government or any Federal agency, other than the SEC or the Internal Revenue Service (IRS);

(2) *IFRS statements.* An audited financial statement, other than a tax return, that is certified, within the meaning of paragraph (d) of this section, as being prepared in accordance with IFRS and is—

(i) Filed by the CAMT entity with the SEC or with an agency of a foreign government that is equivalent to the SEC;

(ii) Used for—

(A) Credit purposes;

(B) Reporting to shareholders, partners, or other proprietors, or to beneficiaries; or

(C) Any other substantial non-tax purpose; or

(iii) Filed with the Federal Government, a Federal agency, a foreign government, or an agency of a foreign government, other than the SEC, the IRS, or an agency that is equivalent to the SEC or the IRS;

(3) *Financial statements prepared in accordance with other generally accepted accounting standards.* An audited financial statement, other than a tax return, that is certified, within the meaning of paragraph (d) of this section, as being prepared in accordance with accepted accounting standards other than GAAP and IFRS that are issued by an accounting standards board charged with developing accounting standards for one or more jurisdictions and is—

(i) Filed by the CAMT entity with the SEC or with an agency of a foreign government that is equivalent to the SEC;

(ii) Used for—

(A) Credit purposes;

(B) Reporting to shareholders, partners, or other proprietors, or to beneficiaries; or

(C) Any other substantial non-tax purpose; or

(iii) Filed with the Federal Government, a Federal agency, a foreign government, or an agency of a foreign government, other than the SEC, the IRS, or an agency that is equivalent to the SEC or the IRS;

(4) *Other government and regulatory statements.* A financial statement, other than a tax return or a financial statement described in paragraph (c)(1), (2), or (3) of this section, filed with the Federal Government or any Federal agency, a State government or State agency, a foreign government or foreign agency, or a self-regulatory organization, including, for example, a financial statement filed with a State agency that regulates

insurance companies, the Financial Industry Regulatory Authority, or a comparable foreign self-regulatory organization;

(5) *Unaudited external statements.* A financial statement, other than a tax return or a financial statement described in paragraph (c)(1), (2), (3), or (4) of this section, that is unaudited (or audited but not certified, within the meaning of paragraph (d) of this section) and prepared for an external non-tax purpose using—

(i) GAAP;

(ii) IFRS; or

(iii) Any other accepted accounting standards that are issued by an accounting standards board charged with developing accounting standards for one or more jurisdictions; or

(6) *Return.* For a CAMT entity that is not a controlled foreign corporation, the Federal income tax return or information return filed with the IRS; or for a CAMT entity that is a controlled foreign corporation, Form 5471, *Information Return of U.S. Persons With Respect To Certain Foreign Corporations* (or any successor form).

(d) *Certified financial statement.* A financial statement is *certified* for purposes of paragraph (c) of this section if it is—

(1) Certified by an independent financial statement auditor to present fairly the financial position and results of operations of a CAMT entity (or a financial statement group) in conformity with the relevant financial accounting standards (that is, an unqualified or unmodified clean opinion);

(2) Subject to a qualified or modified opinion by an independent financial statement auditor that the financial statement presents fairly the financial position and results of operations of a CAMT entity (or a financial statement group) in conformity with the relevant financial accounting standards, except for the effects of the matter to which the qualification or modification relates (that is, a qualified or modified except for opinion); or

(3) Subject to an adverse opinion by an independent financial statement auditor, but only if the auditor discloses the amount of the disagreement with the statement.

(e) *Restatements.* If a CAMT entity restates FSI for a taxable year (or a portion of a taxable year) on a restated AFS that is issued prior to the date that the CAMT entity files its original Federal income tax return for that taxable year, that restated AFS must be prioritized over the AFS being restated. If a CAMT entity restates FSI for a taxable year (or a portion of a taxable year) on a restated AFS that is issued on

or after the date that the CAMT entity files an original Federal income tax return for that taxable year, *see* § 1.56A–17(d).

(f) *Annual and periodic financial statements.* If a CAMT entity is required to file both annual financial statements and periodic financial statements covering less than a 12-month period with a government or government agency, the CAMT entity must prioritize the annual financial statements over the periodic financial statements in accordance with this section.

(g) *AFS priority rules for consolidated financial statements—(1) In general.* Except as provided in paragraph (g)(2) of this section, if a CAMT entity's financial results are consolidated with the financial results of one or more other CAMT entities on one or more consolidated financial statements described in paragraphs (c)(1) through (5) of this section, the CAMT entity's AFS is the consolidated financial statement with the highest priority under paragraphs (c)(1) through (5) of this section. However, except as provided in paragraph (g)(2) of this section, if the CAMT entity's financial results are also reported on one or more separate financial statements that are of equal or higher priority to that highest priority consolidated financial statement, then the CAMT entity's AFS is the separate financial statement with the highest priority under paragraph (c) of this section.

(2) *Exceptions to use of separate AFS—(i) Tax consolidated group member has only one consolidated financial statement that contains the financial results of all members of the tax consolidated group.* Except as provided in paragraph (g)(2)(v) of this section, if there is only one consolidated financial statement described in paragraphs (c)(1) through (5) of this section that contains the financial results of all members of a tax consolidated group, then a member of the tax consolidated group uses that consolidated financial statement as the AFS, regardless of whether the member's financial results also are reported on—

(A) A separate financial statement that is of equal or higher priority to that consolidated financial statement; or

(B) A consolidated financial statement that contains the financial results of some, but not all, members of the tax consolidated group, and that is of equal or higher priority to that consolidated financial statement.

(ii) *Tax consolidated group member has more than one consolidated financial statement that contains the financial results of all members of the*

tax consolidated group. Except as provided in paragraph (g)(2)(v) of this section, if there is more than one consolidated financial statement described in paragraphs (c)(1) through (5) of this section that contains the financial results of all members of a tax consolidated group, then a member of the tax consolidated group uses the consolidated financial statement with the highest priority under paragraphs (c)(1) through (5) of this section that contains the financial results of all members of the tax consolidated group, regardless of whether the member's financial results also are reported on—

(A) A separate financial statement that is of equal or higher priority to that consolidated financial statement; or

(B) A consolidated financial statement that contains the financial results of some, but not all, members of the tax consolidated group, and that is of equal or higher priority to that consolidated financial statement.

(iii) *Tax consolidated group member has only one consolidated financial statement that contains its financial results and the financial results of some, but not all, members of the tax consolidated group.* Except as provided in paragraph (g)(2)(v) of this section, if a member of a tax consolidated group is not described in paragraph (g)(2)(i) or (ii) of this section and there is only one consolidated financial statement described in paragraphs (c)(1) through (5) of this section that contains the member's financial results and the financial results of at least one other member of the tax consolidated group, but not all members of the tax consolidated group, then the member uses that consolidated financial statement as its AFS, regardless of whether member's financial results also are reported on a separate financial statement that is of equal or higher priority to that consolidated financial statement.

(iv) *Tax consolidated group member has more than one consolidated financial statement that contains its financial results and the financial results of some, but not all, members of the tax consolidated group.* Except as provided in paragraph (g)(2)(v) of this section, if a member of a tax consolidated group is not described in paragraph (g)(2)(i) or (ii) of this section and there is more than one consolidated financial statement described in paragraphs (c)(1) through (5) of this section that contains the member's financial results and the financial results of at least one other member of the tax consolidated group, but not all members of the tax consolidated group, then the member uses as its AFS the

consolidated financial statement described in paragraphs (c)(1) through (5) of this section that contains its financial results and the financial results of the greatest number of members of the tax consolidated group (if there is more than one such consolidated financial statement, the member uses the one with the highest priority under paragraphs (c)(1) through (5) of this section), regardless of whether the member's financial results also are reported on—

(A) A separate financial statement that is of equal or higher priority to that consolidated financial statement; or

(B) A consolidated financial statement that contains its financial results and the financial results of fewer members of the tax consolidated group, and that is of equal or higher priority to that consolidated financial statement.

(v) *Members of an FPMG.* If a CAMT entity is a member of an FPMG, and if the FPMG common parent prepares a consolidated financial statement for a financial statement group that includes the CAMT entity (FPMG consolidated AFS), then the CAMT entity uses the FPMG consolidated AFS as its AFS, regardless of whether the CAMT entity's financial results also are reported on a separate financial statement that is of equal or higher priority to the FPMG consolidated AFS.

(h) *Disregarded entities or branches.* If the financial results of a disregarded entity or branch are reflected in the CAMT entity owner's AFS (as determined by applying the rules of this section), the disregarded entity or branch may not determine its own AFS under the rules of this section as if it were a separate CAMT entity (that is, the CAMT entity owner uses its AFS to determine its FSI and AFSI under the rules in § 1.56A–9). If the financial results of a disregarded entity or branch are not reflected in the CAMT entity owner's AFS (as determined by applying the rules of this section), the disregarded entity or branch determines its own AFS under the rules of this section as if it were a separate CAMT entity. *See* § 1.56A–9(b)(3) for rules for determining the FSI and AFSI of a CAMT entity that owns a disregarded entity or branch described in the preceding sentence.

(i) *Examples.* The following examples illustrate the application of paragraphs (c) and (g) of this section.

(1) *Example 1: No substantial non-tax purpose—(i) Facts.* FP is a foreign partnership (FP) that owns a controlling interest in X, a domestic corporation that is an applicable corporation. X is not a member of an FPMG under § 1.59–3 and is not a member of a tax

consolidated group. FP prepares a consolidated AFS that includes X and other entities using IFRS. After the auditor provides an opinion certifying that the consolidated financial statements of FP present fairly the financial position and results of operations of FP and FP's investments in other entities in conformity with IFRS, X receives advice that its Federal income tax liability would be lower if it were to obtain a certified financial statement prepared in accordance with GAAP to use in determining its tentative minimum tax under section 55(b)(2)(A) of the Code. Solely to minimize Federal income taxes, X engages the auditor to provide a separate opinion certifying that X's financial statements as converted from IFRS to GAAP present fairly the financial position and results of operations of X in conformity with GAAP. Other than the consolidated AFS prepared by FP and X's audited GAAP financial statement, X does not prepare any other financial statement and X is not a member of any other consolidated financial statement.

(ii) *Analysis.* X's audited GAAP financial statement is not a financial statement described in paragraph (c)(1)(ii) of this section because X's sole purpose for obtaining the statement was to minimize X's Federal income taxes, which is not a substantial non-tax purpose. Accordingly, under paragraph (g)(1) of this section, X's AFS is the consolidated AFS prepared by FP because X is not a member of any other consolidated financial statement and X does not have a separate financial statement that is of equal or higher priority to the consolidated AFS prepared by FP.

(2) *Example 2: Substantial non-tax purpose*—(i) *Facts.* The facts are the same as in paragraph (i)(1) of this section (*Example 1*), except that X is required by County G to obtain an audited GAAP financial statement that it provides to County G as part of its acquisition of a controlling interest in a public-private partnership for a significant transportation infrastructure project. X therefore engages the auditor to provide a separate opinion certifying that X's financial statements as converted from IFRS to GAAP present fairly the financial position and results of operations of X in conformity with GAAP.

(ii) *Analysis.* X's audited GAAP financial statement is a financial statement described in paragraph (c)(1)(ii) of this section because it was prepared for a substantial non-tax purpose. Accordingly, under paragraph (g)(1) of this section, X's AFS is the audited GAAP financial statement as it

is a separate financial statement that is of equal or higher priority to the consolidated AFS prepared by FP.

(j) *Applicability date.* This section applies to taxable years ending after September 13, 2024.

§ 1.56A-3 AFSI adjustments for AFS year and taxable year differences.

(a) *Overview.* This section provides rules under section 56A(c)(1) of the Code for computing FSI and AFSI if a CAMT entity's AFS is prepared on the basis of a financial accounting period that differs from the taxable year.

(b) *AFSI adjustment for mismatched years*—(1) *In general.* If the AFS of a CAMT entity is prepared on the basis of a financial accounting period that differs from the CAMT entity's taxable year (including a taxable year of less than 12 months), the CAMT entity computes its FSI and AFSI as if the CAMT entity's financial accounting period were the same as its taxable year by conducting an interim closing of the books using the accounting standards the CAMT entity uses to prepare its AFS. For purposes of computing FSI and AFSI for the current taxable year under this paragraph (b)(1), the CAMT entity performs an interim closing of the books as of the end of the current taxable year and uses the interim closing of the books completed as of the end of the immediately preceding taxable year in computing FSI and AFSI for such prior year (if any). If the CAMT entity did not compute FSI and AFSI for the prior taxable year, the CAMT entity also performs an interim closing of the books as of the end of the immediately preceding taxable year.

(2) *Examples.* The following examples illustrate the application of the rules in paragraph (b)(1) of this section.

(i) *Example 1: Calendar-year taxpayer with fiscal annual financial accounting period*—(A) *Facts.* X is a domestic corporation that uses the calendar year as its taxable year. X's AFS is prepared based on a financial accounting period that begins on November 1 and ends on October 31. X computes FSI and AFSI under the section 56A regulations for the taxable year that begins on January 1, 2024, and ends on December 31, 2024, and the taxable year that begins on January 1, 2025, and ends on December 31, 2025.

(B) *Analysis: Taxable year ending December 31, 2024.* Pursuant to paragraph (b)(1) of this section, X conducts an interim closing of the books as of the close of business on December 31, 2023, and December 31, 2024, respectively, to compute FSI and AFSI for the 2024 taxable year (that is, the calendar year). Accordingly, X uses the

financial results and accounting principles from the October 31, 2024, AFS to prepare an interim closing of the books as of December 31, 2023, and determine FSI and AFSI from January 1, 2024, through October 31, 2024. In addition, X uses the financial results and accounting principles for the annual financial accounting period ending October 31, 2025, to prepare an interim closing of the books as of December 31, 2024, and determine FSI and AFSI from November 1, 2024, through December 31, 2024.

(C) *Analysis: Taxable year ending December 31, 2025.* Pursuant to paragraph (b)(1) of this section, X conducts an interim closing of the books as of the close of business on December 31, 2025, to compute FSI and AFSI for its 2025 taxable year. In addition, X uses the interim closing of the books conducted as of December 31, 2024, in computing FSI and AFSI for its 2025 taxable year. Accordingly, X uses the financial results and accounting principles from the October 31, 2025, AFS and the interim closing of the books prepared as of December 31, 2024, to determine FSI and AFSI from January 1, 2025, through October 31, 2025. In addition, X uses the financial results and accounting principles for the annual financial accounting period ending October 31, 2026, to prepare an interim closing of the books as of December 31, 2025, and determine FSI and AFSI from November 1, 2025, through December 31, 2025.

(ii) *Example 2: Fiscal year taxpayer with calendar-year financial accounting period*—(A) *Facts.* X is a domestic corporation that uses the 12-month period ending September 30 as its taxable year. The accounting period for X's AFS begins on January 1 and ends on December 31. X computes FSI and AFSI under the section 56A regulations for the taxable year that begins on October 1, 2023, and ends on September 30, 2024, and the taxable year that begins on October 1, 2024, and ends on September 30, 2025.

(B) *Analysis: Taxable year ending September 30, 2024.* Pursuant to paragraph (b)(1) of this section, X conducts an interim closing of the books as of the close of business on September 30, 2023, and September 30, 2024, respectively, to compute FSI and AFSI for the taxable year ending September 30, 2024. Accordingly, X uses the financial results and accounting principles from the December 31, 2023, AFS to prepare an interim closing of the books as of September 30, 2023, and determine FSI and AFSI from October 1, 2023, through December 31, 2023. In addition, X uses the financial results

and accounting principles for the annual financial accounting period ending December 31, 2024, to prepare an interim closing of the books as of September 30, 2024, and determine FSI and AFSI from January 1, 2024, through September 30, 2024.

(C) *Analysis: Taxable year ending September 30, 2025.* Pursuant to paragraph (b)(1) of this section, X conducts an interim closing of the books as of the close of business on September 30, 2025, to compute FSI and AFSI for the taxable year ending September 30, 2025. In addition, X uses the interim closing of the books prepared as of September 30, 2024, in computing FSI and AFSI for the taxable year ending September 30, 2025. Accordingly, X uses the financial results and accounting principles for its December 31, 2024, AFS and the interim closing of the books prepared as of September 30, 2024, to determine FSI and AFSI from October 1, 2024, through December 31, 2024. In addition, X uses the financial results and accounting principles for the annual financial accounting period ending December 31, 2025, to prepare an interim closing of the books as of September 30, 2025, and determine FSI and AFSI from January 1, 2025, through September 30, 2025.

(c) *Applicability date.* This section applies to taxable years ending after September 13, 2024.

§ 1.56A-4 AFSI adjustments and basis determinations with respect to foreign corporations.

(a) *Overview.* This section provides rules under section 56A(c)(2)(C) of the Code for determining the amount of AFSI of a CAMT entity that results solely from the CAMT entity's ownership of stock of a foreign corporation, as well as rules for determining the AFSI and CAMT basis consequences of certain transactions involving foreign corporations, including rules under section 56A(c)(15)(B) of the Code. Paragraph (b) of this section provides definitions that apply for purposes of this section. Paragraph (c) of this section provides the AFSI adjustments with respect to foreign stock and certain transactions involving foreign corporations. Paragraph (d) of this section provides rules for determining the CAMT basis of assets transferred in certain transactions involving foreign corporations. Paragraph (e) of this section provides a rule that applies if a partnership owns stock of a foreign corporation. Paragraph (f) of this section provides rules for adjusting AFSI in certain cases in which the basis of foreign stock received is determined under section 358 of the

Code for regular tax purposes. Paragraph (g) of this section provides rules for adjusting AFSI in certain cases in which foreign stock is distributed by a partnership. Paragraph (h) of this section provides examples illustrating the application of the rules in this section. Paragraph (i) of this section provides the applicability date of this section. See § 1.56A-6 for determining AFSI adjustments under section 56A(c)(3) with respect to controlled foreign corporations. See §§ 1.56A-18 and 1.56A-19 for rules that apply to transactions involving corporations not described in this section.

(b) *Definitions.* The following definitions apply for purposes of this section. Terms used in this section that are not defined in this section have the meanings provided in § 1.56A-1(b).

(1) *Covered asset transaction.* The term *covered asset transaction* means the following:

(i) A component transaction (within the meaning of § 1.56A-18(b)(6)) in which one or more assets are—

(A) Transferred by a foreign corporation in a transfer to which section 311 of the Code applies;

(B) Transferred by a foreign corporation in a transfer that is part of a complete liquidation to which sections 332 and 337 of the Code apply;

(C) Transferred to a foreign corporation in a transfer to which section 351 or section 361 of the Code applies;

(D) Transferred by a foreign corporation in a transfer to which section 361 applies;

(E) Stock, or stock and securities, of a domestic corporation described in section 355(a)(1)(A) of the Code and transferred by a foreign corporation in a transfer to which section 355 applies; or

(F) Securities of a foreign corporation that is a party to a reorganization described in section 368(a)(1) and transferred in a transfer to which section 354 or 356 applies.

(ii) A component transaction (within the meaning of § 1.56A-18(b)(6)) in which one or more assets, at least one of which is stock of a foreign corporation, are—

(A) Transferred by a domestic corporation in a transfer to which section 311 applies;

(B) Transferred by a domestic corporation in a transfer that is part of a complete liquidation to which sections 332 and 337 apply;

(C) Transferred to a domestic corporation in a transfer to section 351 or section 361 applies;

(D) Transferred by a domestic corporation in a transfer to which section 361 applies;

(E) Stock, or stock and securities, of a foreign corporation described in section 355(a)(1)(A) and transferred by a domestic corporation in a transfer to which section 355 applies; or

(F) Securities of a domestic corporation that is a party to a reorganization described in section 368(a)(1) and transferred in a transfer to which section 354 or 356 applies, provided the securities are exchanged for stock or securities of a foreign corporation that is a party to the reorganization.

(2) *Section 338(g) transaction.* The term *section 338(g) transaction* means a purchase, as defined in section 338(h)(3) of the Code, of stock of a foreign corporation with respect to which the purchaser makes an election under section 338(g).

(3) *Transfer.* The term *transfer* (or *transferred* or *transfers* or *transferring*), when used with respect to an asset, means a sale, distribution, exchange, or any other disposition of the asset. If the asset is stock or securities of a corporation, the term *transfer* includes an issuance or a redemption of stock or securities by the corporation.

(c) *Adjustments to AFSI—(1) Adjustments with respect to stock of a foreign corporation.* If a CAMT entity directly owns stock of a foreign corporation, the AFSI of the CAMT entity with respect to its ownership of stock of the foreign corporation is adjusted to—

(i) Disregard any items of income, expense, gain, and loss resulting from ownership of stock of the foreign corporation, including any items that result from acquiring or transferring the stock, reflected in the CAMT entity's FSI; and

(ii) Include any items of income, deduction, gain, and loss for regular tax purposes resulting from ownership of stock of the foreign corporation, including any items that result from acquiring or transferring the stock, other than any items of income, deduction, gain, and loss resulting from the application of section 78, 250, 951, or 951A of the Code.

(2) *Adjustments with respect to covered asset transactions.* If a CAMT entity transfers an asset, other than stock of a foreign corporation, in a covered asset transaction, the AFSI of the CAMT entity must be adjusted to—

(i) Disregard any items of income, expense, gain, and loss with respect to the transferred asset resulting from the covered asset transaction reflected in the CAMT entity's FSI; and

(ii) Include any items of income, deduction, gain, and loss for regular tax purposes with respect to the transferred

asset resulting from the covered asset transaction; however, for this purpose, the amount of each such item is computed by substituting the CAMT entity's CAMT basis in the transferred asset for the CAMT entity's basis in the transferred asset for regular tax purposes.

(3) *Adjustments with respect to section 338(g) transactions.* If stock of a foreign corporation is acquired in a section 338(g) transaction, the AFSI of the foreign corporation is adjusted to include any net gain or loss that results for regular tax purposes with respect to all assets the foreign corporation is treated as selling by reason of the section 338(g) transaction; however, for this purpose, the amount of gain or loss with respect to each asset that the foreign corporation is deemed to have sold by reason of the section 338(g) transaction is computed by substituting the foreign corporation's CAMT basis in the asset for the foreign corporation's basis in the asset for regular tax purposes.

(4) *Adjustments with respect to purchase accounting and push down accounting.* If a CAMT entity acquires the stock of a foreign corporation, then any purchase accounting and push down accounting adjustments, as applicable, with respect to the acquisition of the stock of the foreign corporation are disregarded for purposes of determining the CAMT entity's AFSI.

(d) *Certain rules for determining CAMT basis—(1) Covered asset transactions.* If an asset is transferred in a covered asset transaction, the following rules apply to determine the transferee's CAMT basis in the asset transferred (or the transferee's CAMT basis in the asset retained, in the case of stock of a distributing corporation in certain distributions under section 355)—

(i) If the asset is transferred in a transaction described in section 311, the transferee's CAMT basis in the asset is determined in the manner described in section 301(d) of the Code;

(ii) If the asset is transferred in a transaction described in sections 332 and 337, the transferee's CAMT basis in the asset is determined in the manner described in section 334(b) of the Code, substituting the transferor's CAMT basis in the asset for the transferor's basis in the asset for regular tax purposes;

(iii) If the asset is transferred in a transaction described in section 351 or 361, then—

(A) If the transferor is a CAMT entity, the transferee's CAMT basis in the asset is determined in the manner described in section 362 of the Code, substituting the transferor's CAMT basis in the asset

for the transferor's basis in the asset for regular tax purposes and substituting the amount of gain included in the transferor's AFSI for the amount of gain recognized to the transferor for regular tax purposes; or

(B) If the transferor is not a CAMT entity, the transferee's CAMT basis in the asset is equal to the transferee's basis in the asset for regular tax purposes;

(iv) If the asset transferred is stock or securities of a domestic corporation described in section 355(a)(1)(A) and the asset is transferred by a foreign corporation in a transaction to which section 355 applies, the transferee's CAMT basis in the transferred stock or securities of the domestic corporation is equal to the transferee's basis in such stock or securities for regular tax purposes;

(v) If the asset transferred is stock or securities of a foreign corporation described in section 355(a)(1)(A) and the asset is transferred by a domestic corporation in a transaction to which section 355 applies, the transferee's CAMT basis in the stock or securities of the domestic transferor corporation is determined by applying section 358 of the Code, substituting the transferee's CAMT basis in the stock or securities of the domestic corporation for the transferee's basis in the stock or securities of the domestic corporation for regular tax purposes; and

(vi) If the asset transferred is securities of a foreign corporation that is a party to a reorganization described in section 368(a)(1) and the asset received in exchange for the securities is not stock of a foreign corporation that is a party to the reorganization, the transferee's CAMT basis in the asset received is determined by applying section 358, substituting the transferee's CAMT basis in the securities of the foreign corporation for the transferee's basis in such securities for regular tax purposes.

(vii) If the asset transferred is securities of a domestic corporation that is a party to a reorganization described in section 368(a)(1) and the asset received in exchange for the securities is not stock of a foreign corporation that is a party to the reorganization, the transferee's CAMT basis in the asset received is determined by applying section 358, substituting the transferee's CAMT basis in the securities of the domestic corporation for the transferee's basis in such securities for regular tax purposes.

(2) *Section 338(g) transaction.* If stock of a foreign corporation is acquired in a section 338(g) transaction, immediately after the section 338(g) transaction, the

foreign corporation's CAMT basis in the assets it is deemed to have purchased by reason of the section 338(g) transaction is equal to the foreign corporation's basis in those assets for regular tax purposes.

(3) *Transfers of stock of a foreign corporation involving a partnership.* For rules that adjust a partner's basis in its investment in a partnership for certain transfers of stock of a foreign corporation by the partner to the partnership or by the partnership to the partner, see § 1.56A–5(j)(3)(xi) and (xii).

(4) *Purchase accounting and push down accounting.* If a CAMT entity acquires stock of a foreign corporation, then any purchase accounting and push down accounting adjustments, as applicable, with respect to the acquisition of the stock of the foreign corporation are disregarded for purposes of determining the CAMT basis in the foreign corporation's assets.

(5) *Stock of a foreign corporation.* The CAMT basis in stock of a foreign corporation is equal to the basis in the stock for regular tax purposes.

(e) *Stock of a foreign corporation owned by a partnership.* If a partnership directly owns stock of a foreign corporation, then in determining the AFSI of a CAMT entity that is a partner in the partnership (or an indirect partner, in the case of tiered partnerships), the partner takes into account the items described in paragraph (c)(1)(ii) of this section that are allocated to the partner for regular tax purposes. See also § 1.56A–5(e)(4)(iii).

(f) *AFSI adjustments when basis in foreign stock is determined under section 358—(1) In general.* If a CAMT entity receives stock of a foreign corporation as part of a covered asset transaction, the basis in the stock of the foreign corporation received is determined under section 358 of the Code, and at least one of the requirements in paragraphs (f)(1)(i) and (ii) of this section is satisfied, then to the extent the basis for regular tax purposes in such stock of the foreign corporation is greater than the hypothetical CAMT basis in such stock of the foreign corporation (as determined under paragraph (f)(2) of this section), the CAMT entity increases its AFSI for the taxable year in which such stock is received by the amount of such excess.

(i) *Principal purpose rule.* For purposes of this paragraph (f)(1), the requirement of this paragraph (f)(1)(i) is satisfied if a principal purpose of the covered asset transaction is to avoid treatment of the CAMT entity or another CAMT entity as an applicable

corporation or to reduce or otherwise avoid a liability under section 55(a) of the Code.

(ii) *Two-year rule.* For purposes of this paragraph (f)(1), the requirement of this paragraph (f)(1)(ii) is satisfied if within two years of the date the stock of the foreign corporation is received, the basis in such stock of the foreign corporation is taken into account, in whole or in part, in determining the AFSI of the recipient CAMT entity or another CAMT entity. The principles of this paragraph (f)(1)(ii) apply with respect to any asset whose basis for regular tax purposes is determined in whole or in part by reference to the basis of the foreign stock received.

(2) *Hypothetical CAMT basis.* For purposes of paragraph (f)(1) of this section, the hypothetical CAMT basis in the stock of the foreign corporation received is the basis computed under section 358; however, for this purpose, the CAMT basis is used instead of the basis for regular tax purposes with respect to the property by reference to which the basis in the stock of the foreign corporation for regular tax purposes is determined in whole or in part.

(g) *AFSI adjustments when certain foreign stock is distributed by a partnership—(1) In general.* If a partnership distributes stock of a foreign corporation to a partner that is a related CAMT entity—

(i) If both—

(A) The basis for regular tax purposes in the distributed foreign stock to the related CAMT entity distributee under section 732(b) of the Code exceeds the basis for regular tax purposes in the foreign stock to the distributing partnership immediately before the distribution (distributee step-up amount); and

(B) The distributee step-up amount is greater than the amount, if any, the distributing partnership is required to decrease its basis for regular tax purposes in any remaining foreign stock held by the distributing partnership immediately after the distribution under section 734(b)(2)(B) of the Code (partnership basis decrease amount); then

(ii) The distributing partnership must increase its modified FSI for the taxable year of the distribution by any excess of the distributee step-up amount over the partnership basis decrease amount.

(2) *Related CAMT entity.* For purposes of paragraph (g)(1) of this section, a partner is a related CAMT entity if immediately prior to the distribution, the partner is related to the distributing partnership or any partner in the distributing partnership within the

meaning of section 267(b) or 707(b)(1) of the Code, without regard to section 267(c)(3) of the Code.

(h) *Examples.* The following examples illustrate the application of this section. For purposes of these examples, all entities have a functional currency of the U.S. dollar, each entity uses the calendar year as its taxable year and for AFS purposes, and no covered asset transaction in which stock of a foreign corporation is received is described in paragraph (f) of this section.

(1) *Example 1: Dividend received from a foreign corporation—(i) Facts.* X is a domestic corporation that owns all the stock of FC, a controlled foreign corporation. FC distributes \$100x of earnings and profits described in section 959(c)(3) of the Code to X, and, with respect to the dividend, X qualifies for a \$100x dividends-received deduction under section 245A of the Code. The \$100x dividend received by X does not result in any item of income, expense, gain, or loss being reflected in the FSI of X.

(ii) *Analysis.* Under paragraph (c)(1)(i) of this section, no adjustment is required to the AFSI of X because the \$100x dividend received from FC does not result in any item of income, expense, gain, or loss being reflected in the FSI of X. Under paragraph (c)(1)(ii) of this section, the AFSI of X is adjusted to include the \$100x dividend recognized by X for regular tax purposes. Furthermore, under paragraph (c)(1)(ii) of this section, the AFSI of X is also adjusted to include the \$100x dividends-received deduction under section 245A.

(2) *Example 2: Stock of a foreign corporation owned by a partnership—(i) Facts.* The facts are the same as in paragraph (h)(1)(i) of this section (*Example 1*), except that all the stock of FC is owned by PRS, a partnership in which X is a partner, X is not a United States shareholder with respect to FC, FC makes a distribution of earnings and profits described in section 959(c)(3) to PRS, the \$100x dividend received by PRS does not result in any item of income, expense, gain, or loss being reflected in the FSI of PRS, and X is allocated \$9x of the dividend income for regular tax purposes.

(ii) *Analysis.* Under paragraph (c)(1)(i) of this section, no adjustment to AFSI is required because the \$100x dividend received from FC does not result in any item of income, expense, gain, or loss being reflected in the FSI of PRS. Under § 1.56A–5(e)(3) and (e)(4)(i), the AFSI adjustment provided in paragraph (c)(1)(ii) of this section is not taken into account by PRS in determining its modified FSI and instead the AFSI

adjustment resulting from the dividend is separately stated to the partners. Under paragraph (e) of this section, X's AFSI is increased by \$9x, the amount of the dividend received by PRS that is reported to X for regular tax purposes. Under § 1.56A–5(j)(3)(v), X's CAMT basis in its partnership investment in PRS is increased by \$9x.

(3) *Example 3: Sale of stock of a foreign corporation—(i) Facts.* The facts are the same as in paragraph (h)(1)(i) of this section (*Example 1*), except that FC does not make a distribution and instead X sells all the stock of FC. As a result of the sale, for regular tax purposes, X recognizes \$200x of gain, of which \$100x is recharacterized as a dividend under section 1248 of the Code. X qualifies for (and claims) a \$100x dividends-received deduction under section 245A (see section 1248(j)). X's sale of the stock of FC results in \$150x of gain being reflected in the FSI of X.

(ii) *Analysis.* Under paragraph (c)(1)(i) of this section, the AFSI of X is adjusted to disregard the \$150x of gain reflected in the FSI of X. Under paragraph (c)(1)(ii) of this section, the AFSI of X is adjusted to include the \$100x dividend and \$100x gain recognized by X for regular tax purposes and to include the \$100x dividends-received deduction under section 245A.

(4) *Example 4: Foreign corporation reported on equity method—(i) Facts.* X is a domestic corporation that owns 30% of the single class of stock of FC, a foreign corporation that is not a controlled foreign corporation or a passive foreign investment company (within the meaning of section 1297 of the Code). X reflects FC's income, expense, gain, and loss in X's FSI using the equity method. FC earns \$100x of operating income, \$30x of which is reflected in X's FSI under the equity method.

(ii) *Analysis.* Under paragraph (c)(1)(i) of this section, the AFSI of X is adjusted to disregard the \$30x of FC income reflected in the FSI of X under the equity method. Under paragraph (c)(1)(ii) of this section, there is no adjustment to the AFSI of X.

(5) *Example 5: Section 351 transfer—(i) Facts.* FC1, a foreign corporation, holds stock of a domestic corporation (DC stock) with a basis of \$10x for regular tax purposes, CAMT basis of \$12x, and fair market value of \$15x. FC1 transfers DC stock to FC2, a foreign corporation, solely in exchange for stock of FC2 in an exchange described in section 351(a) of the Code. FC1 reflects \$3x of gain in FSI as a result of the transfer of DC stock to FC2.

(ii) *Analysis.* The transfer of DC stock is a covered asset transaction described in paragraph (b)(1)(i)(C) of this section. Under paragraph (c)(2)(i) of this section, FC1's AFSI is adjusted to disregard the \$3x of gain reflected in its FSI. Under paragraph (c)(2)(ii) of this section, FC1 will not include any gain in its AFSI as a result of the transfer of DC stock because for regular tax purposes, under section 351(a), FC1 does not recognize any gain as a result of the transfer of DC stock. For regular tax purposes, under section 358, FC1's basis in the stock of FC2 received in the exchange is \$10x, which is the amount equal to FC1's \$10x basis in DC stock for regular tax purposes. Under paragraph (d)(5) of this section, FC1's CAMT basis in the stock of FC2 is also \$10x. Upon a subsequent disposition of the stock of FC2, the AFSI consequences to FC1 will be determined under paragraph (c)(1)(ii) of this section by reference to FC1's basis in the stock of FC2 for regular tax purposes. Under paragraph (d)(1)(iii) of this section, FC2's CAMT basis in DC stock is \$12x, which is the amount equal to FC1's \$12x CAMT basis in DC stock.

(6) *Example 6: Section 351 transfer with boot*—(i) *Facts.* FC1, a foreign corporation, holds an asset other than stock of a corporation (Asset A) with a basis of \$10x for regular tax purposes, CAMT basis of \$12x, and fair market value of \$15x. FC1 transfers Asset A to FC2, a foreign corporation, in exchange for stock of FC2 with a fair market value of \$5x and cash of \$10x. FC1 reflects \$3x of gain in FSI as a result of the transfer of Asset A to FC2.

(ii) *Analysis.* The transfer of Asset A is a covered asset transaction described in paragraph (b)(1)(i)(C) of this section. Under paragraph (c)(2)(i) of this section, FC1's AFSI is adjusted to disregard the \$3x of gain reflected in its FSI as a result of the transfer of Asset A. Under paragraph (c)(2)(ii) of this section, as a result of the transfer of Asset A, FC1's AFSI is adjusted to include gain of \$3x, which is the amount equal to the lesser of FC1's \$3x gain (the sum of \$5x fair market value of the stock of FC2 and \$10x of cash received, less FC1's \$12x CAMT basis in Asset A) and the \$10x of cash received. For regular tax purposes, under section 351(b) of the Code, FC1 recognizes gain of \$5x as a result of the transfer, which is the amount equal to the lesser of its \$5x gain (the sum of \$5x of fair market value of the stock of FC2 and \$10x of cash received, less FC1's \$10x basis in asset for regular tax purposes) and the \$10x of cash received. For regular tax purposes, under section 358, FC1's basis in the stock of FC2 is \$5x, which is equal to its \$10x basis in Asset A for

regular tax purposes, decreased by the \$10x of cash received, and increased by the \$5x of gain recognized for regular tax purposes. Under paragraph (d)(5) of this section, FC1's CAMT basis in the stock of FC2 is also \$5x. Upon a subsequent disposition of the stock of FC2, the AFSI consequences to FC1 will be determined under paragraph (c)(1)(ii) of this section by reference to FC1's basis in the stock of FC2 for regular tax purposes. Under paragraph (d)(1)(iii) of this section, FC2's CAMT basis in Asset A is \$15x, which is the amount equal to FC1's \$12x CAMT basis in Asset A, increased by the \$3x of gain included in FC1's AFSI.

(7) *Example 7: Transfer subject to section 367(a)*—(i) *Facts.* X, a domestic corporation, holds an asset which is not stock or securities in a corporation or intangible property within the meaning of section 367(d)(4) of the Code (Asset A), with basis of \$10x for regular tax purposes, CAMT basis of \$12x, and fair market value of \$15x. X transfers Asset A to FC, a foreign corporation, solely in exchange for stock of FC in an exchange described in section 351(a). X reflects \$3x of gain in FSI as a result of the transfer of Asset A to FC.

(ii) *Analysis.* The transfer of Asset A is a covered asset transaction described in paragraph (b)(1)(i)(C) of this section. Under paragraph (c)(2)(i) of this section, X's AFSI is adjusted to disregard the \$3x of gain reflected in its FSI as a result of the transfer of Asset A. Because section 367(a) of the Code applies to the transfer of Asset A, under paragraph (c)(2)(ii) of this section, X's AFSI is adjusted to include gain of \$3x as a result of the transfer (\$15x fair market value of Asset X less \$12x CAMT basis in Asset A). For regular tax purposes, because section 367(a) applies to the transfer of Asset A, X recognizes gain of \$5x (\$15x fair market value of Asset A less \$10x basis in Asset A for regular tax purposes). For regular tax purposes, X's basis in the stock of FC is \$15x, which is equal to its \$10x basis in Asset A for regular tax purposes, increased by the \$5x of gain recognized for regular tax purposes under section 367(a). Under paragraph (d)(5) of this section, X's CAMT basis in the stock of FC is also \$15x. Upon a subsequent disposition of the stock of FC, the AFSI consequences to X will be determined under paragraph (c)(1)(ii) of this section by reference to X's basis in the stock of FC for regular tax purposes. Under paragraph (d)(1)(iii) of this section, FC's CAMT basis in Asset A is \$15x, which is the amount equal to X's \$12x CAMT basis in Asset A, increased by the \$3x of gain included in FC's AFSI.

(8) *Example 8: Inbound liquidation subject to section 367(b)*—(i) *Facts.* X, a domestic corporation, owns all the stock of FC, a controlled foreign corporation. FC owns a single asset which is not stock or securities of a corporation (Asset A), with basis of \$10x for regular tax purposes, CAMT basis of \$12x, and fair market value of \$15x. Pursuant to a complete liquidation described in sections 332 and 337, FC transfers Asset A to X (FC liquidation). FC has earnings and profits of \$15x, none of which are either previously taxed earnings and profits or earnings and profits (or deficit in earnings and profits) effectively connected with the conduct of a trade or business within the United States (or attributable to a permanent establishment in the United States, in the context of an applicable United States income tax treaty). X's all earnings and profits amount (within the meaning of § 1.367(b)–2(d)(1)) with respect to the stock of FC is \$10x. As a result of the FC liquidation, under § 1.367(b)–3(b)(3)(i), X includes in income a deemed dividend of \$10x. Furthermore, under § 1.367(b)–3(f)(1), no earnings and profits of FC carryover to X under section 381(c)(2) of the Code. FC reflects \$3x of gain in FSI as a result of the transfer of Asset A to X in the FC liquidation, and X reflects \$3x of gain in FSI as a result of the FC liquidation.

(ii) *Analysis.* The FC liquidation is a covered asset transaction described in paragraph (b)(1)(i)(B) of this section. Under paragraph (c)(1)(i) of this section, X's AFSI is adjusted to disregard the \$3x of gain reflected in its FSI as a result of the FC liquidation. Under paragraph (c)(1)(ii) of this section, X's AFSI is adjusted to include the \$10x deemed dividend recognized by X for regular tax purposes. Furthermore, under paragraph (c)(1)(ii) of this section, if X is eligible for the section 245A dividends-received deduction with respect to the deemed dividend, the AFSI of X is also adjusted to include the section 245A dividends-received deduction. Under paragraph (c)(2)(i) of this section, FC's AFSI is adjusted to disregard the \$3x of gain reflected in its FSI as a result of the transfer of Asset A in the FC liquidation. There is no adjustment to FC's AFSI under paragraph (c)(2)(ii) of this section. Under paragraph (d)(1)(ii) of this section, X's CAMT basis in Asset A is \$12x, which is the amount equal to FC's CAMT basis in Asset A. Under § 1.56A–18(c)(7)(i), none of FC's earnings and profits are carried over to X for purposes of determining X's CAMT retained earnings, because none of FC's earnings and profits carryover to X under section 381(c)(2) for regular tax purposes.

(i) *Applicability date*—(1) *In general.* Except as provided in paragraph (i)(2) of this section, this section applies to taxable years of CAMT entities ending after September 13, 2024.

(2) *Rule for transfers.* In the case of rules in this section that apply to transfers, those rules are applicable to transfers occurring after September 13, 2024.

§ 1.56A–5 AFSI adjustments to partner's distributive share of partnership AFSI.

(a) *Overview.* This section provides rules under section 56A(c)(2)(D) of the Code for determining a CAMT entity's AFSI adjustment for its distributive share of AFSI with respect to a partnership investment (that is, a CAMT entity's interest in a partnership). Paragraph (b) of this section provides the general rule regarding adjustments to a CAMT entity's AFSI with respect to its partnership investment. Paragraph (c) of this section describes the applicable method used to adjust a CAMT entity's AFSI with respect to its partnership investment. Paragraph (d) of this section provides rules regarding items reflected in a CAMT entity's FSI with respect to a partnership investment that are not disregarded for AFSI purposes under the applicable method. Paragraph (e) of this section describes how a distributive share amount is determined under the applicable method. Paragraph (f) of this section describes how the applicable method is applied in tiered partnerships. Paragraph (g) of this section provides rules for determining the taxable year in which the CAMT entity includes the distributive share amount in AFSI if the CAMT entity and the partnership have different taxable years. Paragraph (h) of this section describes reporting and filing requirements for a CAMT entity that is a partner in a partnership. Paragraph (i) of this section lists reporting and filing requirements for partnerships with CAMT entities as partners. Paragraph (j) of this section provides rules limiting the use of a CAMT entity's distributive share amount. Paragraph (k) of this section provides examples illustrating the application of the rules in this section. Paragraph (l) of this section provides the applicability date of this section.

(b) *In general.* If a CAMT entity is a partner in a partnership, the CAMT entity's AFSI with respect to its partnership investment is adjusted as required under the applicable method described in paragraph (c) of this section and the rules in § 1.56A–20, regardless of the method the CAMT entity uses to account for its partnership investment for AFS purposes.

(c) *Applicable method.* Under the *applicable method*, a CAMT entity's AFSI with respect to its partnership investment—

(1) First, except for the amounts described in paragraph (d) of this section, is adjusted to disregard any amount the CAMT entity reflects in its FSI with respect to its partnership investment for the taxable year (for example, changes in the fair value of the partnership investment that are reflected in the CAMT entity's FSI under the fair value method, or the CAMT entity's share of the partnership's earnings that are reflected in the CAMT entity's FSI under the equity method);

(2) Second, is adjusted to include the CAMT entity's distributive share amount for the taxable year as computed under paragraph (e) of this section (except for paragraph (e)(5) of this section), taking into account paragraphs (f), (g) and (j) of this section; and

(3) Third, to the extent applicable, is adjusted as required under paragraph (e)(5) of this section.

(d) *FSI amounts with respect to a partnership investment that are not disregarded under paragraph (c)(1) of this section.* For purposes of paragraph (c)(1) of this section, a CAMT entity's AFSI with respect to its partnership investment is not adjusted to disregard any FSI amounts attributable to a transfer, sale or exchange, contribution, distribution, dilution, deconsolidation, change in ownership, or any other transaction between any partners (including the CAMT entity) of a partnership and the partnership, or between any partners of the partnership (including the CAMT entity), that are not derived from, and included in, the partnership's FSI. However, these FSI amounts may be subject to modification or redetermination for AFSI purposes under §§ 1.56A–1(d)(4) and 1.56A–20.

(e) *Distributive share amount*—(1) *In general.* Except as provided in paragraph (e)(6) of this section, for purposes of this section, the *distributive share amount* of a CAMT entity that is a partner in a partnership is computed by—

(i) The CAMT entity determining its distributive share percentage in accordance with paragraph (e)(2) of this section;

(ii) The partnership determining its modified FSI in accordance with paragraph (e)(3) of this section;

(iii) The CAMT entity multiplying its distributive share percentage by the modified FSI of the partnership; and

(iv) The CAMT entity adjusting the amount determined under paragraph (e)(1)(iii) of this section in accordance with paragraph (e)(4)(ii) of this section.

(2) *Computing the distributive share percentage.* The *distributive share percentage* is a fraction, the numerator of which is the FSI amount that is disregarded by a CAMT entity under paragraph (c)(1) of this section, redetermined based on the partnership's taxable year if the taxable year of the partnership and the CAMT entity are different, and the denominator of which is:

(i) In the case of a CAMT entity, other than a CAMT entity described in paragraph (e)(2)(ii), (iii), (iv) or (v) of this section, and a partnership that are members of the same financial statement group, or in the case of a CAMT entity that uses the equity method to account for its partnership investment, 100 percent of the partnership's FSI for the partnership's taxable year.

(ii) In the case of a CAMT entity that uses the fair value method to account for its partnership investment, the total change in the fair value of the partnership during the partnership's taxable year, as determined by the CAMT entity for purposes of determining the CAMT entity's share of the total change in its AFS.

(iii) In the case of a CAMT entity that treats its partnership investment as other than an equity investment for AFS purposes (for example, as debt) (AFS non-partner), 100 percent of the partnership's FSI for the partnership's taxable year plus the FSI amount included in the numerator for the CAMT entity under this paragraph (e)(2) for the taxable year.

(iv) In the case of a CAMT entity that treats itself as owning 100 percent of the equity in the partnership for AFS purposes because the CAMT entity treats all other partners in the partnership as AFS non-partners, 100 percent of the partnership's FSI for the partnership's taxable year plus the sum of any amounts reflected in the partnership's FSI that are treated as paid or accrued to the other partners for the partnership's taxable year.

(v) In the case of a CAMT entity that uses any other AFS method to account for its partnership investment, an amount determined under the principles of paragraphs (e)(2)(i) and (ii) of this section that is reasonable under the facts and circumstances and reflective of the proportionate amount of the partnership's FSI the CAMT entity is reporting for AFS purposes.

(3) *Computing the modified FSI of the partnership.* A partnership's modified FSI is equal to the partnership's FSI for the partnership's taxable year, adjusted for all relevant AFSI adjustments provided in the section 56A regulations

(that is, those AFSI adjustments that can apply to partnerships), except for the AFSI adjustments in §§ 1.56A–4(c)(1)(ii), 1.56A–15(d)(2)(ii) and (iv), and 1.56A–16(d)(2)(ii) and (iv). For purposes of determining a partnership's modified FSI, references to AFSI in other sections of the section 56A regulations (except for the references to AFSI in § 1.56A–1(b)(1)) are treated as references to modified FSI.

(4) *AFSI items that are separately stated*—(i) *In general.* The AFSI items described in §§ 1.56A–4(c)(1)(ii), 1.56A–6(c)(2)(iii), 1.56A–8(c), 1.56A–15(d)(2)(ii) and (iv), and (e)(3)(iii) and (iv), 1.56A–16(d)(2)(ii) and (iv), and (e)(3)(iii) and (iv), 1.56A–20(d)(1)(ii), and 1.56A–21(e)(2)(iii) are separately stated to the partners in the partnership that are CAMT entities (CAMT entity partners) and taken into account by the CAMT entity partners in the manner provided in paragraphs (e)(4)(ii) and (iii) of this section, as applicable.

(ii) *Adjustments to a partner's distributive share amount.* The following separately stated AFSI items are taken into account as adjustments to a CAMT entity partner's distributive share amount of a partnership's modified FSI as provided in paragraph (e)(1)(iv) of this section:

(A) A CAMT entity partner's distributive share of the AFSI items described in §§ 1.56A–15(d)(2)(ii) and (iv) and 1.56A–16(d)(2)(ii) and (iv), which is equal to the CAMT entity partner's distributive share of the items for regular tax purposes for the taxable year;

(B) A CAMT entity partner's distributive share of the AFSI items described in §§ 1.56A–15(e)(3)(iii) and (iv) and 1.56A–16(e)(3)(iii) and (iv), as provided under §§ 1.56A–15(e)(3)(iii) and (iv) and 1.56A–16(e)(3)(iii) and (iv); and

(C) A CAMT entity partner's distributive share of the AFSI items described in § 1.56A–20(d)(1)(ii), which is equal to the CAMT entity partner's allocable share of the items as provided in § 1.56A–20(d)(2)(i) for the taxable year, taking into account any acceleration event described in § 1.56A–20(d)(1)(iii) and (d)(2)(ii).

(iii) *Adjustments to a partner's AFSI.* The separately stated AFSI items described in §§ 1.56A–4(c)(1)(ii), 1.56A–6(c)(2)(iii), 1.56A–8(c), and 1.56A–21(e)(2)(iii) are not taken into account in determining a CAMT entity partner's distributive share amount, and instead are taken into account in determining a CAMT entity partner's AFSI as follows:

(A) The CAMT entity partner takes into account the AFSI items described in § 1.56A–4(c)(1)(ii) that are separately

stated to the CAMT entity partner, as provided under § 1.56A–4(e);

(B) The CAMT entity partner takes into account the AFSI items described in § 1.56A–6(c)(2)(iii) that are separately stated to the CAMT entity partner, as provided under § 1.56A–6(c)(2)(iv);

(C) The CAMT entity partner takes into account the AFSI items described in § 1.56A–8(c) that are separately stated to the CAMT entity partner, as provided under § 1.56A–8(c); and

(D) The CAMT entity partner takes into account the AFSI item described in § 1.56A–21(e)(2)(iii) that is separately stated to the CAMT entity partner, as provided under § 1.56A–21(e)(2)(ii).

(5) *Effect of equity method basis adjustments to a CAMT entity's FSI.* If a CAMT entity partner includes in its FSI any amortization of an equity method basis adjustment with respect to the partnership investment that is attributable to section 168 property or qualified wireless spectrum held by the partnership, and if the CAMT entity partner has a basis adjustment under section 743(b) of the Code with respect to the same property that affects the CAMT entity partner's distributive share amount, then the CAMT entity partner adjusts its AFSI to disregard any such FSI amortization.

(6) *Computing a partner's distributive share amount when the partnership's AFSI is its Federal income tax return*—

(i) *In general.* If a partnership treats as its AFSI the partnership's Federal income tax return under § 1.56A–2(c)(6), a CAMT entity partner's distributive share amount with respect to the partnership for a taxable year is equal to the amount of the CAMT entity partner's FSI that the partner disregards under paragraph (c)(1) of this section for the taxable year (except for any items described in §§ 1.56A–4(c)(1)(i) and 1.56A–8(b) that would otherwise be reflected in such amount).

(ii) *Separately stated AFSI items.* If a CAMT entity partner determines its distributive share amount in accordance with paragraph (e)(6)(i) of this section, paragraphs (e)(4)(iii)(A) through (C) of this section apply to determine the CAMT entity partner's AFSI, but paragraph (e)(4)(iii)(D) of this section does not apply.

(f) *Computation in the case of tiered partnerships.* If a CAMT entity is a partner in a partnership (UTP) that directly or indirectly owns an investment in a lower-tier partnership (LTP), each partnership, starting with the lowest-tier partnership and going in order up the tiered-partnership chain, applies the rules and principles of paragraphs (b) through (e) of this section to determine the distributive share

amounts of each CAMT entity partner in the tiered-partnership chain.

(g) *Taxable year.* The distributive share amount that is required to be included in a CAMT entity's AFSI for a taxable year of the CAMT entity under paragraph (c)(2) of this section with respect to the CAMT entity's partnership investment is based on the modified FSI of the partnership for any taxable year of the partnership ending with or within the taxable year of the CAMT entity.

(h) *Reporting and filing requirements for a CAMT entity that is a partner in a partnership*—(1) *In general.* If a CAMT entity is a partner in a partnership, and if the CAMT entity cannot determine its distributive share of the partnership's AFSI without receiving certain information from the partnership, the CAMT entity must request such information from that partnership by the 30th day after the close of the taxable year of the partnership to which the information request relates, except as provided in paragraph (i)(2)(iii) of this section. The CAMT entity must maintain the information, and requests made for the information, in its books and records. After the first taxable year in which the CAMT entity requests information from the partnership, the partnership must continue to provide the information to the CAMT entity each subsequent taxable year of the partnership unless the partnership receives written notification from the CAMT entity that the information is not required.

(2) *Failure to obtain information*—(i) *In general.* If a partnership fails to furnish the information requested by a CAMT entity that is a partner in the partnership under paragraph (h)(1) of this section, the CAMT entity must determine its distributive share amount with respect to the partnership investment by making a required good-faith estimate in accordance with paragraph (h)(2)(ii) of this section.

(ii) *Required estimate.* If a CAMT entity is required to estimate its distributive share amount under paragraph (h)(2)(i) of this section with respect to a partnership investment, it must base its estimate on whatever information it can reasonably obtain, if received before the expiration of the period of limitations under section 6501 of the Code, and it must continue to use its best efforts to obtain the requested information from the partnership. Except as provided in paragraph (h)(2)(iii)(B) of this section, once the CAMT entity receives the information from the partnership, the CAMT entity (if not also an applicable corporation) should report the information to its

partners, including any UTP (which would then report the information to its partners), until the information is received by an applicable corporation. A partnership that fails to furnish the required information may be subject to penalties and adjustment in accordance with paragraph (i)(6) of this section.

(iii) *Partnerships subject to subchapter C of chapter 63 of the Code*—(A) *Required estimate.* If a partnership is subject to the centralized partnership audit regime in subchapter C of chapter 63 of the Code (BBA partnership), a CAMT entity that is a partner in the partnership must file a notice of inconsistent treatment in accordance with section 6222 of the Code if making the required estimate requires the CAMT entity to treat a partnership-related item, as defined in § 301.6241–1(a)(6)(ii) of this chapter, inconsistently with how the partnership treated the partnership-related item on its partnership return.

(B) *Information obtained after the filing of the partnership return.* If a BBA partnership previously filed its partnership return for the taxable year, and if the due date for filing the partnership return has passed, the BBA partnership must file an administrative adjustment request (AAR) in accordance with section 6227 of the Code in order to adjust any partnership-related items, including as part of furnishing information to a CAMT entity that is a partner in a partnership. Any such adjustment is determined and taken into account in accordance with section 6227 and the regulations.

(i) *Reporting and filing requirements for partnerships in which a CAMT entity is a partner*—(1) *Requirement to file information with the IRS and to furnish information to a CAMT entity.* If a CAMT entity that is a partner in a partnership requests information from the partnership in accordance with paragraph (h) of this section, the partnership must file such information with the IRS as the Commissioner may require in forms, instructions, or other guidance for the Commissioner to determine that the partnership and its partners have complied with the rules of this section. The partnership also must furnish the information to the CAMT entity in such manner as the Commissioner may require in forms, instructions, or other guidance. This information includes—

(i) Information necessary to determine the denominator for the distributive share percentage under paragraph (e)(2) of this section;

(ii) The partnership's modified FSI as determined under paragraph (e)(3) of this section;

(iii) Information required for the CAMT entity to make the adjustments provided in paragraph (e)(4) of this section;

(iv) If the CAMT entity is a United States shareholder, information required for the CAMT entity to make the adjustments provided in § 1.56A–6(b); and

(v) If the CAMT entity is a controlled foreign corporation, information required for the United States shareholders of the controlled foreign corporation to make the adjustments provided in § 1.56A–6(b).

(2) *Special rules for tiered structures*—(i) *Requirement to request information.* If a UTP requires information from an LTP to meet the UTP's reporting and filing requirements under this section (including any information required to be furnished under paragraph (i)(1) of this section to a CAMT entity that is a partner in UTP), the UTP must request the information from the LTP.

(ii) *Requirement to furnish and file information.* If information is requested from an LTP under paragraph (i)(2)(i) of this section, the LTP must file the information with the IRS and must furnish the information to the UTP as required under paragraph (i)(1) of this section.

(iii) *Timing of requesting information.* A UTP described in paragraph (i)(2)(i) of this section must request any necessary information by the later of—

(A) The 30th day after the close of the taxable year of the partnership to which the information request relates; or

(B) 14 days after the date the UTP receives a request for the information from another UTP.

(3) *Timing of furnishing information*—(i) *In general.* Except as provided in paragraph (i)(3)(ii) of this section, requested information must be furnished by the date on which the partnership is required to furnish information under section 6031(b) of the Code.

(ii) *Late requests.* Except as provided in paragraph (h)(2)(iii)(B) of this section, information with respect to a taxable year that is requested by a UTP after the date that is 14 days prior to the due date for an LTP to furnish and file information under section 6031(b) must be furnished and filed in the time and manner prescribed by forms, instructions, or other guidance.

(iii) *Partnership not required to furnish information to a CAMT entity until it has notice of a request.* A partnership is not required to furnish information to a CAMT entity that is a partner in the partnership under this paragraph (i)(3)(iii) until it has notice of

a request. For purposes of this paragraph (i)(3)(iii), a partnership has notice of a request when—

(A) The partnership has received a request in the manner described in paragraph (h)(1) of this section from the CAMT entity; or

(B) The partnership has an obligation to continue providing information to a CAMT entity partner under paragraph (h)(1) of this section due to a request made by the CAMT entity in a prior taxable year.

(4) *Manner of furnishing information.* Information may be furnished in any written manner, including electronically, that is agreed to by the parties.

(5) *Recordkeeping requirement.* Any partnership receiving a request for information must retain a copy of the request and calculations related to distributive share amounts, and the date the request was received, in its books and records.

(6) *Penalties.* The information required to be furnished under this paragraph (i) also is required to be furnished under section 6031(b). See also section 6722 of the Code.

(j) *Limitation on allowance of negative distributive share amount*—(1) *In general.* If a CAMT entity's distributive share amount (as determined under paragraph (e) of this section) with respect to a partnership investment is negative for a taxable year, the CAMT entity includes the negative distributive share amount in its AFSI for the taxable year only to the extent the negative distributive share amount does not exceed the CAMT entity's CAMT basis in its partnership investment (as determined under paragraph (j)(3) of this section) at the end of the partnership taxable year in which the negative distributive share amount occurred. Ordering rules similar to the rules in § 1.704–1(d)(2) apply in computing a CAMT entity's CAMT basis in its partnership investment for purposes of applying the rules in this section.

(2) *Carryover of suspended negative distributive share amount.* Any negative distributive share amount that is not allowed for a taxable year under paragraph (j)(1) of this section is included in determining the CAMT entity's distributive share amount (as determined under paragraph (e) of this section) in the succeeding taxable year, subject to the limitation provided in paragraph (j)(1) of this section.

(3) *CAMT basis in a partnership investment.* For purposes of the section 56A regulations, a CAMT entity's CAMT basis in its partnership investment is equal to the CAMT entity's AFS basis in

the partnership investment as of the first day of the partnership's first taxable year ending after December 31, 2019, in which the CAMT entity held its interest in the partnership, adjusted for the following items for each taxable year of the partnership ending after December 31, 2019 (but not adjusted below zero), as applicable—

(i) Include any amounts reflected in the AFS basis of the CAMT entity's partnership investment that are not derived from, and included in, the partnership's FSI (for example, amounts described in paragraph (d) of this section);

(ii) Increase by the CAMT entity's distributive share amount included in its AFSI, if the distributive share amount is positive;

(iii) Decrease by the CAMT entity's distributive share amount included in its AFSI, if the distributive share amount is negative;

(iv) Increase or decrease, as appropriate, to take into account the treatment of contributions of property by the CAMT entity under § 1.56A–20(c)(3)(ii);

(v) Increase or decrease, as appropriate, to take into account any adjustments that are separately stated under paragraph (e)(4)(iii) of this section and made to the basis in the CAMT entity's partnership investment for regular tax purposes under section 705 of the Code;

(vi) Decrease to take into account any adjustments made to the basis in the CAMT entity's partnership investment for regular tax purposes under § 1.1017–1(g)(2) in accordance with § 1.56A–21(e);

(vii) Increase or decrease, as appropriate, to take into account any adjustments made to the basis in the CAMT entity's partnership investment for regular tax purposes under section 961(a) or (b) of the Code;

(viii) Decrease to take into account any adjustments made to the basis in the CAMT entity's partnership investment for regular tax purposes under section 50(c)(5) of the Code;

(ix) Exclude any FSI amortization disallowed in the calculation of the CAMT entity's AFSI under paragraph (e)(5) of this section;

(x) Increase to take into account any adjustments described in § 1.56A–21(e) that are separately stated to the CAMT entity under paragraph (e)(4)(iii) of this section;

(xi) Exclude any amounts that are included in the AFS basis of the CAMT entity's partnership investment as a result of a contribution of stock of a foreign corporation and increase to take into account any adjustments made to

the basis in the CAMT entity's partnership investment for regular tax purposes under section 722 of the Code resulting from a contribution of stock of a foreign corporation; and

(xii) Include any amounts that are excluded from the AFS basis of the CAMT entity's partnership investment as a result of a non-liquidating distribution of stock of a foreign corporation and decrease to take into account any adjustments made to the basis of the CAMT entity's partnership investment for regular tax purposes under section 733 of the Code resulting from a non-liquidating distribution of stock of a foreign corporation.

(k) *Examples.* The following examples illustrate the application of the rules in this section.

(1) *Example 1: Adjustment of AFSI with respect to a partnership investment accounted for using the equity method—(i) Facts.* PRS1 is a partnership, X is a corporation, and A is an individual. PRS1 is owned by X and A. PRS1 and X have the same tax and AFS years, and both use the calendar year as its taxable year and for AFS purposes. For 2024, X has FSI of \$250x, consisting of \$200x from its direct operations and \$50x from its investment in PRS1, which it accounts for under the equity method. Also, for 2024, PRS1 has \$100x of FSI which includes \$20x of income from a covered benefit plan and \$10x of covered book depreciation expense, as defined in § 1.56A–15(b)(3). For regular tax purposes, the \$20x of income from the covered benefit plan is excludable from gross income and the \$10x of covered book depreciation expense is equal to deductible tax depreciation, as defined in § 1.56A–15(b)(5), with respect to section 168 property. Under the equity method, X includes 50% of PRS1's FSI for 2024 on its AFS.

(ii) *Analysis.* The following steps are used to compute X's distributive share amount from PRS1 for 2024:

(A) *Step 1: Disregard FSI amount with respect to partnership investment for the taxable year.* Under paragraph (c)(1) of this section, X disregards the \$50x of FSI it includes on its AFS with respect to its investment in PRS1 for 2024.

(B) *Step 2: Calculate the distributive share percentage.* Under paragraph (e)(2)(i) of this section, X must compute a fraction, the numerator of which is \$50x (the amount disregarded under paragraph (c)(1) of this section) and the denominator of which is \$100x (100% of PRS1's FSI for 2024). The resulting distributive share percentage is 50% (\$50x/\$100x).

(C) *Step 3: Compute the modified FSI of the partnership.* Under paragraph

(e)(3) of this section, PRS1's FSI of \$100x must be adjusted under § 1.56A–13(b) to disregard the \$20x of income from the covered benefit plan within the meaning § 1.56A–13(c)(1) that was included for AFS purposes, and to include none of the gross income from the covered benefit plan since it was all excluded from gross income for regular tax purposes. PRS1's FSI must also be adjusted to disregard the covered book depreciation expense, or \$10x, under § 1.56A–15(d)(1)(iii), and reduced by the deductible tax depreciation, or \$10x, under § 1.56A–15(d)(1)(ii). Accordingly, PRS1's modified FSI is \$80x (\$100x – \$20x + \$10x – \$10x).

(D) *Step 4: Multiply the distributive share percentage by the modified FSI of the partnership.* Under paragraph (e)(1)(iii) of this section, X must multiply its distributive share percentage (50%) by the modified FSI of PRS1, or \$80x, resulting in \$40x of modified FSI for X.

(E) *Step 5: Adjust the share of modified FSI by separately stated adjustments.* Under paragraphs (e)(1)(iv) and (e)(4) of this section, X must adjust its share of PRS1's modified FSI by any separately stated amounts listed in paragraph (e)(4)(ii) of this section. Because there are none, X's distributive share amount of PRS1's AFSI for 2024 is \$40x.

(F) *Step 6: Include distributive share amount in AFSI.* Under paragraph (c)(2) of this section, X includes in its AFSI the \$40x distributive share amount from PRS1. Thus, after reducing X's AFSI from \$250x to \$200x (Step 1), it is increased to \$240x for 2024.

(2) *Example 2: Adjustment of AFSI with respect to a partnership investment accounted for using the hypothetical liquidation at book value under the equity method—(i) Facts.* PRS1 is a partnership, X is a corporation, and A is an individual. PRS1 is owned by X and A. PRS1 and X have the same tax and AFS years. For 2024, X has FSI of \$250x, consisting of \$190x from its direct operations and \$60x from its investment in PRS1, which it accounts for under the hypothetical liquidation at book value method under the equity method. Also, for 2024, PRS1 has \$100x of FSI which includes \$20x of income from a covered benefit plan and \$10x of covered book depreciation expense, as defined in § 1.56A–15(b)(3). For regular tax purposes, the \$20x of income from the covered benefit plan is excludable from gross income and the \$10x of covered book depreciation expense is equal to deductible tax depreciation, as defined in § 1.56A–15(b)(5), with respect to section 168 property.

(ii) *Analysis.* The following steps are used to compute X's distributive share amount from PRS1 for 2024:

(A) *Step 1: Disregard FSI amount with respect to partnership investment for the taxable year.* Under paragraph (c)(1) of this section, X disregards the \$60x of FSI it includes on its AFS with respect to its investment in PRS1 for 2024.

(B) *Step 2: Calculate the distributive share percentage.* Under paragraph (e)(2)(i) of this section, X must compute a fraction, the numerator of which is \$60x (the amount disregarded under paragraph (c)(1) of this section) and the denominator of which is \$100x (100% of PRS1's FSI for 2024). The resulting distributive share percentage is 60% (\$60x/\$100x).

(C) *Step 3: Compute the modified FSI of the partnership.* Under paragraph (e)(3) of this section, PRS1's FSI of \$100x must be adjusted under § 1.56A-13(b) to disregard the \$20x of income from the covered benefit plan within the meaning § 1.56A-13(c)(1) that was included for AFS purposes, and to include none of the gross income from the covered benefit plan since it was all excluded from gross income for regular tax purposes. PRS1's FSI must also be adjusted to disregard the covered book depreciation expense, or \$10x, under § 1.56A-15(d)(1)(iii) and reduced by the deductible tax depreciation, or \$10x, under § 1.56A-15(d)(1)(ii). Accordingly, PRS1's modified FSI is \$80x (\$100x - \$20x + \$10x - \$10x).

(D) *Step 4: Multiply the distributive share percentage by the modified FSI of the partnership.* Under paragraph (e)(1)(iii) of this section, X must multiply its distributive share percentage (60%) by the modified FSI of PRS1, or \$80x, resulting in \$48x of modified FSI for X.

(E) *Step 5: Adjust the share of modified FSI by separately stated adjustments.* Under paragraphs (e)(1)(iv) and (e)(4) of this section, X must adjust its share of PRS1's modified FSI by any separately stated amounts listed in paragraph (e)(4)(ii) of this section. Because there are none, X's distributive share amount of PRS1's AFSI for 2024 is \$48x.

(F) *Step 6: Include distributive share amount in AFSI.* Under paragraph (c)(2) of this section, X includes in its AFSI the \$48x distributive share amount from PRS1. Thus, after reducing X's AFSI from \$250x to \$190x (Step 1), it is increased to \$238x for 2024.

(3) *Example 3: Adjustment of AFSI with respect to a partnership investment accounted for using the hypothetical liquidation at book value under the equity method and involving a loss on the investment—(i) Facts.* PRS1 is

owned by X, a corporation and a tax-equity investor in PRS, and A, an individual developer. For 2024, X has FSI of \$50x, consisting of \$200x of income from its direct operations and \$150x of loss from its investment in PRS1, which it accounts for under the hypothetical liquidation at book value method under the equity method. Also, for 2024, PRS1 has - \$100x of FSI which includes \$20x of income from a covered benefit plan and \$10x of covered book depreciation expense, as defined in § 1.56A-15(b)(3). For regular tax purposes, the \$20x of income from the covered benefit plan is excludable from gross income and the \$10x of covered book depreciation expense is deductible tax depreciation, as defined in § 1.56A-15(b)(5), with respect to section 168 property.

(ii) *Analysis.* The following steps are used to compute X's distributive share amount from PRS1 for 2024:

(A) *Step 1: Disregard FSI amount with respect to partnership investment for the taxable year.* Under paragraph (c)(1) of this section, X disregards the - \$150x of FSI it includes on its AFS with respect to its investment in PRS1 for 2024.

(B) *Step 2: Calculate the distributive share percentage.* Under paragraph (e)(2)(i) of this section, X must compute a fraction, the numerator of which is - \$150x (the amount disregarded under paragraph (c)(1) of this section) and the denominator of which is - \$100x (100% of PRS1's FSI for 2024). The resulting distributive share percentage is 150% (- \$150x/- \$100x).

(C) *Step 3: Compute the modified FSI of the partnership.* Under paragraph (e)(3) of this section, PRS1's FSI of - \$100x must be adjusted under § 1.56A-13(b) to disregard the \$20x of income from the covered benefit plan within the meaning § 1.56A-13(c)(1) that was included for AFS purposes, and to include none of the gross income from the covered benefit plan since it was all excluded from gross income for regular tax purposes. PRS1's FSI must also be adjusted to disregard the covered book depreciation expense, or \$10x, under § 1.56A-15(d)(1)(iii) and reduced by the deductible tax depreciation, or \$10x, under § 1.56A-15(d)(1)(ii). Accordingly, PRS1's modified FSI is - \$120x (- \$100x - \$20x + \$10x - \$10x).

(D) *Step 4: Multiply the distributive share percentage by the modified FSI of the partnership.* Under paragraph (e)(1)(iii) of this section, X must multiply its distributive share percentage (150%) by the modified FSI of PRS1, or - \$120x, resulting in - \$180x of modified FSI for X.

(E) *Step 5: Adjust the share of modified FSI by separately stated adjustments.* Under paragraphs (e)(1)(iv) and (e)(4) of this section, X must adjust its share of PRS1's modified FSI by any separately stated amounts listed in paragraph (e)(4)(ii) of this section. Because there are none, X's distributive share amount of PRS1's AFSI for 2024 is - \$180x.

(F) *Step 6: Include distributive share amount in AFSI.* Under paragraph (c)(2) of this section, X includes in its AFSI the - \$180x distributive share amount from PRS1 (subject to the rules in paragraph (j)(1) of this section). Thus, after increasing X's AFSI from \$50x to \$200x (Step 1), it is decreased to \$20x for 2024.

(4) *Example 4: Determining distributive share percentage for AFS non-partner—(i) Facts.* PRS1 is treated as a partnership for Federal income tax purposes owned by X and Y, each of which is a corporation. X is subject to the CAMT. For AFS purposes, X treats itself as a creditor to PRS1 and PRS1 treats itself as a debtor to X. For 2024, under their methods of financial accounting and under the terms of the loan, X reports on its AFS \$50 of interest income from its investment in PRS1, and PRS1 reports on its AFS \$50 of interest expense paid to X. Also, for 2024, PRS1 has \$75x of FSI after deducting its interest expense paid to X.

(ii) *Analysis.* Under § 1.56A-1(f), the classification of PRS1 for regular tax purposes applies for purposes of the section 56A regulations. Accordingly, X must determine its distributive share percentage with respect to PRS1 under paragraph (e)(2)(iii) of this section by computing a fraction, the numerator of which is \$50x (the amount disregarded under paragraph (c)(1) of this section) and the denominator of which is \$125x (100% of PRS1's FSI for 2024 plus the FSI amount included in the numerator for X's distributive share percentage). The resulting distributive share percentage is 40% (\$50x/\$125x).

(5) *Example 5: Determining distributive share percentage for entity that treats itself as owning 100 percent of the equity in the partnership for AFS purposes because the CAMT entity treats all other partners in the partnership as AFS non-partners—(i) Facts.* PRS1 is treated as a partnership for Federal income tax purposes owned by X and Y, each of which is a corporation. For AFS purposes, X treats itself as owning 100% of the equity in PRS1. X also treats Y as a creditor with respect to PRS1 and treats PRS1 as a debtor with respect to Y. X is subject to the CAMT. For 2024, X reports on its AFS \$75x of FSI from its investment in

PRS1. Also, for 2024, PRS1 has \$75x of FSI after deducting its interest expense paid to Y. As such, under their methods of financial accounting, X reports on its AFS \$75 from its equity investment in PRS1, Y reports on its AFS \$50 of interest income from its investment in PRS1, and PRS1 reports on its AFS \$50 of interest expense paid to Y.

(ii) *Analysis.* Under § 1.56A–1(f), the classification of PRS1 for regular tax purposes applies for purposes of the section 56A regulations. Accordingly, X must determine its distributive share percentage with respect to PRS1 under paragraph (e)(2)(iv) of this section by computing a fraction, the numerator of which is \$75x (the amount disregarded under paragraph (c)(1) of this section) and the denominator of which is \$125x (100% of PRS1's FSI for 2024 plus the sum of any amounts reflected in the PRS1's FSI that are treated as paid or accrued to Y). The resulting distributive share percentage is 60% (\$75x/\$125x).

(6) *Example 6: Adjustment of AFSI with respect to a partnership investment accounted for using the equity method in a tiered partnership structure—(i) Facts.* The facts are the same as in paragraph (k)(1)(i) of this section (*Example 1*), except that included in PRS1's \$100x of FSI is \$50x of FSI from its investment in PRS2, a partnership owned by PRS1 and A. PRS1 and PRS2 have the same taxable year and AFS year. For AFS purposes, PRS1 accounts for its interest in PRS2 using the equity method. For 2024, PRS2 has FSI of \$150x, which includes \$15x of covered book depreciation expense. For regular tax purposes, PRS2 has \$45x of deductible tax depreciation with respect to section 168 property. Under the equity method, PRS1 includes 33⅓% of PRS2's FSI for 2024 on its AFS.

(ii) *Analysis: Computation beginning with respect to lowest-tier partnership.* The following steps are used to compute X's distributive share amount from PRS1 for 2024, beginning with respect to the lowest-tier partnership. Under paragraphs (e)(3) and (f) of this section, PRS1 must determine its distributive share amount with respect to its investment in PRS2 in accordance with this section before X determines its distributive share amount with respect to PRS1.

(A) *Step 1: Disregard FSI amount with respect to partnership investment for the taxable year.* Under paragraph (c)(1) of this section, PRS1 disregards the \$50x of FSI included on its AFS with respect to its investment in PRS2.

(B) *Step 2: Calculate the distributive share percentage.* Under paragraph (e)(2)(i) of this section, PRS1 computes a fraction, the numerator of which is

\$50x (the amount disregarded under paragraph (c)(1) of this section) and the denominator of which is \$150x (100% of PRS2's FSI). The resulting distributive share percentage is 33⅓% (\$50x/\$150x).

(C) *Step 3: Compute the modified FSI of the partnership.* Under paragraph (e)(3) of this section, PRS2's FSI of \$150x must be adjusted to disregard the covered book depreciation expense, or \$15x, under § 1.56A–15(d)(1)(iii) and reduced by the deductible tax depreciation, or \$45x, under § 1.56A–15(d)(1)(ii). Accordingly, PRS2's modified FSI is \$120x (\$150x + \$15x – \$45x).

(D) *Step 4: Multiply the distributive share percentage by the modified FSI of the partnership.* Under paragraph (e)(1)(iii) of this section, PRS1 must multiply its distributive share percentage (33⅓%) by the modified FSI of PRS2, or \$120x, resulting in an amount of \$40x.

(E) *Step 5: Adjust the share of modified FSI by separately stated adjustments.* Under paragraph (e)(1)(iv) and (e)(4) of this section, PRS1 must adjust its share of PRS2's modified FSI by any separately stated amounts listed in paragraph (e)(4)(ii) of this section. Because there are none, PRS1's distributive share amount of PRS2's AFSI for Year 1 is \$40x.

(F) *Step 6: Include distributive share amount in AFSI (or modified FSI if a CAMT entity is a partnership).* Under paragraph (c)(2) of this section, PRS1 includes in its modified FSI the \$40x distributive share amount from PRS2. Thus, after reducing PRS1's modified FSI from \$100x to \$50x, it is increased to \$90x.

(iii) *Analysis: Computation with respect to PRS1.* Under paragraphs (e)(3) and (f) of this section, because PRS1 is the last partnership in the chain, X determines its distributive share amount with respect to its investment in PRS1.

(A) *Step 1: Disregard FSI amount with respect to partnership investment for the taxable year.* Under paragraph (c)(1) of this section, X disregards the \$50x of FSI it includes on its AFS with respect to its investment in PRS1 for Year 1.

(B) *Step 2: Calculate the distributive share percentage.* Under paragraph (e)(2)(i) of this section, X computes a fraction, the numerator of which is \$50x (the amount disregarded under paragraph (c)(1) of this section) and the denominator of which is \$100x (100% of PRS1's FSI for Year 1). The resulting distributive share percentage is 50% (\$50x/\$100x).

(C) *Step 3: Compute the modified FSI of the partnership.* Under paragraph (e)(3) of this section, PRS1's FSI of

\$100x must be adjusted under § 1.56A–13(b) to disregard the \$20x of income from the covered benefit plan within the meaning of § 1.56A–13(c)(1) that was included for AFS purposes. PRS1's FSI must also be adjusted to disregard the covered book depreciation expense, or \$10x, under § 1.56A–15(d)(1)(iii) and reduced by the deductible tax depreciation, or \$10x under § 1.56A–15(d)(1)(ii). PRS1's FSI must further be adjusted to exclude its \$50x of FSI with respect to its investment in PRS2 and to include its distributive share amount with respect to PRS2 of \$40x, as determined in paragraph (k)(6)(ii)(F) of this section. Accordingly, PRS1's modified FSI is \$70x (\$100x – \$20x + \$10x – \$10x – \$50x + \$40x).

(D) *Step 4: Multiply the distributive share percentage by the modified FSI of the partnership.* Under paragraph (e)(1)(iii) of this section, X must multiply its distributive share percentage, or 50%, by the modified FSI of PRS1, or \$70x, resulting in X having a share of \$35x of the modified FSI of PRS1.

(E) *Step 5: Adjust the share of modified FSI by separately stated adjustments.* Under paragraphs (e)(1)(iv) and (e)(4) of this section, X must adjust its share of PRS1's modified FSI by any separately stated amounts listed in paragraph (e)(4)(ii) of this section. Because there are none, X's distributive share amount of PRS1's AFSI for 2024 is \$35x.

(F) *Step 6: Include distributive share amount in AFSI.* Under paragraph (c)(2) of this section, X includes in its AFSI the \$35x distributive share amount from PRS1. Thus, after reducing X's AFSI from \$250x to \$200x, it is increased to \$235x for 2024.

(7) *Example 7: Adjustment of AFSI with respect to a partnership investment accounted for using the equity method with a basis adjustment under section 743(b) related to section 168 property—(i) Facts.* The facts are the same as in paragraph (k)(1)(i) of this section (*Example 1*), except that X has a basis adjustment under section 743(b) with respect to its investment in PRS1, in turn with respect to section 168 property owned by PRS1. As result of the section 743(b) basis adjustment, X is allocated an additional \$10x of deductible tax depreciation from PRS1's section 168 property. X does not have a corresponding equity interest method basis adjustment for financial statement purposes.

(ii) *Analysis.* The analysis is the same as in paragraphs (k)(1)(ii)(A) through (D) of this section (*Example 1*), and the remaining steps are as follows:

(A) *Step 5: Adjust the share of modified FSI by separately stated adjustments.* Under paragraphs (e)(1)(iv) and (e)(4) of this section, X must adjust its share of PRS1's modified FSI by its section 704(b) of the Code distributive share amount of PRS1's deductible tax depreciation for section 168 property from its section 743(b) basis adjustment with respect to its investment in PRS1, or \$10x. X's distributive share amount of PRS1's AFSI for 2024 is \$30x (\$40x – \$10x).

(B) *Step 6: Include distributive share amount in AFSI.* Under paragraph (c)(2) of this section, X includes in its AFSI the \$30x distributive share amount with respect to its investment in PRS1. Thus, after reducing X's AFSI from \$250x to \$200x, it is increased to \$230x for 2024.

(8) *Example 8: Adjustment of AFSI with respect to a partnership investment accounted for using the fair value method—(i) Facts—(A) General facts.* PRS3 is a partnership, Y is a corporation, and B is an individual. PRS3 is directly owned by Y and B. PRS3 and Y have the same taxable year and AFS year. For 2024, Y has FSI of \$275x, consisting of \$200x from its direct operations and \$75x from its investment in PRS3, which it accounts for using the fair value method of accounting pursuant to which the FSI reported on its AFS with respect to PRS3 reflects the net change in the fair value of its investment in PRS3 during the taxable year.

(B) *Facts: PRS3.* PRS3 has an interest in PRS4. PRS4 is a partnership. For 2024, PRS3 has FSI of \$100x, which includes \$14x of covered book depreciation expense and \$50x from its investment in PRS4. PRS3 uses the fair value method to account for its assets and its FSI includes the total change in the fair value with respect to its assets. The FSI reported by PRS3 on its AFS with respect to its investment in PRS4 reflects the net change in the fair value of its investment in PRS4 during the taxable year, including changes in cash amounts. For regular tax purposes, PRS3 has deductible tax depreciation with respect to section 168 property of \$36x per year for ten years. PRS3 and PRS4 have the same taxable year and AFS year.

(C) *Facts: PRS4.* PRS4 uses the fair value method to account for its investment in its assets. The FSI reported on its AFS with respect to those assets reflects the net change in fair value of the assets during the taxable year, including changes in cash amounts. For Year 1, PRS4 has FSI of \$150x, consisting of a \$100x increase to cash amounts and a \$50x increase to the value of certain property. PRS4 has no

covered book depreciation expense for the section 168 property. For regular tax purposes, PRS4 has deductible tax depreciation with respect to section 168 property of \$18x per year for ten years.

(ii) *Analysis: Begin computation with respect to lowest-tier partnership.* Under paragraphs (e)(3) and (f) of this section, PRS3 must determine its distributive share amount with respect to its investment in PRS4 in accordance with this section before Y determines its distributive share amount with respect to PRS3.

(A) *Step 1: Disregard FSI amount with respect to partnership investment for the taxable year.* Under paragraph (c)(1) of this section, PRS3 disregards the \$50x of FSI it includes on its AFS with respect to its investment in PRS4 for 2024.

(B) *Step 2: Calculate the distributive share percentage.* Under paragraph (e)(2)(ii) of this section, PRS3 must compute a fraction, the numerator of which is \$50x (the amount disregarded under paragraph (c)(1) of this section) and the denominator of which is \$150x (the total change in the fair value of PRS4's assets, including changes in cash amounts and increases in the value of property, for PRS4's taxable year). The resulting distributive share percentage is $33\frac{1}{3}\%$ ($\$50x/\$150x$).

(C) *Step 3: Compute the modified FSI of the partnership.* Under paragraph (e)(3) of this section, PRS4's FSI of \$150x is reduced by the deductible tax depreciation, or \$18x, under § 1.56A–15(d)(1)(ii). As a result, PRS4's modified FSI is \$132x ($\$150x - \$18x$).

(D) *Step 4: Multiply the distributive share percentage by the modified FSI of the partnership.* Under paragraph (e)(1)(iii) of this section, PRS3 multiplies its distributive share percentage ($33\frac{1}{3}\%$) by the modified FSI of PRS4, or \$132x, resulting in PRS3 having a share of \$44x of the modified FSI of PRS4.

(E) *Step 5: Adjust the share of modified FSI by separately stated adjustments.* Under paragraphs (e)(1)(iv) and (e)(4) of this section, PRS3 must adjust its share of PRS4's modified FSI by any separately stated amounts listed in paragraph (e)(4)(ii) of this section. Because there are none, PRS3's distributive share amount of PRS4's AFSI for 2024 is \$44x.

(F) *Step 6: Include distributive share amount in AFSI (or modified FSI if a CAMT entity is a partnership).* Under paragraph (c)(2) of this section, PRS3 includes in its modified FSI the \$44x distributive share amount from PRS4. Thus, after reducing PRS3's modified FSI with respect to its investment in

PRS4 from \$100x to \$50x, it is increased to \$94x for 2024.

(iii) *Analysis: Computation with respect to PRS3.* Under paragraph (e)(3) of this section, because PRS3 is the last partnership in the chain, Y determines its distributive share amount with respect to its investment in PRS3.

(A) *Step 1: Disregard FSI amount with respect to partnership investment for the taxable year.* Under paragraph (c)(1) of this section, Y disregards the \$75x of FSI it includes on its AFS with respect to its investment in PRS3 for 2024.

(B) *Step 2: Calculate the distributive share percentage.* Under paragraph (e)(2)(ii) of this section, Y must compute a fraction, the numerator of which is \$75x (the amount disregarded under paragraph (c)(1) of this section) and the denominator of which is \$100x (the total change in the fair value of PRS3's assets, including changes in cash amounts, during the PRS3's taxable year). The resulting distributive share percentage is 75% ($\$75x/\$100x$).

(C) *Step 3: Compute the modified FSI of the partnership.* Under paragraph (e)(3) of this section, PRS3's FSI of \$100x must be adjusted to disregard the covered book depreciation expense, or \$14x, under § 1.56A–15(d)(1)(iii), and reduced by the deductible tax depreciation, or \$36x, under § 1.56A–15(d)(1)(ii). PRS3's FSI must further be adjusted to exclude its \$50x of FSI with respect to its investment in PRS4 and to include its distributive share amount with respect to PRS4, or \$44x, as determined under paragraph (k)(4)(ii) of this section. Accordingly, PRS3's modified FSI is \$72x ($\$100x + \$14x - \$36x - \$50x + \$44x$).

(D) *Step 4: Multiply the distributive share percentage by the modified FSI of the partnership.* Under paragraph (e)(1)(iii) of this section, Y must multiply its distributive share percentage, or 75%, by the modified FSI of PRS3, or \$72x, resulting in Corporation Y having a share of \$54x of modified FSI of Partnership C.

(E) *Step 5: Adjust the share of modified FSI by separately stated adjustments.* Under paragraphs (e)(1)(iv) and (e)(4) of this section, Y must adjust its share of PRS3's modified FSI of \$54x by any separately stated amounts listed in paragraph (e)(4)(ii) of this section. Because there are none, Y's distributive share amount of PRS3's AFSI for 2024 is \$54x.

(F) *Step 6: Include distributive share amount in AFSI.* Under paragraph (c)(2) of this section, Y includes in its AFSI the \$54x distributive share amount from PRS3. Thus, after reducing Y's AFSI from \$275x to \$200x, it is increased to \$254x for 2024.

(9) *Example 9: Computation of CAMT basis in partnership investment—(i) Facts.* The facts are the same as in paragraph (k)(1)(i) of this section (*Example 1*), except that PRS1 is formed on January 1, 2024, at which time X and A each contributes \$50x to PRS. During 2024, X and A each contributes an additional \$10x to PRS1 to meet its respective capital contribution requirement under the terms of the PRS1 agreement.

(ii) *Analysis—(A) Compute the CAMT basis in the partnership investment.* Under paragraph (j)(3) of this section, X's initial CAMT basis in its PRS1 investment is equal to X's AFS basis in its PRS1 investment as of the first day of the partnership's first taxable year ending after December 31, 2019. Accordingly, because PRS1 was formed on January 1, 2024, X's initial AFS and CAMT basis under paragraph (j)(3) of this section is \$0x. Under § 1.56A–20(c)(3)(ii) and paragraph (j)(3)(iv) of this section, X's \$50x contribution results in X having an initial CAMT basis in its PRS1 investment of \$50x on January 1, 2024, which is equal to its AFS basis in its PRS1 investment following the contribution. Under § 1.56A–20(c)(3)(ii) and paragraph (j)(3)(iv) of this section, X's CAMT basis in its PRS1 investment of \$50x is increased by \$10x at the time of X's additional \$10x contribution in 2024.

(B) *Increase by the CAMT entity's positive distributive share amount under paragraph (j)(3)(ii) of this section or decrease (but not below zero) by its negative distributive share amount paragraph (j)(3)(iii) of this section for the taxable year.* Under paragraph (j)(3)(ii) of this section, X must increase its CAMT basis in PRS1 by its distributive share amount of \$40x (computed in paragraph (k)(1)(ii)(E) of this section) resulting in X having a CAMT basis of \$100x (\$60x + \$40x) in its PRS 1 investment at the end of 2024.

(10) *Example 10: Limitation of negative distributive share amount in excess of CAMT basis—(i) Facts.* The facts are the same as in paragraph (k)(9)(i) of this section (*Example 9*). In 2025, X's distributive share amount with respect to its investment in PRS1, determined under paragraph (e) of this section, is –\$120x. Further, in 2025 each of X and A contributes \$10x to meet its respective capital contribution requirement under the terms of the PRS1 agreement.

(ii) *Analysis—(A) Limitation on allowance of negative distributive share.* Under paragraph (j)(1) of this section, X must limit its 2025 negative distributive share amount with respect to its

investment in PRS1 to its CAMT basis in the partnership.

(B) *Computation of CAMT basis in partnership investment.* X must compute its CAMT basis in its investment in PRS1 for 2025. Under paragraph (j)(3) of this section, X's CAMT basis is adjusted by the items described in paragraph (j)(3) of this section for each taxable year and prior taxable years ending after December 31, 2019. Under paragraph (j)(3)(iv) of this section, X increases its CAMT basis of \$100x as of the end of 2024 (which includes all of X's paragraph (j)(3) of this section items for 2024) by its 2025 contribution of \$10x to \$110x. Under paragraph (j)(3)(iii) of this section, X must decrease its CAMT basis (but not below zero) by its 2025 negative distributive share amount of –\$120x.

(C) *Carryover of suspended negative distributive share amount.* Under paragraph (j)(1) of this section, X includes the –\$120x distributive amount in its AFSI for the 2025 taxable year only to the extent it does not exceed its CAMT basis in its partnership investment. Under paragraph (j)(2) of this section, X's excess negative distributive share amount of –\$10x (\$110x – \$120x) is included in determining X's distributive share amount in the subsequent taxable year, subject to the limitation in paragraph (j)(1) of this section.

(l) *Applicability dates—(1) In general.* Except as provided in paragraph (l)(2) of this section, this section applies to partnership taxable years ending after [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**] and to taxable years of CAMT entities that are partners in which or with which such partnership taxable years end.

(2) *Exceptions—(i) Paragraph (d).* Paragraph (d) of this section applies to taxable years of a CAMT entity ending after [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**].

(ii) *Coordination with certain other provisions during prior years—(A) Information reporting during prior years.* A partnership must furnish to the IRS and any CAMT entity that is a partner in the partnership the information described in paragraphs (i)(1)(iv) and (v) of this section in a manner consistent with paragraphs (h) and (i) of this section.

(B) *Certain basis adjustments during prior years.* A CAMT entity that is a partner in a partnership must make adjustments to the CAMT basis in its partnership investment consistent with those described in paragraphs (j)(3)(v), (vii), (xi), and (xii) of this section.

(C) *Certain adjustments during prior years.* A CAMT entity's AFSI with

respect to a partnership investment is determined without regard to any items included in the partnership's FSI that are described in § 1.56A–4(c)(1)(i) or 1.56A–8(b)(2).

(iii) *Applicability dates for rules described in paragraph (l)(2)(ii).* The following are the applicability dates for the rules described in paragraph (l)(2)(ii) of this section:

(A) Paragraph (l)(2)(ii)(A) of this section applies to taxable years of partnerships ending after September 13, 2024 and on or before [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**];

(B) Paragraph (l)(2)(ii)(B) of this section applies to taxable years of CAMT entities ending after September 13, 2024 and on or before [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**]; and

(C) Except as provided in paragraph (l)(2)(iii)(D) of this section, paragraph (l)(2)(ii)(C) of this section applies to taxable years of partnerships ending after September 13, 2024 and on or before [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**].

(D) When the items described in paragraph (l)(2)(ii)(C) of this section result from the occurrence of transfers (as defined in § 1.56A–4(b)(3)), paragraph (l)(2)(ii)(C) of this section applies to transfers occurring after September 13, 2024 and on or before [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**].

§ 1.56A–6 AFSI adjustments with respect to controlled foreign corporations.

(a) *Overview.* This section provides rules under section 56A(c)(3) of the Code for determining adjustments to AFSI with respect to controlled foreign corporations. Paragraph (b) of this section provides rules for determining a CAMT entity's adjustment to AFSI with respect to controlled foreign corporations in which the CAMT entity is a United States shareholder. Paragraph (c) of this section provides rules for computing a controlled foreign corporation's adjusted net income or loss. Paragraph (d) of this section defines the type of dividends excluded from a controlled foreign corporation's adjusted net income or loss. Paragraph (e) of this section provides examples illustrating the application of the rules in this section. Paragraph (f) of this section provides the applicability date of this section.

(b) *Section 56A(c)(3) adjustment to AFSI—(1) Aggregate adjustment.* Except as provided under paragraph (b)(3) of this section, for any taxable year, a CAMT entity that is a United States shareholder of one or more controlled

foreign corporations makes a single adjustment to its AFSI for its taxable year that is equal to the aggregate of its pro rata share of the adjusted net income or loss of each such controlled foreign corporation, with such aggregate amount reduced as provided under paragraphs (b)(2) and (4) of this section. The CAMT entity's pro rata share of the adjusted net income or loss of a controlled foreign corporation is determined for the taxable year of the controlled foreign corporation that ends with or within the taxable year of the CAMT entity and is determined under the principles of section 951(a)(2) of the Code (including the aggregation rules in § 1.958-1(d)).

(2) *Tax reduction.* An applicable corporation that does not choose to have the benefits of subpart A of part III of subchapter N of chapter 1 for the taxable year reduces the amount of the adjustment otherwise determined under paragraph (b)(1) of this section by the amount that would be described in § 1.59-4(d)(3) if the applicable corporation were to choose to have such benefits, reduced to reflect the suspensions and disallowances described in § 1.59-4(b)(1) that apply at the level of the United States shareholder.

(3) *Aggregate negative adjustment.* If the adjustment determined under paragraph (b)(1) of this section with respect to a taxable year of a United States shareholder would be negative (after taking into account the reduction provided under paragraph (b)(2) of this section but before taking paragraph (b)(4) of this section into account), then there is no adjustment under paragraph (b)(1) of this section for the taxable year.

(4) *Reduction for utilization of a CFC adjustment carryover.* If the adjustment determined under paragraph (b)(1) of this section with respect to a taxable year of a United States shareholder would be positive (after taking into account the reduction provided under paragraph (b)(2) of this section but before taking this paragraph (b)(4) into account), then the adjustment under paragraph (b)(1) of this section (after taking into account the reduction provided under paragraph (b)(2) of this section) is reduced by the aggregate amount of CFC adjustment carryovers to the taxable year (as determined under paragraph (b)(5) of this section), but not below zero.

(5) *CFC adjustment carryover mechanics.* A CFC adjustment carryover for any taxable year (including a taxable year in which the corporation is not an applicable corporation) is carried forward to each taxable year following the taxable year in which the CFC

adjustment carryover arose. The amount of a CFC adjustment carryover carried forward to a taxable year is the amount of the CFC adjustment carryover remaining (if any) after the application of paragraph (b)(4) of this section. CFC adjustment carryovers are used in the order of the taxable years in which the CFC adjustment carryovers arose. For purposes of determining the amount of a CFC adjustment carryover carried forward to the first taxable year a corporation is an applicable corporation (and any subsequent taxable year), paragraph (b)(4) of this section applies to reduce the CFC adjustment carryover in taxable years beginning after the taxable year the CFC adjustment carryover arose and before the first taxable year in which the corporation is an applicable corporation.

(6) *Definition of CFC adjustment carryover.* The term *CFC adjustment carryover* means, with respect to a United States shareholder for any taxable year ending after December 31, 2019, the amount of the negative adjustment, if any, described in paragraph (b)(3) of this section.

(7) *Tax consolidated groups.* Members of a tax consolidated group are treated as a single entity for purposes of this paragraph (b). *See also* § 1.1502-56A(a)(2). For rules regarding the use of CFC adjustment carryovers by a tax consolidated group, *see* § 1.1502-56A(h).

(c) *Computing the adjusted net income or loss of a controlled foreign corporation—(1) In general.* A controlled foreign corporation's adjusted net income or loss is equal to the controlled foreign corporation's FSI for the taxable year of the controlled foreign corporation, adjusted for all AFSI adjustments provided under the section 56A regulations, except as provided under paragraphs (c)(2) through (5) of this section. For purposes of determining a controlled foreign corporation's adjusted net income or loss, references to AFSI in other sections of the section 56A regulations, except for references to AFSI in § 1.56A-1(b)(1) and (e), are treated as references to adjusted net income or loss. Adjusted net income or loss must be expressed in U.S. dollars. Any item included in adjusted net income or loss that is not expressed in U.S. dollars must be translated from the relevant currency to U.S. dollars using the relevant weighted average exchange rate, as defined in § 1.989(b)-1, for the controlled foreign corporation's taxable year.

(2) *Adjustments relating to ownership of stock of a foreign corporation—(i) In general.* Adjustments in this paragraph (c)(2) apply in lieu of the adjustments

described in § 1.56A-4(c)(1) (providing adjustments to AFSI with respect to ownership of stock in a foreign corporation).

(ii) *Amounts relating to ownership of stock of a foreign corporation reflected in controlled foreign corporation's FSI.* Adjusted net income or loss of a controlled foreign corporation excludes any items of income, expense, gain, and loss resulting from ownership of stock of a foreign corporation, including acquiring or disposing of such stock, reflected in the controlled foreign corporation's FSI.

(iii) *Amounts relating to ownership of stock of a foreign corporation included for regular tax purposes—(A) In general.* Except as provided under paragraph (c)(2)(iii)(B) of this section, adjusted net income or loss of a controlled foreign corporation includes any items of income, deduction, gain, and loss resulting from the controlled foreign corporation's ownership of stock of a foreign corporation, including acquiring or transferring such stock, for regular tax purposes (taking into account section 961(c) of the Code).

(B) *Dividends received from another foreign corporation.* Adjusted net income or loss of a controlled foreign corporation does not include the amount of any dividend received from another foreign corporation to the extent the dividend is a CAMT excluded dividend as defined in paragraph (d) of this section.

(iv) *Stock of a foreign corporation owned by a partnership.* If a partnership directly owns stock of a foreign corporation, then in determining the adjusted net income or loss of a controlled foreign corporation that is a partner in the partnership (or an indirect partner, in the case of tiered partnerships), the partner takes into account the items described in paragraph (c)(2)(iii) of this section (including taking into account the exception provided in paragraph (c)(2)(iii)(B) of this section) that are allocated to the partner by the partnership for regular tax purposes.

(3) *Controlled foreign corporations engaged in a U.S. trade or business.* A controlled foreign corporation's adjusted net income or loss is not limited to amounts taken into account in determining AFSI under § 1.56A-7 (providing that the AFSI of a foreign corporation is limited to income that is effectively connected with the conduct of a trade or business within the United States). If a controlled foreign corporation is an applicable corporation, the controlled foreign corporation's adjusted net income or loss is reduced by the amount of AFSI

of the controlled foreign corporation (such as FSI determined by taking § 1.56A–7 into account).

(4) *Foreign income tax expense.* The AFSI adjustment provided under § 1.56A–8(c) does not apply in computing a controlled foreign corporation's adjusted net income or loss.

(5) *FSNOL carryovers.* The AFSI adjustment provided under § 1.56A–23(c) (providing a reduction to AFSI for FSNOL carryovers) does not apply in computing a controlled foreign corporation's adjusted net income or loss.

(d) *Definition of CAMT excluded dividend.* The term *CAMT excluded dividend* means a dividend received by a controlled foreign corporation to the extent the dividend is excluded from—

(1) The recipient controlled foreign corporation's gross income under section 959(b) of the Code; or

(2) Both—

(i) The recipient controlled foreign corporation's foreign personal holding company income under section 954(c)(3) (relating to certain income received from related persons) or 954(c)(6) (relating to certain amounts received from related controlled foreign corporations) of the Code; and

(ii) The recipient controlled foreign corporation's gross tested income under § 1.951A–2(c)(1)(iv) (relating to dividends received from related persons).

(e) *Examples.* The following examples illustrate the application of the rules in this section. For purposes of these examples, no entity is a member of a tax consolidated group, each entity's functional currency is the U.S. dollar, and each entity uses the calendar year as its taxable year and for AFS purposes.

(1) *Example 1: Dividend received by a controlled foreign corporation from another controlled foreign corporation—*

(i) *Facts.* X is a domestic corporation that owns all the stock of FC1, a controlled foreign corporation, which owns all the stock of FC2, a controlled foreign corporation. FC2 distributes \$100x of earnings and profits described in section 959(c)(3) to FC1, and the dividend qualifies for the exception to foreign personal holding company income under section 954(c)(6) and the exception to gross tested income under § 1.951A–2(c)(1)(iv). The \$100x dividend received by FC1 does not result in any item of income, expense, gain, or loss being reflected in the FSI of FC1.

(ii) *Analysis.* Under paragraph (b)(1) of this section, X's AFSI includes the sum of X's pro rata shares of the adjusted net income or loss of each of

FC1 and FC2, because X is a United States shareholder of FC1 and FC2, both of which are controlled foreign corporations. For purposes of computing FC1's adjusted net income or loss, there is no adjustment under paragraph (c)(2)(ii) of this section, because the dividend received by FC1 does not result in any item of income, expense, gain, or loss being reflected in the FSI of FC1. Under paragraph (c)(2)(iii) of this section, the entire dividend is excluded from FC1's adjusted net income or loss because the dividend is a CAMT excluded dividend. The dividend is a CAMT excluded dividend because the dividend qualifies for the exception to subpart F income under section 954(c)(6) and the exception to tested income under § 1.951A–2(c)(1)(iv).

(2) *Example 2: Sale of stock of lower-tier controlled foreign corporation—*(i) *Facts.* The facts are the same as in paragraph (e)(1) of this section (*Example 1*), except that FC2 does not pay a dividend to FC1, and instead FC1 sells all the stock of FC2 to a third party for cash. For regular tax purposes, FC1 recognizes \$100x of gain, all of which is recharacterized as a dividend under section 964(e)(1) of the Code and treated as subpart F income of FC1 under section 964(e)(4)(A)(i). Furthermore, under section 964(e)(4)(A)(iii), X qualifies for a \$100x dividends-received deduction under section 245A of the Code. FC1's sale of the stock of FC2 results in \$100x of gain being reflected in the FSI of FC1.

(ii) *Analysis.* Under paragraph (c)(2)(ii) of this section, the \$100x of gain reflected in the FSI of FC1 is excluded from FC1's adjusted net income or loss. Under paragraph (c)(2)(iii) of this section, FC1's adjusted net income or loss includes the \$100x of recharacterized dividend income because the dividend is included in FC1's subpart F income and therefore is not a CAMT excluded dividend. Under § 1.56A–4(c)(1)(ii), X's AFSI is reduced by \$100x as a result of the dividends-received deduction under section 245A.

(3) *Example 3: Controlled foreign corporation held through a partnership—*(i) *Facts.* X is a domestic corporation that owns 20% of the partnership interests in PRS, a domestic partnership. PRS owns all the stock of FC, a controlled foreign corporation. In Year 1, FC's adjusted net income or loss is \$100x and X's pro rata share of FC's adjusted net income or loss is \$20x.

(ii) *Analysis.* Under paragraph (b)(1) of this section, a CAMT entity's pro rata share of the adjusted net income or loss of a controlled foreign corporation is determined under the principles of

section 951(a)(2). Under these principles, a partnership is not treated as owning stock of a controlled foreign corporation for purposes of determining pro rata share under paragraph (b)(1) of this section. See §§ 1.951–1(a)(4) (directing taxpayers to § 1.958–1(d) for rules regarding the ownership of stock of a foreign corporation through a domestic partnership for purposes of section 951) and 1.958–1(d) (providing generally that for purposes of applying section 951, a domestic partnership is not treated as owning stock of a foreign corporation). Accordingly, PRS is not treated as owning stock of FC, and no adjustment is made to PRS's modified FSI under paragraph (b)(1) of this section. However, under paragraph (b)(1) of this section, in Year 1, X's AFSI includes X's pro rata share of the adjusted net income or loss of FC, because X is a United States shareholder of FC, a controlled foreign corporation. Therefore, in Year 1, X includes in its AFSI \$20x of FC's adjusted net income or loss.

(f) *Applicability date—*(1) *In general.* Except as described in paragraph (f)(3) of this section, if the conditions described in paragraphs (f)(2)(i) and (ii) of this section are not satisfied, this section applies to taxable years of CAMT entities that are United States shareholders ending after September 13, 2024, and to taxable years of controlled foreign corporations that end with or within such taxable years.

(2) *Multiple United States shareholders with different taxable years.* Except as described in paragraph (f)(3) of this section, this section applies to taxable years of controlled foreign corporations ending after September 13, 2024, and to taxable years of CAMT entities that are United States shareholders in which or with which such taxable years end, if:

(i) More than one CAMT entity that is a United States shareholder but not a domestic partnership owns (within the meaning of section 958(a)) stock in the controlled foreign corporation; and

(ii) At least one, but not all, of the United States shareholders referred to in paragraph (f)(2)(i) has a taxable year ending after September 13, 2024 and the controlled foreign corporation's taxable year that ends with or within such taxable year ends on or before September 13, 2024.

(3) *Transactions involving foreign stock.* To the extent a controlled foreign corporation's adjusted net income or loss would include an item resulting from the occurrence of a transfer (as defined in § 1.56A–4(b)(3)), this section applies to transfers occurring after September 13, 2024.

§ 1.56A-7 AFSI adjustments with respect to effectively connected income.

(a) *Overview.* This section provides rules under section 56A of the Code for determining the AFSI of a foreign corporation engaged in (or treated as engaged in) a trade or business within the United States. Paragraph (b) of this section provides rules under section 56A(c)(4) of the Code for determining a foreign corporation's AFSI. Paragraph (c) of this section provides the applicability date of this section.

(b) *Adjusted financial statement income of foreign corporations.* A foreign corporation determines its AFSI by applying the principles of section 882 of the Code. The AFSI of a foreign corporation is adjusted to take into account only amounts and items of FSI that would be included in income effectively connected with the conduct of a trade or business within the United States or allowable as a deduction by such corporation for purposes of section 882(c) had such amount or item accrued for regular tax purposes in the taxable year.

(c) *Applicability date.* This section applies to taxable years of foreign corporations ending after September 13, 2024.

§ 1.56A-8 AFSI adjustments for certain Federal and foreign income taxes.

(a) *Overview.* This section provides rules under section 56A(c)(5) of the Code for adjusting AFSI with regard to certain income taxes. Paragraph (b) of this section provides general rules for adjusting AFSI with regard to certain income taxes. Paragraph (c) of this section provides a rule for applicable corporations that do not choose to have the benefits of subpart A of part III of subchapter N of chapter 1 of the Code. Paragraph (d) of this section provides rules for determining if an income tax is considered to be taken into account in an AFS. Paragraph (e) of this section provides examples illustrating the application of the rules in this section. Paragraph (f) of this section provides the applicability date of this section.

(b) *AFSI adjustment for applicable income taxes—(1) In general.* AFSI is adjusted to disregard any applicable income taxes, as defined in paragraph (b)(2) of this section, that are taken into account (within the meaning of paragraph (d) of this section) in a CAMT entity's AFS.

(2) *Definition of applicable income taxes.* The term *applicable income taxes* means Federal income taxes and foreign income taxes that are taken into account (within the meaning of paragraph (d) of this section) in a CAMT entity's AFS as current tax expense (or benefit), as

deferred tax expense (or benefit), or through increases or decreases to other AFS accounts of the CAMT entity (for example, AFS accounts used to account for FSI from investments in other CAMT entities, AFS accounts used to account for section 168 property, or AFS accounts used to account for other items of income and expense).

(c) *Applicable corporations that choose not to credit foreign income taxes.* An applicable corporation that does not choose to have the benefits of subpart A of part III of subchapter N of chapter 1 for the taxable year reduces its AFSI for the taxable year by an amount equal to the deduction for foreign income taxes allowed to the applicable corporation for regular tax purposes under section 164 of the Code (taking into account all other relevant provisions) for the taxable year. For purposes of the immediately preceding sentence, foreign income taxes allowed to the applicable corporation for regular tax purposes include foreign income taxes paid or accrued by a disregarded entity if the applicable corporation is the owner for regular tax purposes, any creditable foreign tax expenditures (within the meaning of § 1.704-1(b)(4)(viii)) of a partnership that are allocated to the applicable corporation as a partner or indirect partner in a tiered partnership, and any other foreign income taxes that are allocated to the applicable corporation as an owner of any other type of pass-through entity.

(d) *Requirements for an applicable income tax to be considered taken into account in an AFS.* For purposes of paragraph (b) of this section and § 1.59-4, the following rules apply—

(1) Applicable income taxes are considered taken into account in an AFS of a CAMT entity if any journal entry has been recorded in the books and records used to determine an amount in the AFS of the CAMT entity for any year, or in another AFS that includes the CAMT entity, to reflect the taxes;

(2) Such applicable income taxes are considered taken into account in an AFS of a CAMT entity even if the taxes do not increase or decrease the CAMT entity's FSI at the time of the journal entry; and

(3) If applicable income taxes are taken into account in a partnership's AFS, they also are considered taken into account in any AFS of the partnership's partners.

(e) *Examples.* The following examples illustrate the application of the rules in this section. For purposes of these examples, each of X and Y is a domestic corporation that uses the calendar year

as its taxable year and has a calendar-year financial accounting period.

(1) *Example 1—(i) Facts.* X does not choose to have the benefits of subpart A of part III of subchapter N of chapter 1 for its 2024 taxable year. In 2024, X pays \$200x of foreign income taxes to Country G, for which X claims a deduction for regular tax purposes under section 164. In X's 2024 AFS, X records a current foreign income tax expense of \$200x for the foreign income taxes paid to Country G. X also records in its 2024 AFS a deferred Federal income tax expense of \$50x with respect to an installment sale that occurred in 2024.

(ii) *Analysis.* Under paragraph (b) of this section, X adjusts its AFSI to disregard the \$200x of current foreign income tax expense for Country G taxes and the \$50x of deferred Federal income tax expense from the installment sale that are reflected in X's FSI for the 2024 taxable year because both such taxes are applicable income taxes. If X is an applicable corporation for the 2024 taxable year, then for purposes of determining its tentative minimum tax under section 55(b)(2)(A) of the Code for the 2024 taxable year, X also reduces AFSI under paragraph (c) of this section by an amount equal to the \$200x deduction for regular tax purposes under section 164 for the Country G taxes because X does not choose to have the benefits of subpart A of part III of subchapter N of chapter 1 for the 2024 taxable year.

(2) *Example 2—(i) Facts.* X is an applicable corporation for its 2024 taxable year and chooses to have the benefits of subpart A of part III of subchapter N of chapter 1 for the 2024 taxable year. In 2024, X pays \$100x of foreign income taxes to Country G for which X is eligible to claim a credit under section 901 of the Code. X also pays \$75x of foreign income taxes to Country H, a country with which the United States has severed diplomatic relations. X is not allowed to claim a credit for the taxes paid to Country H under section 901(j) but is allowed to take a deduction for regular tax purposes under section 164 for those taxes. Both taxes are taken into account as current tax expense in X's 2024 AFS.

(ii) *Analysis.* In determining X's AFSI for its 2024 taxable year, under paragraph (b) of this section, X adjusts AFSI to disregard both the \$100x of Country G taxes and the \$75 of Country H taxes because both such taxes are applicable income taxes. Because X chooses to have the benefits of subpart A of part III of subchapter N of chapter 1 for the 2024 taxable year, paragraph (c) of this section does not apply and

therefore X is not allowed to reduce AFSI by an amount equal to the deduction taken for the \$75x of Country H taxes.

(3) *Example 3—(i) Facts.* X and Y are applicable corporations for the 2024 taxable year. X and Y each own a 50% interest in PRS, a domestic partnership that uses the calendar year as its taxable year. In 2024, PRS paid \$300x of foreign income taxes to Country G, which PRS accounted for as a current tax expense on its AFS. The \$300x of foreign income taxes paid to Country G are creditable foreign tax expenditures (within the meaning of § 1.704–1(b)(4)(viii)) of PRS. For the 2024 taxable year, X chooses to have the benefits of subpart A of part III of subchapter N of chapter 1, and therefore claims a credit under section 901 for the \$150x of Country G taxes that are allocated to X as a partner. Y does not choose to have the benefits of subpart A of part III of subchapter N of chapter 1 for its 2024 taxable year, and therefore takes a deduction for regular tax purposes for the \$150x of Country G taxes that are allocated to Y as a partner.

(ii) *Analysis.* For purposes of determining PRS's modified FSI under § 1.56A–5(e)(3), PRS disregards the \$300x of current tax expense for Country G taxes that are reflected in PRS's FSI. Under paragraph (c) of this section, Y (not PRS) reduces its AFSI by an amount equal to the \$150x deduction for regular tax purposes under section 164 for the Country G taxes allocated to Y as a partner. Paragraph (c) of this section does not apply to X because X chooses to have the benefits of subpart A of part III of subchapter N of chapter 1 for its 2024 taxable year.

(f) *Applicability date.* This section applies to taxable years ending after September 13, 2024.

§ 1.56A–9 AFSI adjustments for owners of disregarded entities or branches.

(a) *Overview.* This section provides rules under section 56A(c)(6) of the Code for determining the AFSI of a CAMT entity that owns a disregarded entity or branch.

(b) *Rules for determining the FSI and AFSI of a CAMT entity that owns a disregarded entity or branch—(1) In general.* A disregarded entity or branch and the CAMT entity that owns the disregarded entity or branch (including through other disregarded entities or branches) are treated as a single CAMT entity for purposes of the section 56A regulations. Thus, except as otherwise provided in the section 56A regulations (for example, in § 1.56A–21), for purposes of the section 56A regulations, a CAMT entity that owns a disregarded entity or branch is treated as—

(i) Directly owning the assets of the disregarded entity or branch;

(ii) Being directly liable for the liabilities of the disregarded entity or branch; and

(iii) Directly earning or incurring any income, expense, gain, loss, or other similar item of the disregarded entity or branch.

(2) *Transactions disregarded.* For purposes of determining the FSI and AFSI of a CAMT entity that owns a disregarded entity or branch (CAMT entity owner)—

(i) Transactions between the disregarded entity or branch and the CAMT entity owner (or between disregarded entities or branches owned by the same CAMT entity owner) are disregarded; and

(ii) Any balance sheet account or income statement account that reflects the CAMT entity owner's investment in the disregarded entity or branch (or a disregarded entity's or branch's investment in another disregarded entity or branch that is ultimately owned by the same CAMT entity owner) is disregarded.

(3) *Certain disregarded entities or branches subject to the rules in § 1.56A–2(h).* If a disregarded entity or branch is required to determine its own AFS under § 1.56A–2(h), then for purposes of the section 56A regulations, the CAMT entity that owns the disregarded entity or branch treats the separate AFS of the disregarded entity or branch (as determined under § 1.56A–2(h)) as part of the CAMT entity's own AFS, and applies the rules of this section by reference to that separate AFS.

(c) *Applicability date.* This section applies to taxable years ending after September 13, 2024.

§ 1.56A–10 AFSI adjustments for cooperatives.

(a) *Overview.* This section provides rules under section 56A(c)(7) of the Code for adjusting the AFSI of a cooperative.

(b) *AFSI adjustments for cooperatives.* In the case of a cooperative to which section 1381 of the Code applies, the AFSI of the cooperative is reduced by the amounts referred to in section 1382(b) of the Code and the regulations under section 1382(b) (relating to patronage dividends and per-unit retain allocations), but only to the extent such amounts were not otherwise taken into account in determining the AFSI of the cooperative.

(c) *Applicability date.* This section applies to taxable years ending after September 13, 2024.

§ 1.56A–11 AFSI adjustments for Alaska Native Corporations.

(a) *Overview.* This section provides rules under section 56A(c)(8) of the Code for adjusting the AFSI of Alaska Native Corporations. Paragraph (b) of this section provides definitions that apply for purposes of this section. Paragraph (c) of this section provides rules for adjusting AFSI for cost recovery and depletion with respect to certain property held by an Alaska Native Corporation. Paragraph (d) of this section provides rules for adjusting AFSI for certain payments made by an Alaska Native Corporation. Paragraph (e) of this section provides the applicability date of this section.

(b) *Definitions.* For purposes of this section:

(1) *Alaska Native Corporation.* The term *Alaska Native Corporation* has the meaning provided in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(m)).

(2) *ANCSA property.* The term *ANCSA property* means property the basis of which is determined under 43 U.S.C. 1620(c).

(3) *Specified payments.* The term *specified payments* means amounts payable made pursuant to 43 U.S.C. 1606(i) or (j).

(c) *Cost recovery and depletion.* The AFSI of an Alaska Native Corporation is—

(1) Reduced by cost recovery and depletion attributable to ANCSA property (including cost recovery that occurs as part of the computation of gain or loss) upon the disposition of ANCSA property) to the extent of the amount recovered for regular tax purposes for the taxable year; and

(2) Adjusted to disregard any cost recovery and depletion attributable to ANCSA property (including cost recovery that occurs as part of the computation of gain or loss upon the disposition of ANCSA property) reflected in the FSI of the Alaska Native Corporation.

(d) *Deduction for specified payments.* The AFSI of an Alaska Native Corporation is—

(1) Reduced by deductions for specified payments to the extent of the amount allowed as deduction for regular tax purposes for the taxable year; and

(2) Adjusted to disregard expenses or other FSI reductions reflected in the Alaska Native Corporation's FSI with respect to specified payments.

(e) *Applicability date.* This section applies to taxable years ending after September 13, 2024.

§ 1.56A–12 AFSI adjustments with respect to certain tax credits.

(a) *Overview.* This section provides rules under section 56A(c)(9) of the Code for adjusting AFSI with regard to amounts described in section 56A(c)(9) and certain other amounts related to credits to which sections 48D, 6417, and 6418 of the Code apply. Paragraph (b) of this section provides rules for adjusting AFSI with regard to proceeds from credits to which sections 48D, 6417, and 6418 apply. Paragraph (c) of this section provides rules for adjusting the AFSI of a CAMT entity that acquires a credit to which section 6418 applies. Paragraph (d) of this section provides rules for adjusting AFSI with regard to amounts recaptured under sections 6417 and 6418. Paragraph (e) of this section provides the applicability date of this section.

(b) *Proceeds from certain credits excluded from AFSI.* AFSI is adjusted to disregard the following amounts, provided that any such amount (or portion thereof) is not otherwise disregarded under § 1.56A–8—

(1) Any amount treated as a payment against the tax imposed by subtitle A pursuant to an election under section 48D(d) or 6417;

(2) Any amount received from the transfer of an eligible credit, as defined in section 6418(f)(1)(A), that is not includible in the gross income of the CAMT entity by application of section 6418(b) or that is treated as tax exempt income under section 6418(c)(1)(A); and

(3) Any amount received pursuant to an election under section 48D(d)(2) or 6417(c) that is treated as tax exempt income under section 48D(d)(2)(A)(i)(III) or 6417(c)(1)(C).

(c) *Treatment of transferee taxpayer.* If a transferee taxpayer, as defined in section 6418(a), is a CAMT entity, AFSI is adjusted to disregard—

(1) Any amount paid by the transferee taxpayer to the eligible taxpayer, as defined in section 6418(f)(2), as consideration for the transfer of the eligible credit, as defined in section 6418(f)(1)(A), provided that the amount is not otherwise disregarded under § 1.56A–8; and

(2) Any increase in the transferee taxpayer's FSI resulting from the utilization of the eligible credit, provided that the increase is not otherwise disregarded under § 1.56A–8.

(d) *Recapture disregarded as expense in determining AFSI.* AFSI is adjusted to disregard any decrease in FSI resulting from an increase in tax under section 48D(d)(5), 50(a)(3), 6417(g), or 6418(g)(3) of the Code, provided that the decrease in FSI is not otherwise disregarded under § 1.56A–8.

(e) *Applicability date.* This section applies to taxable years ending after [DATE OF PUBLICATION OF FINAL RULE IN THE Federal Register].

§ 1.56A–13 AFSI adjustments for covered benefit plans.

(a) *Overview.* This section provides rules under section 56A(c)(11) of the Code for adjusting AFSI with respect to covered benefit plans. Paragraph (b) of this section provides for adjustments to AFSI with respect to covered benefit plans. Paragraph (c) of this section defines a covered benefit plan for purposes of this section. Paragraph (d) of this section provides the applicability date of this section.

(b) *Adjustments to AFSI for covered benefit plans.* AFSI is—

(1) Adjusted to disregard any amount of income, cost, expense, gain, or loss that otherwise would be included on a CAMT entity's AFS in connection with any covered benefit plan;

(2) Increased by any amount of income in connection with any covered benefit plan that is included in gross income for the taxable year under any provision of chapter 1; and

(3) Reduced by deductions allowed for the taxable year under any provision of chapter 1 with respect to any covered benefit plan.

(c) *Covered benefit plan—(1) General definition.* For purposes of section 56A(c)(11), a *covered benefit plan* is a plan described in paragraph (c)(2), (3), or (4) of this section.

(2) *Qualified defined benefit pension plan.* A plan is described in this paragraph (c)(2) if the plan is—

(i) A defined benefit plan for which the trust that is part of the plan is an employees' trust described in section 401(a) of the Code that is exempt from tax under section 501(a) of the Code; and

(ii) Not a multiemployer plan described in section 414(f) of the Code.

(3) *Qualified foreign plan.* A plan is described in this paragraph (c)(3) if the plan is a qualified foreign plan as defined in section 404A(e) of the Code.

(4) *Other defined benefit plan.* A plan is described in this paragraph (c)(4) if, under the accounting standards that apply to the AFS, the plan is treated as a defined benefit plan that provides post-employment benefits other than pension benefits.

(d) *Applicability date.* This section applies to taxable years ending after September 13, 2024.

§ 1.56A–14 AFSI adjustments for tax-exempt entities.

(a) *Overview.* This section provides rules under section 56A(c)(12) of the

Code for adjusting the AFSI of tax-exempt entities.

(b) *AFSI adjustments for tax-exempt entities.* In the case of an organization subject to tax under section 511 of the Code, AFSI is adjusted to take into account only the AFSI (if any) of an unrelated trade or business (as defined in section 513 of the Code) of such organization, subject to the modifications to unrelated business taxable income described in section 512(b) of the Code. AFSI determined under the preceding sentence includes any unrelated debt-financed income determined under section 514 of the Code. *See* section 512(b)(4).

(c) *Applicability date.* This section applies to taxable years ending after September 13, 2024.

§ 1.56A–15 AFSI adjustments for section 168 property.

(a) *Overview.* This section provides rules under section 56A(c)(13) of the Code for determining AFSI adjustments with respect to section 168 property. Paragraph (b) of this section provides definitions that apply for purposes of this section. Paragraph (c) of this section provides rules for determining the extent to which property (or an expenditure with respect to property) is section 168 property. Paragraph (d) of this section provides rules for adjusting AFSI for depreciation and other amounts with respect to section 168 property. Paragraph (e) of this section provides rules for adjusting AFSI upon the disposition of section 168 property. Paragraph (f) of this section provides the applicability date of this section.

(b) *Definitions.* For purposes of this section:

(1) *Covered book inventoriable depreciation.* The term *covered book inventoriable depreciation* means any of the following items that are included in inventoriable cost (or capitalized as part of the cost of non-inventory property held for sale) in a CAMT entity's AFS with respect to section 168 property—

(i) Depreciation expense;

(ii) Other recovery of AFS basis (including from an impairment loss) that occurs prior to the taxable year in which the disposition of section 168 property occurs for regular tax purposes; or

(iii) Impairment loss reversal.

(2) *Covered book COGS depreciation.* The term *covered book COGS depreciation* means any of the following items that are taken into account as part of cost of goods sold (or as part of the computation of gain or loss from the sale or exchange of property held for sale) in FSI with respect to section 168 property—

(i) Depreciation expense;
 (ii) Other recovery of AFS basis (including from an impairment loss) that occurs prior to the taxable year in which the disposition of section 168 property occurs for regular tax purposes; or

(iii) Impairment loss reversal.
 (3) *Covered book depreciation expense.* The term *covered book depreciation expense* means any of the following items other than covered book COGS depreciation that are taken into account in FSI with respect to section 168 property—

(i) Depreciation expense;
 (ii) Other recovery of AFS basis (including from an impairment loss) that occurs prior to the taxable year in which the disposition of section 168 property occurs for regular tax purposes; or

(iii) Impairment loss reversal.
 (4) *Covered book expense.* The term *covered book expense* means an amount, other than covered book COGS depreciation and covered book depreciation expense, that—

(i) Reduces FSI; and
 (ii) Is reflected in the unadjusted depreciable basis, as defined in § 1.168(b)–1(a)(3), of section 168 property for regular tax purposes.

(5) *Deductible tax depreciation.* The term *deductible tax depreciation* means tax depreciation, as defined in paragraph (b)(8) of this section, that is allowed as a deduction in computing taxable income, including tax depreciation that is capitalized and subsequently recovered as a deduction in computing taxable income (even if the deduction is allowed under a provision of the Code other than section 167 of the Code).

(6) *Section 168 property.* The term *section 168 property* means property to which section 168 of the Code applies, as described in paragraph (c) of this section.

(7) *Tax COGS depreciation.* The term *tax COGS depreciation* means—

(i) Tax depreciation that is capitalized to inventory under section 263A of the Code and is recovered as part of cost of goods sold in computing gross income; and

(ii) Tax depreciation that is capitalized under section 263A to the basis of property described in section 1221(a)(1) of the Code that is not inventory and is recovered as part of the computation of gain or loss from the sale or exchange of such property in computing taxable income.

(8) *Tax depreciation.* The term *tax depreciation* means depreciation deductions allowed under section 167 with respect to section 168 property.

(9) *Tax depreciation section 481(a) adjustment.* The term *tax depreciation section 481(a) adjustment* means the net amount of the adjustments required under section 481(a) of the Code for a change in method of accounting for depreciation for any item of section 168 property. The term also includes an adjustment (or portion thereof) required under section 481(a) for any other change in method of accounting (other than a change in method of accounting described in paragraph (b)(10) of this section) that impacts the timing of taking into account depreciation with respect to section 168 property in computing taxable income (for example, a change in method of accounting involving a change from deducting depreciation with respect to section 168 property to capitalizing such depreciation under section 263A or another capitalization provision, or vice versa).

(10) *Tax capitalization method change.* The term *tax capitalization method change* means a change in method of accounting for regular tax purposes involving a change from capitalizing and depreciating costs as section 168 property (including costs that were capitalized to such property under section 263A or another capitalization provision) to deducting the costs (or vice versa).

(11) *Tax capitalization method change AFSI adjustment.* The term *tax capitalization method change AFSI adjustment* means an adjustment to AFSI that is required under paragraph (d)(1) of this section if a CAMT entity makes a tax capitalization method change. The tax capitalization method change AFSI adjustment is computed separately for each tax capitalization method change and equals the difference between the following amounts computed as of the beginning of the tax year of change—

(i) The cumulative amount of adjustments to AFSI under paragraph (d)(1) of this section with respect to the cost(s) subject to the tax capitalization method change that were made with respect to taxable years beginning after December 31, 2019, and before the tax year of change; and

(ii) The cumulative amount of adjustments to AFSI under paragraph (d)(1) of this section with respect to the cost(s) subject to the tax capitalization method change that would have been made with respect to taxable years beginning after December 31, 2019, and before the tax year of change, if the new method of accounting for the cost(s) had been applied for regular tax purposes in those taxable years.

(c) *Property to which section 168 applies*—(1) *In general.* For purposes of section 56A(c)(13) and this section, property to which section 168 applies consists of the following (but only to the extent provided in this paragraph (c))—

(i) MACRS property, as defined in § 1.168(b)–1(a)(2), that is depreciable under section 168;

(ii) Computer software that is qualified property as defined in § 1.168(k)–1(b)(1) or 1.168(k)–2(b)(1), as applicable, and depreciable under section 168; and

(iii) Other property depreciable under section 168 that is—

(A) Qualified property as defined in § 1.168(k)–2(b)(1); and

(B) Described in § 1.168(k)–2(b)(2)(i)(E), (F), or (G).

(2) *Property to which section 168 applies includes only the portion of property for which a depreciation deduction is allowable under section 167.* If a CAMT entity deducts or otherwise recovers the cost of property described in paragraph (c)(1) of this section (or a portion thereof) under sections 179, 179C, or 181 of the Code, or any similar provision, property to which section 168 applies is limited to the unadjusted depreciable basis, as defined in § 1.168(b)–1(a)(3), of such property.

(3) *Deductible expenditures are not property to which section 168 applies.* Property to which section 168 applies does not include any expenditure (or portion thereof) that is deducted for regular tax purposes, even if the expenditure is made with respect to property to which section 168 applies. For example, an expenditure to repair property to which section 168 applies that is deducted for regular tax purposes but capitalized and depreciated as an improvement for FSI purposes is not property to which section 168 applies.

(4) *Property to which section 168 applies does not include property that is not depreciable under section 168 for regular tax purposes.* Except as provided in paragraph (c)(5) of this section, property to which section 168 applies does not include property that is not depreciable under section 168 for regular tax purposes. For example, if a foreign corporation other than a controlled foreign corporation is not subject to U.S. taxation, then property owned by the foreign corporation is not treated as property to which section 168 applies.

(5) *Effect of election out of additional first year depreciation.* Property to which section 168 applies includes property described in paragraph (c)(1) of this section regardless of whether the CAMT entity makes an election out of

the additional first year depreciation deduction under section 168(k) with respect to such property.

(6) *Property placed in service in taxable years beginning before the CAMT effective date.* Notwithstanding § 1.56A–1(d)(3), property to which section 168 applies includes property placed in service by the CAMT entity in any taxable year, including taxable years ending on or before December 31, 2019.

(d) *AFSI adjustments for depreciation and other amounts with respect to section 168 property—(1) In general.* The AFSI of a CAMT entity for a taxable year is—

(i) Reduced by tax COGS depreciation with respect to section 168 property, but only to the extent of the amount recovered—

(A) As part of cost of goods sold in computing gross income for the taxable year; or

(B) As part of the computation of gain or loss from the sale or exchange of non-inventory property described in section 1221(a)(1) that is included in taxable income, or deducted in computing taxable income, respectively, for the taxable year;

(ii) Reduced by deductible tax depreciation with respect to section 168 property, but only to the extent of the amount allowed as a deduction in computing taxable income for the taxable year;

(iii) Adjusted to disregard covered book COGS depreciation, covered book depreciation expense, covered book expense, and amounts described in paragraph (e)(6) of this section with respect to section 168 property, including section 168 property placed in service for regular tax purposes in a taxable year subsequent to the taxable year the property is treated as placed in service for AFS purposes;

(iv) Reduced by any tax depreciation section 481(a) adjustment with respect to section 168 property that is negative, but only to the extent of the amount of the adjustment that is taken into account in computing taxable income for the taxable year;

(v) Increased by any tax depreciation section 481(a) adjustment with respect to section 168 property that is positive, but only to the extent of the amount of the adjustment that is taken into account in computing taxable income for the taxable year;

(vi) Increased or decreased, as appropriate, by any tax capitalization method change AFSI adjustment in accordance with paragraph (d)(4) of this section; and

(vii) Adjusted for other items as provided in IRB guidance the IRS may publish.

(2) *Special rules for section 168 property held by a partnership—(i) In general.* If section 168 property is held by a partnership, see § 1.56A–5(e) for the manner in which the adjustments provided in paragraph (d)(1) of this section are taken into account by the partnership and its CAMT entity partners under the applicable method described in § 1.56A–5(c).

(ii) *Basis adjustment under section 743(b) of the Code.* If section 168 property is held by a partnership, the adjustments provided in paragraphs (d)(1)(i), (ii), and (iv) through (vii) of this section do not include amounts resulting from any basis adjustment under section 743(b) of the Code attributable to the section 168 property that are treated as increases or decreases to tax depreciation or a tax depreciation section 481(a) adjustment for regular tax purposes. See § 1.743–1(j)(4). Instead, such amounts resulting from any basis adjustment under section 743(b) attributable to the section 168 property that would have been included in the adjustments provided in paragraphs (d)(1)(i), (ii), and (iv) through (vii) of this section are separately stated to the CAMT entity partners under § 1.56A–5(e)(4)(i) and are taken into account by the CAMT entity partners in the manner provided in § 1.56A–5(e)(4)(ii)(A).

(iii) *Basis adjustment under section 734(b) of the Code.* If section 168 property is held by a partnership, the adjustments provided in paragraphs (d)(1)(i), (ii), and (iv) through (vii) of this section include amounts resulting from any basis adjustment under section 734(b) of the Code attributable to the section 168 property that are treated as increases or decreases to tax depreciation or a tax depreciation section 481(a) adjustment for regular tax purposes. See § 1.734–1(e).

(iv) *Basis adjustment under § 1.1017–1(g)(2).* If section 168 property is held by a partnership, the adjustments provided in paragraphs (d)(1)(i), (ii), and (iv) through (vii) of this section do not include any decreases in tax depreciation or income amounts for regular tax purposes, as applicable, resulting from any basis adjustment under § 1.1017–1(g)(2) attributable to section 168 property (as calculated under § 1.743–1(j)(4)(ii)). Instead, such decreases in tax depreciation or income amounts, as applicable, resulting from any basis adjustment under § 1.1017–1(g)(2) attributable to section 168 property that would have been included in the adjustments provided in paragraphs (d)(1)(i), (ii), and (iv) through (vii) of this section are separately stated to the CAMT entity partners under § 1.56A–5(e)(4)(i) and are

taken into account by the CAMT entity partners in the manner provided in § 1.56A–5(e)(4)(ii)(A).

(3) *Special rules for determining tax COGS depreciation and covered book COGS depreciation adjustments—(i) In general.* Except as provided in paragraph (d)(3)(ii) of this section, a CAMT entity is required—

(A) To apply the method(s) of accounting under section 263A that the CAMT entity uses for regular tax purposes (and, in the case of inventory property, the method(s) of accounting that the CAMT entity uses to identify and value inventories under sections 471 and 472 of the Code) to determine the tax COGS depreciation adjustments under paragraph (d)(1)(i) of this section; and

(B) To apply the method(s) of accounting the CAMT entity uses for FSI purposes to determine the covered book COGS depreciation adjustments under paragraph (d)(1)(iii) of this section.

(ii) *Simplifying methods.* A CAMT entity is permitted to use the simplifying methods of determining depreciation in ending inventory provided in this paragraph (d)(3)(ii) to determine the tax COGS depreciation and covered book COGS depreciation adjustments under paragraphs (d)(1)(i) and (iii) of this section, respectively.

(A) *Tax depreciation in inventory for FIFO method taxpayers.* For a CAMT entity that uses the First-In-First-Out (FIFO) method to identify inventories for regular tax purposes, the tax depreciation in additional section 263A costs in ending inventory may be computed by multiplying the section 471 costs in ending inventory by the ratio of the tax depreciation in additional section 263A costs incurred during the taxable year to the section 471 costs incurred during the taxable year (tax depreciation absorption ratio). See § 1.263A–1(d)(2) and (3), respectively, for the definitions of section 471 costs and additional section 263A costs.

(B) *Tax depreciation in inventory for LIFO method taxpayers.* For a CAMT entity that uses the LIFO method to identify inventories for regular tax purposes, the tax depreciation in section 471 costs in a LIFO increment may be computed by multiplying the tax depreciation in section 471 costs incurred during the taxable year by the ratio of the section 471 costs in the increment to the section 471 costs incurred during the taxable year (tax increment to current-year cost ratio). The tax depreciation in additional section 263A costs in a LIFO increment may be computed by multiplying the tax

depreciation in additional section 263A costs incurred during the taxable year by the tax increment to current-year cost ratio. The total tax depreciation that remains in a LIFO increment after a decrement is determined by multiplying the tax depreciation in the section 471 costs and the tax depreciation in additional section 263A costs in the LIFO increment before the decrement by the ratio of the section 471 costs in the increment after the decrement to the section 471 costs in the LIFO increment before the decrement. See § 1.263A–1(d)(2) and (3), respectively, for the definitions of section 471 costs and additional section 263A costs.

(C) *Covered book inventoriable depreciation in inventory for LIFO method taxpayers.* For a CAMT entity that uses the LIFO method to identify inventories for AFS and FSI purposes, the covered book inventoriable depreciation in a LIFO increment may be computed by multiplying the covered book inventoriable depreciation incurred during the taxable year by the ratio of inventoriable costs in the increment in the CAMT entity's AFS to the inventoriable costs incurred during the taxable year in the CAMT entity's AFS (book increment to current-year cost ratio). The covered book inventoriable depreciation that remains in a LIFO increment after a decrement is determined by multiplying the covered book inventoriable depreciation in the LIFO increment before the decrement by the ratio of the inventoriable costs in the increment after the decrement to the inventoriable costs in the LIFO increment before the decrement.

(4) *Adjustment period for tax capitalization method change AFSI adjustments.* A tax capitalization method change AFSI adjustment that is negative reduces AFSI under paragraph (d)(1)(vi) of this section in the tax year of change by the full amount of the adjustment. A tax capitalization method change AFSI adjustment that is positive increases AFSI under paragraph (d)(1)(vi) of this section ratably over four taxable years beginning with the tax year of change. For purposes of this paragraph (d)(4), if any taxable year during the four-year spread period for a tax capitalization method change AFSI adjustment that is positive is a short taxable year, the CAMT entity takes the adjustment into account as if that short taxable were a full 12-month taxable year. If, in any taxable year, a CAMT entity ceases to engage in the trade or business to which the tax capitalization method change AFSI adjustment relates, the CAMT entity includes in AFSI for such taxable year any portion of the

adjustment not included in AFSI for a previous taxable year.

(5) *Examples.* The following examples illustrate the application of the rules in this paragraph (d). For purposes of paragraphs (d)(5)(i) through (viii) of this section (*Examples 1 through 8*), each of X and Y is a corporation that uses the calendar year as its taxable year and has a calendar-year financial accounting period. Unless otherwise stated, each of X and Y has elected out of additional first year depreciation under section 168(k), and the tax depreciation with respect to any section 168 property is not required to be capitalized under any capitalization provision in the Code.

(i) *Example 1: Tax COGS depreciation and covered book COGS depreciation adjustments under FIFO method—(A) General facts.* X is a manufacturer that uses the FIFO method to identify inventories and values inventories at the lower of cost or market for regular tax and FSI purposes. X uses the simplified service cost method to determine capitalizable mixed service costs under § 1.263A–1(h) and the modified simplified production method to allocate additional section 263A costs to ending inventory under § 1.263A–2(c)(3). X determines both the type and amount of section 471 costs by reference to its financial statements in accordance with § 1.263A–1(d)(2)(iii)(A). All depreciation for regular tax and FSI purposes is attributable to section 168 property. There were no write downs of inventory for regular tax purposes and no disposition or book impairment losses for FSI purposes in 2024. X uses the same method(s) of allocating section 471 costs to ending inventory for regular tax purposes that it uses to allocate inventoriable costs to ending inventory for AFS purposes, so the tax depreciation in section 471 costs in ending inventory and the covered book inventoriable depreciation in ending inventory are equal.

(B) *Facts: Beginning inventory for 2024.* X's beginning inventory for 2024 is \$2,500,000x, consisting of \$2,000,000x of section 471 costs and \$500,000x of additional section 263A costs. The section 471 costs in beginning inventory include \$100,000x of book depreciation based on X's financial statement method of accounting. The additional section 263A costs in beginning inventory include \$10,000x of tax depreciation computed under the simplifying method in paragraph (d)(3)(ii) of this section for the preceding year.

(C) *Facts: Current-year costs for 2024.* During 2024, X incurs \$11,000,000x of inventoriable costs, consisting of \$10,000,000x of section 471 costs and

\$1,000,000x of additional section 263A costs. The section 471 costs include \$500,000x of book depreciation based on X's financial statement method of accounting and the additional section 263A costs include \$40,000x of tax depreciation, which is comprised of book depreciation in capitalizable mixed service costs determined under the simplified service cost method, as well as the excess of tax depreciation over book depreciation under § 1.263A–1(d)(2)(iii)(B) related to the book depreciation in section 471 costs and capitalizable mixed service costs.

(D) *Facts: Ending inventory for 2024.* X's ending inventory for 2024 is \$3,300,000x, consisting of \$3,000,000x of section 471 costs and \$300,000x of additional section 263A costs computed under the modified simplified production method. The section 471 costs include \$150,000x of book depreciation based on X's financial statement method of accounting.

(E) *Facts: Cost of goods sold for 2024.* X's cost of goods sold for 2024 is \$10,200,000x (\$2,500,000x beginning inventory + \$11,000,000x inventoriable costs incurred during the year – \$3,300,000x ending inventory).

(F) *Analysis: Ending inventory for 2024.* X determines the tax depreciation in additional section 263A costs in ending inventory for 2024 using the simplifying method in paragraph (d)(3)(ii)(A) of this section as follows: X's tax depreciation absorption ratio is 0.4% (\$40,000x tax depreciation in additional section 263A costs incurred during the year/\$10,000,000x section 471 costs incurred during the year) and its tax depreciation in additional section 263A costs in ending inventory is \$12,000x (tax depreciation absorption ratio of 0.4% x \$3,000,000x of section 471 costs remaining in ending inventory).

(G) *Analysis: Taxable year 2024: Tax COGS depreciation.* X's tax COGS depreciation for 2024 is \$488,000x (\$100,000x tax depreciation in section 471 costs in beginning inventory + \$10,000x tax depreciation in additional section 263A costs in beginning inventory + \$500,000x tax depreciation in section 471 costs incurred during the year + \$40,000x tax depreciation in additional section 263A costs incurred during the year – \$150,000x tax depreciation in section 471 costs in ending inventory – \$12,000x of tax depreciation in additional section 263A costs in ending inventory). Pursuant to paragraph (d)(1)(i)(A) of this section, X reduces AFSI by \$488,000x, the tax COGS depreciation for taxable year 2024.

(H) *Analysis: Taxable year 2024: Covered book COGS depreciation.* X's covered book COGS depreciation for 2024 is \$450,000x (\$100,000x covered book inventoriable depreciation in beginning inventory + \$500,000x covered book inventoriable depreciation incurred during the year – \$150,000x covered book inventoriable depreciation in ending inventory). Pursuant to paragraph (d)(1)(iii) of this section, X adjusts AFSI to disregard the covered book COGS depreciation by increasing AFSI by \$450,000x for 2024.

(ii) *Example 2: Tax COGS depreciation and covered book COGS depreciation adjustments under LIFO method—(A) General facts.* The facts are the same as in paragraph (d)(5)(i) of this section (*Example 1*), except that X uses the same dollar-value LIFO method to identify inventory for regular tax and AFS purposes. X uses the simplifying method in paragraph (d)(3)(ii)(B) of this section to determine the tax depreciation in section 471 costs and the tax depreciation in additional section 263A costs in its LIFO increments for purposes of computing tax COGS depreciation. X also uses the simplifying method in paragraph (d)(3)(ii)(C) of this section to determine the covered book inventoriable depreciation in its LIFO increments for purposes of computing covered book COGS depreciation. Based on X's methods of accounting for determining and allocating section 471 costs for regular tax purposes described in paragraph (d)(5)(i) of this section (*Example 1*), X's section 471 costs (including tax depreciation) incurred for the taxable year and X's inventoriable costs (including covered book inventoriable depreciation) incurred for the taxable year in X's AFS are equal, and X's section 471 costs (including tax depreciation) in any LIFO increment and the inventoriable costs (including covered book inventoriable depreciation) in such increment in X's AFS are equal.

(B) *Facts: Beginning inventory for 2024.* X's beginning inventory for 2024 is \$2,500,000x, consisting of a base layer of \$2,000,000x and a 2023 increment of \$500,000x. The base layer consists of \$1,800,000x of section 471 costs and \$200,000x of additional section 263A costs and the 2023 increment consists of \$450,000x of section 471 costs and \$50,000x of additional section 263A costs. The base layer includes \$100,000x of tax depreciation (\$90,000x of tax depreciation in section 471 costs + \$10,000x of tax depreciation in additional section 263A costs) and the 2023 increment includes \$25,000x of tax depreciation (\$22,500x of tax

depreciation in section 471 costs + \$2,500x of tax depreciation in additional section 263A costs), computed under the simplifying method in paragraph (d)(3)(ii)(B) of this section for the preceding year. The covered book inventoriable depreciation in X's beginning inventory for 2024 computed under the simplifying method in paragraph (d)(3)(ii)(C) of this section equals the tax depreciation in section 471 costs in X's beginning inventory for 2024 computed under the simplifying method in paragraph (d)(3)(ii)(B) of this section (that is, the covered book inventoriable depreciation in the base layer equals \$90,000x and covered book inventoriable depreciation in the 2023 increment equals \$22,500x).

(C) *Facts: Current-year costs for 2024.* During 2024, X incurs \$11,000,000x of inventoriable costs, consisting of \$10,000,000x of section 471 costs and \$1,000,000x of additional section 263A costs. The section 471 costs include \$500,000x of book depreciation based on X's financial statement method of accounting and the additional section 263A costs include \$40,000x of tax depreciation, which includes book depreciation in capitalizable mixed service costs determined under the simplified service cost method, as well as for the excess of tax depreciation over book depreciation under § 1.263A–1(d)(2)(iii)(B) related to the book depreciation in section 471 costs and capitalizable mixed service costs.

(D) *Facts: Ending inventory for 2024.* X's ending inventory for 2024 is \$2,750,000x, consisting of the base layer of \$2,000,000x, the 2023 increment of \$500,000x, and a 2024 increment of \$250,000x. The 2024 increment consists of \$225,000x of section 471 costs and \$25,000x of additional section 263A costs.

(E) *Facts: Cost of goods sold for 2024.* X's cost of goods sold for 2024 is \$10,750,000x (\$2,500,000x beginning inventory + \$11,000,000x inventoriable costs incurred during the year – \$2,750,000x ending inventory).

(F) *Analysis: Ending inventory for 2024.* X determines the tax depreciation in section 471 costs and the tax depreciation in additional section 263A costs in the 2024 increment under the simplifying method in paragraph (d)(3)(ii)(B) of this section as follows: X computes a tax increment to current-year cost ratio of 2.25% by dividing the section 471 costs in the increment, or \$225,000x, by the section 471 costs incurred during the year, or \$10,000,000x. X determines the tax depreciation in section 471 costs for the 2024 increment of \$11,250x by multiplying the tax increment to

current-year cost ratio, or 2.25%, by the tax depreciation in section 471 costs incurred during the year, or \$500,000x. X determines the tax depreciation in additional section 263A costs for the 2024 increment of \$900x by multiplying the tax increment to current-year cost ratio, or 2.25%, by the tax depreciation in additional section 263A costs incurred during the year, or \$40,000x. X determines the covered book inventoriable depreciation in the 2024 increment under the simplifying method in paragraph (d)(3)(ii)(C) of this section as follows: X computes a book increment to current-year cost ratio of 2.25% by dividing the inventoriable costs in the increment in X's AFS, or \$225,000x, by the inventoriable costs incurred during the taxable year in X's AFS, or \$10,000,000x. X determines the covered book inventoriable depreciation for the 2024 increment of \$11,250x by multiplying the book increment to current-year cost ratio, or 2.25%, by covered book inventoriable depreciation incurred for the year, or \$500,000x.

(G) *Analysis: Taxable year 2024: Tax COGS depreciation.* X's tax COGS depreciation for 2024 of \$527,850x is equal to the tax depreciation in section 471 costs in beginning inventory of \$112,500x (\$90,000x from the base layer + \$22,500x from the 2023 increment), plus the tax depreciation in additional section 263A costs in beginning inventory of \$12,500x (\$10,000x from the base layer + \$2,500x from the 2023 increment), plus the \$500,000x of tax depreciation in section 471 costs incurred during the year, plus the \$40,000x of tax depreciation in additional section 263A costs incurred during the year, less the tax depreciation in section 471 costs in ending inventory of \$123,750x (\$90,000x from the base layer + \$22,500x from the 2023 increment + \$11,250x from the 2024 increment), less the tax depreciation in additional section 263A costs in ending inventory of \$13,400x (\$10,000x from the base layer + \$2,500x from the 2023 increment + \$900x from the 2024 increment). Pursuant to paragraph (d)(1)(i)(A) of this section, X reduces AFSI by \$527,850x, the tax COGS depreciation for taxable year 2024.

(H) *Analysis: Taxable year 2024: Covered book COGS depreciation.* X's covered book COGS depreciation for 2024 of \$488,750x is equal to the covered book inventoriable depreciation in beginning inventory of \$112,500x (\$90,000x from the base layer + \$22,500x from the 2023 increment), plus the \$500,000x of covered book inventoriable depreciation incurred during the year, less the \$123,750x of

covered book inventoriable depreciation in ending inventory (\$90,000x from the base layer + \$22,500x from the 2023 increment + \$11,250x from the 2024 increment). Pursuant to paragraph (d)(1)(iii) of this section, X adjusts AFSI to disregard the covered book COGS depreciation by increasing AFSI by \$488,750x for 2024.

(iii) *Example 3: Tax COGS depreciation and covered book COGS depreciation adjustments under LIFO method*—(A) *General facts.* The facts are the same as in paragraph (d)(5)(ii) of this section (*Example 2*), except that X continues to use the dollar-value LIFO method for regular tax and AFS purposes for 2025.

(B) *Facts: Current-year costs for 2025.* During 2025, X incurs \$13,250,000x of inventoriable costs, consisting of \$12,000,000x of section 471 costs and \$1,250,000x of additional section 263A costs. The section 471 costs include \$750,000x of book depreciation based on X's financial statement method of accounting and the additional section 263A costs include \$100,000x of tax depreciation which is comprised of book depreciation in capitalizable mixed service costs determined under the simplified service cost method and a positive book-to-tax adjustment for the excess of tax depreciation over book depreciation under § 1.263A-1(d)(2)(iii)(B) related to the book depreciation in section 471 costs and capitalizable mixed service costs.

(C) *Facts: Ending inventory for 2025.* X incurs a LIFO decrement in 2025 that eliminates the entire 2024 increment and a portion of the 2023 increment. X's ending inventory is \$2,250,000x, consisting of the base layer of \$2,000,000x and a remaining 2023 increment of \$250,000x. The base layer consists of \$1,800,000x of section 471 costs and \$200,000x of additional section 263A costs. The remaining portion of the 2023 increment consists of \$225,000x of section 471 costs and \$25,000x of additional section 263A costs.

(D) *Facts: Cost of goods sold for 2025.* X's cost of goods sold for 2025 is \$13,750,000x (\$2,750,000x beginning inventory + \$13,250,000x inventoriable costs incurred during the year – \$2,250,000x ending inventory).

(E) *Analysis: Ending inventory for 2025.* X determines the tax depreciation in section 471 costs and the tax depreciation in additional section 263A costs that remain in the 2023 increment under the simplifying method in paragraph (d)(3)(ii)(B) of this section as follows: After taking into account the 2025 decrement, 50% of the 2023 increment remains (\$225,000x of section

471 costs in the increment after the decrement/\$450,000x of section 471 costs in the increment before the decrement). The tax depreciation in section 471 costs that remains in the 2023 increment is \$11,250x (50% surviving proportion of the increment x \$22,500x tax depreciation in section 471 costs in the 2023 increment before the decrement). X's tax depreciation in additional section 263A costs that remains in the 2023 increment is \$1,250x (50% surviving proportion of the increment x \$2,500x tax depreciation in additional section 263A costs in the 2023 increment before the decrement, or \$2,500x). X determines the covered book inventoriable depreciation that remains in the 2023 increment under the simplifying method in paragraph (d)(3)(ii)(C) of this section as follows: After taking into account the 2025 decrement, 50% of the 2023 increment remains (\$225,000x of inventoriable costs in the increment in X's AFS after the decrement/\$450,000x of inventoriable costs in the increment before the decrement). The covered book inventoriable depreciation that remains in the 2023 increment is \$11,250x (50% surviving proportion of the increment x \$22,500x of covered book inventoriable depreciation in the 2023 increment before the decrement).

(F) *Analysis: Taxable year 2025: Tax COGS depreciation.* X's tax COGS depreciation for 2025 of \$874,650x is equal to the tax depreciation in section 471 costs in beginning inventory of \$123,750 (\$90,000x from the base layer + \$22,500x from the 2023 increment + \$11,250x from the 2024 increment), plus the tax depreciation in additional section 263A costs in beginning inventory of \$13,400x (\$10,000x from the base layer + \$2,500x from the 2023 increment + \$900x from the 2024 increment), plus \$750,000x of tax depreciation in section 471 costs incurred during the year, plus \$100,000x of tax depreciation in additional section 263A costs incurred during the year, less the tax depreciation in section 471 costs in ending inventory of \$101,250x (\$90,000x from the base layer + \$11,250x from the 2023 increment), less the tax depreciation in additional section 263A costs in ending inventory of \$11,250x (\$10,000x from the base layer + \$1,250x from the 2023 increment). Pursuant to paragraph (d)(1)(i)(A) of this section, B reduces AFSI by \$874,650x, the tax COGS depreciation for taxable year 2025.

(G) *Analysis: Taxable year 2025: Covered book COGS depreciation.* X's covered book COGS depreciation for 2025 of \$772,500x is equal to the

covered book inventoriable depreciation in beginning inventory of \$123,750x (\$90,000x from the base layer + \$22,500x from the 2023 increment + \$11,250x from the 2024 increment), plus the \$750,000x of covered book inventoriable depreciation incurred during the year, less \$101,250x of covered book inventoriable depreciation in ending inventory (\$90,000x from the base layer + \$11,250x from the 2023 increment). Pursuant to paragraph (d)(1)(iii) of this section, X adjusts AFSI to disregard the covered book COGS depreciation by increasing AFSI by \$772,500x for 2025.

(iv) *Example 4: Net positive tax depreciation section 481(a) adjustment*—(A) *Facts.* Y timely files a Form 3115, *Application for Change in Accounting Method*, under Rev. Proc. 2015-13 (2015-5 I.R.B. 419) for the calendar year ending December 31, 2024, to change its method of accounting for depreciation for an item of section 168 property, and the Commissioner consents to the change. The adjustment required under section 481(a) to implement the change is positive because the total amount of depreciation taken by Y with respect to the section 168 property under its present method was \$1,000x greater than the total amount of depreciation allowable under the new method of accounting. Y takes the \$1,000x net positive section 481(a) adjustment into account in computing taxable income ratably over the section 481(a) adjustment period of 4 taxable years, beginning with the year of change (2024 through 2027).

(B) *Analysis: Taxable years 2024 through 2027.* Pursuant to paragraph (d)(1)(v) of this section, Y takes the \$1,000x net positive tax depreciation section 481(a) adjustment into account in determining AFSI under section 56A(c)(13) for taxable years 2024 through 2027. Because the adjustment is positive, A increases AFSI by \$250x each year.

(v) *Example 5: Change in method of accounting to treat the replacement of a portion of section 168 property as a deductible repair*—(A) *Facts: Taxable years 2024 through 2026.* On January 1, 2024, Y replaces a component of section 168 property (replacement property), at a cost of \$10,000x. For regular tax purposes, Y capitalized the cost of the replacement property and depreciates it under the general depreciation system by using the 200 percent declining balance method, the half-year convention, and a 5-year recovery period. For regular tax purposes, Y claims \$2,000x (\$10,000x cost x 20%) of deductible tax depreciation in 2024,

\$3,200x ($\$10,000x \times 32\%$) of deductible tax depreciation in 2025, and \$1,920x ($\$10,000x \times 19.2\%$) of deductible tax depreciation in 2026. For AFS purposes, Y depreciates the replacement property over 10 years using the straight-line method and the half-year convention. Y takes into account \$500x ($\$10,000x \text{ cost} / 10 \text{ years} / 2$) of covered book depreciation expense in 2024, and \$1,000x ($\$10,000x \text{ cost} / 10 \text{ years}$) of covered book depreciation expense in each of 2025 and 2026.

(B) *Facts: Taxable year 2027.* Y timely files a Form 3115, *Application for Change in Accounting Method*, under Rev. Proc. 2015–13 for the calendar year ending December 31, 2027, to change its method of accounting from capitalizing and depreciating the cost of the replacement property to deducting those costs as a repair under section 162, and the Commissioner consents to the change. The section 481(a) adjustment to implement the method change is negative \$2,880x (the difference between the total amount of tax depreciation Y claimed under its present method of \$7,120x ($\$2,000x + \$3,200x + \$1,920x$) and the \$10,000x repair expense deductible under Y's new method of accounting). Y takes the \$2,880x negative section 481(a) adjustment into account in computing taxable income for regular tax purposes in 2027, the year of change.

(C) *Analysis: Adjustment to AFSI under paragraph (d)(1) of this section.* Because repair expenditures deductible under section 162 are not property to which section 168 applies, the replacement property is no longer section 168 property. Accordingly, the negative section 481(a) adjustment of \$2,880x does not reduce AFSI for 2027 under paragraph (d)(1)(ii) or (iv) of this section because the negative section 481(a) adjustment is neither tax depreciation nor a tax depreciation section 481 adjustment (that is, it is not attributable to change in method of accounting for depreciation with respect to section 168 property). Further, except as provided in the analysis in paragraph (d)(5)(v)(D) of this section, beginning in 2027, Y will not make any other AFSI adjustments under paragraph (d)(1) of this section with respect to the replacement property because, following the accounting method change, the replacement property is not section 168 property.

(D) *Analysis: Tax capitalization method change AFSI adjustment.* The change in method of accounting implemented by Y for its taxable year ending December 31, 2027, is a tax capitalization method change. Accordingly, Y must compute and take

into account the corresponding tax capitalization method change AFSI adjustment under paragraph (d)(1)(vi) of this section. The tax capitalization method change AFSI adjustment is \$4,620x, and is computed as the difference between the amount determined under paragraph (b)(11)(i) of this section of \$4,620x (the cumulative amount of deductible tax depreciation taken into account under paragraph (d)(1)(ii) of this section with respect to taxable years ending on or after December 31, 2019, and before the tax year of change, of \$7,120x ($\$2,000x + \$3,200x + \$1,920x$), less the cumulative amount of covered book depreciation expense that was disregarded under paragraph (d)(1)(iii) of this section with respect to taxable years ending on or after December 31, 2019, and before the tax year of change, of \$2,500x ($\$500x + \$1,000x + \$1,000x$)), and the amount determined under paragraph (b)(11)(ii) of this section of \$0x (following the tax capitalization method change, the replacement property is not section 168 property and, therefore, no adjustments under paragraph (d)(1) of this section would have been required with respect to taxable years ending on or after December 31, 2019, and before the tax year of change under the new method of accounting). Under paragraphs (d)(1)(vi) and (d)(4) of this section, Y takes the \$4,620x positive tax capitalization method change AFSI adjustment into account as an increase to AFSI ratably over four taxable years beginning in 2027.

(vi) *Example 6: Change in method of accounting to capitalize costs to section 168 property as required under section 263A—(A) Facts: Taxable years 2024 through 2026.* During 2024, Y produces and places in service section 168 property with a cost of \$20,000x. For regular tax purposes, Y depreciates the section 168 property under the general depreciation system by using the 200 percent declining balance method, the half-year convention, and a 5-year recovery period. For regular tax purposes, Y claims \$4,000x ($\$20,000x \text{ cost} \times 20\%$) of deductible tax depreciation in 2024, \$6,400 ($\$20,000x \times 32\%$) of deductible tax depreciation in 2025, and \$3,840 ($\$20,000x \times 19.2\%$) of deductible tax depreciation in 2026. For AFS purposes, Y depreciates the section 168 property over 10 years using the straight-line method and the half-year convention. Y takes into account in its FSI \$1,000x ($\$20,000x \text{ cost} / 10 \text{ years} / 2$) of covered book depreciation expense for 2024 and \$2,000x ($\$20,000x \text{ cost} / 10 \text{ years}$) of covered book depreciation expense for each of 2025 and 2026.

Further, Y deducts \$10,000x of general and administrative costs in computing taxable income for 2024 consistent with its established method of accounting for regular tax purposes with respect to those costs. Y also takes into account the \$10,000x of general and administrative costs as an expense in its FSI for 2024.

(B) *Facts: Taxable year 2027.* During 2027, Y determines that the \$10,000x of general and administrative costs deducted in computing taxable income for 2024 were incurred by reason of the production of the section 168 property Y produced and placed in service in 2024, and therefore Y should have capitalized the \$10,000x of general and administrative costs to the basis of the section 168 property under section 263A and depreciated those costs under sections 167 and 168. Accordingly, Y timely files a Form 3115, *Application for Change in Accounting Method*, under Rev. Proc. 2015–13 for its taxable year ending December 31, 2027, to change its method of accounting to capitalize and depreciate the \$10,000x of general and administrative costs as part of the basis of the corresponding section 168 property. The Commissioner consents to the change. The section 481(a) adjustment required to implement the method change is positive \$2,880x (the difference between the amount of the general and administrative costs Y deducted under its present method of accounting prior to the tax year of change of \$10,000x, and the amount that would have been deducted under Y's proposed method of accounting prior to the tax year of change of \$7,120x (this amount equals the deductible tax depreciation that would have been claimed prior to the tax year of change ($\$2,000x$ for 2024 + $\$3,200x$ for 2025 + $\$1,920x$ for 2026))). Y takes one fourth of the \$2,880x positive section 481(a) adjustment into account in computing taxable income for regular tax purposes for 2027, the tax year of change.

(C) *Analysis: Tax capitalization method change AFSI adjustment.* The change in method of accounting for regular tax purposes implemented by Y for its taxable year ending December 31, 2027, is a tax capitalization method change as defined in paragraph (b)(10) of this section. Accordingly, Y must compute and take into account in AFSI a tax capitalization method change AFSI adjustment pursuant to paragraphs (b)(11) and (d)(1)(vi) of this section. The tax capitalization method change AFSI adjustment equals positive \$2,880x, computed as the difference between the amount determined under paragraph (b)(11)(i) of this section of \$0x (under

Y's prior method of accounting, the \$10,000x of general and administrative costs did not constitute section 168 property as those costs were deducted, and therefore no adjustments under paragraph (d)(1) of this section were made with respect to taxable years ending on or after December 31, 2019, and before the tax year of change) and the amount determined under paragraph (b)(11)(ii) of this section of \$2,880x (the cumulative amount of deductible tax depreciation that would have reduced AFSI under paragraph (d)(1)(ii) of this section with respect to taxable years ending on or after December 31, 2019, and before the tax year of change of \$7,120x (\$2,000x + \$3,200x + \$1,920x), plus the cumulative amount of covered book expense that would have been disregarded under paragraph (d)(1)(iii) of this section with respect to taxable years ending on or after December 31, 2019, and before the tax year of change of \$10,000x). Y takes the \$2,880x positive tax capitalization method change AFSI adjustment into account in computing AFSI ratably over four taxable years beginning in 2027 under paragraph (d)(4) of this section.

(D) *Analysis: Adjustments to AFSI under paragraph (d)(1) of this section for 2027 and subsequent taxable years.* Following the tax capitalization method change, the \$10,000x of general and administrative costs constitute section 168 property as those costs become part of the unadjusted basis of the underlying section 168 property produced and placed in service in 2024, resulting in total unadjusted basis of the section 168 property of \$30,000x. Therefore, in addition to taking into account the tax capitalization method change AFSI adjustment described in paragraph (d)(5)(vi)(C) of this section, Y is required to begin making adjustments to AFSI under paragraph (d)(1) of this section with respect to the general and administrative costs. Accordingly, Y reduces AFSI for 2027 and subsequent taxable years by the deductible tax depreciation it claims for the particular taxable year with respect to the section 168 property (including the \$10,000x of general and administrative costs) under paragraph (d)(1)(ii) of this section (that is, \$3,456x for 2027 (\$30,000x × 11.52%)). Y increases AFSI for 2027 and subsequent taxable years by the covered book depreciation expense with respect to the section 168 property under paragraph (d)(1)(iii) of this section (that is, \$2,000x for 2027). As the covered book expense attributable to the \$10,000x of general and administrative costs was taken into account in Y's FSI for 2024, there is no covered book

expense for Y to disregard under paragraph (d)(1)(iii) of this section when computing AFSI for 2027 and subsequent taxable years with respect to those costs.

(vii) *Example 7: Deductible tax depreciation under section 174—(A) Facts.* Y is engaged in the business of developing chemical products. On January 1, 2024, Y begins a research project in the United States to develop a new product. Y pays or incurs costs for the research project that are considered specified research or experimental expenditures under section 174 of the Code. Y owns a facility that is used exclusively for research. Tax depreciation on the facility is \$200,000x in 2024. Y treats the \$200,000x of 2024 tax depreciation as a specified research or experimental expenditure under section 174. Accordingly, Y capitalizes and amortizes the \$200,000x of 2024 tax depreciation ratably over a 5-year period under section 174(a)(2), beginning at the midpoint of 2024. Thus, \$20,000x of the capitalized amount (\$200,000x depreciation/5 years × 6/12 months) results in a deduction (through section 174 amortization) in computing taxable income in 2024.

(B) *Analysis.* Pursuant to paragraph (d)(1)(ii) of this section, Y reduces AFSI for 2024 by deductible tax depreciation of \$20,000x, which is the portion of the 2024 tax depreciation that reduced Y's taxable income for 2024.

(viii) *Example 8: Section 168 property treated as leased property for AFS purposes—(A) Facts.* On January 1, 2024, Y enters into an agreement to obtain the right to use equipment in its trade or business for seven years. Under the agreement, Y will make seven annual payments of \$10,000x at the end of each year. At the end of the agreement, Y will take ownership of the equipment at no additional cost. For regular tax purposes, Y treats the agreement as a financed purchase of equipment and capitalizes the cost of the equipment of \$57,750x (equal to the present value of the annual payments based on a 5% rate stated in the agreement) and depreciates the equipment under the general depreciation system using the 200 percent declining balance method, the half-year convention, and a 5-year recovery period. For regular tax purposes, Y claims \$11,550x (\$57,750x cost × 20%) of deductible tax depreciation in 2024 and \$18,480x (\$57,750x cost × 32%) of deductible tax depreciation in 2025. For regular tax purposes, Y also incurs interest expense on the remaining liability as of the end of the year equal to \$2,900x for 2024

and \$2,550x for 2025, based on the 5% interest rate stated in the agreement. Y prepares its AFS on the basis of GAAP and accounts for the agreement as a finance lease under ASC 842.

Accordingly, Y capitalizes a right of use asset of \$57,750x (equal to the present value of the annual lease payments) and recognizes right of use asset amortization each year of \$8,250x (\$57,750x right of use asset/7 years). For AFS purposes, Y also recognizes interest expense each year equal to the amounts incurred for regular tax purposes.

(B) *Analysis: Taxable year 2024.* The right of use asset amortization of \$8,250x is a covered book depreciation expense under paragraph (b)(3) of this section. Pursuant to paragraph (d)(1)(iii) of this section, Y makes an adjustment to AFSI to disregard the covered book depreciation expense of \$8,250x for 2024 (equal to the right of use asset amortization of \$8,250x). Pursuant to paragraph (d)(1)(ii) of this section, AFSI is also reduced by the deductible tax depreciation of \$11,550x for 2024. The interest expense of \$2,900x incurred for regular tax and AFS purposes is not a covered book expense as such amount is not reflected in the unadjusted depreciable basis, as defined in § 1.168(b)–1(a)(3), of the equipment for regular tax purposes and, accordingly, does not give rise to an AFSI adjustment under this paragraph (d).

(C) *Analysis: Taxable year 2025.* Pursuant to paragraph (d)(1)(iii) of this section, Y makes an adjustment to AFSI to disregard the covered book depreciation expense of \$8,250x for 2025 (equal to the right of use asset amortization for 2025 of \$8,250x). Pursuant to paragraph (d)(1)(ii) of this section, AFSI is also reduced by the deductible tax depreciation of \$18,480x for 2025. The interest expense of \$2,550x incurred for regular tax and AFS purposes is not a covered book expense as such amount is not reflected in the unadjusted depreciable basis, as defined in § 1.168(b)–1(a)(3), of the equipment for regular tax purposes and, accordingly, does not give rise to an AFSI adjustment under this paragraph (d).

(D) *Analysis: Taxable years 2026 through 2029.* Pursuant to paragraph (d)(1)(iii) of this section, Y continues to make an annual adjustment to AFSI to disregard the covered book depreciation expense of \$8,250x for each year (equal to the right of use asset amortization of \$8,250x). Pursuant to paragraph (d)(1)(ii) of this section, Y continues to reduce AFSI by the deductible tax depreciation for each taxable year. As of the end of 2029, the equipment is fully depreciated for regular tax purposes.

Interest expense incurred for regular tax and AFS purposes for each year is not a covered book expense as such amount is not reflected in the unadjusted depreciable basis, as defined in § 1.168(b)–1(a)(3), of the equipment for regular tax purposes and, accordingly, does not give rise to an AFSI adjustment under this paragraph (d).

(E) *Analysis: Taxable year 2030.*

Although the equipment is fully depreciated for regular tax purposes, the right of use asset amortization of \$8,250x for 2030 continues to be treated as a covered book depreciation expense under paragraph (b)(3) of this section. Pursuant to paragraph (d)(1)(iii) of this section, Y makes an adjustment to AFSI to disregard the covered book depreciation expense of \$8,250x for 2030 (equal to the right of use asset amortization for 2030 of \$8,250x). As the equipment was fully depreciated as of the end of 2029, there is no reduction to AFSI needed under paragraph (d)(1)(ii) of this section, as the deductible tax depreciation for the equipment for 2030 is zero. Interest expense incurred for regular tax and AFS purposes for 2030 is not a covered book expense as such amount is not reflected in the unadjusted depreciable basis, as defined in § 1.168(b)–1(a)(3), of the equipment for regular tax purposes and, accordingly, does not give rise to an AFSI adjustment under this paragraph (d).

(ix) *Example 9: Basis adjustment under section 743(b) to section 168 property—(A) Facts.* PRS1, a partnership for Federal tax and AFS purposes, is owned by X, a C corporation, and A, an individual. PRS1 was formed in 2022, uses the calendar year as its taxable year, and has a calendar-year financial accounting period. For 2024, PRS1 has \$100x of FSI, which includes \$20x of covered book depreciation expense. For regular tax purposes, PRS1's deductible tax depreciation with respect to its section 168 property is \$30x. X has a basis adjustment under section 743(b) with respect to its investment in PRS1 that relates to section 168 property owned by PRS1. As result of the basis adjustment, X is allocated an additional \$5x of tax depreciation that relates to PRS1's section 168 property. X does not have a corresponding equity interest method basis adjustment for AFS purposes.

(B) *Analysis: PRS1's modified FSI adjustment.* In computing its modified FSI for the 2024 taxable year, pursuant to § 1.56A–5(e)(3) and paragraph (d)(2)(i) of this section, PRS1 adjusts the \$100x FSI to disregard the covered book depreciation expense of \$20x, and reduces modified FSI by the deductible

tax depreciation of \$30x, which under paragraph (d)(2)(ii) of this section does not include X's \$5x tax depreciation resulting from the basis adjustment under section 743(b). Accordingly, PRS1's modified FSI is \$90x (\$100x FSI + \$20x covered book depreciation expense – \$30x deductible tax depreciation).

(C) *Analysis: X's adjustments to its share of PRS1's modified FSI.* Pursuant to § 1.56A–5(e)(1)(iv) and (e)(4)(ii)(A) and paragraph (d)(2)(ii) of this section, X adjusts its share of PRS1's modified FSI by deductible tax depreciation resulting from the basis adjustment under section 743(b) attributable to section 168 property under paragraph (d)(2)(ii) of this section. Accordingly, X reduces its share of modified FSI by deductible tax depreciation of \$5x.

(x) *Example 10: Basis adjustment under section 734(b) to section 168 property—(A) Facts.* The facts are the same as in paragraph (d)(5)(ix) of this section (*Example 9*), except that on December 31, 2023, PRS1 distributed property, that is not section 168 property, to A. The distribution of property to A required PRS1 to increase its basis in its remaining partnership property under section 734(b), including its section 168 property. For 2024, as a result of the positive basis adjustment under section 734(b), PRS1 has additional tax depreciation with respect to section 168 property of \$10x, increasing the deductible tax depreciation with respect to section 168 property from \$30x to \$40x. Consistent with paragraph (d)(5)(ix) of this section (*Example 9*), X has a basis adjustment under section 743(b) with respect to its investment in PRS1 that relates to section 168 property owned by PRS1. As result of the basis adjustment, X is allocated an additional \$5x of tax depreciation that relates to PRS1's section 168 property for 2024.

(B) *Analysis: PRS1's modified FSI adjustment.* In computing its modified FSI for the 2024 taxable year, pursuant to § 1.56A–5(e)(3) and paragraph (d)(2)(i) of this section, PRS1 adjusts the \$100x FSI to disregard the covered book depreciation expense of \$20x, and reduces modified FSI by the deductible tax depreciation of \$40x, which under paragraph (d)(2)(iii) of this section includes the deductible tax depreciation resulting from the basis adjustment under section 734(b). Accordingly, PRS1's modified FSI is \$80x (\$100x FSI + \$20x covered book depreciation expense – \$40x deductible tax depreciation).

(C) *Analysis: X's adjustments to its share of PRS1's modified FSI.* Pursuant to § 1.56A–5(e)(1)(iv) and (e)(4)(ii)(A)

and paragraph (d)(2)(ii) of this section, X adjusts its share of PRS1's modified FSI by deductible tax depreciation resulting from the basis adjustment under section 743(b) attributable to section 168 property under paragraph (d)(2)(ii) of this section. Accordingly, X reduces its share of modified FSI by deductible tax depreciation of \$5x.

(e) *AFSI adjustments upon disposition of section 168 property—(1) In general.* Except as otherwise provided in paragraph (e)(7) of this section, if a CAMT entity disposes of section 168 property for regular tax purposes, the CAMT entity adjusts AFSI for the taxable year in which the disposition occurs to redetermine any gain or loss taken into account in the CAMT entity's FSI with respect to the disposition for the taxable year (including a gain or loss of zero) by reference to the CAMT basis (in lieu of the AFS basis) of the section 168 property as of the date of the disposition (disposition date), as determined under paragraph (e)(2)(i) of this section. To the extent the CAMT basis of the section 168 property is negative (for example, because of differences between regular tax basis and AFS basis), this negative amount is required to be recognized as AFSI gain upon disposition of the section 168 property.

(2) *Adjustments to the AFS basis of section 168 property—(i) In general.* For purposes of applying paragraph (e)(1) of this section, and subject to paragraphs (e)(2)(ii) and (e)(3) of this section, the CAMT basis of the section 168 property as of the disposition date is the AFS basis of the section 168 property as of that date—

(A) Decreased by the full amount of tax depreciation with respect to such property as of the disposition date (regardless of whether any amount of tax depreciation was capitalized for regular tax purposes and not yet taken into account as a reduction to AFSI through an adjustment described in paragraph (d)(1)(i) or (ii) of this section as of the disposition date);

(B) Increased by the amount of any covered book expense with respect to such property;

(C) Increased by the amount of any covered book COGS depreciation and covered book depreciation expense that reduced the AFS basis of such property as of the disposition date, including covered book COGS depreciation and covered book depreciation expense with respect to AFS basis increases that are otherwise disregarded for AFSI and CAMT basis purposes (for example, AFS basis increases that are disregarded for AFSI and CAMT basis purposes under §§ 1.56A–18 and 1.56A–19);

(D) Decreased by any reductions to the CAMT basis of such property under § 1.56A–21(c)(4) and (5);

(E) Decreased by any amount allowed as a credit against tax imposed by subtitle A with respect to such property, but only to the extent of the amount that reduces the basis of such property for regular tax purposes; and

(F) Increased or decreased, as appropriate, by the amount of any adjustments to AFS basis that are disregarded for AFSI and CAMT basis purposes under other sections of the section 56A regulations with respect to such property (for example, AFS basis decreases that are disregarded for AFSI and CAMT basis purposes under § 1.56A–8 and AFS basis adjustments that are disregarded for AFSI and CAMT basis purposes under § 1.56A–18 or § 1.56A–19).

(ii) *Special rules regarding adjustments to the AFS basis of section 168 property*—(A) *Property placed in service prior to the effective date of CAMT.* In the case of section 168 property placed in service by a CAMT entity in a taxable year that begins before January 1, 2023, the amounts described in paragraph (e)(2)(i) of this section include amounts attributable to all taxable years beginning before January 1, 2023 (including taxable years beginning on or before December 31, 2019).

(B) *Property acquired in certain transactions to which section 168(i)(7) applies.* In the case of section 168 property that was acquired by a CAMT entity in a transaction that is a covered recognition transaction, as defined in § 1.56A–18(b)(10), with respect to at least one party to the transaction, or in a transaction described in § 1.56A–20, the amounts described in paragraph (e)(2)(i) of this section include only amounts attributable to the period following the transaction, regardless of whether section 168(i)(7) applies to any portion of the transaction for regular tax purposes.

(C) *Coordination with section 56A(c)(5).* The adjustment described in paragraph (e)(2)(i)(E) of this section applies regardless of the treatment of the tax credit for AFS purposes. *See* § 1.56A–8(b) and paragraph (e)(2)(i)(F) of this section.

(D) *Determination of CAMT basis of section 168 property following a change in method of accounting for depreciation or a tax capitalization method change.* In the case of section 168 property for which the CAMT entity made a change in method of accounting for depreciation for regular tax purposes or a tax capitalization method change, the amounts described in paragraph

(e)(2)(i) of this section are determined as though the CAMT entity used the method of accounting to which it changed under the corresponding method change when making the adjustments under paragraph (d)(1) of this section in all taxable years prior to the taxable year in which the disposition of the section 168 property occurs. The immediately preceding sentence applies regardless of whether the full amount of a corresponding tax depreciation section 481(a) adjustment or a tax capitalization method change AFSI adjustment has been taken into account in AFSI under paragraph (d)(1) of this section as of the end of the taxable year in which the disposition of the section 168 property occurs.

(E) *Adjustments to the AFS basis of section 168 property include only the covered book amounts actually disregarded in determining AFSI.* The adjustments described in paragraphs (e)(2)(i)(B) and (C) of this section include only the amounts that were actually disregarded by the CAMT entity under paragraph (d)(1)(iii) of this section in computing its AFSI, modified FSI, or adjusted net income or loss for the relevant taxable years. Accordingly, for a taxable year ending after December 31, 2019, only the amounts disregarded under paragraph (d)(1)(iii) of this section in computing the AFSI, modified FSI, or adjusted net income or loss reported by the CAMT entity as required by the section 56A regulations or other sections of the Code (for example, on its annual return on Form 4626 (or any successor), on its Form 5471, or in accordance with the reporting requirements in § 1.56A–5(h)) for such taxable year with respect to the section 168 property are taken into account in computing the adjustments described in paragraphs (e)(2)(i)(B) and (C) of this section. For a taxable year ending on or before December 31, 2019, or for a taxable year in which the CAMT entity satisfies the simplified method under § 1.59–2(g) (including a taxable year included in the relevant three-taxable-year period), the CAMT entity is deemed to have disregarded the appropriate amounts under paragraph (d)(1)(iii) with respect to the section 168 property for such taxable year.

(3) *Special rules for section 168 property disposed of by a partnership.* If a partnership disposes of section 168 property—

(i) The adjustment under paragraph (e)(1) of this section with respect to the section 168 property is taken into account in determining the partnership's modified FSI under § 1.56A–5(e)(3); and

(ii) For purposes of determining the adjustment under paragraph (e)(1) of this section with respect to the section 168 property, the adjustment to the partnership's AFS basis in the section 168 property under paragraph (e)(2)(i)(A) of this section—

(A) Includes any tax depreciation (including any reduction in tax depreciation) with respect to a section 734(b) basis adjustment;

(B) Excludes any tax depreciation (including any reduction in tax depreciation) with respect to a section 743(b) basis adjustment; and

(C) Excludes any tax depreciation (including any reduction in tax depreciation) with respect to a basis adjustment under § 1.1017–1(g)(2).

(iii) For purposes of determining the adjustment under paragraph (e)(1) of this section with respect to the section 168 property, the adjustment to the partnership's AFS basis in the section 168 property under paragraph (e)(2)(i)(D) of this section excludes any basis adjustment under § 1.1017–1(g)(2), regardless of whether any partner in the partnership is subject to the attribute reduction rules under § 1.56A–21(c)(5) and (6). However, if a partner in the partnership is subject to the attribute reduction rules under § 1.56A–21(c)(5) and (6), the partner increases its distributive share amount (under § 1.56A–5(e)(4)(ii)(B)) for the taxable year of the disposition of the section 168 property by the amount of any basis adjustment under § 1.1017–1(g)(2) with respect to the section 168 property that has not yet been taken into account for regular tax purposes. *See* § 1.1017–1(g)(2)(v).

(iv) If a partner has a basis adjustment under section 743(b) with respect to section 168 property held by a partnership that is disposed of by the partnership for regular tax purposes, the partner—

(A) Increases its distributive share amount (under § 1.56A–5(e)(4)(ii)(B)) for the taxable year of the disposition of the section 168 property by an amount equal to the total amount of any tax depreciation or tax depreciation section 481(a) adjustment(s) with respect to a section 743(b) basis adjustment that decreased the partner's distributive share amount under § 1.56A–5(e)(1)(iv) and (e)(4)(ii)(A) for taxable years prior to the disposition; and

(B) Decreases its distributive share amount (under § 1.56A–5(e)(4)(ii)(B)) for the taxable year of the disposition of the section 168 property by an amount equal to the total amount of any tax depreciation or tax depreciation section 481(a) adjustment(s) with respect to a section 743(b) basis adjustment that

increased the partner's distributive share amount under § 1.56A–5(e)(1)(iv) and (e)(4)(ii)(A) for taxable years prior to the disposition.

(4) *Treatment of amounts recognized in FSI upon the disposition of section 168 property.* Except as provided in other sections of the section 56A regulations, if a CAMT entity disposes of section 168 property for regular tax purposes and recognizes gain or loss from the disposition in its FSI, the gain or loss (as redetermined under paragraph (e)(1) of this section) is recognized for AFSI purposes in the taxable year of the disposition, regardless of whether any gain or loss with respect to the disposition is realized, recognized, deferred, or otherwise taken into account for regular tax purposes.

(5) *Determining the appropriate asset.* For purposes of determining the appropriate asset to ascertain whether section 168 property has been disposed of, the unit of property determination under § 1.263(a)–3(e) does not apply. Instead, section 168 and the regulations under section 168 apply. See § 1.168(i)–8(c)(4).

(6) *Subsequent AFS dispositions.* If section 168 property is disposed of for regular tax purposes before it is treated as disposed of for AFS purposes, any AFS basis recovery with respect to such property that is reflected in FSI following the date such property is disposed of for regular tax purposes is disregarded in determining AFSI.

(7) *Intercompany transactions.* If a member of a tax consolidated group disposes of section 168 property for regular tax purposes in an intercompany transaction, as defined in § 1.1502–13(b)(1)(i), for which the AFS consolidation entries are taken into account under § 1.1502–56A(c)(3)(i) in determining AFSI of the tax consolidated group for the taxable year that includes the intercompany transaction, the tax consolidated group member's AFSI adjustment under paragraph (e)(1) of this section is determined as of the date of the intercompany transaction. However, such AFSI adjustment is deferred, and the tax consolidated group does not adjust AFSI under this paragraph (e), until the taxable year in which the AFS consolidation entries related to the disposition become disregarded under § 1.1502–56A(c)(3)(ii). See § 1.1502–56A(e)(3).

(8) *Examples.* The following examples illustrate the application of the rules in this paragraph (e). For purposes of paragraphs (e)(8)(i) through (ix) of this section (*Examples 1 through 9*), each of X and Y is a corporation that uses the

calendar year as its taxable year and has a calendar-year financial accounting period. Unless otherwise stated, Y has elected out of additional first year depreciation under section 168(k), and the tax depreciation with respect to any section 168 property is not required to be capitalized under any capitalization provision in the Code.

(i) *Example 1: Disposition of section 168 property.*—(A) *Facts.* X is an applicable corporation for the calendar year ending December 31, 2024. On January 1, 2019, X purchased and placed in service Property 1, which is section 168 property, at a cost of \$1,000x. Property 1 qualified for, and X claimed, the 100-percent additional first year depreciation deduction allowable under section 168(k) for its taxable year ending December 31, 2019. For AFS purposes, X depreciates Property 1 over 40 years on a straight-line method and recognizes \$25x (\$1,000x cost/40 years) of covered book depreciation expense in 2019 and each year thereafter until X sells Property 1 (a disposition for regular tax and AFS purposes) on January 1, 2025, for \$900x. For 2025, X takes into account \$50x of net gain from the sale of Property 1 in its FSI (\$900x consideration – \$850x of AFS basis (\$1,000x cost – \$150x accumulated covered book depreciation expense as of January 1, 2025)).

(B) *Analysis: Taxable year 2024.* In determining AFSI for the taxable year ending December 31, 2024, X does not have any tax COGS depreciation or deductible tax depreciation in computing taxable income with respect to Property 1, and thus, the adjustments under paragraphs (d)(1)(i) and (ii) of this section are zero. In addition, X adjusts AFSI under paragraph (d)(1)(iii) of this section to disregard the \$25x of covered book depreciation expense with respect to Property 1.

(C) *Analysis: Taxable year 2025.* To determine the AFSI adjustment for the gain or loss from the sale of Property 1 under paragraph (e)(1) of this section, X determines the CAMT basis of Property 1 by adjusting the AFS basis of Property 1 by the amounts described in paragraph (e)(2)(i) of this section with respect to Property 1, including those amounts attributable to taxable years beginning before January 1, 2023 (as required by paragraph (e)(2)(ii)(A) of this section). Accordingly, the CAMT basis of Property 1 for AFSI purposes is zero (\$850x AFS basis + \$150x accumulated covered book depreciation expense – \$1,000x accumulated tax depreciation). Thus, the redetermined gain on the sale of Property 1 for AFSI purposes is \$900x (\$900x consideration – \$0x CAMT basis), and

X's AFSI adjustment under paragraph (e)(1) of this section required to reflect the redetermined gain is a positive adjustment of \$850x (\$900x redetermined gain – \$50x net gain in FSI).

(ii) *Example 2: Property acquired in a covered nonrecognition transaction.*—(A) *Facts: Property 1.* The facts are the same as in paragraph (e)(8)(i)(A) of this section (*Example 1*), except that X does not sell Property 1.

(B) *Facts: Merger.* On January 1, 2024, X merges with and into Y, a corporation, in a transaction that qualifies as a reorganization under section 368(a)(1)(A) of the Code (Merger). The sole consideration received by X's shareholders in the Merger is Y voting stock. On X's AFS and Y's AFS for the 2024 taxable year, the Merger results in \$165x net gain included in FSI and a corresponding \$165x increase in the AFS basis of the assets exchanged in the transaction. As a result, Y's AFS basis of Property 1 as of January 1, 2024, is \$1,040x (\$1,000x AFS basis on January 1, 2019 – \$125x accumulated covered book depreciation expense + \$165x net gain in FSI from the Merger). For AFS purposes, Y depreciates Property 1 over 40 years on a straight-line method and recognizes \$26x (\$1,040x AFS basis following the Merger/40 years) of covered book depreciation expense in the 2024 taxable year.

(C) *Facts: Disposition of Property 1.* On January 1, 2025, Y sells Property 1 for \$900x. For 2025, Y takes into account \$114x of net loss from the sale of Property 1 in its FSI (\$900x consideration – \$1,014x AFS basis (\$1,040x AFS basis following the Merger – \$26x of covered book depreciation expense for the 2024 taxable year)).

(D) *Analysis: Merger in 2024.* The Merger is a covered nonrecognition transaction, as defined in § 1.56A–18(b)(9). Under § 1.56A–19(c)(1)(i)(A), in computing AFSI resulting from the Merger, X disregards any gain or loss reflected in its FSI resulting from the exchange of X's assets for the Y stock in the Merger. As a result, X's AFSI does not include the \$165x net gain that was taken into account on its AFS as a result of the transfer of its assets to Y in the Merger. Under § 1.56A–19(c)(3)(i)(A), Y disregards any gain or loss reflected in its FSI resulting from the exchange of its stock for X's assets in the Merger. Under § 1.56A–19(c)(3)(ii), Y takes Property 1 (acquired from X in the Merger) with a CAMT basis of \$0x, equal to X's CAMT basis in Property 1 prior to the Merger (\$875x AFS basis + \$125x accumulated covered book depreciation expense – \$1,000x accumulated tax

depreciation). Under § 1.56A–19(c)(4)(i), X's shareholders' AFSI is adjusted to disregard the \$165x net gain in FSI and, thus, includes no gain or loss in AFSI resulting from the exchange of X stock for Y stock in the Merger.

(E) *Analysis: Property 1 in taxable year 2024.* For regular tax purposes, Y is treated as X for purposes of computing tax depreciation with respect to Property 1 under section 168(i)(7). Because Property 1 was already fully depreciated by X prior to the Merger, Y's tax depreciation with respect to Property 1 is zero. As a result, Y does not have any tax COGS depreciation or deductible tax depreciation with respect to Property 1 for 2024, and thus, the adjustments under paragraphs (d)(1)(i) and (ii) of this section are zero. In addition, Y adjusts AFSI under paragraph (d)(1)(iii) of this section to disregard the \$26x of covered book depreciation expense with respect to Property 1.

(F) *Analysis: Taxable year 2025.* To determine the AFSI adjustment for gain or loss resulting from the sale of Property 1 under paragraph (e)(1) of this section, Y determines the CAMT basis of Property 1 by adjusting the AFS basis by the amounts described in paragraph (e)(2)(i) of this section with respect to Property 1, including those amounts attributable to taxable years beginning before January 1, 2024 (as required by paragraph (e)(2)(ii)(A) of this section). Because the Merger in 2024 is a covered nonrecognition transaction, paragraph (e)(2)(ii)(B) of this section does not apply and, thus, depreciation with respect to years prior to the Merger is accounted for in determining the CAMT basis of Property 1. Accordingly, the CAMT basis of Property 1 for AFSI purposes is zero (\$1,014x AFS basis + \$125x accumulated covered book depreciation expense from years prior to the Merger + \$26x accumulated covered book depreciation expense from years after the Merger – \$1,000x of accumulated tax depreciation – \$165x increase in AFS basis from the Merger that is disregarded for CAMT purposes under § 1.56A–19(c)(3)(ii)). Thus, the redetermined gain on the sale of Property 1 for AFSI purposes is \$900x (\$900x consideration – \$0x CAMT basis) and Y's AFSI adjustment under paragraph (e)(1) of this section to reflect the redetermined gain is a positive adjustment of \$1,014x (\$900x redetermined gain – \$114x net loss in FSI).

(iii) *Example 3: Property acquired in a covered recognition transaction—(A) Facts: Property 1 before the transaction.* The facts are the same as in paragraph (e)(8)(i)(A) of this section (*Example 1*),

except that X does not sell Property 1, and Property 1 has a fair market value of \$900x on January 1, 2024.

(B) *Facts: Section 351 transfer with boot.* On January 1, 2024, X transfers Property 1 to Y, an unrelated applicable corporation, in exchange for 100 shares of Y stock with a fair market value of \$700x and \$200x cash in a transaction that qualifies under section 351(b) of the Code (Exchange). The Exchange is made pursuant to an integrated transaction in which unrelated Z transfers non-depreciable Property 2 to Y. Following the Exchange, X and Y are not members of the same controlled group of corporations, as defined in § 1.59–2(e), and do not report their FSI on a consolidated financial statement. On X's AFS for the 2024 taxable year, the Exchange results in \$25x net gain in FSI (\$900x consideration – \$875x AFS basis (\$1,000x cost – \$125x accumulated book depreciation)). On Y's AFS for the 2024 taxable year, Y has a corresponding \$25x increase in the AFS basis of Property 1. As a result, Y's AFS basis of Property 1 is \$900x (\$1,000x AFS basis on January 1, 2019 – \$125x X's accumulated covered book depreciation expense + \$25x net gain in X's FSI from the Exchange). For AFS purposes, Y depreciates Property 1 over 40 years using the straight line method and recognizes \$22.5x (\$900x AFS basis following the Exchange)/40 years) of covered book depreciation expense in the 2024 taxable year.

(C) *Facts: Tax depreciation for Property 1 in taxable year 2024.* Y is treated as acquiring Property 1 on January 1, 2024. For regular tax purposes, under section 168(i)(7), Y is treated as X for purposes of computing depreciation deductions with respect to so much of the basis of Property 1 in the hands of Y as does not exceed the adjusted basis of Property 1 in the hands of X. Because X fully depreciated Property 1 prior to the Exchange, the adjusted basis of Property 1 in the hands of X prior to the Exchange is zero and, thus, the amount of Y's tax depreciation for Property 1 that is determined under section 168(i)(7) is also zero. However, under section 362(a) of the Code, the \$200x cash X received from Y in the Exchange increases Y's adjusted basis of Property 1. Y depreciates the \$200x adjusted basis of Property 1 under the general depreciation system by using the 200 percent declining balance method, 5-year recovery period, and half-year convention. For regular tax purposes, Y recognizes \$40x (\$200x x 20%) of deductible tax depreciation in 2024 with respect to Property 1.

(D) *Facts: Disposition of Property 1.* On January 1, 2025, Y sells Property 1

for \$800x. For 2025, Y takes into account \$77.5x of net loss for the sale of Property 1 in its FSI (\$800x consideration – \$877.5x AFS basis (\$900x AFS basis following the Exchange – \$22.5x of covered book depreciation expense for the 2024 taxable year)).

(E) *Analysis: Exchange in 2024.* Because Y transferred cash to X in addition to Y stock, under § 1.56A–19(g)(4)(i), the Exchange is a covered recognition transaction, as defined in § 1.56A–18(b)(10). Under § 1.56A–19(g)(3)(i), to determine AFSI resulting from the Exchange, X redetermines the gain or loss reflected in FSI by reference to CAMT basis. Thus, X's redetermined gain from the Exchange is \$900x (\$900x consideration – \$0x CAMT basis in Property 1 (\$875x AFS basis + \$125x accumulated covered book depreciation expense – \$1,000x accumulated tax depreciation)) and X's AFSI adjustment to reflect the redetermined gain is a positive adjustment of \$875x (\$900x redetermined gain – \$25x net gain in FSI). Under § 1.56A–19(g)(5)(ii), Y's CAMT basis in Property 1 is equal to its AFS basis of \$900x.

(F) *Analysis: Property 1 in taxable year 2024.* In determining AFSI for the taxable year ending December 31, 2024, Y does not have any tax COGS depreciation in computing taxable income with respect to Property 1, and thus, the adjustment under paragraph (d)(1)(i) of this section is zero. In addition, Y reduces AFSI under paragraph (d)(1)(ii) of this section by deductible tax depreciation of \$40x, and Y adjusts AFSI under paragraph (d)(1)(iii) of this section to disregard the \$22.5x of covered book depreciation expense with respect to Property 1.

(G) *Analysis: Taxable year 2025.* To determine the AFSI adjustment for the gain or loss from the sale of Property 1 under paragraph (e)(1) of this section, Y determines the CAMT basis of Property 1 by adjusting the AFS basis of Property 1 by the amounts described in paragraph (e)(2)(i) of this section, which generally include amounts attributable to taxable years beginning before January 1, 2024 (as required by paragraph (e)(2)(ii)(A) of this section). However, because the Exchange is a covered recognition transaction, under paragraph (e)(2)(ii)(B) of this section, the amounts described in paragraph (e)(2)(i) of this section taken into account to determine Y's CAMT basis of Property 1 include only amounts attributable to the period following the date Property 1 was acquired in the Exchange, or January 1, 2024. Accordingly, the CAMT basis of Property 1 is \$860x (\$877.5x AFS basis (\$900x AFS basis following

the Exchange – \$22.5x of covered book depreciation expense for the 2024 taxable year) + \$22.5x accumulated covered book depreciation expense following the Exchange – \$40x of tax depreciation following the Exchange). Thus, the redetermined loss on the sale of Property 1 for AFSI purposes is \$60x (\$800x consideration – \$860x CAMT basis) and Y's AFSI adjustment under paragraph (e)(1) of this section to reflect the redetermined loss is a positive adjustment of \$17.5x (\$60x redetermined loss – \$77.5x net loss in FSI).

(iv) *Example 4: Property for which a tax credit was claimed—(A) Facts.* X is a domestic corporation that uses the calendar year as its taxable year and has a calendar-year financial accounting period. On January 1, 2018, X purchased and placed in service Property A, which is section 168 property, at a cost of \$1,000x. Property A qualified for, and X claimed, a \$200x investment tax credit for its taxable year ending December 31, 2018. X reduced its regular tax basis in Property A under section 50(c)(1) of the Code and its AFS basis in Property A under the accounting standards used to prepare its AFS to \$800x (\$1,000x cost basis – \$200x basis reduction for the credit received). For regular tax purposes, Property A qualified for, and X claimed, the 100-percent additional first year depreciation deduction allowable under section 168(k) for its taxable year ending December 31, 2018, for the remaining \$800x of regular tax basis. For AFS purposes, X depreciates Property A over 40 years on a straight-line method and recognizes \$20x (\$800x AFS basis/40 years) of depreciation expense in its FSI in 2018 and each year thereafter until it sells Property A (a disposition for regular tax and AFS purposes) on January 1, 2024, for \$900x. For 2024, X recognizes \$220x of net gain for the sale of Property A in its FSI (\$900x consideration – \$680x AFS basis (\$1,000x cost – \$200x investment tax credit – \$120x accumulated depreciation expense as of January 1, 2024)). Under § 1.56A–8(b), X disregards the \$200x investment tax credit claimed with respect to Property A in determining its AFSI. Had X determined its depreciation expense for AFS purposes without regard to the \$200x investment tax credit, X would have instead recognized \$25x (\$1000x AFS basis/40 years) of depreciation expense each year and \$50 of net gain in 2024 from the sale from the sale of Property A (\$900x consideration – \$850 AFS basis (\$1000x cost – \$150x accumulated depreciation expense)).

(B) *Analysis for taxable year 2023.* In determining AFSI for the taxable year

ending December 31, 2023, X does not have any tax COGS depreciation or deductible tax depreciation in computing taxable income with respect to Property A, and thus, the adjustments to AFSI under paragraphs (d)(1)(i) and (ii) of this section are zero. In addition, X is required to adjust AFSI under paragraph (d)(1)(iii) of this section to disregard covered book depreciation expense with respect to Property A. Notwithstanding that the depreciation expense reflected in X's FSI is reduced as a result of the AFS treatment of the investment tax credit, and that the investment tax credit is disregarded under § 1.56A–8(b), covered book depreciation expense for 2023 is \$20x (as opposed to \$25x), which is the amount of depreciation expense that X actually reflects in its FSI for 2023. That is, the adjustment to AFSI under paragraph (d)(1)(iii) of this section encompasses the adjustment required under § 1.56A–8(b).

(C) *Analysis for taxable year 2024.* To determine the AFSI adjustment for the gain or loss from the sale of Property A under paragraph (e)(1) of this section, X determines the CAMT basis of such property by adjusting the AFS basis of such property as of the disposition date by the amounts described in paragraph (e)(2)(i) of this section, including those amounts attributable to taxable years beginning before January 1, 2023 (as required by paragraph (e)(2)(ii)(A) of this section). The AFS basis of Property A as of the disposition date is \$680x. Such amount is decreased by the \$800x of tax depreciation with respect to Property A under paragraph (e)(2)(i)(A) of this section, increased by the \$120x of covered book depreciation expense under paragraph (e)(2)(i)(C) of this section (which is the amount of covered book depreciation expense that reduced the AFS basis of Property A as of the disposition date), decreased by the \$200x investment tax credit under paragraph (e)(2)(i)(E) of this section (which equals the amount by which X reduced its basis in Property A for regular tax purposes), and increased, under paragraph (e)(2)(i)(F) of this section, by the \$200x reduction to AFS basis that is disregarded under § 1.56A–8(b). Accordingly, the CAMT basis of Property A is \$0, and the redetermined gain on the sale of Property A for AFSI purposes is \$900x (\$900x consideration – \$0x CAMT basis). Thus, X's AFSI adjustment under paragraph (e)(1) of this section is an increase to AFSI of \$680x (\$900x redetermined gain – \$220x FSI gain).

(v) *Example 5: Disposition of property that was subject to a tax capitalization method change and is not section 168*

property at time of disposition—(A) General facts. The facts are the same as in paragraph (d)(5)(v) of this section (*Example 5*), except Y transfers the replacement property to a scrap account on January 1, 2030, and sells it on the same day for \$5,000x. Y's AFS basis in the replacement property as of January 1, 2030, is \$4,000x (\$10,000x cost – \$6,000x of cumulative book depreciation expense as of January 1, 2030 (\$500x for 2024, \$1,000x for each year in the period 2025 through 2029, and \$500x for 2030)). Accordingly, Y takes into account \$1,000x of net gain for the sale of the replacement property in its FSI for 2030 (\$5,000x consideration – \$4,000x of AFS basis).

(B) *Analysis: Taxable years 2027 through 2029.* As discussed in the analysis in paragraph (d)(5)(v)(C) of this section, the replacement property is no longer section 168 property beginning in 2027. Therefore, except as provided in the analysis in paragraph (d)(5)(v)(D) of this section (regarding the tax capitalization method change AFSI adjustment), Y does not make any AFSI adjustments under paragraph (d)(1) of this section with respect to the replacement property for taxable years 2027 through 2029. Accordingly, Y's AFSI for taxable years 2027 through 2029 includes the book depreciation expense taken into account in Y's FSI for those years (\$1,000x for each of 2027, 2028, and 2029) and the portion of the tax capitalization method change AFSI adjustment pursuant to paragraph (d)(4) of this section.

(C) *Analysis: Taxable year 2030.* If a CAMT entity disposes of section 168 property, this paragraph (e) requires the CAMT entity to adjust AFSI for the taxable year of the disposition to redetermine any gain or loss taken into account in the CAMT entity's FSI by reference to the CAMT basis of the section 168 property, as determined under paragraph (e)(2)(i) of this section. However, as discussed in the analysis in paragraph (d)(5)(v)(C) of this section, the replacement property is no longer section 168 property under the method of accounting Y changed to under the tax capitalization method change, and therefore the replacement property is not section 168 property at the time of disposition. Accordingly, this paragraph (e) does not apply for purposes of determining the CAMT basis and any corresponding amount of any gain or loss Y takes into account in computing AFSI for 2030 with respect to the disposition of the replacement property. Therefore, the net gain from the sale of the replacement property that Y takes into account in its AFSI for 2030 is the

same as the amount taken into account in Y's FSI for 2030 (\$1,000x).

(vi) *Example 6: Disposition of property that was subject to a tax capitalization method change and is section 168 property at time of disposition*—(A) *General facts.* The facts are the same as in paragraph (d)(5)(vi) of this section (*Example 6*), except Y sells the section 168 property on December 31, 2029, for \$5,000x.

(B) *Facts: Basis of the section 168 property for regular tax and AFS purposes at disposition.* As provided in the analysis in paragraph (d)(5)(vi)(D) of this section, Y's unadjusted basis in the section 168 property is \$30,000x following the tax capitalization method change. Based on Y's depreciation methods of accounting with respect to the section 168 property for regular tax purposes (described in paragraph (d)(5)(vi)(A) of this section), the section 168 property is fully depreciated for regular tax purposes as of December 31, 2029 (that is, cumulative deductible tax depreciation as of December 31, 2029 equals \$30,000x), resulting in adjusted basis for regular tax purposes at disposition of zero. For AFS purposes, Y's cumulative covered book depreciation expense taken into account in Y's FSI as of December 31, 2029 with respect to the section 168 property is \$10,000x (\$1,000x in 2024, \$2,000x in each year for the period 2025 through 2028, and \$1,000x in 2029), resulting in AFS basis at the time of disposition with respect to the section 168 property of \$10,000x (\$20,000x original cost less \$10,000x of cumulative covered book depreciation expense).

(C) *Facts: AFS gain or loss for taxable year 2029.* For its taxable year 2029, Y takes into account a net loss equal to \$5,000x in its FSI with respect to the disposition of the section 168 property (\$5,000x consideration less \$10,000x AFS basis).

(D) *Analysis: AFSI gain or loss for taxable year 2029.* If a CAMT entity disposes of section 168 property, this paragraph (e) requires the CAMT entity to adjust AFSI for the taxable year of the disposition to redetermine any gain or loss taken into account in the CAMT entity's FSI by reference to the CAMT basis of the section 168 property, as determined under paragraph (e)(2)(i) of this section. In addition, pursuant to the special rule in paragraph (e)(2)(ii)(E) of this section, if a CAMT entity made a tax capitalization method change with respect to the section 168 property disposed of, the amounts described in paragraph (e)(2)(i) of this section are determined as though the CAMT entity used the method of accounting it changed to under the corresponding

method change. As provided in the analysis in paragraph (d)(5)(vi)(D) of this section, the \$10,000x of general and administrative costs taken into account in computing taxable income for 2024 constitute section 168 property beginning in 2027. Accordingly, the CAMT basis of the section 168 property for purposes of determining any gain or loss to take into account in AFSI upon the sale of the property on December 31, 2029 is zero (\$10,000x AFS basis + \$10,000x accumulated covered book depreciation expense + \$10,000x of covered book expense (the general and administrative costs taken into account in FSI for 2024) – \$30,000x of accumulated tax depreciation). Pursuant to the special rule in paragraph (e)(2)(ii)(E) of this section, CAMT basis is zero notwithstanding that Y has not yet taken into account in AFSI the full amount of the tax capitalization method change AFSI adjustment that resulted from the tax capitalization method change (as of December 31, 2029, Y has included 75% of the tax capitalization method change AFSI adjustment in AFSI (\$720x for each of 2027, 2028, and 2029)). Thus, the redetermined gain on the sale of the section 168 property for AFSI purposes is \$5,000x (\$5,000x consideration – \$0x CAMT basis), and Y's AFSI adjustment under paragraph (e)(1) of this section required to reflect the redetermined gain is a positive adjustment of \$10,000x (\$5,000x redetermined gain less \$5,000x of net loss in FSI).

(vii) *Example 7: Installment sale under section 453*—(A) *Facts.* X is a CAMT entity that uses the calendar year as its taxable year and has a calendar-year financial accounting period. On January 1, 2018, X purchased for \$550x and placed in service residential rental property (Real Property 1), which is section 168 property. For regular tax purposes, X depreciates Real Property 1 under the general depreciation system by using the straight-line method, a 27.5-year recovery period, and the mid-month convention. X depreciates Real Property 1 for AFS purposes using the same recovery period, depreciation method, and convention that is used for regular tax purposes. X becomes an applicable corporation for the calendar year ending December 31, 2024. On January 1, 2024, X sells Real Property 1 to Y, an unrelated taxpayer, for \$1,000x with the following payment structure: \$100x payable at closing and the remainder payable in equal annual installments over the next 9 years, together with adequate stated interest. As of the date of the installment sale, X's adjusted basis for regular tax

purposes, AFS basis, and CAMT basis for AFSI purposes (as determined under paragraph (e)(1) of this section) for Real Property 1 is \$430x. X does not elect out of the installment method under section 453 of the Code. The gross profit to be realized on the sale is \$570x (\$1,000x selling price – \$430x adjusted regular tax/AFS/CAMT basis). The gross profit percentage is 57% (\$570x gross profit/\$1,000x contract price). No provision in section 56A or the section 56A regulations provides for an adjustment to AFSI to apply the installment method under section 453.

(B) *Analysis.* For taxable year 2024, X realizes \$570x (\$1,000x selling price – \$430x basis) of gain for both regular tax and FSI purposes from the disposition of Real Property 1 in the installment sale. X recognizes \$570x of the gain in FSI, but for regular tax purposes, X recognizes only \$57x (57% of the \$100x payment received in 2024) of the gain, and the remaining \$513x of gain is deferred and recognized as subsequent payments are received under the installment method. Pursuant to paragraph (e)(4) of this section, the installment method in section 453 does not apply for purposes of determining the AFSI gain or loss on the disposition of Real Property 1. Accordingly, X recognizes the entire \$570x FSI gain in AFSI, notwithstanding that \$513x was deferred under section 453 for regular tax purposes.

(viii) *Example 8: Like-kind exchange under section 1031*—(A) *Facts.* The facts are the same as paragraph (e)(8)(vii)(A) of this section (*Example 7*), except that, on January 1, 2024, instead of an installment sale, X transfers Real Property 1 to Y in exchange for Real Property 2 with a fair market value of \$440x and \$20x cash. The exchange qualifies as an exchange of real property held for productive use or investment under section 1031 of the Code. As of the date of the exchange, X's adjusted basis for regular tax purposes, AFS basis, and CAMT basis for AFSI purposes (as determined under paragraph (e)(1) of this section) for Real Property 1 is \$430x. No provision in section 56A or the section 56A regulations provides for an adjustment to AFSI to apply the nonrecognition rules under section 1031.

(B) *Analysis.* For taxable year 2024, X realizes \$30x of gain under section 1001(a) of the Code (\$460x amount realized (\$440x fair market value of replacement Real Property B + \$20x cash) – \$430x adjusted regular tax basis of relinquished property). Of the \$30x realized gain, only \$20x is recognized by X under section 1031(b) for regular tax purposes, as this is the amount of

non-like-kind consideration received in the exchange (\$20x cash). For AFS purposes, X recognizes \$30x of gain in its FSI (\$460x amount realized (\$440x fair market value of Real Property 2 + \$20x cash) – \$430x AFS basis of Real Property 1). Pursuant to paragraph (e)(4) of this section, the nonrecognition rules in section 1031 do not apply for purposes of determining the AFSI gain or loss on the disposition of Real Property 1. Accordingly, for AFSI purposes, X recognizes the entire redetermined gain of \$30x (\$460x amount realized – \$430x of CAMT basis under paragraph (e)(1) of this section) for purposes of computing AFSI, notwithstanding that X recognized only \$20x of the \$30x gain realized for regular tax purposes.

(ix) *Example 9: Replacement property received in a like-kind exchange—(A) Facts.* The facts are the same as in paragraph (e)(8)(viii)(A) of this section (*Example 8*). In addition, for regular tax purposes, X's regular tax basis in the replacement Real Property 2 as of the date of the exchange is \$430x (\$430x adjusted regular tax basis in relinquished Real Property 1 – \$20x cash + \$20x gain recognized). X's AFS basis in Real Property 2 as of the date of the exchange is \$440x, which is the fair market value of Real Property 2 as of the date of the exchange. Under § 1.168(i)–6(c)(3)(ii) and paragraph (c)(4) of this section, X depreciates the \$430x regular tax basis of Real Property 2 over the remaining recovery period of, and using the same depreciation method and convention as that of, Real Property 1. For AFS purposes, X depreciates the \$440x AFS basis of Real Property 2 using the straight-line method and a 27.5-year recovery period and recognizes \$16x (\$440x/27.5 years) of covered book depreciation expense each year. On January 1, 2032, X sells Real Property 2 with a regular tax basis of \$270x (\$430x exchange basis – \$160x accumulated tax depreciation) and a AFS basis of \$312x (\$440x AFS basis – \$128x accumulated book depreciation) to Z for \$500x cash.

(B) *Analysis.* For regular tax purposes, X recognizes a gain on the sale of Real Property 2 of \$230x (\$500x amount realized – \$270x regular tax basis). For AFS purposes, X recognizes a gain of \$188x in its FSI (\$500x amount realized – \$312x AFS basis). Pursuant to paragraph (e)(1) of this section, X adjusts AFSI for taxable year 2032 to redetermine the gain or loss taken to account in FSI with respect to the disposition of Real Property 2 by reference to the CAMT basis of Real Property 2, as determined under paragraph (e)(2)(i) of this section.

Accordingly, the CAMT basis of Real Property 2 for AFSI purposes is \$280x (\$312x AFS basis + \$128x accumulated covered book depreciation expense – \$160x of accumulated tax depreciation). Thus, the redetermined gain on the sale of Real Property 2 for AFSI purposes is \$220x (\$500x consideration – \$280x CAMT basis), and Y's AFSI adjustment under paragraph (e)(1) of this section required to reflect the redetermined gain is a positive adjustment of \$32x (\$220x redetermined gain – \$188x of net gain in FSI).

(x) *Example 10: Section 168 property disposed of by a partnership—(A) Facts.* PRS1, a partnership for Federal tax and AFS purposes, is owned by X, a C corporation, and A, an individual. PRS1 was formed in 2022, uses the calendar year as its taxable year, and has a calendar-year financial accounting period. PRS1 purchased and placed in service section 168 property on January 1, 2023, at a cost of \$210x. For AFS purposes, PRS1 depreciates the section 168 property over 10 years on a straight-line method, recognizing \$21x (\$210x cost basis/10 years) of covered book depreciation expense in 2023 and each year thereafter. For regular tax purposes, the applicable recovery period of the section 168 property is 7 years and PRS1 makes an election under section 168(b)(5) to depreciate the section 168 property on a straight-line basis using the half-year convention. Accordingly, the deductible tax depreciation with respect to the section 168 property is \$15x for 2023 and \$30x for each of 2024 and 2025. In addition, the deductible tax depreciation with respect to the section 168 property is increased in 2024 and subsequent years by \$10x each year as a result of a positive basis adjustment under section 734(b) on December 31, 2023, so that the deductible tax depreciation with respect to the section 168 property is \$40x in each of 2024 and 2025. On January 1, 2026, PRS1 sells the section 168 property for \$100x (a disposition for regular tax and AFS purposes). For 2026, PRS1 takes into account \$47x of net loss from the sale of the section 168 property in its FSI (\$100x consideration – \$147x AFS basis (\$210x cost – \$63x accumulated covered book depreciation expense as of January 1, 2026)).

(B) *Analysis: Taxable years 2023 through 2025.* In determining modified FSI for the 2023, 2024 and 2025 taxable years, PRS1 adjusts its modified FSI under § 1.56A–5(e)(3) and paragraph (d)(2)(i) of this section to disregard the \$21x of covered book depreciation expense each year with respect to the section 168 property and reduces

modified FSI by deductible tax depreciation of \$15x for 2023 and \$40x for each of 2024 and 2025, which under paragraph (d)(2)(iii) of this section includes the deductible tax depreciation with respect to the basis adjustment under section 734(b).

(C) *Analysis: Taxable year 2026.* Under paragraphs (e)(1) and (e)(3)(i) of this section, PRS1 adjusts its modified FSI for 2026 to redetermine any gain or loss taken into account in its FSI with respect to the disposition of the section 168 property by reference to the CAMT basis of the section 168 property, taking into account the adjustments under paragraphs (e)(2)(i) and (e)(3)(ii) of this section. Under paragraphs (e)(2)(i)(A) and (e)(3)(ii)(A) of this section, PRS1 adjusts the AFS basis, decreasing it by the full amount of tax depreciation with respect to the property as of the disposition date. Accordingly, the CAMT basis of the section 168 property is \$115x (\$147x AFS basis + \$63x accumulated covered book depreciation expense – \$95x accumulated tax depreciation). Thus, the redetermined loss on the sale of the section 168 property is \$15x (\$100x consideration – \$115x CAMT basis) and PRS1's adjustment to modified FSI under paragraph (e)(1) of this section to reflect the redetermined loss is a positive adjustment of \$32x (\$15x redetermined loss – \$47x net loss in FSI).

(xi) *Example 11: Section 168 property disposed of by a partnership with a section 743(b) basis adjustment in place—(A) Facts.* The facts are the same as in paragraph (e)(8)(x)(A) of this section (*Example 10*). In addition, on January 1, 2024, X purchased additional interests in PRS1 that resulted in a \$50x basis adjustment under section 743(b) with respect to its investment in PRS1 that relates to section 168 property owned by PRS1. As result of the basis adjustment, X is allocated an additional \$5x of tax depreciation that relates to PRS1's section 168 property for each of 2024 and 2025. X does not have a corresponding equity interest method basis adjustment for AFS purposes.

(B) *Analysis: Taxable years 2024 and 2025.* Pursuant to § 1.56A–5(e)(1)(iv) and (e)(4)(ii)(A) and paragraph (d)(2)(i) of this section, X adjusts its share of PRS1's modified FSI by deductible tax depreciation resulting from the basis adjustment under section 743(b) attributable to section 168 property under paragraph (d)(2)(ii) of this section. Accordingly, X reduces its share of modified FSI by deductible tax depreciation of \$5x for each of 2024 and 2025.

(C) *Analysis: Taxable year 2026.* Pursuant to § 1.56A–5(e)(1)(iv) and (e)(4)(ii)(B) and paragraph (e)(3)(iv) of this section, X increases its distributive share amount for 2026 by an amount equal to the total amount of tax depreciation with respect to its section 743(b) basis adjustment that decreased its distributive share amount under §§ 1.56A–5(e)(1)(iv) and (e)(4)(ii)(A), that is, an increase of \$10x.

(f) *Applicability date.* This section applies to taxable years ending after [DATE OF PUBLICATION OF FINAL RULE IN THE Federal Register].

§ 1.56A–16 AFSI adjustments for qualified wireless spectrum property.

(a) *Overview.* This section provides rules under section 56A(c)(14) of the Code for determining AFSI adjustments with respect to qualified wireless spectrum. Paragraph (b) of this section provides definitions that apply for purposes of this section. Paragraph (c) of this section provides rules for determining the extent to which property is qualified wireless spectrum. Paragraph (d) of this section provides rules for adjusting AFSI for amortization and other amounts with respect to qualified wireless spectrum. Paragraph (e) of this section provides rules for adjusting AFSI upon the disposition of qualified wireless spectrum. Paragraph (f) of this section provides the applicability date of this section.

(b) *Definitions.* For purposes of this section:

(1) *Covered book amortization expense.* The term *covered book amortization expense* means any of the following items that are taken into account in FSI with respect to qualified wireless spectrum—

(i) Amortization expense;

(ii) Other recovery of AFS basis (including from an impairment loss) that occurs prior to the taxable year in which the disposition occurs for regular tax purposes; or

(iii) Impairment loss reversal.

(2) *Covered book wireless spectrum expense.* The term *covered book wireless spectrum expense* means an amount, other than covered book amortization expense, that—

(i) Reduces FSI; and

(ii) Is reflected in the basis for depreciation, as defined in §§ 1.167(g)-1 and 1.197–2(f)(1)(ii) (without regard to any adjustments described in section 1016(a)(2) and (3) of the Code), of qualified wireless spectrum for regular tax purposes.

(3) *Deductible tax amortization.* The term *deductible tax amortization* means tax amortization, as defined in paragraph (b)(5) of this section, that is

allowed as a deduction in computing taxable income.

(4) *Qualified wireless spectrum.* The term *qualified wireless spectrum* means property that meets the requirements of paragraph (c) of this section.

(5) *Tax amortization.* The term *tax amortization* means amortization deductions allowed under section 197 of the Code with respect to qualified wireless spectrum.

(6) *Tax amortization section 481(a) adjustment.* The term *tax amortization section 481(a) adjustment* means the net amount of the adjustments required under section 481(a) of the Code for a change in method of accounting for amortization for any item of qualified wireless spectrum.

(7) *Tax capitalization method change for qualified wireless spectrum.* The term *tax capitalization method change for qualified wireless spectrum* means a change in method of accounting for regular tax purposes involving a change from capitalizing and depreciating costs as qualified wireless spectrum to deducting the costs (or vice versa).

(8) *Tax capitalization method change AFSI adjustment for qualified wireless spectrum.* The term *tax capitalization method change AFSI adjustment for qualified wireless spectrum* means an adjustment to AFSI that is required under paragraph (d)(1) of this section if a CAMT entity makes a tax capitalization method change for qualified wireless spectrum. The tax capitalization method change AFSI adjustment for qualified wireless spectrum is computed separately for each tax capitalization method change for qualified wireless spectrum and equals the difference between the following amounts computed as of the beginning of the tax year of change—

(i) The cumulative amount of adjustments to AFSI under paragraph (d)(1) of this section with respect to the cost(s) subject to the tax capitalization method change for qualified wireless spectrum that were made with respect to taxable years beginning after December 31, 2019, and before the tax year of change; and

(ii) The cumulative amount of adjustments to AFSI under paragraph (d)(1) of this section with respect to the cost(s) subject to the tax capitalization method change for qualified wireless spectrum that would have been made with respect to taxable years beginning after December 31, 2019, and before the tax year of change, if the new method of accounting for the cost(s) had been applied for regular tax purposes in those taxable years.

(c) *Qualified wireless spectrum—(1) In general.* For purposes of section

56A(c)(14) and this section, qualified wireless spectrum is wireless spectrum that is—

(i) Used in the trade or business of a wireless telecommunications carrier;

(ii) An amortizable section 197 intangible under section 197(c)(1) and (d)(1)(D); and

(iii) Acquired after December 31, 2007, and before August 16, 2022.

(2) *Qualified wireless spectrum does not include wireless spectrum that is not depreciable under section 197 for regular tax purposes.* Qualified wireless spectrum does not include wireless spectrum that is not subject to amortization under section 197 for regular tax purposes. For example, if a foreign corporation other than a controlled foreign corporation is not subject to U.S. taxation, then wireless spectrum owned by the foreign corporation is not treated as qualified wireless spectrum.

(d) *AFSI adjustments for amortization and other amounts with respect to qualified wireless spectrum—(1) In general.* The AFSI of a CAMT entity for a taxable year is—

(i) Reduced by deductible tax amortization with respect to qualified wireless spectrum, but only to the extent of the amount allowed as a deduction in computing taxable income for the taxable year;

(ii) Adjusted to disregard covered book amortization expense, covered book wireless spectrum expense, and amounts described in paragraph (e)(5) of this section with respect to qualified wireless spectrum, including qualified wireless spectrum placed in service for regular tax purposes in a taxable year subsequent to the taxable year the wireless spectrum is treated as placed in service for AFS purposes;

(iii) Reduced by any tax amortization section 481(a) adjustment with respect to qualified wireless spectrum that is negative, but only to the extent of the amount of the adjustment that is taken into account in computing taxable income for the taxable year;

(iv) Increased by any tax amortization section 481(a) adjustment with respect to qualified wireless spectrum that is positive, but only to the extent of the amount of the adjustment that is taken into account in computing taxable income for the taxable year;

(v) Increased or decreased, as appropriate, by any tax capitalization method change AFSI adjustment for qualified wireless spectrum in accordance with paragraph (d)(3) of this section; and

(vi) Adjusted for other items as provided in IRB guidance the IRS may publish.

(2) *Special rules for qualified wireless spectrum held by a partnership*—(i) *In general.* If qualified wireless spectrum is held by a partnership, see § 1.56A–5(e) for the manner in which the adjustments provided in paragraph (d)(1) of this section are taken into account by the partnership and its CAMT entity partners under the applicable method described in § 1.56A–5(c).

(ii) *Basis adjustment under section 743(b) of the Code.* If qualified wireless spectrum is held by a partnership, the adjustments provided in paragraphs (d)(1)(i) and (iii) through (vi) of this section do not include any amounts resulting from any basis adjustment under section 743(b) of the Code attributable to the qualified wireless spectrum that are treated as increases or decreases to tax amortization or a tax amortization section 481(a) adjustment for regular tax purposes. See § 1.743–1(j)(4). Instead, such amounts resulting from any basis adjustment under section 743(b) attributable to the qualified wireless spectrum that would have been included in the adjustments provided in paragraphs (d)(1)(i), (ii), and (iv) through (vi) of this section are separately stated to the CAMT entity partners under § 1.56A–5(e)(4)(i) and are taken into account by the CAMT entity partners in the manner provided in § 1.56A–5(e)(4)(ii)(A).

(iii) *Basis adjustment under section 734(b) of the Code.* If qualified wireless spectrum is held by a partnership, the adjustments provided in paragraphs (d)(1)(i) and (iii) through (vi) of this section include amounts resulting from any basis adjustment under section 734(b) of the Code attributable to the qualified wireless spectrum that are treated as increases or decreases to tax amortization or a tax amortization section 481(a) adjustment for regular tax purposes. See § 1.734–1(e).

(iv) *Basis adjustment under § 1.1017–1(g)(2).* If qualified wireless spectrum is held by a partnership, the adjustments provided in paragraphs (d)(1)(i) and (iii) through (vi) of this section do not include any decreases in tax amortization or income amounts for regular tax purposes, as applicable, resulting from any basis adjustment under § 1.1017–1(g)(2) attributable to qualified wireless spectrum (as calculated under § 1.743–1(j)(4)(ii)). Instead, such decreases in tax depreciation or income amounts, as applicable, resulting from any basis adjustment under § 1.1017–1(g)(2) attributable to section 168 property that would have been included in the adjustments provided in paragraphs (d)(1)(i), (ii), and (iv) through (vii) of

this section are separately stated to the CAMT entity partners under § 1.56A–5(e)(4)(i) and are taken into account by the CAMT entity partners in the manner provided in § 1.56A–5(e)(4)(ii)(A).

(3) *Adjustment period for tax capitalization method change AFSI adjustments for qualified wireless spectrum.* A tax capitalization method change AFSI adjustment for qualified wireless spectrum that is negative reduces AFSI under paragraph (d)(1)(v) of this section in the tax year of change by the full amount of the adjustment. A tax capitalization method change AFSI adjustment for qualified wireless spectrum that is positive increases AFSI under paragraph (d)(1)(v) of this section ratably over four taxable years beginning with the tax year of change. For purposes of this paragraph (d)(3), if any taxable year during the four-year spread period for a tax capitalization method change AFSI adjustment for qualified wireless spectrum that is positive is a short taxable year, the CAMT entity takes the adjustment into account as if that short taxable year were a full 12-month taxable year. If, in any taxable year, a CAMT entity ceases to engage in the trade or business to which the tax capitalization method change AFSI adjustment for qualified wireless spectrum relates, the CAMT entity includes in AFSI for such taxable year any portion of the adjustment not included in AFSI for a previous taxable year.

(e) *AFSI adjustments upon disposition of qualified wireless spectrum*—(1) *In general.* Except as otherwise provided in paragraph (e)(7) of this section, if a CAMT entity disposes of qualified wireless spectrum for regular tax purposes, the CAMT entity adjusts AFSI for the taxable year in which the disposition occurs to redetermine any gain or loss taken into account in the CAMT entity's FSI with respect to the disposition for the taxable year (including a gain or loss of zero) by reference to the CAMT basis (in lieu of the AFS basis) of the qualified wireless spectrum as of the date of the disposition (disposition date), as determined under paragraph (e)(2)(i) of this section. To the extent the CAMT basis of the qualified wireless spectrum is negative (for example, because of differences between regular tax basis and AFS basis), this negative amount is required to be recognized as AFSI gain upon disposition of the qualified wireless spectrum.

(2) *Adjustments to the AFS basis of qualified wireless spectrum*—(i) *In general.* For purposes of applying paragraph (e)(1) of this section, and subject to paragraphs (e)(2)(ii) and (e)(3)

of this section, the CAMT basis of the qualified wireless spectrum as of the disposition date is the AFS basis of the qualified wireless spectrum as of that date—

(A) Decreased by the full amount of tax amortization with respect to such property as of the disposition date;

(B) Increased by the amount of any covered book wireless spectrum expense with respect to such property;

(C) Increased by the amount of any covered book amortization expense that reduced the AFS basis of such property as of the disposition date, including covered book amortization expense with respect to AFS basis increases that are otherwise disregarded for AFSI and CAMT basis purposes (for example, AFS basis increases that are disregarded for AFSI and CAMT basis purposes under §§ 1.56A–18 and 1.56A–19);

(D) Decreased by any reductions to the CAMT basis of such property under § 1.56A–21(c)(4) and (5); and

(E) Increased or decreased, as appropriate, by the amount of any adjustments to AFS basis that are disregarded for AFSI and CAMT basis purposes under other sections of the section 56A regulations with respect to such property (for example, AFS basis adjustments that are disregarded for AFSI and CAMT basis purposes under §§ 1.56A–18 and 1.56A–19).

(ii) *Special rules regarding adjustments to the AFS basis of qualified wireless spectrum*—(A) *Qualified wireless spectrum placed in service prior to the effective date of CAMT.* The amounts described in paragraph (e)(2)(i) of this section include amounts attributable to all taxable years beginning before January 1, 2023 (including taxable years beginning on or before December 31, 2019).

(B) *Qualified wireless spectrum acquired in certain transactions to which section 197(f)(2) applies.* In the case of qualified wireless spectrum that was acquired by a CAMT entity in a transaction that is a covered recognition transaction, as defined in § 1.56A–18(b)(10), with respect to at least one party to the transaction, or in a transaction described in § 1.56A–20, the amounts described in paragraph (e)(2)(i) of this section include only amounts attributable to the period following the transaction, regardless of whether section 197(f)(2) applies to any portion of the transaction for regular tax purposes. For rules regarding transactions involving members of a tax consolidated group, see § 1.1502–56A(e).

(C) *Determination of CAMT basis of qualified wireless spectrum following a*

change in method of accounting for amortization or a tax capitalization method change for qualified wireless spectrum. In the case of qualified wireless spectrum for which the CAMT entity made a change in method of accounting for amortization for regular tax purposes or a tax capitalization method change for qualified wireless spectrum, the amounts described in paragraph (e)(2)(i) of this section are determined as though the CAMT entity used the method of accounting to which it changed to under the corresponding method change when making the adjustments under paragraph (d)(1) of this section in all taxable years prior to the taxable year in which the disposition of the qualified wireless spectrum occurs. The immediately preceding sentence applies regardless of whether the full amount of a corresponding tax amortization section 481(a) adjustment or a tax capitalization method change AFSI adjustment for qualified wireless spectrum has been taken into account in AFSI under paragraph (d)(1) of this section as of the end of the taxable year in which the disposition of the qualified wireless spectrum occurs.

(D) *Adjustments to the AFS basis of qualified wireless spectrum include only the covered book amounts actually disregarded in determining AFSI.* The adjustments described in paragraphs (e)(2)(i)(B) and (C) of this section include only amounts that were actually disregarded by the CAMT entity under paragraph (d)(1)(ii) of this section in computing its AFSI, modified FSI, or adjusted net income or loss for the relevant taxable years. Accordingly, for a taxable year ending after December 31, 2019, only the amounts disregarded under paragraph (d)(1)(ii) of this section in computing the AFSI, modified FSI, or adjusted net income or loss reported by the CAMT entity as required by the section 56A regulations or other sections of the Code (for example, on its annual return on Form 4626 (or any successor), on its Form 5471, or in accordance with the reporting requirements in § 1.56A–5(h)) for such taxable year with respect to the qualified wireless spectrum are taken into account in computing the adjustments described in paragraphs (e)(2)(i)(B) and (C) of this section. For a taxable year ending on or before December 31, 2019, or for a taxable year in which the CAMT entity satisfied the simplified method under § 1.59–2(g) (including a taxable year included in the relevant three-taxable-year period), the CAMT entity is deemed to have disregarded the appropriate amounts

under paragraph (d)(1)(ii) of this section with respect to the qualified wireless spectrum for such taxable year.

(3) *Special rule for qualified wireless spectrum disposed of by a partnership.* If a partnership disposes of qualified wireless spectrum—

(i) The adjustment under paragraph (e)(1) of this section with respect to the qualified wireless spectrum is taken into account in determining the partnership's modified FSI under § 1.56A–5(e)(3); and

(ii) For purposes of determining the adjustment under paragraph (e)(1) of this section with respect to the qualified wireless spectrum, the adjustment to the partnership's AFS basis in the qualified wireless spectrum under paragraph (e)(2)(i)(A) of this section—

(A) Includes any curative allocation under § 1.704–3(c) or remedial item under § 1.704–3(d) that is treated as tax amortization, but excludes any other curative allocation or offsetting remedial income item;

(B) Includes any tax amortization (including any reduction in tax amortization) with respect to a section 734(b) adjustment;

(C) Excludes any tax amortization (including any reduction in tax amortization) with respect to a section 743(b) basis adjustment; and

(D) Excludes any tax amortization (including any reduction in tax amortization) with respect to a basis adjustment under § 1.1017–1(g)(2).

(iii) For purposes of determining the adjustment under paragraph (e)(1) of this section with respect to the qualified wireless spectrum, the adjustment to the partnership's AFS basis in the qualified wireless spectrum under paragraph (e)(2)(i)(D) of this section excludes any basis adjustment under § 1.1017–1(g)(2), regardless of whether any partner in the partnership is subject to the attribute reduction rules under § 1.56A–21(c)(5) and (6). However, if a partner in the partnership is subject to the attribute reduction rules under § 1.56A–21(c)(5) and (6), the partner increases its distributive share amount (under § 1.56A–5(e)(4)(ii)(B)) for the taxable year of the disposition of the qualified wireless spectrum by the amount of any basis adjustment under § 1.1017–1(g)(2) with respect to the qualified wireless spectrum that has not yet been taken into account for regular tax purposes. See § 1.1017–1(g)(2)(v).

(iv) If a partner has a basis adjustment under section 743(b) in place with respect to qualified wireless spectrum held by a partnership that is disposed of by the partnership, the partner—

(A) Increases its distributive share amount (under § 1.56A–5(e)(4)(ii)(B)) for

the taxable year of the disposition of the qualified wireless spectrum by an amount equal to the total amount of any tax amortization or tax amortization section 481(a) adjustment(s) with respect to a section 743(b) basis adjustment that decreased the partner's distributive share amount under § 1.56A–5(e)(1)(iv) and (e)(4)(ii)(A) for taxable years prior to the disposition; and

(B) Decreases its distributive share amount (under § 1.56A–5(e)(4)(ii)(B)) for the taxable year of the disposition of the qualified wireless spectrum by an amount equal to the total amount of any tax amortization or tax amortization section 481(a) adjustment(s) with respect to a section 743(b) basis adjustment that increased the partner's distributive share amount under § 1.56A–5(e)(1)(iv) and (e)(4)(ii)(A) for taxable years prior to the disposition.

(4) *Treatment of amounts recognized in FSI upon the disposition of qualified wireless spectrum.* Except as otherwise provided in other sections of the section 56A regulations, if a CAMT entity disposes of qualified wireless spectrum for regular tax purposes and recognizes gain or loss from the disposition in its FSI, the gain or loss (as redetermined under paragraph (e)(1) of this section) is recognized for AFSI purposes in the taxable year of disposition, regardless of whether any gain or loss with respect to the disposition is realized, recognized, deferred, or otherwise taken into account for regular tax purposes.

(5) *Subsequent AFS dispositions.* If qualified wireless spectrum is disposed of for regular tax purposes before it is treated as disposed of for AFS purposes, any AFS basis recovery with respect to such wireless spectrum that is reflected in FSI following the date such wireless spectrum is disposed of for regular tax purposes is disregarded in determining AFSI.

(6) *Intercompany transactions.* If a member of a tax consolidated group disposes of qualified wireless spectrum for regular tax purposes in an intercompany transaction, as defined in § 1.1502–13(b)(1)(i), for which the AFS consolidation entries are taken into account under § 1.1502–56A(c)(3)(i) in determining AFSI of the tax consolidated group for the taxable year that includes the intercompany transaction, the member's AFSI adjustment under paragraph (e)(1) of this section is determined as of the date of the intercompany transaction. However, the AFSI adjustment is deferred, and the tax consolidated group does not adjust AFSI under this paragraph (e), until the taxable year in which the AFS consolidation entries

related to the disposition become disregarded under § 1.1502–56A(c)(3)(ii). *See* § 1.1502–56A(e)(3).

(7) *Example.* The following example illustrates the application of this paragraph (e).

(i) *Facts.* X is an applicable corporation for the calendar year ending December 31, 2024. On January 1, 2019, X acquired Wireless Spectrum 1, which is qualified wireless spectrum, at a cost of \$1,000x. For AFS purposes, X does not amortize Wireless Spectrum 1. For regular tax purposes, X amortizes Wireless Spectrum 1 ratably over 15 years and recognizes \$67x (\$1,000x cost/15 years) of deductible tax amortization in 2019 and each year thereafter until X sells Wireless Spectrum 1 (a disposition for regular tax and AFS purposes) on January 1, 2025, for \$900x. For 2025, X takes into account \$100x of net loss from the sale of Wireless Spectrum 1 in its FSI (\$900x consideration – \$1,000x of AFS basis (\$1,000x cost – \$0x accumulated covered book amortization expense as of January 1, 2025)).

(ii) *Analysis: Taxable year 2024.* In determining AFSI for the taxable year ending December 31, 2024, X does not have any covered book amortization expense or covered book wireless spectrum expense reflected in X's FSI with respect to Wireless Spectrum 1, and thus, the adjustment to disregard the amounts under paragraph (d)(1)(ii) of this section is zero. In addition, X reduces AFSI under paragraph (d)(1)(i) of this section for the \$67x of deductible tax amortization with respect to Wireless Spectrum 1.

(iii) *Analysis: Taxable year 2025.* To determine the AFSI adjustment for the gain or loss from the sale of Wireless Spectrum 1 under paragraph (e)(1) of this section, X determines the CAMT basis of such property by adjusting the AFS basis of such property by the amounts described in paragraph (e)(2)(i) of this section with respect to such property, including those amounts attributable to taxable years beginning before January 1, 2023 (as required by paragraph (e)(2)(ii)(A) of this section). Accordingly, the CAMT basis of Wireless Spectrum 1 for AFSI purposes is \$598x (\$1,000x AFS basis + \$0x accumulated covered book amortization expense – \$402x of accumulated tax amortization). Thus, the redetermined gain on the sale of Wireless Spectrum 1 for AFSI purposes is \$302x (\$900x consideration – \$598x CAMT basis), and X's AFSI adjustment under paragraph (e)(1) of this section to reflect the redetermined gain is a positive adjustment of \$402x (\$302x

redetermined gain – \$100x net loss in FSI).

(f) *Applicability date.* This section applies to taxable years ending after [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**].

§ 1.56A–17 AFSI adjustments to prevent certain duplications or omissions.

(a) *Overview.* This section provides rules under section 56A(c)(15)(A) of the Code regarding AFSI adjustments to prevent the duplication or omission of income, expense, gain, or loss.

Paragraph (b) of this section provides general rules for adjusting AFSI to prevent such duplications or omissions. Paragraph (c) of this section provides rules for adjusting AFSI to prevent duplications or omissions that arise from a change in accounting principle. Paragraph (d) of this section provides rules for adjusting AFSI to prevent duplications or omissions that arise from an AFS restatement. Paragraph (e) of this section provides rules for adjusting AFSI to prevent the omission of amounts disclosed in an auditor's opinion. Paragraph (f) of this section provides rules on timing differences that do not give rise to a duplication or omission. Paragraph (g) of this section provides the applicability date of this section.

(b) *In general.* To prevent duplications or omissions of items of income, expense, gain, or loss, AFSI is adjusted for the items described in paragraphs (c) through (e) of this section and for such other items as required or permitted in other sections of the section 56A regulations (for example, § 1.56A–4(c)(1)). *See* § 1.59–2 for modifications to AFSI to prevent duplications or omissions that apply solely for purposes of section 59(k) of the Code.

(c) *Change in accounting principle—*(1) *In general.* If a CAMT entity implements a change in accounting principle in its AFS, or if the CAMT entity is treated as implementing a change in accounting principle under paragraph (c)(5) of this section, AFSI of the CAMT entity is adjusted to include the accounting principle change amount (as determined under paragraph (c)(2) of this section) for the taxable year(s) provided in paragraphs (c)(3) and (4) of this section.

(2) *Accounting principle change amount—*(i) *In general.* If a CAMT entity implements a change in accounting principle in its AFS for a taxable year, the accounting principle change amount is equal to the amount of the net cumulative adjustment to the CAMT entity's beginning retained earnings for the taxable year that results

from the change in accounting principle, adjusted to—

(A) Disregard any portion of the cumulative retained earnings adjustment attributable to taxable years beginning on or before December 31, 2019; and

(B) Reflect the AFSI adjustments provided in other sections of the section 56A regulations to the extent the cumulative retained earnings adjustment is attributable to FSI items to which those AFSI adjustments apply.

(ii) *Change in AFS under paragraph (c)(5) of this section.* If a CAMT entity is treated as implementing a change in accounting principle under paragraph (c)(5) of this section for a taxable year, the accounting principle change amount is equal to the difference between the CAMT entity's beginning retained earnings reflected in the CAMT entity's current AFS as of the beginning of the taxable year and the CAMT entity's ending retained earnings reflected in the CAMT entity's former AFS as of the end of the immediately preceding taxable year (retained earnings difference), adjusted to—

(A) Disregard any portion of the retained earnings difference attributable to taxable years beginning on or before December 31, 2019; and

(B) Reflect the AFSI adjustments provided in other sections of the section 56A regulations to the extent the retained earnings difference is attributable to FSI items to which those AFSI adjustments apply.

(3) *Adjustment spread period rule—*(i) *Duplications—*(A) *General rule.* Except as provided in paragraph (c)(3)(i)(B) of this section, if an accounting principle change amount prevents a net duplication for AFSI purposes, the amount is included in the CAMT entity's AFSI ratably over four taxable years beginning with the taxable year for which the change in accounting principle is implemented in the CAMT entity's AFS.

(B) *Duplication over different period.* If the CAMT entity is able to demonstrate that the net duplication described in paragraph (c)(3)(i)(A) of this section is reasonably anticipated to occur over a different period (not to exceed fifteen taxable years), then the accounting principle change amount may be included in the CAMT entity's AFSI ratably over such period, beginning with the taxable year for which the change in accounting principle is implemented in the CAMT entity's AFS.

(ii) *Omissions—*(A) *Increase to AFI.* If an accounting principle change amount prevents a net omission for AFSI purposes and results in an increase to

AFSI, the amount is included in the CAMT entity's AFSI ratably over four taxable years beginning with the taxable year for which the change in accounting principle is implemented in the CAMT entity's AFS.

(B) *Decrease to AFSI.* If an accounting principle change amount prevents a net omission for AFSI purposes and results in a decrease to AFSI, the amount is included in the CAMT entity's AFSI in full in the taxable year for which the change in accounting principle is implemented in the CAMT entity's AFS.

(iii) *Short periods.* For purposes of paragraphs (c)(3)(i) and (ii) of this section, if any taxable year during the relevant spread period is a short taxable year, the CAMT entity takes the accounting principle change amount into account as if that short taxable year were a full 12-month taxable year.

(4) *Acceleration of accounting principle change amount.* If, in any taxable year, a CAMT entity ceases to engage in a trade or business to which an accounting principle change amount relates, the CAMT entity includes in AFSI for such taxable year any portion of such amount not included in AFSI for a previous taxable year.

(5) *Use of different priority AFSs in consecutive taxable years.* If the priority of a CAMT entity's AFS (as determined under § 1.56A–2(c)) for the taxable year is different than the priority of the CAMT entity's AFS for the immediately preceding taxable year, the CAMT entity is treated as having implemented a change in accounting principle for the taxable year and adjusts AFSI to the extent required under this paragraph (c).

(6) *Examples.* The following examples illustrate the application of the rules in this paragraph (c). For purposes of these examples, the adjustments to retained earnings due to the change in accounting principle are shown on a pre-tax basis.

(i) *Example 1: Adjustment spread period: duplicated income spread over 2 years—(A) Facts.* X is a CAMT entity that uses the calendar year as its taxable year and has a calendar-year financial accounting period. Under the accounting standards that X uses to prepare its AFS, X reports income from contracts under an acceleration method. The applicable regulatory body that issues the accounting standards that X uses to prepare its AFS changed the accounting standards to require income from contracts accounted for under an acceleration method to be accounted for under an end-of-contract deferral method, effective for financial statements issued for financial accounting periods beginning after December 31, 2023. This change in

accounting standards constitutes a change in accounting principle. On January 1, 2024, X has outstanding contracts that are subject to this change in accounting principle (Affected Contracts), and the term of the longest Affected Contract ends in 2025. In X's 2024 AFS, X makes a \$150x negative cumulative adjustment to its opening retained earnings for 2024 to reverse the income X previously reflected in its FSI after 2019 and prior to 2024 with respect to the Affected Contracts. Pursuant to the new accounting principle, X reflects the duplicated income from the Affected Contracts in FSI for 2024 and 2025.

(B) *Analysis.* Under paragraph (c)(1) of this section, X is required to adjust AFSI by the accounting principle change amount (the \$150x negative cumulative adjustment) for the taxable years provided in paragraph (c)(3) of this section. Because the accounting principle change amount prevents a duplication of income, under paragraph (c)(3)(i)(A) of this section, X takes the negative \$150x accounting principle change amount into account in AFSI ratably over four taxable years beginning with the 2024 taxable year ($\$150x/4$ years = \$37.5x per year). Alternatively, because X is able to demonstrate that the duplicated income is reasonably expected to be included in FSI in 2024 and 2025, under paragraph (c)(3)(i)(B) of this section X may choose to take the negative \$150x accounting principle change amount into account in AFSI ratably over 2024 and 2025 ($\$150x/2$ years = \$75x per year).

(ii) *Example 2: Adjustment spread period: duplicated income spread over 10 years—(A) Facts.* The facts are the same as in paragraph (c)(6)(i)(A) of this section (*Example 1*), except that the term of the longest Affected Contract ends in 2033.

(B) *Analysis.* Under paragraph (c)(3)(i)(A) of this section, X takes the negative \$150x accounting principle change amount into account in AFSI ratably over four taxable years beginning with the 2024 taxable year ($\$150x/4$ years = \$37.5x per year). Alternatively, because X is able to demonstrate that the duplicated income is reasonably expected to be included in FSI over the 10-year period from 2024 through 2033, under paragraph (c)(3)(i)(B) of this section X may choose to take the negative \$150x accounting principle change amount into account in AFSI ratably over the 10-year period from the 2024 taxable year through the 2033 taxable year ($\$150x/10$ years = \$15x per year).

(iii) *Example 3: Adjustment spread period: duplications expected over*

twenty-year period—(A) Facts. The facts are the same as in paragraph (c)(6)(i)(A) of this section (*Example 1*), except that the term of the longest Affected Contract ends in 2043.

(B) *Analysis.* Under paragraph (c)(3)(i)(A) of this section, X takes the negative \$150x accounting principle change amount into account in AFSI ratably over the four-taxable-year period beginning with the 2024 taxable year ($\$150x/4$ years = \$37.5x per year). Alternatively, because X is able to demonstrate that the duplicated income is reasonably expected to be included in FSI over a period in excess of 15 taxable years, under paragraph (c)(3)(i)(B) of this section X may choose to take the negative \$150x accounting principle change amount into account in AFSI ratably over the 15-year period from the 2024 taxable year through the 2038 taxable year ($\$150x/15$ years = \$10x per year).

(d) *Restatement of a prior year's AFS—(1) In general—(i) Adjustments to AFSI.* Except as provided in paragraph (d)(2) of this section, if a CAMT entity issues a restated AFS and, as a result, the CAMT entity's FSI for a taxable year beginning after December 31, 2019, is restated on or after the date the CAMT entity filed its original Federal income tax return for such taxable year (restatement year), the CAMT entity accounts for the restatement by adjusting its AFSI for the taxable year in which the restated AFS is issued (AFSI restatement adjustment). Subject to paragraph (d)(1)(ii) of this section, the AFSI restatement adjustment takes into account the cumulative effect of the restatement on the CAMT entity's FSI for the restatement year, including any restatement of the CAMT entity's beginning retained earnings for the restatement year (but only to the extent the retained earnings restatement is attributable to taxable years beginning after December 31, 2019). See § 1.56A–2(e) for rules relating to the issuance of a restated AFS prior to the date the CAMT entity's return for the taxable year is filed.

(ii) *Further adjustments to AFSI.* The AFSI restatement adjustment described in paragraph (d)(1)(i) of this section is subject to further adjustment if it relates to one or more FSI items to which AFSI adjustments provided in other sections of the section 56A regulations apply. For example, to the extent the AFSI restatement adjustment includes a Federal income tax component, § 1.56A–8 applies to disregard that component.

(2) *Exception for amended return.* If, after issuing a restated AFS for a taxable year, a CAMT entity files an amended

return or an administrative adjustment request under section 6227 of the Code (AAR), as applicable, for the taxable year to adjust taxable income as a result of the restatement, the CAMT entity must use the restated AFS for purposes of determining AFSI on the amended return or AAR, as applicable, rather than make the AFSI restatement adjustment under paragraph (d)(1) of this section.

(3) *Reconciliation of retained earnings in AFS.* A CAMT entity is deemed to have issued a restated AFS for a preceding taxable year described in paragraph (d)(3)(i) of this section, and applies paragraph (d)(1) or (2) of this section, as applicable, if—

(i) The beginning retained earnings reflected in the CAMT entity's AFS for the current taxable year is adjusted to be different than the ending retained earnings reflected in the CAMT entity's AFS for the preceding taxable year (for example, as a result of a prior period adjustment);

(ii) The difference described in paragraph (d)(3)(i) of this section is attributable to items that otherwise would be reflected in the CAMT entity's FSI under the relevant accounting standards used to prepare the CAMT entity's AFS; and

(iii) The CAMT entity is not otherwise subject to paragraph (c) or (d)(1) or (2) of this section.

(4) *Example.* The following example illustrates the application of paragraph (d)(1) of this section.

(i) *Facts.* X is a CAMT entity that uses the calendar year as its taxable year and has a calendar-year financial accounting period. On September 15, 2024, X files its Federal income tax return for taxable year 2023 and reports FSI of \$1,580x, which is the FSI set forth on X's original AFS for 2023, and AFSI of \$2,000x (FSI of \$1,580x adjusted to disregard \$420x of Federal income tax expense under § 1.56A–8). On November 1, 2024, X issues a restated AFS for 2023 that reflects FSI of \$2,370x (which includes a reduction for Federal income tax expense of \$630x). The restated AFS also includes an adjustment to increase the 2023 beginning balance of retained earnings by \$79x (\$100x income – \$21x Federal income tax expense) related to income from a prior period that was underreported. X is not amending its taxable year 2023 Federal income tax return to adjust taxable income for such year. X is not subject to any AFSI adjustments other than the AFSI adjustment under § 1.56A–8.

(ii) *Analysis.* X has restated its FSI for 2023 in a restated AFS issued after X filed its original 2023 Federal income tax return. Pursuant to paragraph (d)(1)

of this section, X accounts for the restatement by adjusting its AFSI for taxable year 2024, the taxable year in which the restated AFS for 2023 is issued. On X's 2024 Federal income tax return, X will increase AFSI by \$1,100x for taxable year 2024, which is the first taxable year for which X has not filed an original return as of the November 1, 2024, restatement date. The \$1,100x adjustment represents the cumulative effect of the restatement on FSI, including any restatement of the beginning balance of retained earnings for the period being restated, or 2023. The \$1,100x consists of \$790x (\$2,370x FSI reported on the restated AFS – \$1,580x FSI reported on the original AFS), plus \$210x (\$630x Federal income tax expense reported on the restated AFS – \$420x Federal income tax expense reported on the original AFS, which is required to be disregarded under section § 1.56A–8 in determining AFSI), plus \$100x (\$79x net adjustment to the 2023 beginning balance of retained earnings reported on the restated AFS for 2023 + \$21x disregarded Federal income tax expense (under § 1.56A–8)).

(e) *Adjustment for amounts disclosed in an auditor's opinion.*—(1) *In general.* AFSI is adjusted to include amounts disclosed in an auditor's opinion described in § 1.56A–2(d)(2) and (3) to the extent such amounts would have increased FSI for the taxable year to which the auditor's opinion relates had the amounts been reflected in the CAMT entity's AFS for such taxable year (auditor increase to FSI). No AFSI adjustment is required to the extent the auditor increases to FSI were included in FSI for a prior taxable year. Moreover, if FSI for a subsequent taxable year includes amounts included in AFSI pursuant to an adjustment under this paragraph (e), AFSI for the subsequent taxable year is adjusted to prevent any duplication of income.

(2) *Further adjustments to AFSI.* The auditor increase to FSI described in paragraph (e)(1) of this section is subject to further adjustment if it relates to one or more FSI items to which AFSI adjustments provided in other sections of the section 56A regulations apply. For example, to the extent the auditor increase to FSI includes a Federal income tax component, § 1.56A–8 applies to disregard that component.

(f) *No adjustment for timing differences.* No adjustment to AFSI is permitted to account for differences between the taxable year in which an item is taken into account in FSI and the taxable year in which that item is taken into account for regular tax purposes, even if the timing difference for that

item originates in a taxable year that begins prior to January 1, 2023, and reverses in a taxable year that begins on or after January 1, 2023.

(g) *Applicability date.* This section applies to taxable years ending after September 13, 2024.

§ 1.56A–18 AFSI, CAMT basis, and CAMT retained earnings resulting from certain corporate transactions.

(a) *Overview.*—(1) *Scope.* Except as provided in paragraph (a)(2) of this section, this section provides rules under section 56A(c)(2)(C) and (c)(15)(B) of the Code for determining the AFSI, CAMT basis, and CAMT earnings consequences resulting from specified transactions between a domestic corporate CAMT entity and an individual or other CAMT entity, including a CAMT entity that is a shareholder of a domestic corporate CAMT entity. Paragraph (a)(3) of this section provides cross-references to other applicable rules. Paragraph (b) of this section provides definitions that apply for purposes of this section and §§ 1.56A–19 and 1.56A–21. Paragraph (c) of this section provides operating rules for this section and §§ 1.56A–19 and 1.56A–21. Paragraph (d) of this section provides rules for determining the CAMT consequences of certain non-liquidating stock and property distributions. Paragraph (e) of this section provides rules for determining the CAMT consequences of certain distributions for which an election under section 336(e) of the Code (section 336(e) election) is made. Paragraph (f) of this section provides rules for determining the CAMT consequences of liquidating distributions. Paragraph (g) of this section provides rules for determining the CAMT consequences of stock sales. Paragraph (h) of this section provides rules for determining the CAMT consequences of asset sales. Paragraph (i) of this section provides the applicability date of this section.

(2) *Exceptions.* This section and § 1.56A–19 do not apply to any transaction—

(i) Between members of the same tax consolidated group during any period that they are shareholders of other members of the same tax consolidated group (see § 1.1502–56A(c)(3) for treatment of members of a tax consolidated group when a party to a transaction or property subject to a transaction described in this section or § 1.56A–19 leaves a tax consolidated group); or

(ii) That is a covered asset transaction (as defined in § 1.56A–4(b)(1)), a section 338(g) transaction (as defined in

§ 1.56A–4(b)(3)), or an acquisition or transfer of stock of a foreign corporation subject to § 1.56A–4(c)(1).

(3) *Cross-references*—(i) *Corporate reorganizations and organizations*. For rules regarding the AFSI, CAMT basis, and CAMT earnings consequences resulting from certain corporate reorganizations and organizations not within a tax consolidated group, *see* § 1.56A–19.

(ii) *Transactions within a tax consolidated group*. For rules regarding the AFSI, CAMT basis, and CAMT earnings consequences resulting from transactions between members of the same tax consolidated group (including rules regarding the timing of those determinations), *see* § 1.1502–56A.

(iii) *Deferral of loss from disposition between certain members of a CAMT-related group*. For rules that require the deferral of any loss resulting from a sale, exchange, or any other disposition of property between two or more CAMT entities that are treated as a single employer under section 52(a) and (b) of the Code, *see* § 1.56A–26(b).

(iv) *Certain arrangements disregarded or recharacterized*. For rules pursuant to which the Commissioner may disregard or recharacterize arrangements entered into by one or more CAMT entities, *see* § 1.56A–26(c).

(v) *Clear reflection of income requirement*. For rules regarding adjustments to AFSI to reflect the principles of section 482 of the Code and the regulations under section 482, *see* § 1.56A–26(d).

(vi) *AFSI and CAMT attribute rules regarding troubled corporations*. For rules to determine the CAMT consequences resulting from an insolvency or bankruptcy of a CAMT entity (including an emergence from bankruptcy of a CAMT entity), *see* § 1.56A–21.

(vii) *Financial statement net operating losses*. For rules regarding the apportionment, transfer, and use of FSNOLs by a CAMT entity, *see* §§ 1.56A–23 and 1.1502–56A.

(viii) *Minimum tax credits*. For rules regarding limitations on the use of minimum tax credits, *see* section 383 of the Code and § 1.383–1.

(ix) *AFSI history*. For rules regarding the determination of AFSI history of a CAMT entity described in this section, *see* § 1.59–2(f).

(x) *Certain stock owned by insurance companies*. For rules regarding the AFSI consequences of an insurance company owning stock that relates to the insurance company's obligations under certain insurance contracts, *see* § 1.56A–22(c).

(b) *Definitions*. For purposes of this section and §§ 1.56A–19 and 1.56A–21:

(1) *Acquiror corporation*—(i) *Covered nonrecognition transaction*. In the case of a covered nonrecognition transaction, the term *acquiror corporation* means a party to the covered nonrecognition transaction that is—

(A) An *acquiring corporation* within the meaning of § 1.368–2 (that is, an acquiring corporation with regard to a series of one or more transactions that qualify as a reorganization under section 368(a)(1)(A) through (C) and (G) of the Code); or

(B) A *transferee corporation* within the meaning of § 1.368–2(l)(1) (that is, a transferee corporation with regard to a series of one or more transactions that qualify as a reorganization under section 368(a)(1)(D)), other than a controlled corporation.

(ii) *Covered recognition transaction*. In the case of a covered recognition transaction, the term *acquiror corporation* means a corporate party to the covered recognition transaction that is treated on the corporate party's AFS as acquiring stock or assets of a target corporation (for example, an acquiror under the Accounting Standards Codification). *See generally* paragraphs (g) and (h) of this section, which provide rules for determining the CAMT consequences of stock and asset sales.

(2) *B reorganization*. The term *B reorganization* means a series of one or more transactions that qualify as a reorganization under section 368(a)(1)(B).

(3) *CAMT current earnings*. The term *CAMT current earnings*, for a taxable year of a corporate CAMT entity, means the AFSI of the corporate CAMT entity for the taxable year, taking into account the adjustments required by this section and § 1.56A–19 (not otherwise reflected in AFSI).

(4) *CAMT earnings*. The term *CAMT earnings* means CAMT current earnings and CAMT retained earnings (as appropriate).

(5) *CAMT retained earnings*—(i) *In general*. The term *CAMT retained earnings*, with regard to a corporate CAMT entity, means the amount obtained by adding—

(A) The amount of earnings and profits (within the meaning of section 312 of the Code) of the CAMT entity as of the beginning of the first taxable year of the CAMT entity beginning after December 31, 2019 (even if negative); and

(B) The cumulative balance of the CAMT current earnings of the corporate CAMT entity, taking into account all taxable years of the corporate CAMT entity beginning after December 31,

2019 (that is, all subsequent taxable years).

(ii) *Timing of determination*. The CAMT retained earnings for a year of a corporate CAMT entity is determined immediately before the beginning of the corporate CAMT entity's current taxable year.

(6) *Component transaction*. The term *component transaction* means, with regard to a party to a transaction specified in this section or § 1.56A–19, an element of the transaction (for example, an actual or a deemed transfer or other disposition of property by the party) the regular tax consequences of which are determined solely with regard to that party. For example, a section 351 transferor and section 351 transferee in the same section 351 exchange each would be a party to separate transfers of property that compose separate component transactions of that exchange, the regular tax consequences of which are determined under separate sections of the Code. For rules regarding component transactions, *see* paragraph (c)(5) of this section.

(7) *Controlled corporation*—(i) *Covered nonrecognition transaction*. In the case of a covered nonrecognition transaction, the term *controlled corporation* means a party to the covered nonrecognition transaction that is a controlled corporation described in section 355(a)(1)(A) of the Code.

(ii) *Covered recognition transaction*. In the case of a covered recognition transaction, the term *controlled corporation* means a party—

(A) To a covered recognition transaction that qualifies as a section 355 transaction; and

(B) That is treated as a corporation the stock of which is distributed by another corporation on the AFS of that other corporation (for example, a *spinnee* under the Accounting Standards Codification).

(8) *Corporate dissolution*. The term *corporate dissolution* means—

(i) The complete dissolution of a corporation pursuant to a plan reported on the original (but not a supplemented or an amended) Form 966, *Corporate Dissolution or Liquidation* (or any successor form); or

(ii) A deemed dissolution (for example, pursuant to an election to be treated as a disregarded entity under § 301.7701–3 of this chapter).

(9) *Covered nonrecognition transaction*. The term *covered nonrecognition transaction* means a component transaction that, with regard to a party—

(i) Qualifies for nonrecognition treatment for regular tax purposes, respectively, under section 305, 311(a),

332, 337, 351, 354, 355, 357, 361, or 1032(a) of the Code, or a combination thereof, solely with regard to that party;

(ii) Is not treated as resulting in the recognition of any amount of gain or loss for regular tax purposes solely with regard to that party; and

(iii) Is not treated as a covered recognition transaction under any provision of this section or § 1.56A-19.

(10) *Covered recognition transaction.* The term *covered recognition transaction* means a component transaction consisting of a transfer, sale, contribution, distribution, or other disposition of property that, with regard to a party, does not qualify as a covered nonrecognition transaction solely with regard to the party (and therefore, for example, could result in the recognition of gain or loss for regular tax purposes to the party).

(11) *Covered transaction.* The term *covered transaction* means a covered recognition transaction or a covered nonrecognition transaction (as appropriate).

(12) *Distributing corporation*—(i) *Covered nonrecognition transaction.* In the case of a covered nonrecognition transaction, the term *distributing corporation* means a party to the covered nonrecognition transaction that—

(A) Distributes stock or stock rights of the corporation under section 311(a); or

(B) With regard to a section 355 transaction, distributes stock or securities of a controlled corporation under section 355(c) or distributes stock or securities, or money or other property, of a controlled corporation under section 361(c).

(ii) *Covered recognition transaction.* In the case of a covered recognition transaction, the term *distributing corporation* means a party to the covered recognition transaction that—

(A) Distributes property in a distribution described in section 311(b);

(B) Distributes stock in a distribution described in section 336(e); or

(C) With regard to a section 355 transaction, is treated on the party's AFS as the corporation that distributes the stock or securities of another corporation (for example, a *spinnor* under the Accounting Standards Codification) or distributes money or other property (in addition to stock or securities) of that other corporation.

(13) *Distributing corporation shareholder or security holder.* The term *distributing corporation shareholder or security holder* means, with regard to a section 355 transaction, a CAMT entity that receives in a distribution with respect to, or in exchange for,

distributing corporation stock or securities (as appropriate)—

(i) Stock or securities of a controlled corporation under section 355; or

(ii) Money or other property (in addition to stock or securities) of the controlled corporation under section 356 of the Code.

(14) *Distribution recipient.* The term *distribution recipient* means, with regard to a covered transaction, a CAMT entity that receives from a distributing corporation—

(i) A distribution of property described in section 301 of the Code;

(ii) A distribution in redemption of stock of the distributing corporation under section 302 of the Code; or

(iii) A distribution of stock or stock rights of the distributing corporation under section 305.

(15) *E reorganization.* The term *E reorganization* means a series of one or more transactions that qualify as a reorganization under section 368(a)(1)(E).

(16) *F reorganization.* The term *F reorganization* means a series of one or more transactions that qualify as a reorganization under section 368(a)(1)(F).

(17) *Liquidating corporation*—(i) *Covered nonrecognition transaction.* In the case of a covered nonrecognition transaction, the term *liquidating corporation* means a party to the covered nonrecognition transaction that distributes, through one or more distributions, its property in a complete liquidation to which section 337(a) of the Code applies.

(ii) *Covered recognition transaction.* In the case of a covered recognition transaction, the term *liquidating corporation* means a party to the transaction that distributes, through one or more distributions, all of its property in—

(A) A complete liquidation to which section 336(a) applies; or

(B) Any other corporate dissolution.

(18) *Liquidation recipient.* The term *liquidation recipient* means, with regard to a covered transaction, a CAMT entity that receives one or more distributions of property from a liquidating corporation as part of—

(i) A complete liquidation under sections 331 and 336 of the Code, or sections 332 and 337, as appropriate; or

(ii) Any other corporate dissolution.

(19) *Party.* The term *party* means, with regard to a covered transaction—

(i) An acquiror corporation;

(ii) An acquiror corporation shareholder;

(iii) A controlled corporation;

(iv) A distributing corporation;

(v) A distributing corporation shareholder or security holder;

(vi) A liquidating corporation;

(vii) A liquidation recipient;

(viii) A recapitalizing corporation;

(ix) A recapitalizing corporation shareholder or security holder;

(x) A resulting corporation;

(xi) A section 351 transferee;

(xii) A section 351 transferor;

(xiii) A target corporation;

(xiv) A target corporation shareholder or security holder;

(xv) A transferor corporation within the meaning of § 1.368-2(l)(1); and

(xvi) A transferor corporation shareholder or security holder.

(20) *Property.* The term *property* means any asset, including stock.

(21) *Qualified property.* The term *qualified property* has the meaning given the term in section 355(c)(2)(B) or 361(c)(2)(B) (as appropriate).

(22) *Recapitalizing corporation*—(i) *Covered nonrecognition transaction.* In the case of a covered nonrecognition transaction, the term *recapitalizing corporation* means a corporate party to the covered nonrecognition transaction that recapitalizes its capital structure in a transaction that qualifies as an E reorganization or an exchange to which section 1036 of the Code applies.

(ii) *Covered recognition transaction.* In the case of a covered recognition transaction, the term *recapitalizing corporation* means a corporate party to the covered recognition transaction through which the party recapitalizes its capital structure.

(23) *Recapitalizing corporation shareholder or security holder.* The term *recapitalizing corporation shareholder or security holder* means, with regard to an E reorganization, a CAMT entity that receives in exchange for recapitalizing corporation stock or securities (as appropriate)—

(i) Stock or securities of a recapitalizing corporation under section 354; or

(ii) Money or other property (in addition to stock or securities) of the recapitalizing corporation under section 301.

(24) *Resulting corporation*—(i) *Covered nonrecognition transaction.* In the case of a covered nonrecognition transaction, the term *resulting corporation* means a resulting corporation within the meaning given the term in § 1.368-2(m)(1) (that is, a resulting corporation with regard to an F reorganization) that is a party to the covered nonrecognition transaction.

(ii) *Covered recognition transaction.* In the case of a covered recognition transaction, the term *resulting corporation* means a corporate party—

(A) To a covered nonrecognition transaction that qualifies as an F reorganization; and

(B) That makes a distribution of property to a transferor corporation shareholder or security holder (see paragraph (d)(1)(ii) of this section for rules addressing non-liquidating corporate distributions).

(25) *Section 351 exchange*. The term *section 351 exchange* means one or more transfers by one or more persons (that is, section 351 transferors) of property to a corporation (that is, a section 351 transferee) in exchange for stock of that corporation, or stock and money or other property, that qualifies as an exchange under section 351.

(26) *Section 351 transferee*—(i) *Covered nonrecognition transaction*. In the case of a covered nonrecognition transaction, the term *section 351 transferee* means a party to the section 351 exchange that transfers solely that party's stock to a section 351 transferor, in exchange for money or other property from the section 351 transferor, in a transaction to which section 1032(a) applies.

(ii) *Covered recognition transaction*. In the case of a covered recognition transaction, the term *section 351 transferee* means a party to the section 351 exchange that transfers money or other property (in addition to that party's stock) to a section 351 transferor, in exchange for money or other property from the section 351 transferor, in a transaction to which section 1032(a) applies.

(27) *Section 351 transferor*—(i) *Covered nonrecognition transaction*. In the case of a covered nonrecognition transaction, the term *section 351 transferor* means a party to the section 351 exchange that transfers property to a section 351 transferee solely in exchange for stock of the section 351 transferee in a transaction that qualifies the party solely for nonrecognition treatment under section 351(a).

(ii) *Covered recognition transaction*. In the case of a covered recognition transaction, the term *section 351 transferor* means a party to the section 351 exchange that—

(A) Transfers property to a section 351 transferee in a transaction to which section 351 applies; and

(B) Receives from the section 351 transferee money or other property (in addition to stock of the section 351 transferee) under section 351(b).

(28) *Section 355 transaction*. The term *section 355 transaction* means—

(i) A series of transactions that qualify as a reorganization under sections 355(a) and 368(a)(1)(D) or (G), including a transfer of property by a distributing corporation to a controlled corporation and one or more distributions of controlled corporation stock or

controlled corporation securities that are in pursuance of the plan of reorganization; or

(ii) A distribution of controlled corporation stock or controlled corporation securities that qualifies under section 355 (or so much of section 356 as relates to section 355) and that is not undertaken pursuant to a plan of reorganization.

(29) *Target corporation*—(i) *Covered nonrecognition transaction*. In the case of a covered nonrecognition transaction, the term *target corporation* means a party to the covered nonrecognition transaction that is—

(A) A target corporation within the meaning of § 1.368–2 (that is, a target corporation with regard to a series of one or more transactions that qualify as a reorganization under section 368(a)(1)(A) through (C) and (G)); or

(B) A transferor corporation within the meaning of § 1.368–2(l)(1).

(ii) *Covered recognition transaction*. In the case of a covered recognition transaction, the term *target corporation* means a corporate party to the covered recognition transaction the property (that is, stock or assets) of which is recorded as acquired on the AFS of the acquiror corporation (for example, an acquiree under the Accounting Standards Codification).

(30) *Target corporation shareholder or security holder*. The term *target corporation shareholder or security holder* means, with regard to a series of one or more transactions that qualify as a reorganization described in paragraph (b)(30)(i) of this section, a CAMT entity that receives in exchange for target corporation stock or securities (as appropriate)—

(i) Stock or securities of an acquiror corporation under section 354; or

(ii) Money or other property of the acquiror corporation under section 356 (in addition to stock or securities of the acquiror corporation).

(31) *Transferor corporation*. In the case of a covered nonrecognition transaction, the term *transferor corporation* means a *transferor corporation* within the meaning given the term in § 1.368–2(m)(1) (that is, a transferor corporation with regard to an F reorganization) that is a party to the covered nonrecognition transaction.

(32) *Transferor corporation shareholder or security holder*. The term *transferor corporation shareholder or security holder* means, with regard to an F reorganization, a CAMT entity that receives in exchange for transferor corporation stock or securities (as appropriate)—

(i) Stock or securities of a resulting corporation under section 354; or

(ii) Money or other property of the resulting corporation under section 301 or 302 (in addition to stock or securities of the acquiror corporation).

(c) *Operating rules for this section and § 1.56A–19*—(1) *Treatment of stock*. If a shareholder that is a CAMT entity owns stock of a corporate CAMT entity (for example, a subsidiary), for purposes of applying this section and § 1.56A–19 with regard to the shareholder and subsidiary, as appropriate—

(i) The stock is treated as a directly held asset of the shareholder; and

(ii) The shareholder is not treated as directly holding the assets of the subsidiary.

(2) *FSI resulting from stock investments*—(i) *In general*. Except as provided in paragraph (c)(2)(ii) of this section, if a CAMT entity holds stock in a domestic corporation that is not a member of a tax consolidated group of which the CAMT entity is a member, the CAMT entity—

(A) Disregards in computing the CAMT entity's AFSI any amount reflected in the CAMT entity's FSI that results from holding stock in the domestic corporation (for example, the FSI of a shareholder CAMT entity that otherwise would result from the application of the equity method or fair value method with regard to the shareholder CAMT entity's investment in stock of the subsidiary domestic corporation);

(B) Disregards any adjustment to AFS basis of the stock of that corporation on the CAMT entity's AFS, and instead adjusts CAMT basis in the stock as provided in this section or § 1.56A–19; and

(C) Disregards any adjustments to AFS retained earnings resulting from the ownership of that stock, and instead adjusts CAMT retained earnings as provided in this section or § 1.56A–19.

(ii) *Exceptions*. Paragraph (c)(2)(i) of this section does not apply with regard to—

(A) Amounts that result from a transaction described in paragraphs (d) through (h) of this section or in § 1.56A–19; or

(B) Gains or losses reflected in the CAMT entity's FSI that result from the remeasurement (to fair value) of its existing or remaining stock in a domestic corporation (that is, a subsidiary) when the CAMT entity acquires or disposes of some (but not all) stock in that subsidiary domestic corporation in a covered recognition transaction.

(iii) *Characterization of FSI resulting from stock investments*—(A) *In general*. Except as otherwise provided in paragraph (c)(2)(iii)(B) of this section,

the shareholder of a distributing corporation or a target corporation determines the character of any distribution resulting from a transaction described in paragraphs (d) through (h) of this section or in § 1.56A–19 using the distributing corporation's or target corporation's regular tax earnings and profits.

(B) *Exception.* If the requirements of each of paragraphs (c)(2)(iii)(B)(1) and (2) of this section are met, the shareholder of a distributing corporation or a target corporation determines the character of any distribution resulting from a transaction described in paragraphs (d) through (h) of this section or in § 1.56A–19 as set forth in paragraphs (d) through (h) of this section or in § 1.56A–19, respectively.

(1) Immediately before the transaction, the shareholder owns at least 25 percent (by vote and value) of the stock or the distributing corporation or the target corporation.

(2) The distributing corporation or the target corporation would not qualify for the simplified method for determining applicable corporation status described in § 1.59–2(g)(2).

(3) *Purchase accounting and push down accounting for stock acquisitions.* If an acquiror corporation acquires stock of a target corporation in a covered transaction for regular tax purposes, purchase accounting and push down accounting adjustments (as applicable) that otherwise would be reflected in an acquiror corporation's AFS basis, balance sheet accounts, or FSI are disregarded for purposes of determining the acquiror corporation's AFSI, CAMT basis, and CAMT earnings (as appropriate).

(4) *Purchase accounting and push down accounting for asset acquisitions.* If an acquiror corporation acquires assets of a target corporation in a covered transaction for regular tax purposes, then for purposes of determining the acquiror corporation's AFSI, CAMT basis, and CAMT earnings (as appropriate)—

(i) If the transaction is a covered recognition transaction, any purchase accounting adjustments reflected in a CAMT entity's AFS basis, balance sheet accounts, or FSI are regarded; and

(ii) If the transaction is a covered nonrecognition transaction, any purchase accounting adjustments reflected in a CAMT entity's AFS basis, balance sheet accounts, or FSI are disregarded.

(5) *Determination of CAMT consequences of component transactions—(i) Generally separate treatment.* Except as provided in paragraph (c)(5)(ii) of this section, each

component transaction of a larger transaction is examined separately for qualification as a covered nonrecognition transaction or a covered recognition transaction with regard to each party to the component transaction. For example, a section 351 transferor and a section 351 transferee of the same section 351 exchange each would be a party to separate property transfers that compose separate component transactions of that exchange, the regular tax consequences of which are determined under separate sections of the Code.

(ii) *Effect of other component transactions.* The treatment of a component transaction as a covered nonrecognition transaction or covered recognition transaction may be affected by the treatment of any other component transaction for regular tax purposes, taking into account all relevant provisions of the Code and general principles of Federal tax law, including the step transaction doctrine.

(6) *CAMT stock basis transition rule.* The CAMT basis of stock in a corporation held by a CAMT entity equals the adjusted basis of the stock for regular tax purposes as of the beginning of the first taxable year of the CAMT entity beginning after December 31, 2019, taking into account all subsequent adjustments required under this section and § 1.56A–19. For rules regarding the CAMT basis of stock in a corporation acquired by a CAMT entity during any taxable year of the CAMT entity beginning after December 31, 2019, see § 1.56A–1(d)(3).

(7) *CAMT retained earnings following certain cross border transactions—(i) Inbound liquidations and reorganizations.* If a foreign corporation transfers property to a domestic corporation in a complete liquidation to which sections 332 and 337 apply or in an asset acquisition described in section 368(a)(1), the domestic corporation's CAMT retained earnings are increased to the extent of any earnings and profits of the foreign corporation that carryover to the domestic corporation under section 381(c)(2) of the Code. See § 1.367(b)–3(f)(1); § 1.56A–4(h)(8) (*Example 8*).

(ii) *Section 355 distributions.* If a foreign corporation transfers stock in a domestic corporation described in section 355(a)(1)(A) of the Code in a transfer to which section 355 of the Code applies, the domestic corporation's CAMT retained earnings are increased to the extent of any earnings and profits allocated to the domestic corporation under § 1.312–10. Furthermore, if a domestic corporation transfers stock in a foreign corporation

described in section 355(a)(1)(A) of the Code in a transfer to which section 355 of the Code applies, the domestic corporation's CAMT retained earnings are decreased to the extent the earnings and profits of the domestic corporation are reduced under § 1.312–10.

(8) *Examples.* The following examples illustrate the application of the rules in this paragraph (c). For purposes of these examples, except as otherwise provided, each entity is a domestic corporation that uses the calendar year as its taxable year and is not a member of a tax consolidated group.

(i) *Example 1: Treatment of stock—*

(A) *Facts.* X owns all the stock of Y, which owns Asset 1 and Asset 2. On X's AFS, X is treated as owning directly Asset 1 and Asset 2.

(B) *Analysis.* For purposes of this section and § 1.56A–19, X treats the Y stock as an asset that X directly owns. See paragraph (c)(1)(i) of this section. Accordingly, X is not treated as directly owning either Asset 1 or Asset 2. See paragraph (c)(1)(ii) of this section.

(ii) *Example 2: FSI resulting from stock investments marked to market—*

(A) *Facts.* On February 1, 2024, X acquires stock in Y, a publicly traded company, for \$100x. On X's AFS, X records the Y stock with an AFS basis of \$100x. X does not acquire more, or dispose of any, Y stock. On March 31, 2024, X increases the AFS basis of the Y stock to its fair value of \$110x and recognizes \$10x of gain on X's AFS. For regular tax purposes, X does not mark X's Y stock to market.

(B) *Analysis.* The CAMT consequences to X are identical to the consequences that result for regular tax purposes. Therefore, in computing X's AFSI, X disregards the \$10x of FSI resulting from the revaluation of X's Y stock to its fair value. See paragraph (c)(2)(i)(A) of this section. Accordingly, X does not adjust X's CAMT basis in the Y stock. See paragraph (c)(2)(i)(B) of this section. See also generally § 1.56A–19 (providing no required adjustments to X's CAMT basis in the Y stock). Likewise, X does not adjust X's CAMT retained earnings. See paragraph (c)(2)(i)(C) of this section. See also generally § 1.56A–19 (providing no required adjustments to X's CAMT retained earnings).

(iii) *Example 3: FSI resulting from stock investments due to equity method annual inclusions—(A) Facts.* X owns 35% of the stock of Y. In 2024, Y reports \$20x of net income on Y's AFS. Under the equity method, X includes on X's AFS \$7x of Y's income ($35\% \times \$20x = \$7x$). Consequently, X increases the AFS basis of X's Y stock on X's AFS by \$7x.

(B) *Analysis.* The CAMT consequences to X are identical to the consequences that result for regular tax purposes. Therefore, to compute X's AFSI, X disregards the \$7x of Y's income reported as FSI on X's AFS. Accordingly, X does not adjust X's CAMT basis in the Y stock. See paragraph (c)(2)(i)(B) of this section. See also generally § 1.56A–19 (providing no required adjustments to X's CAMT basis in the Y stock). Likewise, X does not adjust X's CAMT retained earnings. See paragraph (c)(2)(i)(C) of this section. See also generally § 1.56A–19 (providing no required adjustments to X's CAMT retained earnings).

(iv) *Example 4: Remeasurement gain—(A) Facts.* X owns 5% of the stock of Y. X's AFS basis in the Y stock is \$45x, and X's CAMT basis in the Y stock is \$35x. X acquires an additional 25% of the Y stock for \$250x in a covered recognition transaction. The imputed value of X's 5% interest in Y at the time of the acquisition is \$50x ($((\$250x/0.25) \times 0.05 = \$50x)$). As a result of the acquisition, X reports on X's AFS gain of \$5x ($\$50x - \$45x = \$5x$), and X records X's 30% interest in Y with an AFS basis of \$300x ($\$250x + \$50x = \$300x$).

(B) *Analysis.* The adjustments to AFSI described in paragraph (c)(2)(i) of this section do not apply with respect to X's remeasurement gains resulting from X's acquisition of additional Y stock. See paragraph (c)(2)(ii)(B) of this section. Therefore, X takes into account the \$5x of remeasurement gain reported on X's AFS, adjusts X's CAMT basis in the Y stock from \$35x to \$40x, and takes into account any adjustments to X's AFS retained earnings resulting from the ownership of the Y stock.

(v) *Example 5: Purchase accounting and push down accounting—(A) Facts.* Target is the parent of a tax consolidated group of which X is a subsidiary member. Target owns 100% of the stock of X, the fair market value and CAMT basis of which are \$70x and \$20x, respectively. X's assets have a fair market value and CAMT basis of \$70x and \$50x, respectively. During the taxable year, Acquiror acquires all the stock of Target from Target's shareholders for \$100x, and Acquiror does not make a section 338 election with respect to the acquisition of Target stock. At the time of Target's acquisition by Acquiror, Target's assets (other than Target's stock in X) have a fair market value and CAMT basis of \$30x and \$15x, respectively. On Acquiror's AFS, Acquiror records Target's assets at \$30x and X's assets at \$70x.

(B) *Analysis.* The purchase accounting adjustments and push down accounting

adjustments Acquiror made on Acquiror's AFS are disregarded in computing Acquiror's AFSI, CAMT basis, and CAMT earnings. See paragraph (c)(3) of this section. As a result, the purchase by Acquiror of the stock of Target does not affect Target's CAMT basis in Target's assets (including the X stock), nor does the acquisition affect X's CAMT basis in X's assets. Accordingly, the following results obtain from the purchase by Acquiror of the stock of Target: Target's CAMT basis in Target's stock in X equals \$20x; Target's CAMT basis in Target's assets other than Target's X stock equals \$15x; and X's CAMT basis in X's assets equals \$50x.

(vi) *Example 6: Identification of component transactions—(A) Facts.* X and Y respectively contribute Asset 1 and Asset 2 to Z in exchange solely for stock of newly formed Z (XYZ exchange). The XYZ exchange qualifies for nonrecognition treatment under section 351(a) with regard to each of X and Y, and nonrecognition treatment under section 1032(a) with regard to Z. Immediately before the XYZ exchange, Asset 1 had a fair market value and CAMT basis of \$50x and \$25x, respectively. At that time, Asset 2 had a fair market value and CAMT basis of \$50x and \$15x, respectively.

(B) *Analysis: General application of component transaction rule.* X, Y, and Z each identifies the component transactions of the larger transaction (that is, the XYZ exchange) specific to X, Y, and Z to determine the CAMT consequences of that larger transaction specific to each of those parties. See generally paragraph (c)(5) of this section. Under paragraph (c)(5)(i) of this section, the XYZ exchange consists of a total of four component transactions among all of X, Y, and Z. See paragraphs (c)(8)(vi)(C) through (E) of this section (providing greater detail regarding the identification of each component transaction specific to X, Y, and Z, respectively).

(C) *Analysis: X's component transaction.* X has one component transaction, which is X's transfer of property to Z solely in exchange for stock of Z. This transaction is the sole component transaction relevant to X because it is the sole component transaction of the larger transaction (that is, the XYZ exchange) that is relevant for the determination of the CAMT consequences of the larger transaction with regard to X. See paragraphs (b)(27) and (c)(5)(i) of this section. Based on the treatment of this component transaction for regular tax purposes, the XYZ transaction is a covered nonrecognition transaction with regard to X.

(D) *Analysis: Y's component transaction.* Y has one component transaction, which is Y's transfer of property to Z solely in exchange for stock of Z. This transaction is the sole component transaction relevant to Y because it is the sole component transaction of the larger transaction (that is, the XYZ exchange) that is relevant for the determination of the CAMT consequences of the larger transaction with regard to Y. See paragraphs (b)(27) and (c)(5)(i) of this section. Based on the treatment of this component transaction for regular tax purposes, the XYZ transaction is a covered nonrecognition transaction with regard to Y.

(E) *Analysis: Z's two component transactions.* Z has two component transactions, which are Z's respective transfers of stock to X and Y in exchange for property transferred by those parties to Z. Those two transactions are the sole component transactions relevant to Z because they are the sole component transactions of the larger transaction (that is, the XYZ exchange) that are relevant for the determination of the CAMT consequences of the larger transaction with regard to Z. See paragraphs (b)(26) and (c)(5)(i) of this section. Based on the treatment of these component transactions for regular tax purposes, the XYZ transaction is a covered nonrecognition transaction with regard to Z.

(vii) *Example 7: Effect of component transaction on other component transactions—(A) Facts.* The facts are the same as in paragraph (c)(8)(vi)(A) of this section (*Example 6*), except that, prior to the XYZ exchange, X enters into a binding commitment to sell the Z stock that X receives in the XYZ exchange to W, which is unrelated to X and Y.

(B) *Analysis: General application of component transaction rule.* X's binding commitment to sell the Z stock that it received in X's component transaction with regard to the XYZ exchange (that is, the larger transaction) causes the receipt of that stock to be disregarded for purposes of satisfying the control requirement in section 351(a). As a result, section 351(a) does not apply to either X or Y. Because X received 50 percent of the total shares of Z stock in the XYZ exchange, X's binding commitment to sell to W the Z stock that X received in the XYZ exchange forecloses qualification of that exchange under section 351. See paragraph (c)(5)(ii) of this section.

(C) *Analysis: Effect on X's component transaction.* Because the XYZ exchange fails to qualify under section 351, X's component transaction (that is, X's

transfer of property to Z solely in exchange for stock of Z) is treated as a covered recognition transaction with regard to X.

(D) *Analysis: Effect on Y's component transaction.* Because the XYZ exchange fails to qualify under section 351, Y's component transaction (that is, Y's transfer of property to Z solely in exchange for stock of Z) is treated as a covered recognition transaction with regard to Y.

(E) *Analysis: Effect on Z's two component transactions.* The failure of the XYZ exchange to qualify under section 351 does not affect the CAMT consequences of either of Z's two component transactions (which are Z's respective transfers of stock to X and Y in exchange for property transferred by those parties to Z). This result obtains because Z's qualification for nonrecognition treatment under section 1032(a) is not conditioned on the qualification of the XYZ exchange under section 351 or any other nonrecognition provision of the Code. Accordingly, each of Z's two component transactions of the XYZ exchange (that is, the larger transaction) qualifies as a covered nonrecognition transaction with regard to Z.

(viii) *Example 8: CAMT stock basis transition rule—(A) Facts.* X owns a minority interest in Y. On January 1, 2020, X's AFS basis in X's interest in Y was \$120x, and X's adjusted basis in X's Y stock for regular tax purposes was \$45x.

(B) *Analysis.* Under paragraph (c)(6) of this section, X's CAMT basis in X's Y stock is \$45x, subject to any subsequent adjustments required under this section and § 1.56A-19.

(ix) *Example 9: CAMT retained earnings—(A) Facts.* On January 1, 2020, X has \$340x of accumulated earnings and profits (as determined under section 312). In taxable years 2020, 2021, 2022, and 2023, X has CAMT current earnings of \$0x, \$50x, \$27x, and \$33x, respectively.

(B) *Analysis.* To determine X's CAMT retained earnings for the taxable year beginning January 1, 2024, under paragraph (b)(5)(i) of this section, X adds together X's earnings and profits as of the first day of X's taxable year beginning after December 31, 2019, or \$340x, and the cumulative balance of CAMT current earnings for taxable years beginning after December 31, 2019, or \$110x (\$0x + \$50x + \$27x + \$33x). As a result, X's CAMT retained earnings for the taxable year beginning January 1, 2024, are \$450x.

(d) *CAMT consequences of certain non-liquidating stock and property distributions—(1) Distributing*

corporation in covered nonrecognition transaction. If a distributing corporation distributes solely the distributing corporation's stock (or rights to acquire stock) or other property to a distribution recipient in a transaction that qualifies the distributing corporation for nonrecognition treatment under section 311(a) (that is, a covered nonrecognition transaction, determined using CAMT basis in lieu of AFS basis or regular tax basis), the distributing corporation—

(i) Determines the distributing corporation's AFSI resulting from the distribution by—

(A) Disregarding any resulting gain or loss reflected in the distributing corporation's FSI; and

(B) Applying section 311(a) to the distribution (that is, no AFSI is recognized by the distributing corporation); and

(ii) Adjusts the distributing corporation's CAMT earnings (in lieu of AFS retained earnings) resulting from the distribution by applying section 312 (by, for example, reference to CAMT basis).

(2) *Distributing corporation in covered recognition transaction.* Subject to paragraph (e) of this section, if a distributing corporation distributes property to a distribution recipient in a transaction in which section 311(b) applies to the distributing corporation (that is, a covered recognition transaction, determined using CAMT basis in lieu of AFS basis or regular tax basis), the distributing corporation—

(i) Determines the distributing corporation's AFSI resulting from the distribution by redetermining any gain or loss reflected in the distributing corporation's FSI by reference to the distributing corporation's CAMT basis (in lieu of AFS basis) in the distributed property; and

(ii) Adjusts the distributing corporation's CAMT earnings (in lieu of AFS retained earnings) resulting from the distribution based on the distributing corporation's AFSI.

(3) *Section 355(c) distributions in covered recognition transactions.* If a distributing corporation distributes property under section 355(c)(2) that results in any recognition treatment to the distributing corporation (that is, a covered recognition transaction), the distributing corporation—

(i) Determines the distributing corporation's AFSI resulting from the covered recognition transaction by redetermining any resulting gain or loss reflected in the distributing corporation's FSI by reference to the distributing corporation's CAMT basis in the property (in lieu of AFS basis); and

(ii) Adjusts the distributing corporation's CAMT earnings (in lieu of AFS retained earnings) resulting from the distribution based on the distributing corporation's AFSI.

(4) *Distribution recipient.* A distribution recipient in a covered transaction described in paragraph (d)(1) or (2) of this section—

(i) Determines the distribution recipient's AFSI resulting from that distribution by—

(A) Disregarding any resulting gain or loss reflected in the distribution recipient's FSI;

(B) Applying the relevant sections of the Code (for example, sections 243, 301, 302, 305, 306, and 1059 of the Code); and

(C) Using the amount of the distribution (distribution amount) of property other than the distributing corporation stock reflected on the distribution recipient's AFS, taking into account (for purposes of the relevant section of the Code) the distribution recipient's CAMT basis in its distributing corporation stock;

(ii) Determines the characterization of the distribution amount of property other than the distributing corporation stock (to the extent applicable) by applying the relevant section of the Code based on the CAMT earnings (in lieu of earnings and profits) of the distributing corporation;

(iii) Determines the distribution recipient's CAMT basis in the stock of the distributing corporation resulting from the distribution by applying the relevant sections of the Code, using the distribution recipient's CAMT basis in the stock in lieu of regular tax basis;

(iv) Determines the distribution recipient's CAMT basis in the property received from the distributing corporation by applying the relevant sections of the Code, using CAMT basis in lieu of AFS basis; and

(v) Adjusts (to the extent applicable) the distribution recipient's CAMT current earnings (in lieu of AFS retained earnings) resulting from the distribution by applying section 312 based on the distribution recipient's AFSI, as determined under paragraph (d)(4)(i) of this section.

(5) *Examples.* The following examples illustrate the application of the rules in this paragraph (d). For purposes of these examples, except as otherwise provided, each entity is a domestic corporation that uses the calendar year as its taxable year and is not a member of a tax consolidated group.

(i) *Example 1: Stock distribution—(A) Facts.* X owns 25 shares of the stock of Y. X's stock in Y has a fair market value of \$125x and a CAMT basis of \$60x. X

does not qualify for a dividends received deduction for any distribution from Y. Y distributes solely newly-issued stock to X (that is, a distribution recipient) in a transaction that qualifies X for nonrecognition treatment under section 305(a) and that qualifies Y (that is, the distributing corporation) for nonrecognition treatment under section 311(a). Y has CAMT earnings of \$100x.

(B) *Analysis: Treatment of distributing corporation.* Y's distribution of the additional shares of Y stock is a covered nonrecognition transaction. See paragraph (d)(1) of this section. As a result, in determining the amount of Y's AFSI resulting from the distribution, Y disregards any FSI reflected on Y's AFS resulting from the distribution, and Y applies section 311(a) to the distribution. No FSI is reflected in Y's AFS resulting from the distribution. Accordingly, Y has \$0x of AFSI resulting from the distribution. See paragraph (d)(1)(i) of this section. Y adjusts Y's CAMT earnings under section 312 by the amount of Y's AFSI resulting from the distribution, or \$0x. See paragraph (d)(1)(ii) of this section.

(C) *Analysis: Treatment of distribution recipient.* X's receipt of the additional Y stock is a covered nonrecognition transaction with regard to X. See paragraph (d)(1) of this section. In determining the amount of AFSI resulting from the distribution, X first disregards any FSI reflected in X's AFS, and X then applies section 305(a) to the distribution. See paragraph (d)(4)(i) of this section. Accordingly, X has \$0x of AFSI resulting from the distribution. X determines X's CAMT basis in the additional Y stock by applying section 307(a) and § 1.307-1(a), and therefore allocating CAMT basis in proportion to fair market value. See paragraph (d)(4)(iii) of this section. As a result, X allocates \$10x of X's existing CAMT basis in X's Y stock to the new Y stock ($[(\$25x/(\$125x + \$25x)) \times \$60x = \$10x]$). X adjusts X's CAMT earnings under section 312 by the amount of X's AFSI resulting from the distribution, or \$0x. See paragraph (d)(4)(v) of this section.

(ii) *Example 2: Property distribution—*(A) *Facts.* The facts are the same as in paragraph (d)(5)(i) of this section (*Example 1*), except that, instead of distributing additional shares of Y stock to X, Y distributes Asset 1 to X. Asset 1 has a fair market value of \$25x, a CAMT basis of \$15x, a regular tax basis of \$30x, and an AFS basis on Y's AFS of \$20x. Y's FSI is increased by \$5x ($\$25x - \$20x$) as a result of the distribution.

(B) *Analysis: Treatment of distributing corporation.* The determination of

whether section 311(a) or 311(b) applies to the distribution is determined using CAMT basis. As a result, Y's distribution of Asset 1 is a covered recognition transaction under section 311(b). See paragraph (d)(2) of this section. Thus, in determining the amount of Y's AFSI resulting from the distribution, Y uses Y's CAMT basis in lieu of Y's AFS basis in Asset 1 (in other words, Y redetermines any gain or loss reflected in Y's FSI by reference to Y's CAMT basis, in lieu of AFS basis in the distributed property). See paragraph (d)(2)(i) of this section. Accordingly, Y has \$10x ($\$25x - \$15x$) of AFSI resulting from the distribution. Y adjusts Y's CAMT earnings (in lieu of AFS retained earnings) upward by the amount of AFSI resulting from the distribution, or \$10x, and downward by the fair market value of the property distributed, or \$25x. See section 312(b) and paragraph (d)(2)(ii) of this section.

(C) *Analysis: Treatment of distribution recipient.* X's receipt of Asset 1 is a covered recognition transaction with regard to X. See paragraph (d)(2) of this section. In determining the amount of AFSI resulting from the distribution, X first disregards the \$25x of FSI reflected on X's AFS, and X then applies section 301 to the distribution. See paragraph (d)(4)(i) of this section. Under section 301(b)(1), the amount of the distribution is the fair market value of the property distributed, or \$25x. The characterization of the distribution is determined by reference to Y's CAMT earnings. See paragraph (d)(4)(ii) of this section. Because Y has sufficient CAMT earnings, under section 301(c)(1), the entire amount of the distribution is a dividend to X. Accordingly, X has \$25x of AFSI resulting from the distribution. X determines X's CAMT basis in Asset 1 by applying section 301(d), or \$25x. See paragraph (d)(4)(iv) of this section. X adjusts X's CAMT earnings under section 312 by the amount of X's AFSI resulting from the distribution, or \$25x. See paragraph (d)(4)(v) of this section.

(iii) *Example 3: Redemption—*(A) *Facts.* X owns 70 of the 200 outstanding shares of Y stock with an AFS basis of \$77x on X's AFS and a CAMT basis of \$1x per share, or \$70x. In 2024, Y redeems 50 shares from X for \$60x. After the redemption, X owns 20 ($70 - 50$) of the 150 outstanding shares of Y stock. X's CAMT basis in the redeemed shares is \$50x, and the AFS basis of the redeemed shares on X's AFS is \$55x. Y has CAMT earnings of \$100x. The imputed value of the 20 retained shares at the time of the redemption is \$24x ($[(\$60x/50) \times 20 = \$24x]$). X's CAMT basis in those shares is \$20x, and the

AFS basis of those shares on X's AFS is \$22x. As a result of the redemption, X reports on X's AFS gain of \$5x ($\$60x - \$55x = \$5x$) on the redeemed shares and gain of \$2x ($\$24x - \$22x = \$2x$) on the retained shares, and X records X's retained shares with a AFS basis of \$24x.

(B) *Analysis: Treatment of shareholder.* Under paragraph (d)(4)(i) of this section, in determining the amount of AFSI resulting from the redemption, X disregards any FSI reflected on X's AFS, and X applies section 302 to the redemption. Under paragraph (d)(4)(ii) of this section, X determines that the redemption qualifies under section 302(a). Accordingly, X has \$10x ($\$60x - \$50x$) of AFSI resulting from the redemption. Under paragraph (d)(4)(iii) of this section, the distribution does not affect the CAMT basis of X's retained stock. As a result, X holds X's retained Y stock with a CAMT basis of \$20x. Under paragraph (d)(4)(v) of this section, X adjusts X's CAMT earnings under section 312 by the amount of AFSI resulting from the redemption, or \$10x.

(iv) *Example 4: Dividends received deduction—*(A) *Facts.* The facts are the same as in paragraph (d)(5)(i) of this section (*Example 1*), except that, instead of distributing additional shares of Y stock to X, Y makes a pro rata distribution of cash to Y's shareholders out of Y's retained earnings, of which X receives \$25x. Additionally, X's 25 shares of Y stock constitute 10% of all the stock of Y. X records \$25x of FSI resulting from the distribution on X's AFS.

(B) *Analysis.* Under paragraph (d)(4)(i) of this section, in determining the amount of AFSI resulting from the distribution, X disregards the \$25x of FSI reflected in X's AFS, and X applies section 301 to the distribution. Under paragraph (d)(4)(ii) of this section, the characterization of the distribution is determined under the relevant provisions of the Code by reference to Y's CAMT earnings. Under sections 301(c)(1) and 243(a)(1), the entire amount of the distribution is a dividend to X that is eligible for a 50% dividends received deduction. Accordingly, X has \$12.5x ($\$25x - \$25x \times 50\%$) of AFSI resulting from the distribution. Under paragraph (d)(4)(v) of this section, X adjusts X's CAMT earnings under section 312 by the amount of the cash distribution, or \$25x.

(v) *Example 5: Extraordinary dividend—*(A) *Facts.* The facts are the same as in paragraph (d)(5)(iv)(A) of this section (*Example 4*), except that the distribution is an extraordinary

dividend within the meaning of section 1059(c) of the Code.

(B) *Analysis.* The analysis is the same as in paragraph (d)(5)(iv)(B) of this section (*Example 4*), except that, under paragraph (d)(4)(iii) of this section, the CAMT basis of X's stock in Y is reduced by \$12.5x (*see* section 1059(a)). In addition, X adjusts its CAMT earnings under section 312 by \$12.5x. *See* section 312(f)(2) and paragraph (d)(4)(v) of this section.

(e) *Section 336(e) elections—(1) Distributing corporation with regard to dispositions described in section 355(d)(2) or (e)(2).* If a distributing corporation distributes property under section 355(c) or 361(c) that results in any recognition treatment to the distributing corporation (that is, a covered recognition transaction), and if the distribution is the subject of a section 336(e) election described in § 1.336–2(b)(2), the distributing corporation determines the distributing corporation's AFSI by—

(i) Disregarding any resulting gain or loss reflected in the distributing corporation's FSI;

(ii) Applying section 336(e) to the distribution (that is, no AFSI is recognized by the distributing corporation); and

(iii) If stock of the target corporation (that is, the controlled corporation) is sold, exchanged, or distributed outside of the section 355 transaction but is described in § 1.336–2(b)(2)(iii), applying section 336(e) to the sale, exchange, or distribution (that is, no AFSI is recognized by the distributing corporation).

(2) *Target corporation with regard to dispositions described in section 355(d)(2) or (e)(2).* As the result of a distribution described in paragraph (e)(1) of this section, the target corporation (that is, the controlled corporation)—

(i) Determines the target corporation's AFSI resulting from the deemed sale under section 336(e) by redetermining any resulting gain or loss reflected in the target corporation's FSI as being equal to the gain or loss that would result for regular tax purposes, determined by using the CAMT basis in the target corporation's assets rather than the basis in the target corporation's assets for regular tax purposes; and

(ii) Determines the target corporation's CAMT basis in the property received in the deemed purchase under section 336(e) to be equal to the target corporation's regular tax basis in that property as a result of that deemed purchase.

(3) *Distributing corporation shareholder or security holder with*

regard to dispositions described in section 355(d)(2) or (e)(2). A distributing corporation shareholder or security holder in a covered transaction described in paragraph (e)(1) of this section—

(i) Determines the distributing corporation shareholder's or security holder's AFSI resulting from the distribution by—

(A) Disregarding any resulting gain or loss reflected in the distributing corporation shareholder's or security holder's FSI and applying the relevant sections of the Code; and

(B) Using the distribution amount of the property other than distributing corporation stock reflected on the AFS of the distributing corporation shareholder or security holder, taking into account (for purposes of the relevant section of the Code) the CAMT basis of the distributing corporation shareholder or security holder in its distributing corporation stock;

(ii) Determines the characterization of the distribution of the property other than distributing corporation stock (to the extent applicable) by applying the relevant section of the Code based on the CAMT earnings (in lieu of earnings and profits) of the distributing corporation;

(iii) Determines the distributing corporation shareholder's or security holder's CAMT basis in the stock of the distributing corporation resulting from the distribution by applying the relevant section of the Code, using the CAMT basis of the distributing corporation shareholder or security holder in the stock (in lieu of basis for regular tax purposes);

(iv) Determines the distributing corporation shareholder's or security holder's CAMT basis in the property received from the distributing corporation by applying the relevant section of the Code, using CAMT basis (in lieu of AFS basis); and

(v) Adjusts the distributing corporation shareholder's or security holder's CAMT earnings (in lieu of AFS retained earnings) resulting from the distribution by applying section 312 (taking into account CAMT basis).

(4) *Distributing corporation with regard to distributions not described in section 355(d)(2) or (e)(2) for which a section 336(e) election is made.* If a distributing corporation distributes solely the distributing corporation's stock in a subsidiary corporation to a distribution recipient in a transaction that is the subject of a section 336(e) election described in § 1.336–2(b)(1), the distributing corporation determines the distributing corporation's AFSI resulting from the distribution by—

(i) Disregarding any resulting gain or loss reflected in the distributing corporation's FSI; and

(ii) Applying section 336(e) to the distribution (that is, no AFSI is recognized by the distributing corporation).

(5) *Target corporation with regard to distributions not described in section 355(d)(2) or (e)(2).* As the result of a distribution described in paragraph (e)(4) of this section, the target corporation determines the target corporation's AFSI resulting from the deemed sale under section 336(e) by redetermining any resulting gain or loss reflected in the target corporation's FSI to be equal to the gain or loss that would result for regular tax purposes, determined by using the CAMT basis in the target corporation's assets rather than the basis in the target corporation's assets for regular tax purposes.

(6) *New target corporation with regard to distributions not described in section 355(d)(2) or (e)(2).* As the result of a distribution described in paragraph (e)(4) of this section, the new target corporation (within the meaning of § 1.336–1(b)(3)) determines the new target corporation's CAMT basis in the property received in the deemed purchase under section 336(e) to be equal to the new target corporation's regular tax basis in that property as a result of that deemed purchase.

(7) *Example.* The following example illustrates the application of the rules in this paragraph (e).

(i) *Facts.* Distributing is a distributing corporation, and Controlled is a controlled corporation. Each of Distributing and Controlled is a domestic corporation that uses the calendar year as its taxable year and is not a member of a tax consolidated group. On February 1, 2024, Distributing contributes assets with a fair market value of \$100x, a regular tax basis of \$65x, and a CAMT basis of \$60x to Controlled in exchange for all the stock of Controlled (Contribution), and Distributing distributes all the stock of Controlled to Distributing's shareholders pro rata (Distribution). The Contribution and Distribution qualify as a section 355 transaction, but the Distribution is taxable under section 355(e). Because the Distribution is described in section 355(e), Distributing makes a section 336(e) election described in § 1.336–2(b)(2) with respect to the Distribution.

(ii) *Analysis.* Under paragraph (e)(1) of this section, in determining the amount of AFSI resulting from the Distribution, Distributing disregards any FSI resulting from the Distribution, and X applies section 336(e) to the

Distribution. Accordingly, Distributing has \$0x of AFSI resulting from the Distribution. Under paragraph (e)(2)(i) of this section, the target corporation (that is, Controlled) applies section 336(e) and redetermines Controlled's AFSI to be Controlled's gain or loss for regular tax purposes, determined by using its CAMT basis in its assets rather than its regular tax basis in its assets, or \$40x (\$100x – \$66x). Under paragraph (e)(2)(ii) of this section, Controlled's CAMT basis in Controlled's assets is Controlled's regular tax basis, or \$100x.

(f) *CAMT consequences of certain liquidating distributions*—(1) *Liquidating corporation in covered nonrecognition transaction.* If a liquidating corporation distributes property to a liquidation recipient in a transaction that qualifies the liquidating corporation solely for nonrecognition treatment under section 337(a) (that is, a covered nonrecognition transaction), the liquidating corporation—

(i) Determines the liquidating corporation's AFSI resulting from the liquidation by—

(A) Disregarding any resulting gain or loss reflected in the liquidating corporation's FSI; and

(B) Applying section 337(a) to the one or more liquidating distributions composing the liquidation (that is, no AFSI is recognized by the liquidating corporation); and

(ii) Adjusts the liquidating corporation's CAMT retained earnings (in lieu of AFS retained earnings) resulting from the liquidation by applying section 312 based on the liquidating corporation's AFSI, as determined under paragraph (f)(1)(i) of this section.

(2) *Liquidating corporation in covered recognition transaction.* If a liquidating corporation distributes property to a liquidation recipient in a transaction in which section 336(a) applies to the liquidating corporation, or in a corporate dissolution of the liquidating corporation (each, a covered recognition transaction), the liquidating corporation—

(i) Determines the liquidating corporation's AFSI, if any, resulting from the one or more liquidating distributions composing the liquidation or corporate dissolution by redetermining any resulting gain or loss reflected in the liquidating corporation's FSI by reference to the CAMT basis in the liquidating corporation's liquidated property (in lieu of AFS basis); and

(ii) Adjusts the liquidating corporation's CAMT retained earnings (in lieu of AFS retained earnings) based on the liquidating corporation's AFSI, as

determined under paragraph (f)(2)(i) of this section.

(3) *Component transactions of a liquidation consisting of covered recognition and covered nonrecognition transactions.* If a liquidating corporation distributes property to at least one liquidation recipient in a covered nonrecognition transaction to the liquidating corporation and transfers property to at least one liquidation recipient in a covered recognition transaction to the liquidating corporation, the liquidating corporation determines the liquidating corporation's aggregate resulting AFSI and CAMT retained earnings by treating each of the following component transactions separately—

(i) Each component transaction that is a covered nonrecognition transaction to the liquidating corporation; and

(ii) Each component transaction that is a covered recognition transaction to the liquidating corporation.

(4) *Consequences to liquidation recipient in covered nonrecognition transaction.* A liquidation recipient in a covered nonrecognition transaction described in paragraph (f)(1) of this section—

(i) Determines the liquidation recipient's AFSI resulting from the one or more liquidating distributions received by the liquidation recipient by—

(A) Disregarding any resulting gain or loss reflected in the liquidation recipient's FSI; and

(B) Applying section 332 to the one or more liquidating distributions received by the liquidation recipient (that is, no AFSI is recognized by the liquidation recipient);

(ii) Determines the liquidation recipient's CAMT basis in the property received from the liquidating corporation by applying section 334(b), using the CAMT basis of the property received by the liquidation recipient (in lieu of basis for regular tax purposes);

(iii) Adjusts the liquidation recipient's CAMT retained earnings (in lieu of AFS retained earnings) resulting from the one or more liquidating distributions received by the liquidation recipient by applying sections 381(c)(2) and 312; and

(iv) Applying section 381 to the liquidating corporation's other attributes (that is, the liquidation recipient succeeds to the liquidating corporation's other attributes).

(5) *Consequences to liquidation recipient in covered recognition transaction.* A liquidation recipient in a covered recognition transaction described in paragraph (f)(2) of this section—

(i) Determines the liquidation recipient's AFSI resulting from the one or more liquidating distributions by redetermining any resulting gain or loss reflected in the liquidation recipient's FSI by reference to the liquidation recipient's CAMT basis in the liquidation recipient's stock in the liquidating corporation (in lieu of AFS basis);

(ii) Determines the liquidation recipient's CAMT basis in the property received by the liquidation recipient to be equal to the liquidation recipient's AFS basis in that property; and

(iii) Adjusts the liquidation recipient's CAMT earnings (in lieu of earnings and profits) based on the liquidation recipient's AFSI, as determined under paragraph (f)(5)(i) of this section.

(6) *Examples.* The following examples illustrate the application of the rules in this paragraph (f). For purposes of these examples, except as otherwise provided, each entity is a domestic corporation that uses the calendar year as its taxable year and is not a member of a tax consolidated group.

(i) *Example 1: Nonrecognition subsidiary liquidation*—(A) *Facts.* X owns all of the interests in Y, an LLC treated as a corporation for Federal income tax purposes, with a CAMT basis of \$70x and a fair market value of \$100x. Y has one asset (Asset 1) with a CAMT basis of \$45x and a fair market value of \$100x. Y has a FSNOL of \$200x. Y has CAMT earnings of \$50x, and X has CAMT retained earnings of \$300x. X dissolves Y under State law and reports the dissolution on an original Form 966, *Corporate Dissolution or Liquidation*.

(B) *Analysis: Liquidating corporation.* The dissolution of Y is a covered nonrecognition transaction. Under paragraph (f)(1)(i) of this section, in determining the amount of Y's AFSI resulting from the dissolution, Y disregards any FSI reflected in its AFS resulting from the dissolution, and Y applies section 337(a) to the dissolution. Accordingly, Y has \$0x of AFSI resulting from the dissolution. Under paragraph (f)(1)(ii) of this section, Y adjusts Y's CAMT retained earnings by applying section 312 based on the amount of AFSI, or \$0x.

(C) *Analysis: Liquidation recipient.* Under paragraph (f)(4)(i) of this section, in determining the amount of X's AFSI resulting from the dissolution of Y, X disregards any FSI reflected in X's AFS resulting from the liquidating distribution from Y, and X applies section 332 to the liquidating distribution. Accordingly, X has \$0x of AFSI resulting from the dissolution. Under paragraph (f)(4)(ii) of this section,

X determines X's CAMT basis in Asset 1 by applying section 334(b), using the CAMT basis in the hands of Y, or \$45x. Under paragraph (f)(4)(iii) of this section, X succeeds to Y's CAMT earnings. See sections 381(c)(2) and 312. Under paragraph (f)(4)(iv) of this section, X succeeds to Y's FSNOL.

(ii) *Example 2: Component transactions*—(A) *Facts*. X owns 85% of the stock of Y with a fair market value of \$85x, an AFS basis of \$60x, and a CAMT basis of \$40x. Unrelated Z owns the remaining 15% of the stock of Y with a fair market value of \$15x, an AFS basis of \$20x, and a CAMT basis of \$10x. X and Y do not file a consolidated financial statement. Y's assets include \$10x cash, Asset 1, and Asset 2. Asset 1 has a fair market value of \$13x, an AFS basis of \$19x, and a CAMT basis of \$10x. Asset 2 has a fair market value of \$77x, an AFS basis of \$50x, and a CAMT basis of \$40x. Y's CAMT retained earnings are \$50x. X and Z determine to dissolve Y, and they report the dissolution on an original Form 966, *Corporate Dissolution or Liquidation*. Y distributes Asset 1 and \$2x cash to Z, and Y distributes Asset 2 and \$8x cash to X, in exchange for each shareholder's Y stock.

(B) *Analysis: In general*. The dissolution of Y is a covered nonrecognition transaction to Y with respect to the liquidating distribution to X, and a covered recognition transaction to Y with respect to the liquidating distribution to Z. Under paragraph (f)(3) of this section, Y determines Y's AFSI and CAMT retained earnings by treating the component transactions separately.

(C) *Analysis: Covered nonrecognition transaction*. The liquidating distribution to X is a covered nonrecognition transaction. Under paragraph (f)(1)(i) of this section, in determining the amount of Y's AFSI resulting from the distribution to X, Y disregards any FSI reflected in Y's AFS resulting from the distribution to X, and Y applies section 337(a) to the distribution. Accordingly, Y has \$0x of AFSI resulting from the distribution to X. Under paragraphs (f)(1)(ii) and (f)(3) of this section, Y adjusts Y's CAMT retained earnings by applying section 312 based on the amount of AFSI, or \$0x. Under paragraph (f)(4)(i) of this section, in determining the amount of X's AFSI resulting from the dissolution of Y, X disregards any FSI reflected in X's AFS resulting from the liquidating distribution from Y, and X applies section 332 to the liquidating distribution. Accordingly, X has \$0x of AFSI resulting from the dissolution. Under paragraph (f)(4)(ii) of this section, X determines X's CAMT basis in Asset

2 by applying section 334(b), using the CAMT basis in the hands of Y, or \$40x. Under paragraph (f)(4)(iii) of this section, X succeeds to Y's CAMT earnings. See sections 381(c)(2) and 312.

(D) *Analysis: Covered recognition transaction*. The liquidating distribution to Z is a covered recognition transaction. Under paragraph (f)(2)(i) of this section, in determining the amount of Y's AFSI resulting from the distribution to Z, Y redetermines any resulting gain or loss reflected in Y's FSI using Y's CAMT basis in Asset 1. Accordingly, Y has \$3x of AFSI resulting from the liquidating distribution to Z. Under paragraph (f)(2)(ii) of this section, Y adjusts Y's CAMT earnings based on Y's AFSI resulting from the liquidating distribution to Z, or \$3x and reduces them by the CAMT basis of the property, or \$10x, and \$2x cash distributed to Z. Under paragraph (f)(5)(i) of this section, in determining the amount of Z's AFSI resulting from the dissolution of Y, Z redetermines any resulting gain or loss reflected in Z's FSI using Z's CAMT basis in Z's Y stock, or \$5x (\$13x + \$2x - \$10x). Under paragraph (f)(5)(ii) of this section, Z takes a CAMT basis in Asset 1 equal to Z's AFS basis in Asset 1, or \$13x. Under paragraph (f)(5)(iii) of this section, Z adjusts Z's CAMT retained earnings based on Z's AFSI resulting from the dissolution of Y, or \$5x.

(g) *CAMT consequences of stock sales*—(1) *Target corporation shareholder*—(i) *In general*. Except as provided in paragraph (g)(1)(ii) of this section, if a target corporation shareholder transfers target corporation stock to an acquiror corporation in a transaction that results in recognition of gain or loss to the target corporation shareholder in a transaction described in section 304 or 1001 of the Code (each, a covered recognition transaction), the target corporation shareholder—

(A) Determines the target corporation shareholder's AFSI resulting from the covered recognition transaction by redetermining any resulting gain or loss reflected in the target corporation shareholder's FSI by reference to the target corporation shareholder's CAMT basis (in lieu of AFS basis) of the transferred stock;

(B) Determines the target corporation shareholder's CAMT basis in the property received from the acquiror corporation to be equal to the target corporation shareholder's AFS basis in that property; and

(C) Adjusts (to the extent applicable) the target corporation shareholder's CAMT current earnings (in lieu of AFS retained earnings) based on the target

corporation shareholder's AFSI, as determined under paragraph (g)(1)(i)(A) of this section.

(ii) *Stock sales for which a section 336(e) or 338(h)(10) election is made*. If the transfer of stock described in paragraph (g)(1)(i) of this section is the subject of an election under section 336(e) or 338(h)(10) of the Code—

(A) Paragraph (g)(1)(i) of this section does not apply to the target corporation shareholder, and the transfer of target corporation stock by the target corporation shareholder is disregarded; and

(B) The target corporation shareholder adjusts (to the extent applicable) the target corporation shareholder's CAMT current earnings (in lieu of AFS retained earnings) to take into account the deemed liquidation of the target corporation under section 336(e) or 338(h)(10) (as appropriate).

(2) *Target corporation*—(i) *In general*. Except as provided in paragraph (g)(2)(ii) of this section, no CAMT consequences to the target corporation result from a transfer described in paragraph (g)(1)(i) of this section.

(ii) *Stock sales for which a section 336(e), 338(g), or 338(h)(10) election is made*. If the transfer described in paragraph (g)(1)(i) of this section is the subject of an election under section 336(e), 338(g), or 338(h)(10) (that is, a covered recognition transaction), the target corporation determines the target corporation's AFSI resulting from the deemed sale under that election by redetermining any resulting gain or loss reflected in the target corporation's FSI to be equal to the gain or loss that would result for regular tax purposes, determined by using the CAMT basis in the target corporation's assets rather than the basis in the target corporation's assets for regular tax purposes.

(3) *Acquiror corporation*. If an acquiror corporation transfers property (including stock) to a target corporation shareholder in a transaction described in section 304 or 1001 (each, a covered recognition transaction), the acquiror corporation—

(i) Determines the acquiror corporation's AFSI resulting from the covered recognition transaction by redetermining any resulting gain or loss reflected in the acquiror corporation's FSI by reference to the acquiror corporation's CAMT basis (in lieu of AFS basis) in the acquiror corporation's transferred property;

(ii) Determines the acquiror corporation's CAMT basis in the target corporation stock received from the target corporation shareholder to be equal to the acquiror corporation's AFS basis in that property; and

(iii) Adjusts (to the extent applicable) the acquiror corporation's CAMT current earnings (in lieu of AFS retained earnings) based on the acquiror corporation's AFSI, as determined under paragraph (g)(3)(i) of this section.

(4) *New target corporation.* If the transfer described in paragraph (g)(1)(i) of this section is the subject of an election under section 336(e), 338(g), or 338(h)(10) (that is, a covered recognition transaction), the new target corporation determines the new target corporation's CAMT basis in the property deemed to be received from the target corporation to be equal to the new target corporation's regular tax basis in that property as a result of that election.

(5) *Section 304 transactions.* For purposes of this section, section 304 does not apply to any acquisition of stock of a corporation.

(6) *Examples.* The following examples illustrate the application of the rules in this paragraph (g). For purposes of these examples, each entity is a domestic corporation that uses the calendar year as its taxable year and is not a member of a tax consolidated group.

(i) *Example 1: Acquisition of stock of a target corporation—(A) Facts.*

Acquiror acquires all the stock of Target from X for \$100x cash. At the time of Target's acquisition by Acquiror, Target's assets have a CAMT basis of \$15x and a value of \$30x, and X has \$40x of CAMT basis in X's Target stock.

(B) *Analysis.* Acquiror's acquisition of Target is a covered recognition transaction. Under paragraph (g)(3)(ii) of this section, Acquiror takes a \$100x CAMT basis in the stock of Target. Under paragraph (g)(2)(i) of this section, Target has no CAMT consequences from the transaction, and Target's \$15x of CAMT basis in its assets is unaffected by the transaction. Under paragraph (g)(1)(i)(A) of this section, X disregards any FSI reflected in X's AFS resulting from the transaction and uses X's CAMT basis in the Target stock to determine X's AFSI. As a result, X recognizes \$60x of AFSI on the sale of the Target stock (\$100x – \$40x = \$60x).

(ii) *Example 2: Covered recognition transaction stock sale: section*

338(h)(10) election—(A) Facts. The facts are the same as in paragraph (g)(6)(i)(A) of this section (*Example 1*), except that X is the common parent of a consolidated group of which Target is a member, and Acquiror and X make a section 338(h)(10) election with respect to the purchase of Target.

(B) *Analysis.* Because of the section 338(h)(10) election, old Target is treated as selling all of old Target's assets to an unrelated buyer for \$100x, then liquidating and distributing the \$100x to

X. Then, new Target is treated as purchasing all of old Target's assets from an unrelated seller for \$100x.

Under paragraph (g)(1)(ii)(A) of this section, the transfer of the Target stock to Acquiror is disregarded. Under paragraph (g)(1)(ii)(B) of this section, X adjusts X's CAMT earnings to succeed to old Target's CAMT earnings (including old Target's earnings on the deemed sale of old Target's assets). Under paragraph (g)(2)(ii) of this section, old Target's AFSI on the deemed sale of old Target's assets determined using old Target's CAMT basis in those assets, or \$85x (\$100x – \$15x). Under paragraph (g)(4) of this section, new Target's CAMT basis of new Target's assets is new Target's regular tax basis, or \$100x.

(iii) *Example 3: Covered recognition transaction stock sale: section 336(e) election—(A) Facts.* X owns all the stock of Target. The Target stock has a fair market value of \$100x, a CAMT basis of \$35x, and a regular tax basis of \$40x. Target has assets with a fair market value of \$100x, CAMT basis of \$60x, and regular tax basis of \$65x. Target has outstanding 100 shares of a single class of stock. On February 1, 2024, X sells 35 shares of Target stock to Y. On July 1, 2024, X sells 40 shares of Target stock to Z. On December 31, 2024, X sells the remaining 25 shares of Target stock to W. Y, Z, and W are each CAMT entities unrelated to X and unrelated to each other. X makes a section 336(e) election with respect to the disposition of Target.

(B) *Analysis.* Under paragraph (g)(2)(ii) of this section, old Target determines old Target's AFSI by redetermining any FSI appearing on old Target's AFS to be old Target's gain for regular tax purposes, except computed using old Target's CAMT basis in its assets, or \$40x (\$100x – \$60x). Under paragraph (g)(4) of this section, new Target's CAMT basis in new Target's assets is equal to new Target's regular tax basis in those assets, or \$100x.

(h) *CAMT consequences of asset sales—(1) Target corporation.* If a target corporation transfers property (including stock) to an acquiror corporation in a transaction that results in recognition of gain or loss to the target corporation under section 1001 (that is, a covered recognition transaction), the target corporation—

(i) Determines the target corporation's AFSI resulting from the covered recognition transaction by redetermining any resulting gain or loss reflected in the target corporation's FSI by reference to the target corporation's CAMT basis (in lieu of AFS basis) in the target corporation's transferred property;

(ii) Determines the target corporation's CAMT basis in the property received from the acquiror corporation to be equal to the target corporation's AFS basis in that property; and

(iii) Adjusts (to the extent applicable) the target corporation's CAMT current earnings (in lieu of AFS retained earnings) based on the target corporation's AFSI, as determined under paragraph (h)(1)(i) of this section.

(2) *Acquiror corporation.* If an acquiror corporation transfers property (including stock) to a target corporation in a transaction that results in recognition of gain or loss to the acquiror corporation under section 1001 (that is, a covered recognition transaction), the acquiror corporation—

(i) Determines the acquiror corporation's AFSI resulting from the covered recognition transaction by redetermining any resulting gain or loss reflected in the acquiror corporation's FSI by reference to the acquiror corporation's CAMT basis (in lieu of AFS basis) in the acquiror corporation's transferred property;

(ii) Determines the acquiror corporation's CAMT basis in the property received from the target corporation to be equal to the acquiror corporation's AFS basis in that property; and

(iii) Adjusts (to the extent applicable) the acquiror corporation's CAMT current earnings (in lieu of AFS retained earnings) based on the acquiror corporation's AFSI, as determined under paragraph (h)(2)(i) of this section.

(3) *Example.* The following example illustrates the application of the rules in this paragraph (h).

(i) *Facts.* Each of unrelated X and Y is a domestic corporation that uses the calendar year as its taxable year. X sells Asset 1 to Y in exchange for Asset 2 in a covered recognition transaction under section 1001. Asset 1 has a CAMT basis in X's hands of \$40x and a fair market value of \$100x. Asset 2 has a CAMT basis in Y's hands of \$65x and a fair market value of \$100x. After the transaction, X records Asset 2 on X's AFS at its fair value of \$100x, and Y records Asset 1 on Y's AFS at its fair value of \$100x.

(ii) *Analysis—(A) X.* Under paragraph (h)(1)(i) of this section, in determining the amount of X's AFSI resulting from the sale of Asset 1, X redetermines any resulting gain or loss reflected in X's FSI using its CAMT basis in Asset 1. Accordingly, X has \$60x of AFSI (\$100x – \$40x) resulting from the sale. Under paragraph (h)(1)(ii) of this section, X takes a CAMT basis in Asset 2 equal to X's AFS basis in Asset 2, or

\$100x. Under paragraph (h)(1)(iii) of this section, X adjusts X's CAMT current earnings based on X's AFSI resulting from the exchange, or \$60x.

(B) Y. Under paragraph (h)(2)(i) of this section, in determining the amount of Y's AFSI resulting from the acquisition of Asset 1, Y redetermines any resulting gain or loss reflected in Y's FSI using its CAMT basis in Asset 2. Accordingly, Y has \$35x of AFSI (\$100x – \$65x) resulting from the acquisition. Under paragraph (h)(2)(ii) of this section, Y takes a CAMT basis in Asset 1 equal to Y's AFS basis in Asset 1, or \$100x. Under paragraph (h)(2)(iii) of this section, Y adjusts Y's CAMT current earnings based on Y's AFSI resulting from the exchange, or \$35x.

(i) *Applicability date.* This section applies to taxable years ending after [DATE OF PUBLICATION OF FINAL RULE IN THE Federal Register].

§ 1.56A–19 AFSI, CAMT basis, and CAMT retained earnings resulting from certain corporate reorganizations and organizations.

(a) *Overview.* This section provides rules under section 56A(c)(2)(C) and (c)(15)(B) of the Code for determining the AFSI, CAMT basis, and CAMT earnings consequences of certain corporate reorganizations with respect to which a domestic corporate CAMT entity and an individual or other CAMT entity, including a CAMT entity that is a shareholder of a domestic corporate CAMT entity, is a party, and section 351 exchanges. This section incorporates the definitions in § 1.56A–18. Paragraph (b) of this section provides rules for determining the CAMT consequences of B reorganizations. Paragraph (c) of this section provides rules for determining the CAMT consequences of certain acquisitive reorganizations. Paragraph (d) of this section provides rules for determining the CAMT consequences of section 355 transactions. Paragraph (e) of this section provides rules for determining the CAMT consequences of E reorganizations. Paragraph (f) of this section provides rules for determining the CAMT consequences of F reorganizations. Paragraph (g) of this section provides rules for determining the CAMT consequences of section 351 exchanges. Paragraph (h) of this section provides the applicability date of this section. For rules coordinating the application of this section with § 1.56A–4, see § 1.56A–18(a)(2)(ii).

(b) *CAMT consequences of B reorganizations—*(1) *Target corporation shareholder or security holder in covered nonrecognition transaction.* If a target corporation shareholder or security holder transfers solely stock or

securities to an acquiror corporation in a B reorganization that qualifies the target corporation shareholder or security holder for nonrecognition treatment under section 354 of the Code (that is, a covered nonrecognition transaction), the target corporation shareholder or security holder—

(i) Determines the target corporation shareholder's or security holder's AFSI resulting from the transfer by—

(A) Disregarding any resulting gain or loss reflected in the target corporation shareholder's or security holder's FSI; and

(B) Applying section 354 to the transfer (that is, no AFSI is recognized by the target corporation shareholder or security holder);

(ii) Determines the target corporation shareholder's or security holder's CAMT basis in the stock received from the acquiror corporation by applying section 358 of the Code using the CAMT basis (in lieu of AFS basis) of the stock or securities transferred by the target corporation shareholder or security holder to the acquiror corporation; and

(iii) Adjusts the target corporation shareholder's or security holder's CAMT current earnings (in lieu of AFS retained earnings) resulting from the covered nonrecognition transaction by applying section 312 of the Code.

(2) *Target corporation shareholder or security holder in covered recognition transaction.* If a target corporation shareholder or security holder receives stock or securities and other property (or solely property other than stock or securities) from an acquiror corporation in exchange for target corporation stock or securities (that is, in a transaction that fails to qualify as a B reorganization (a covered recognition transaction)), see, for example, § 1.56A–18(g), which provides rules for determining the CAMT consequences of stock sales, and paragraph (g) of this section, which provides rules for determining the CAMT consequences of section 351(b) transactions.

(3) *Acquiror corporation in covered nonrecognition transaction.* If an acquiror corporation transfers solely stock to a target corporation shareholder as part of a B reorganization that qualifies the acquiror corporation for nonrecognition treatment under section 1032(a) of the Code or section 1032(a) and § 1.1032–2(b) (that is, a covered nonrecognition transaction), the acquiror corporation—

(i) Determines the acquiror corporation's AFSI resulting from the covered nonrecognition transaction by—

(A) Disregarding any resulting gain or loss reflected in the acquiror corporation's FSI; and

(B) Applying section 1032(a), or section 1032(a) and § 1.1032–2(b) to the transfer (that is, no AFSI is recognized by the acquiror corporation);

(ii) Determines the acquiror corporation's CAMT basis in the stock received from a target corporation shareholder by applying section 362 of the Code using the CAMT basis (in lieu of AFS basis) of that stock in the hands of the target corporation shareholder; and

(iii) Adjusts the acquiror corporation's CAMT retained earnings (in lieu of AFS retained earnings) resulting from the covered nonrecognition transaction by applying section 312.

(4) *Acquiror corporation in covered recognition transaction—*(i) *Failure to qualify as B reorganization.* If an acquiror corporation transfers stock and other property (or solely property other than stock) to a target corporation shareholder described in paragraph (b)(1) of this section in exchange for target corporation stock (that is, a covered recognition transaction), paragraphs (b)(1) through (3) of this section do not apply. See § 1.56A–18(g), which provides rules for determining the CAMT consequences of stock sales, and paragraph (g) of this section, which provides rules for determining the CAMT consequences of section 351(b) transactions.

(ii) *Failure to qualify under § 1.1032–2(b).* If an acquiror corporation transfers solely stock of the acquiror corporation parent to a target corporation shareholder as part of a B reorganization that does not satisfy § 1.1032–2(b) with regard to all acquiror corporation parent stock (that is, a covered recognition transaction solely with regard to the acquiror corporation parent stock that does not satisfy § 1.1032–2(b)), then solely with regard to the acquiror corporation parent stock that does not qualify under § 1.1032–2(b), see § 1.56A–18(g), which provides rules for determining the CAMT consequences of stock sales.

(5) *Acquiror corporation parent in covered nonrecognition transaction.* If an acquiror corporation transfers solely stock of the acquiror corporation parent to a target corporation shareholder as part of a B reorganization that qualifies the acquiror corporation for nonrecognition treatment under section 1032(a) and § 1.1032–2(b) (that is, a covered nonrecognition transaction), the acquiror corporation parent adjusts its CAMT basis in its acquiror corporation stock pursuant to § 1.358–6.

(6) *Acquiror corporation parent in covered recognition transaction—*(i) *Use of old and cold parent stock with qualifying B reorganization.* If an

acquiror corporation transfers solely stock of the acquiror corporation parent to a target corporation shareholder as part of a B reorganization that does not satisfy § 1.1032-2(b) with regard to all acquiror corporation parent stock (that is, a covered recognition transaction solely with regard to the acquiror corporation parent stock that does not satisfy § 1.1032-2(b)), the acquiror corporation parent adjusts its CAMT basis in its acquiror corporation stock pursuant to § 1.358-6.

(ii) *Use of parent stock with transaction that does not qualify as a B reorganization.* If an acquiror corporation transfers stock of the acquiror corporation parent and other property to a target corporation shareholder in exchange for target corporation stock (that is, a covered recognition transaction), with regard to all acquiror corporation parent stock transferred by the acquiror corporation, the acquiror corporation parent adjusts its CAMT basis in its acquiror corporation stock pursuant to § 1.1032-3.

(7) *Examples.* The following examples illustrate the application of the rules in this paragraph (b). For purposes of these examples, each entity is a domestic corporation that uses the calendar year as its taxable year and is not a member of a tax consolidated group.

(i) *Example 1: Covered nonrecognition transaction—(A) Facts.* During the taxable year, Acquiror acquires all the stock of Target from X for 100 shares of Acquiror's voting stock in a transaction that qualifies as a B reorganization. At the time of the transaction, X's stock in Target has a CAMT basis of \$35× and a fair market value of \$100× and Target has a CAMT basis of \$30× in its assets.

(B) *Analysis.* Acquiror's acquisition of Target from X is a covered nonrecognition transaction to each of Acquiror and X. Under paragraph (b)(1)(i)(A) of this section, X disregards any FSI reflected in its AFS resulting from the exchange of Target stock for Acquiror stock. Under paragraph (b)(1)(i)(B) of this section, X records \$0× in AFSI on the exchange. Under paragraph (b)(1)(ii) of this section, X takes the Acquiror stock received in the exchange with a CAMT basis of \$35×. Under paragraph (b)(1)(iii) of this section, X adjusts its CAMT retained earnings by the amount of AFSI resulting from the exchange, or \$0×. Under paragraph (b)(3)(i) of this section, Acquiror disregards any FSI reflected in its AFS resulting from the exchange of Acquiror stock for Target stock and under paragraph (b)(3)(i) of this section, Acquiror records \$0× in AFSI on the exchange. Under paragraph (b)(3)(ii) of

this section, Acquiror takes the Target stock with a \$35× CAMT basis. Under paragraph (b)(3)(iii) of this section, Acquiror adjusts its CAMT retained earnings by the amount of AFSI resulting from the exchange, or \$0×. Under § 1.56A-18(g)(2)(i), Target has no CAMT consequences from the transaction, and Target's \$30× of CAMT basis in its assets is unaffected by the transaction.

(ii) *Example 2: Covered recognition transaction.* The facts are the same as in paragraph (b)(7)(i) of this section (*Example 1*), except that Acquiror acquires the Target stock for 90 shares of Acquiror voting stock and 10 shares of Acquiror nonqualified preferred stock (within the meaning of section 351(g)). Under paragraph (b)(2) of this section, Acquiror's acquisition of Target from X is a covered recognition transaction. Under § 1.56A-18(g)(1)(i)(A), X disregards any FSI reflected in its AFS resulting from the transaction and uses its CAMT basis in the Target stock in determining its AFSI. As a result, X recognizes \$65× of AFSI on the sale of the Target stock ($\$100 \times - \$35 \times = \$65 \times$). Under § 1.56A-18(g)(2)(i), Target has no CAMT consequences from the transaction, and Target's \$30× of CAMT basis in its assets is unaffected by the transaction. Under § 1.56A-18(g)(3)(ii), Acquiror takes a \$100× CAMT basis in the stock of Target.

(c) *CAMT consequences of certain acquisitive reorganizations—(1) Target corporation in a covered nonrecognition transaction—(i) Reorganization exchanges.* If a target corporation transfers property to an acquiror corporation in an acquisitive reorganization that qualifies the target corporation solely for nonrecognition treatment under section 361 of the Code (that is, a covered nonrecognition transaction), the target corporation—

(A) Determines the target corporation's AFSI resulting from the transfer by disregarding any resulting gain or loss reflected in the target corporation's FSI and applying section 361(a) and (b) to the transfer (that is, no AFSI is recognized by the target corporation);

(B) Determines the target corporation's CAMT basis in the property received from the acquiror corporation by applying section 358 using the CAMT basis (in lieu of AFS basis) of the property transferred by the target corporation to the acquiror corporation; and

(C) Adjusts the target corporation's CAMT earnings (in lieu of AFS retained earnings) resulting from the covered nonrecognition transaction by applying section 312.

(ii) *Section 361(c) distributions.* As part of an acquisitive reorganization, if a target corporation distributes or transfers qualified property to a target corporation shareholder, or to a target corporation creditor, that qualifies solely for nonrecognition treatment to the target corporation under section 361(c), the target corporation determines its AFSI resulting from the transfer by—

(A) Disregarding any resulting gain or loss reflected in the target corporation's FSI; and

(B) Applying section 361(c) to the distribution (that is, no AFSI is recognized by the target corporation).

(2) *Target corporation in covered recognition transaction.* As part of an acquisitive reorganization, if a target corporation distributes or transfers property to a target corporation shareholder or security holder or target corporation creditor under section 361(c) that results in the recognition of gain to the target corporation (that is, a covered recognition transaction), the target corporation—

(i) Determines the target corporation's AFSI resulting from the distribution or transfer by redetermining any resulting gain or loss reflected in the target corporation's FSI by reference to its CAMT basis in the distributed or transferred property (in lieu of AFS basis); and

(ii) Adjusts the target corporation's CAMT earnings (in lieu of AFS retained earnings) based on the target corporation's AFSI, as determined under paragraph (c)(1)(ii)(A) of this section.

(3) *Acquiror corporation qualification for covered nonrecognition transaction.* If an acquiror corporation transfers solely stock, or stock and money or other property, to a target corporation as part of an acquisitive reorganization that qualifies the acquiror corporation for nonrecognition treatment under section 1032(a) or section 1032(a) and § 1.1032-2(b) (that is, a covered nonrecognition transaction), the acquiror corporation—

(i) Determines the acquiror corporation's AFSI resulting from the covered nonrecognition transaction by—

(A) Disregarding any resulting gain or loss reflected in the acquiror corporation's FSI; and

(B) Applying section 1032(a), or section 1032(a) and § 1.1032-2(b), to the transfer (that is, no AFSI is recognized by the acquiror corporation);

(ii) Determines the acquiror corporation's CAMT basis in the property received from the target corporation by applying section 362 using the CAMT basis (in lieu of AFS basis) of that property;

(iii) Adjusts the acquiror corporation's CAMT retained earnings (in lieu of AFS retained earnings) resulting from the covered nonrecognition transaction by applying sections 381(c)(2) and 312 of the Code; and

(iv) Applies section 381 to the target corporation's other attributes (that is, the acquiror corporation succeeds to the target corporation's other attributes).

(4) *Acquiror corporation in covered recognition transaction*—(i) *Failure to qualify as an asset reorganization*. If an acquiror corporation transfers stock and other property (or solely property other than stock) to a target corporation shareholder described in paragraph (b)(1) of this section in exchange for target corporation stock (that is, a covered recognition transaction), paragraphs (c)(1) through (3) of this section do not apply. See § 1.56A–18(h), which provides rules for determining the CAMT consequences of asset sales.

(ii) *Failure to qualify under § 1.1032–2(b)*. If an acquiror corporation transfers solely stock of the acquiror corporation parent to a target corporation shareholder as part of an acquisitive reorganization that does not satisfy § 1.1032–2(b) with regard to all acquiror corporation parent stock (that is, a covered recognition transaction solely with regard to the acquiror corporation parent stock that does not satisfy § 1.1032–2(b)), then solely with regard to the acquiror corporation parent stock that does not qualify under § 1.1032–2(b), see § 1.56A–18(h), which provides rules for determining the CAMT consequences of asset sales.

(5) *Acquiror corporation parent in covered nonrecognition transaction*. If an acquiror corporation transfers solely stock of the acquiror corporation parent to a target corporation shareholder as part of an acquisitive reorganization that qualifies the acquiror corporation for nonrecognition treatment under section 1032(a) and § 1.1032–2(b) (that is, a covered nonrecognition transaction), the acquiror corporation parent adjusts its CAMT basis in its acquiror corporation stock pursuant to § 1.358–6.

(6) *Acquiror corporation parent in covered recognition transaction*—(i) *Use of old and cold parent stock with qualifying acquisitive reorganization*. If an acquiror corporation transfers solely stock of the acquiror corporation parent to a target corporation shareholder as part of an acquisitive reorganization that does not satisfy § 1.1032–2(b) with regard to all acquiror corporation parent stock (that is, a covered recognition transaction solely with regard to the acquiror corporation parent stock that does not satisfy § 1.1032–2(b)), the acquiror corporation parent adjusts its

CAMT basis in its acquiror corporation stock pursuant to § 1.358–6.

(ii) *Use of parent stock in a transaction that does not qualify as an acquisitive reorganization*. If an acquiror corporation transfers acquiror corporation parent stock and other property to a target corporation shareholder in exchange for target corporation stock (that is, a covered recognition transaction), with regard to all acquiror corporation parent stock transferred by the acquiror corporation, the acquiror corporation parent adjusts its CAMT basis in its acquiror corporation stock pursuant to § 1.1032–3.

(7) *Target corporation shareholder or security holder in covered nonrecognition transaction*. A target corporation shareholder or security holder in a covered nonrecognition transaction described in paragraph (c)(1) of this section—

(i) Determines the target corporation shareholder or security holder's AFSI resulting from the covered nonrecognition transaction by—

(A) Disregarding any resulting gain or loss reflected in its FSI;

(B) Applying the relevant section of the Code (section 354 or 356 of the Code); and

(C) Using the distribution amount reflected on its AFS, taking into account (for purposes of the relevant section of the Code) the CAMT basis in its target corporation stock;

(ii) Determines the characterization of the distribution of property other than the acquiring corporation stock (to the extent applicable) by applying the relevant section of the Code based on the CAMT earnings (in lieu of earnings and profits) of the target corporation;

(iii) Determines its CAMT basis in the stock or securities of the acquiring corporation resulting from the

distribution by applying the relevant section of the Code using the target corporation shareholder's or security holder's CAMT basis in the stock (in lieu of basis for regular tax purposes);

(iv) Determines its CAMT basis in the property received from the target corporation by applying the relevant section of the Code, using CAMT basis in lieu of AFS basis; and

(v) Adjusts (to the extent applicable) the target corporation shareholder's or security holder's CAMT current earnings (in lieu of AFS retained earnings) resulting from the distribution by applying section 312 based on its AFSI, as determined under paragraph (c)(4)(i) of this section.

(8) *Examples*. The following examples illustrate the application of the rules in this paragraph (c). For purposes of these

examples, each entity is a domestic corporation that uses the calendar year as its taxable year and is not a member of a tax consolidated group.

(i) *Example 1: Covered nonrecognition transaction*—(A) *Facts*. During the taxable year, Target, whose stock is wholly owned by X, merges with and into Acquiror in a transaction that qualifies as a reorganization under section 368(a)(1)(A) of the Code. In the merger, X receives solely Acquiror stock with a fair market value of \$100×. At the time of Target's merger into Acquiror, Target's assets have a CAMT basis of \$15× and a value of \$30×, Target has \$10× CAMT retained earnings, and X has \$40× of CAMT basis in its Target stock.

(B) *Analysis*. Acquiror's acquisition of Target's assets is a covered nonrecognition transaction. Under paragraph (c)(1)(i)(A) of this section, in computing AFSI resulting from the transaction, Target disregards any FSI reflected in its AFS resulting from the exchange of its assets for the Acquiror stock. Under paragraph (c)(3)(i)(A) of this section, Acquiror disregards any FSI reflected in its AFS resulting from the exchange of its stock for Target's assets, and instead applies section 1032(a) of the Code under paragraph (c)(3)(i)(B) of this section. Under paragraph (c)(3)(ii) of this section, Acquiror takes the Target assets with a CAMT basis of \$15×. Under paragraph (c)(3)(iii) of this section, Acquiror adjusts its CAMT retained earnings to reflect Target's \$10× CAMT retained earnings. Under paragraph (c)(7)(i) of this section, X disregards any FSI resulting from the exchange of its Target stock for Acquiror stock. Under paragraph (c)(7)(iii) of this section, X takes the Acquiror stock with a \$40× CAMT basis.

(ii) *Example 2: Covered nonrecognition transaction with nonqualifying consideration*—(A) *Facts*. The facts are the same as in paragraph (c)(8)(i) of this section (*Example 1*), except that X receives as consideration in the merger \$10× cash and Acquiror voting stock with a fair market value of \$90×.

(B) *Analysis*. The analysis is the same as in paragraph (c)(8)(i)(B) of this section (*Example 1*), except as follows: Under paragraph (c)(7)(i)(B) of this section, X applies section 356 to the receipt of the \$10× cash and includes \$10× in AFSI. Under paragraph (c)(7)(iii) of this section, X takes the Acquiror stock at a \$50× basis (\$40× exchanged basis of Target stock + \$10× gain recognized). Under paragraph (c)(7)(v) of this section, X adjusts its

CAMT retained earnings to reflect the \$10× AFSI recognized.

(d) *CAMT consequences of section 355 transactions*—(1) *Distributing corporation in covered nonrecognition transactions*—(i) *Controlled contribution*. If a distributing corporation transfers property to a controlled corporation in a transaction that qualifies the distributing corporation solely for nonrecognition treatment under sections 355 and 361 (that is, a covered nonrecognition transaction), the distributing corporation—

(A) Determines the distributing corporation's AFSI resulting from the one or more transfers by disregarding any resulting gain or loss reflected in its FSI and applying sections 355 and 361, respectively (that is, no AFSI is recognized by the distributing corporation);

(B) Determines the distributing corporation's CAMT basis in the property received from the controlled corporation by applying section 358 using the CAMT basis (in lieu of AFS basis) of the property transferred by the distributing corporation to the controlled corporation; and

(C) Adjusts the distributing corporation's CAMT earnings (in lieu of AFS retained earnings) resulting from the covered nonrecognition transaction by applying section 312.

(ii) *Section 361(c) distributions and transfers*. If a distributing corporation distributes or transfers solely qualified property to a distributing corporation shareholder or security holder, or to a creditor of the distributing corporation, that qualifies solely for nonrecognition treatment to the distributing corporation under section 361(c) (that is, a covered nonrecognition transaction), the distributing corporation determines the distributing corporation's AFSI resulting from the covered nonrecognition transaction by disregarding any resulting gain or loss reflected in the distributing corporation's FSI and applying section 361(c) (that is, no AFSI is recognized by the distributing corporation).

(iii) *Section 355(c) distributions*. If a distributing corporation distributes solely qualified property to a distributing corporation shareholder or security holder in a distribution that qualifies solely for nonrecognition treatment to the distributing corporation under section 355(c) (that is, a covered nonrecognition transaction), the distributing corporation—

(A) Determines the distributing corporation's AFSI resulting from the distribution by disregarding any resulting gain or loss reflected in the

distributing corporation's FSI and applying section 355(c) (that is, no AFSI is recognized by the distributing corporation); and

(B) Adjusts the distributing corporation's CAMT earnings (in lieu of AFS retained earnings) resulting from the distribution by applying section 312.

(2) *Distributing corporation in covered recognition transactions*—(i) *Controlled contribution*. If a distributing corporation transfers property to a controlled corporation in a section 355 transaction that results in any recognition treatment to the distributing corporation (that is, a covered recognition transaction), the distributing corporation—

(A) Determines the distributing corporation's AFSI resulting from the one or more transfers by redetermining any resulting gain or loss reflected in its FSI by using CAMT basis in lieu of AFS basis;

(B) Determines the distributing corporation's CAMT basis in the property received from the controlled corporation to be equal to the distributing corporation's AFS basis in that property; and

(C) Adjusts the distributing corporation's CAMT retained earnings (in lieu of AFS retained earnings) based on the distributing corporation's AFSI, as determined under paragraph (d)(2)(i)(A) of this section.

(ii) *Section 361(c) distribution*. If a distribution or transfer of property by a distributing corporation under section 361(c) results in any recognition treatment to the distributing corporation (that is, a covered recognition transaction), the distributing corporation—

(A) Determines the distributing corporation's AFSI resulting from the covered recognition transaction by redetermining any resulting gain or loss reflected in the distributing corporation's FSI by reference to its CAMT basis in the distributed or transferred property (in lieu of AFS basis); and

(B) Adjusts the distributing corporation's CAMT earnings (in lieu of AFS retained earnings) based on the distributing corporation's AFSI, as determined under paragraph (d)(2)(ii)(A) of this section.

(3) *Distributing corporation shareholder or security holder*. A distributing corporation shareholder or security holder in a covered transaction described in paragraph (d)(1) or (2) of this section—

(i) Determines the distributing corporation shareholder's or security holder's AFSI resulting from the distribution by—

(A) Disregarding any resulting gain or loss reflected in the distributing corporation shareholder's or security holder's FSI;

(B) Applying the relevant section of the Code; and

(C) Using the distribution amount of the property other than distributing corporation stock reflected in the AFS of the distributing corporation shareholder or security holder, taking into account (for purposes of the relevant section of the Code) the CAMT basis of the distributing corporation shareholder or security holder in its distributing corporation stock;

(ii) Determines the characterization of the distribution of the property other than distributing corporation stock (to the extent applicable) by applying the relevant section of the Code based on the CAMT earnings (in lieu of earnings and profits) of the distributing corporation;

(iii) Determines the distributing corporation shareholder's or security holder's CAMT basis in the stock of the distributing corporation resulting from the distribution by applying the relevant section of the Code, using the CAMT basis of the distributing corporation shareholder or security holder in the stock (in lieu of basis for regular tax purposes);

(iv) Determines the distributing corporation shareholder's or security holder's CAMT basis in the property received from the distributing corporation by applying the relevant section of the Code, using CAMT basis (in lieu of AFS basis); and

(v) Adjusts the distributing corporation shareholder's or security holder's CAMT earnings (in lieu of AFS retained earnings) resulting from the distribution by applying section 312 based on its AFSI, as determined under paragraph (d)(3)(i) of this section.

(4) *Controlled corporation in covered nonrecognition transaction*. Subject to § 1.56A-18(e), if a controlled corporation transfers solely its own stock to a distributing corporation that qualifies the controlled corporation for nonrecognition treatment under section 1032(a) (that is, a covered nonrecognition transaction), the controlled corporation—

(i) Determines the controlled corporation's AFSI resulting from the transfer by—

(A) Disregarding any resulting gain or loss reflected in the controlled corporation's FSI; and

(B) Applying section 1032(a) to the transfer (that is, no AFSI is recognized by the controlled corporation);

(ii) Determines the controlled corporation's CAMT basis in the

property received by the controlled corporation from the distributing corporation by applying section 362 using the CAMT basis (in lieu of AFS basis) of that property; and

(iii) Adjusts the controlled corporation's CAMT current earnings (in lieu of AFS retained earnings) resulting from the covered nonrecognition transaction by applying section 312.

(5) *Controlled corporation in covered recognition transaction—(i) Qualification—(A) General rule.* Except as provided in paragraph (d)(5)(i)(B) of this section, if a controlled corporation transfers money or other property (in addition to stock) to a distributing corporation as part of a section 355 transaction that qualifies the controlled corporation for nonrecognition treatment under section 1032(a), the transfer is treated as a covered recognition transaction to the controlled corporation.

(B) *Exception for complete boot purges through covered nonrecognition transactions.* A transfer by a controlled corporation described in paragraph (d)(5)(i)(A) of this section is treated as a covered nonrecognition transaction if the distributing corporation distributes or transfers all of the money or other property received by the distributing corporation in that transfer to a distributing corporation shareholder or security holder, or to a distributing corporation creditor, that qualifies solely for nonrecognition treatment to the distributing corporation under section 361(b) (that is, a covered nonrecognition transaction).

(ii) *CAMT consequences.* If a transfer by a controlled corporation described in paragraph (d)(5)(i) of this section is a covered recognition transaction, the controlled corporation—

(A) Determines the controlled corporation's AFSI resulting from the covered recognition transaction by redetermining any resulting gain or loss reflected in the controlled corporation's FSI by reference to the controlled corporation's CAMT basis (in lieu of AFS basis);

(B) Determines the controlled corporation's CAMT basis in the property received from the distributing corporation to be equal to the controlled corporation's AFS basis in that property; and

(C) Adjusts the controlled corporation's CAMT earnings (in lieu of AFS retained earnings) based on the controlled corporation's AFSI, as determined under paragraph (d)(5)(ii)(A) of this section.

(6) *Examples.* The following examples illustrate the application of the rules in

this paragraph (d). For purposes of these examples, each entity is a domestic corporation that uses the calendar year as its taxable year and is not a member of a tax consolidated group.

(i) *Example 1: Covered nonrecognition transaction to distributing corporation and controlled corporation—(A) Facts.* On February 1, Distributing contributes property with a fair market value of \$190x and a CAMT basis of \$20x to Controlled, a newly formed corporation, in exchange for Controlled stock with a fair market value of \$175x and \$15x of Controlled securities (collectively, the Contribution). Pursuant to a plan of reorganization that includes the Contribution, Distributing distributes all of the Controlled stock to Distributing's shareholders in exchange for their Distributing stock (Controlled Split-Off) in a transaction that qualifies for Distributing under sections 368(a)(1)(D), 355, 357, and 361 of the Code, and for Controlled under section 1032(a). Pursuant to the plan of reorganization, Distributing distributes the Controlled securities to creditors of Distributing in transactions that qualify under section 361(c)(3) (Debt-for-Debt Exchange). Immediately before the Contribution, Distributing has \$600x of CAMT retained earnings. As part of the Controlled Split-Off, X, a CAMT entity that holds 10 shares of Distributing stock with a CAMT basis of \$10x and a fair market value of \$26x, exchanges 5 shares of Distributing stock for Controlled stock. As part of the Debt-for-Debt Exchange, Y, a CAMT entity that holds Distributing securities with a CAMT basis of \$3x and a fair market value of \$6x, exchanges its Distributing securities for \$6x of Controlled securities.

(B) *Analysis: Contribution and distribution.* The Contribution and the Controlled Split-Off are covered nonrecognition transactions. Under paragraph (d)(1)(i)(A) of this section, Distributing disregards any FSI reflected in its AFS resulting from the Contribution and instead applies section 361 to determine AFSI; that is, Distributing has \$0x AFSI on the Contribution. Under paragraph (d)(1)(i)(B) of this section, Distributing takes a CAMT basis of \$20x in the Controlled stock and securities received in the Contribution. Under paragraph (d)(1)(i)(C) of this section, Distributing reduces its CAMT earnings by the amount of AFSI resulting from the Contribution, or \$0x. Under paragraph (d)(4)(i) of this section, Controlled disregards any FSI reflected in its AFS resulting from the Contribution and applies section 1032(a) to determine AFSI, or \$0x AFSI resulting from the

Contribution. Under paragraph (d)(4)(ii) of this section, Controlled records a CAMT basis of \$20x for the assets received in the Contribution.

(C) *Analysis: Distributing shareholders.* Under paragraph (d)(3)(i)(A) of this section, X disregards any FSI reflected in its AFS resulting from the exchange of Distributing stock for Controlled stock and instead applies section 355(a) to determine AFSI, or \$0x AFSI. Under paragraph (d)(3)(iii) of this section, X takes a \$5x CAMT basis in the Controlled stock received in the Controlled Split-Off. Under paragraph (d)(3)(v) of this section, X adjusts its CAMT retained earnings by the amount of AFSI resulting from the exchange, or \$0x.

(D) *Analysis: Distributing security holders.* The analysis is similar to paragraph (d)(6)(i)(C) of this section (*Example 1*) for Y with respect to the Controlled securities exchanged for Distributing securities.

(ii) *Example 2: Distributing corporation boot-purge exception—(A) Facts.* The facts are the same as in paragraph (d)(6)(i)(A) of this section (*Example 1*), except that in the Contribution, the property contributed to Controlled has a fair market value of \$200x, Controlled transfers \$10x cash to Distributing, and Distributing distributes the \$10x cash to its shareholders in a distribution that qualifies under section 361(b)(1)(A) (Cash Distribution). In the Cash Distribution, X receives \$1x.

(B) *Analysis.* Because the Cash Distribution qualifies under section 361(b)(1)(A), under paragraph (d)(5)(i)(B) of this section, the receipt of nonqualifying consideration and the distribution of nonqualifying consideration is a covered nonrecognition transaction. As a result, the analysis is the same as paragraph (d)(6)(i)(B) of this section (*Example 1*). Additionally, under paragraph (d)(3)(i)(B) of this section, X includes \$1x in AFSI. Under paragraph (d)(3)(v) of this section, X adjusts its CAMT earnings by the amount of AFSI resulting from the exchange, or \$1x.

(iii) *Example 3: Covered recognition transaction to distributing corporation—(A) Facts.* The facts are the same as in paragraph (d)(6)(ii)(A) of this section (*Example 2*), except that in the Contribution, the fair market value of the property contributed to Controlled is \$210x and Distributing receives Controlled securities worth \$25x and distributes all of the Controlled securities to Distributing creditors in exchange for Distributing securities. Additionally, in the Controlled Split-Off, Distributing distributes only 90% of

the Controlled stock. On September 30th, Distributing distributes the remaining 10% of the Controlled stock pro rata to its shareholders.

(B) *Analysis: Contribution.* Because Distributing distributed Controlled securities with a fair market value of more than the adjusted basis of the property transferred to Controlled, resulting in gain to Distributing under section 361(b)(3), under paragraph (d)(2)(i) of this section, the Contribution is a covered recognition transaction. Under paragraph (d)(2)(i)(A) of this section, Distributing determines its AFSI resulting from the exchange using its CAMT basis, or \$190x (\$210x – \$20x). Under paragraph (d)(2)(i)(B) of this section, Distributing's CAMT basis in the Controlled stock and Controlled securities is its AFS basis, or \$170x and \$25x, respectively. Under paragraph (d)(2)(i)(C) of this section, Distributing adjusts its CAMT retained earnings by the amount of AFSI resulting from the Contribution, or \$190x.

(C) *Analysis: Controlled split-off.* The Controlled Split-Off is a covered nonrecognition transaction. As a result, the analysis of the CAMT consequences to X is similar to paragraph (d)(6)(i)(C) of this section (*Example 1*). Under § 1.56A–18(c)(2)(i), Distributing disregards any FSI reflected in its AFS resulting from the Controlled Split-Off. Additionally, under § 1.56A–18(c)(2)(i), Distributing disregards any FSI reflected in its AFS resulting from any mark-to-market of the fair value of the retained Controlled stock.

(D) *Analysis—Debt-for-debt exchange.* The Debt-for-Debt exchange is a covered nonrecognition transaction. As a result, the analysis with respect to Y is similar to paragraph (d)(6)(i)(D) of this section (*Example 1*).

(e) *CAMT consequences of recapitalizations—(1) Recapitalizing corporation in covered nonrecognition transaction.* If a recapitalizing corporation transfers solely stock to a recapitalizing corporation shareholder or creditor in an E reorganization or a section 1036 exchange that qualifies the recapitalizing corporation solely for nonrecognition treatment (that is, a covered nonrecognition transaction), the recapitalizing corporation—

(i) Determines the recapitalizing corporation's AFSI resulting from the covered nonrecognition transaction by—

(A) Disregarding any resulting gain or loss reflected in the recapitalizing corporation's FSI; and

(B) Applying section 1032(a) or 1036 of the Code, as appropriate (that is, no AFSI is recognized by the recapitalizing corporation); and

(ii) Adjusts the recapitalizing corporation's CAMT earnings (in lieu of AFS retained earnings) resulting from the covered nonrecognition transaction by applying section 312.

(2) *Component transactions consisting of covered nonrecognition transaction and corporate distributions.* If a transaction that qualifies as an E reorganization includes a transfer of money or other property (other than stock in the recapitalizing corporation) to a recapitalizing corporation shareholder or security holder, the recapitalizing corporation determines its aggregate resulting AFSI and CAMT earnings by treating each of the following component transactions separately—

(i) Each component transaction that qualifies as a covered nonrecognition transaction; and

(ii) Each component transaction that is treated as a distribution of property by the recapitalizing corporation to a recapitalizing corporation shareholder or security holder. See paragraph (d)(1)(ii) of this section for rules addressing non-liquidating corporate distributions.

(3) *Recapitalizing corporation shareholder or security holder.* A recapitalizing corporation shareholder or security holder in a covered transaction described in paragraph (e)(1) or (2) of this section—

(i) Determines the recapitalizing corporation shareholder's or security holder's AFSI resulting from the covered transaction by—

(A) Disregarding any resulting gain or loss reflected in its FSI;

(B) Applying the relevant section of the Code; and

(C) Using the distribution amount reflected on its AFS, taking into account (for purposes of the relevant section of the Code) the CAMT basis in its recapitalizing corporation stock;

(ii) Determines the characterization of any distribution (to the extent applicable) by applying the relevant section of the Code based on the CAMT earnings (in lieu of earnings and profits) of the recapitalizing corporation;

(iii) Determines its CAMT basis in the stock of the recapitalizing corporation resulting from the exchange by applying the relevant section of the Code using its CAMT basis in the stock (in lieu of basis for regular tax purposes);

(iv) Determines its CAMT basis in the property received from the recapitalizing corporation by applying the relevant section of the Code, using CAMT basis (in lieu of AFS basis); and

(v) Adjusts (to the extent applicable) its CAMT earnings (in lieu of AFS retained earnings) resulting from the

exchange by applying section 312 based on its AFSI, as determined under paragraph (e)(3)(i) of this section.

(4) *Examples.* The following examples illustrate the application of the rules in this paragraph (e). For purposes of these examples, each entity is a domestic corporation that uses the calendar year as its taxable year and is not a member of a tax consolidated group.

(i) *Example 1: Covered nonrecognition transaction—(A) Facts.* X has two classes of common stock, Class D and Class E. X also has issued \$100x in securities that are held by unrelated parties. On its AFS, X carries the X securities at \$90x. Y owns Class E common stock with a fair market value of \$100x and a CAMT basis of \$50x. Z holds \$20x of X's securities with a CAMT basis of \$10x. As part of an E reorganization, X recapitalizes its Class D and Class E stock into a single class of Class D common stock. X also recapitalizes the \$100x securities into preferred stock with a fair market value of \$100x.

(B) *Analysis.* The transaction is a covered nonrecognition transaction. Under paragraph (e)(1)(i) of this section, X disregards any FSI reflected in its AFS from the exchange of its Class D and Class E common stock for the Class D common stock and instead applies the appropriate Code section to determine its AFSI on the exchange, or \$0x. Under paragraph (e)(1)(ii) of this section, X adjusts its CAMT retained earnings to reflect the AFSI resulting from the exchange, or by \$0x. Under paragraph (e)(3)(i)(A) of this section, Y disregards any FSI reflected in its AFS resulting from the exchange of its Class E common stock for Class D common stock. Under paragraph (e)(3)(i)(B) of this section, Y determines its AFSI resulting from the exchange by applying section 354 of the Code, resulting in \$0x AFSI. Under paragraph (e)(3)(iii) of this section, Y takes a CAMT basis in its Class D stock of \$50x.

(ii) *Example 2: E reorganization and corporate distribution—(A) Facts.* X has two classes of common stock outstanding, held as follows: Y owns 99 shares of Class D common stock with a CAMT basis of \$99x and a fair market value of \$198x, and Z owns one share of Class E common stock with a CAMT basis of \$1x and a fair market value of \$2x. In order to simplify its capital structure and eliminate minority interests, Y engages in a transaction in which the Class D and Class E stock are recapitalized into a single class of common stock. In the exchange, Y exchanges its 99 shares of Class D X stock for 33 shares of X stock, and Z receives \$2x cash in exchange for its one

share in lieu of X issuing a fractional share of stock.

(B) *Analysis.* Y's exchange of Class D common stock for new X common stock is a covered nonrecognition transaction. Z's exchange of its share of Class E common stock for cash is a covered recognition transaction. Under paragraph (e)(2) of this section, X determines its aggregate AFSI and CAMT earnings by treating each component transaction separately. With respect to the covered nonrecognition transaction, the analysis is similar to paragraph (e)(4)(i)(B) of this section (*Example 1*), except that Y's CAMT basis in its 33 shares of X stock is \$99x. See § 1.56A–18(d) for rules relating to the computation of AFSI for Z and X with respect to the complete redemption of Z's interest in X for cash.

(f) *CAMT consequences of F reorganizations—(1) Transferor corporation in covered nonrecognition transaction.* If a transferor corporation transfers property to a resulting corporation in an F reorganization that qualifies the transferor corporation solely for nonrecognition treatment (that is, a covered nonrecognition transaction), the transferor corporation—

(i) Determines the transferor corporation's AFSI resulting from the covered nonrecognition transaction by—

(A) Disregarding any resulting gain or loss reflected in the transferor corporation's FSI; and

(B) Applying section 361 to the transfer (that is, no AFSI is recognized by the transferor corporation);

(ii) Determines the transferor corporation's CAMT basis in any property received from the resulting corporation by applying section 358 using the CAMT basis (in lieu of AFS basis) of the property transferred by the transferor corporation to the resulting corporation; and

(iii) Adjusts the transferor corporation's CAMT earnings (in lieu of AFS retained earnings) resulting from the covered nonrecognition transaction by applying section 312.

(2) *Component transactions consisting of covered nonrecognition transaction and corporate distributions.* If a transaction that qualifies as an F reorganization includes a transfer of money or other property (other than stock in the resulting corporation) to a transferor corporation shareholder or security holder, the transferor corporation determines its aggregate resulting AFSI and CAMT earnings by treating each of the following component transactions separately—

(i) Each component transaction that qualifies as a covered nonrecognition transaction; and

(ii) Each component transaction that is treated as a distribution of property by the transferor corporation to a transferor corporation shareholder or security holder. See § 1.56A–18(d) for rules addressing non-liquidating corporate distributions.

(3) *Resulting corporation.* If a resulting corporation transfers solely stock, or stock and money or other property, to a transferor corporation as part of an F reorganization that qualifies the resulting corporation for nonrecognition treatment under section 1032(a) (that is, a covered nonrecognition transaction), the resulting corporation—

(i) Determines the resulting corporation's AFSI resulting from the covered nonrecognition transaction by—

(A) Disregarding any resulting gain or loss reflected in the resulting corporation's FSI; and

(B) Applying section 1032(a) to the transfer (that is, no AFSI is recognized by the resulting corporation);

(ii) Determines the resulting corporation's CAMT basis in the property received from the transferor corporation by applying section 362 using the CAMT basis (in lieu of AFS basis) of that property; and

(iii) Adjusts the resulting corporation's CAMT retained earnings (in lieu of AFS retained earnings) resulting from the covered nonrecognition transaction by applying sections 381(c)(2) and 312.

(4) *Transferor corporation shareholder or security holder.* A transferor corporation shareholder or security holder described in paragraph (f)(1) or (2) of this section—

(i) Determines the transferor corporation shareholder's or security holder's AFSI resulting from the covered transaction by—

(A) Disregarding any resulting gain or loss reflected in its FSI;

(B) Applying the relevant provision of the Code; and

(C) Using the distribution amount reflected on its AFS, taking into account (for purposes of the relevant section of the Code) the transferor corporation shareholder's or security holder's CAMT basis in its transferor corporation stock;

(ii) Determines the characterization of any distribution (to the extent applicable) by applying the relevant section of the Code based on the CAMT earnings (in lieu of AFS earnings and profits) of the transferor corporation;

(iii) Determines the transferor corporation shareholder's or security holder's CAMT basis in the stock of the

resulting corporation resulting from the exchange by applying the relevant section of the Code using the transferor corporation shareholder's or security holder's CAMT basis in the stock (in lieu of basis for regular tax purposes);

(iv) Determines the transferor corporation shareholder's or security holder's CAMT basis in the property received by applying the relevant section of the Code, using CAMT basis in lieu of AFS basis; and

(v) Adjusts (to the extent applicable) its CAMT earnings (in lieu of AFS retained earnings) resulting from the exchange by applying section 312 based on its AFSI, as determined under paragraph (f)(4)(i) of this section.

(5) *Examples.* The following examples illustrate the application of the rules in this paragraph (f). For purposes of these examples, each entity is a domestic corporation that uses the calendar year as its taxable year and is not a member of a tax consolidated group.

(i) *Example 1: Covered nonrecognition transaction—(A) Facts.* X is organized in State G. X has a single class of stock owned by Y, Z, and W as follows: Y owns 50 shares, with a fair market value of \$100x and a CAMT basis of \$50x; Z owns 45 shares, with a fair market value of \$90 and a CAMT basis of \$45; and W owns 5 shares with a fair market value of \$10 and a CAMT basis of \$5. X's assets have a fair market value of \$200x and a CAMT basis of \$75x. X has \$350x CAMT retained earnings and \$0x CAMT current earnings. In 2024, X organizes U as a State H corporation. Y, Z, and W contribute their X stock to U in exchange for U stock, and U converts X to a limited liability company under State H law.

(B) *Analysis.* The reorganization is a covered nonrecognition transaction. Under paragraph (f)(1)(i) of this section, X determines its AFSI by disregarding any FSI reflected in its AFS resulting from the transfer of its assets to U and instead applies section 361 to the exchange, resulting in \$0x AFSI. Under paragraph (f)(1)(ii) of this section, X takes a \$75x CAMT basis in the U stock it is deemed to receive. Under paragraph (f)(1)(iii) of this section, X adjusts its CAMT retained earnings by the amount of its AFSI, or \$0x. Under paragraph (f)(3)(i) of this section, U disregards any FSI on its AFS resulting from the issuance of its stock in exchange for X's assets, and instead applies section 1032(a), resulting in \$0x AFSI on the exchange. Under paragraph (f)(3)(ii) of this section, U takes the assets received from X at X's CAMT basis, or \$75x. Under paragraph (f)(3)(iii) of this section, U adjusts its CAMT retained earnings by taking into account X's

CAMT retained earnings, or \$350x, plus the AFSI recognized on the exchange, or \$0x. Under paragraph (f)(4)(i) of this section, each of Y, Z, and W, would disregard any FSI reflected in its AFS resulting from the exchange of X stock for U stock, and instead would apply section 354 to the exchange, resulting in \$0x AFSI. Under paragraph (f)(4)(iv) of this section, each of Y, Z, and W would determine its basis in the U stock by applying section 358, resulting in Y taking a CAMT basis in the U stock of \$50x, Z taking a CAMT basis in the U stock of \$45x, and W taking a CAMT basis in the U stock of \$5x. Under paragraph (f)(4)(v) of this section, each of Y, Z, and W would adjust CAMT retained earnings by the amount of AFSI recognized on the exchange, or \$0x.

(ii) *Example 2: Component transactions*—(A) *Facts*. The facts are the same as in paragraph (f)(5)(i)(A) of this section (*Example 1*), except that as part of the transaction, U distributes \$10x cash to W in complete redemption of W's stock.

(B) *Analysis*. The F reorganization involving Y and Z is a covered nonrecognition transaction. The redemption by U of all of W's stock is a covered recognition transaction. Under paragraph (f)(2) of this section, U determines its aggregate AFSI and CAMT earnings by treating each component transaction separately. With respect to the covered nonrecognition transaction, the analysis is similar to paragraph (f)(5)(i)(B) of this section (*Example 1*). With respect to the covered recognition transaction, see § 1.56A–18(d).

(g) *CAMT consequences of section 351 exchanges*—(1) *Component transactions consisting of covered recognition and covered nonrecognition transactions*. If a section 351 exchange has more than one section 351 transferor, and if the section 351 transferee transfers solely stock to at least one section 351 transferor and transfers money or other property in addition to its stock to at least one other section 351 transferor, the section 351 transferee determines its aggregate resulting AFSI, CAMT basis, and CAMT earnings consequences by treating each of the following component transactions separately—

(i) Each component transaction in which the section 351 transferee transfers solely stock (including nonqualified preferred stock described in section 351(g)(2)) to a section 351 transferor (that is, a covered nonrecognition transaction with respect to the section 351 transferee); and

(ii) Each component transaction in which the section 351 transferee transfers money or other property in

addition to its stock to a section 351 transferor (that is, a covered recognition transaction with respect to the section 351 transferee).

(2) *Section 351 transferor in covered nonrecognition transaction*. If a section 351 transferor transfers property to a section 351 transferee in a transaction to which section 351(a) applies to the section 351 transferor (that is, a covered nonrecognition transaction with respect to the section 351 transferor), the section 351 transferor—

(i) Determines the section 351 transferor's AFSI resulting from the transfer by—

(A) Disregarding any resulting gain or loss reflected in the section 351 transferor's FSI; and

(B) Applying section 351 to the transfer (that is, no AFSI is recognized by the section 351 transferor); and

(ii) Determines the section 351 transferor's CAMT basis in the stock received from the section 351 transferee by applying section 358 using the CAMT basis (in lieu of AFS basis) of the property transferred by the section 351 transferor to the section 351 transferee.

(3) *Section 351 transferor in covered recognition transaction*. If a section 351 transferor transfers property to a section 351 transferee in a transaction in which section 351(b) applies (including by reason of section 351(g)) to the section 351 transferor (that is, a covered recognition transaction with respect to the section 351 transferor), the section 351 transferor—

(i) Determines the section 351 transferor's AFSI resulting from the transfer by redetermining any resulting gain or loss, if any, reflected in its FSI by reference to its CAMT basis in the transferred property (in lieu of AFS basis);

(ii) Determines the section 351 transferor's CAMT basis in the property received from the section 351 transferee to be equal to the section 351 transferor's AFS basis in that property; and

(iii) Adjusts the section 351 transferor's CAMT retained earnings (in lieu of AFS retained earnings) based on the section 351 transferor's AFSI, as determined under paragraph (g)(3)(i) of this section.

(4) *Section 351 transferee in covered nonrecognition transaction*. If a section 351 transferee transfers solely stock to a section 351 transferor in a transaction in which section 1032(a) applies to the section 351 transferee (that is, a covered nonrecognition transaction), the section 351 transferee determines its AFSI resulting from the covered nonrecognition transaction and its CAMT basis in the property received

from the section 351 transferor under this paragraph (g)(4).

(i) *Section 351 transferee's AFSI*. The section 351 transferee determines the section 351 transferee's AFSI resulting from the transfer by—

(A) Disregarding any resulting gain or loss reflected in the section 351 transferee's FSI; and

(B) Applying section 1032(a) to the transfer (that is, no AFSI is recognized by the section 351 transferee).

(ii) *Section 351 transferee's CAMT basis in property*. Except as provided in paragraph (g)(3)(iii) of this section, the section 351 transferee determines the section 351 transferee's CAMT basis in the property received by the section 351 transferee from the section 351 transferor by applying section 362 using the CAMT basis (in lieu of AFS basis) of that property and any CAMT gain recognized by the section 351 transferor in the section 351 exchange.

(iii) *Special CAMT basis rule*. The section 351 transferee determines its CAMT basis under paragraph (g)(4)(ii) of this section in the property received from a section 351 transferor by redetermining the amount of any CAMT gain recognized by the section 351 transferor to include only the amount, if any, by which the fair market value of the portion of the property transferred by the section 351 transferor exceeds the section 351 transferor's CAMT basis in that portion of the transferred property if—

(A) The section 351 transferor is not an applicable corporation and its AFSI otherwise is not required to be taken into account under the section 56A regulations by any applicable corporation for the taxable year in which qualification of the component transaction as a covered recognition transaction with respect to the section 351 transferor otherwise would be determined under the section 56A regulations,

(B) The section 351 transferee solely transfers its stock to that section 351 transferor, and

(C) The fair market value of nonqualified preferred stock (as defined in section 351(g)(2)) described in paragraph (g)(4)(iii)(B) of this section is 10 percent or less of the aggregate fair market value of the stock described in paragraph (g)(4)(iii)(B) of this section transferred by the section 351 transferee to the section 351 transferor in the section 351 exchange.

(5) *Section 351 transferee in covered recognition transaction*. If a section 351 transferee transfers money or other property and stock to a section 351 transferor in a transaction to which section 1032(a) applies to the section

351 transferee (that is, a covered recognition transaction), the section 351 transferee determines its AFSI resulting from the transfer and its CAMT basis in the property received from the section 351 transferor, and CAMT retained earnings consequences under this paragraph (g)(5).

(i) *Section 351 transferee's AFSI.* The section 351 transferee determines the section 351 transferee's AFSI resulting from the transfer by redetermining any resulting gain or loss reflected in the section 351 transferee's FSI by reference to CAMT basis (in lieu of AFS basis).

(ii) *Section 351 transferee's CAMT basis in property.* Except as provided in paragraph (g)(5)(iii) of this section, the section 351 transferee determines the section 351 transferee's CAMT basis in the property received by the section 351 transferee to be equal to the section 351 transferee's AFS basis in that property.

(iii) *Special CAMT basis rule.* The section 351 transferee determines its CAMT basis under paragraph (g)(5)(ii) of this section in the property received from a section 351 transferor by redetermining the section 351 transferee's AFS basis in that property to not exceed the sum of the amount of the section 351 transferee's CAMT basis in the transferred property immediately before the section 351 exchange and the amount, if any, by which the fair market value of the portion of the property other than stock of the section 351 transferee transferred to the section 351 transferor exceeds the section 351 transferee's CAMT basis in that portion of the transferred property if—

(A) The section 351 transferor is not an applicable corporation and its AFSI otherwise is not required to be taken into account under the section 56A regulations by any applicable corporation for the taxable year in which qualification of the component transaction as a covered recognition transaction with respect to the section 351 transferee otherwise would be determined under the section 56A regulations,

(B) The section 351 transferee transfers its stock and money or other property to that section 351 transferor, and

(C) The amount of money and fair market value of other property described in paragraph (g)(5)(iii)(B) of this section is 10 percent or less of the sum of the money and the aggregate fair market value of the stock and other property described in paragraph (g)(5)(iii)(B) of this section transferred by the section 351 transferee to the section 351 transferor in the section 351 exchange.

(iv) *Section 351 transferee's CAMT retained earnings.* The section 351 transferee adjusts the section 351 transferee's CAMT retained earnings (in lieu of AFS retained earnings) based on the section 351 transferee's AFSI, as determined under paragraph (g)(5)(i) of this section.

(6) *Examples.* The following examples illustrate the application of the rules in this paragraph (g). For purposes of these examples, each entity is a domestic corporation that uses the calendar year as its taxable year and is not a member of a tax consolidated group.

(i) *Example 1: Covered nonrecognition transaction—(A) Facts.* Acquiror transfers assets with a CAMT basis of \$40x and a fair market value of \$90x to newly formed Target in a section 351 exchange (Exchange). On its AFS, Acquiror recognizes \$50x of FSI on the Exchange (\$90x – \$40x).

(B) *Analysis.* The Exchange is a covered nonrecognition transaction to each of Acquiror and Target. Under paragraph (g)(2)(i) of this section, in computing AFSI, Acquiror disregards the FSI reflected in its AFS resulting from the Exchange. Under paragraph (g)(2)(ii) of this section, Acquiror records the Target stock received in the Exchange at the CAMT basis of the assets transferred to Target, or \$40x. Under paragraph (g)(4)(i) of this section, Target disregards any FSI reflected in its AFS resulting from the Exchange. Under paragraph (g)(4)(ii) of this section, Target takes a \$40x CAMT basis in the assets it receives from Acquiror in the Exchange.

(ii) *Example 2: Covered recognition transaction—(A) Facts.* The facts are the same as in paragraph (g)(6)(i)(A) of this section (*Example 1*), except that Acquiror receives \$10x of cash in addition to \$80x of Target stock in the Exchange.

(B) *Analysis.* The Exchange is a covered recognition transaction to each of Acquiror and Target. Under paragraph (g)(3)(i) of this section, Acquiror disregards any FSI resulting from the Exchange reflected in its AFS and instead redetermines its AFSI by computing any gain or loss using its CAMT basis in the assets transferred to Target, or \$50x (\$90x – \$40x). Under paragraph (g)(3)(ii) of this section, Acquiror's CAMT basis in the Target stock received is its AFS basis, or \$80x. Under paragraph (g)(3)(iii) of this section, Acquiror adjusts its CAMT retained earnings by the amount of AFSI resulting from the Exchange, or \$50x. Under paragraph (g)(5)(i) of this section, Target disregards any FSI resulting from the Exchange and instead determines AFSI using CAMT basis, or \$90x. Under

paragraph (g)(5)(ii) of this section, Target determines its CAMT basis using its AFS basis in the property, or \$90x. Paragraph (g)(5)(iii) of this section does not apply. Under paragraph (g)(5)(iv) of this section, Target adjusts its CAMT retained earnings by the amount of AFSI recognized on the Exchange, or \$90x, reduced by the \$10x cash distributed.

(iii) *Example 3: Component transactions—(A) Facts.* The facts are the same as in paragraph (g)(6)(ii)(A) of this section (*Example 2*), except that, as part of the same transaction, unrelated X transfers assets to Target with a CAMT basis of \$25x and a fair market value of \$120x in exchange for Target stock.

(B) *Analysis.* The transfer of assets by Acquiror to Target is a covered recognition transaction to each of Acquiror and Target. The transfer of assets by X to Target is a covered nonrecognition transaction to each of X and Target. Under paragraph (g)(1) of this section, Target determines its aggregate AFSI, CAMT basis, and CAMT retained earnings by treating each of the component transactions separately. With respect to the transfer of assets by Acquiror to Target, the analysis is similar to paragraph (g)(6)(ii)(B) of this section (*Example 2*). Under paragraph (g)(2)(i) of this section, in computing AFSI, X disregards the FSI reflected in its AFS resulting from the Exchange. Under paragraph (g)(2)(ii) of this section, X's CAMT basis of the Target stock received in the Exchange is the CAMT basis of the assets transferred to Target, or \$25x. Under paragraph (g)(4)(i) of this section, Target disregards any FSI reflected in its AFS resulting from the Exchange. Under paragraph (g)(4)(ii) of this section, Target takes a \$25x CAMT basis in the assets it receives from X in the Exchange.

(iv) *Example 4: Covered recognition transaction—(A) Facts.* The facts are the same as in paragraph (g)(6)(ii)(A) of this section (*Example 2*), except that Acquiror is not an applicable corporation and receives \$5x of cash in addition to \$85x of Target stock in the Exchange.

(B) *Analysis.* The amount of money transferred by Target to Acquiror in the Exchange is less than 10 percent of the amount of money and the fair market value of stock transferred by Target to Acquiror in the Exchange ($\$5x / (\$5x + \$85x) = 5.5\%$). Accordingly, under paragraph (g)(5)(iii) of this section, Target's CAMT basis in the assets received from Acquiror is equal to Acquiror's CAMT basis in the assets immediately before the Exchange (\$40) plus \$0 of CAMT gain recognized by

Target on the transfer of the \$5 of cash in the Exchange.

(h) *Applicability date.* This section applies to taxable years ending after [DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER].

§ 1.56A-20 AFSI adjustments to apply certain subchapter K principles.

(a) *Overview*—(1) *In general.* This section provides rules under sections 56A(c)(15)(B) and (e) of the Code for determining AFSI adjustments for a CAMT entity that is a partner in a partnership, including the CAMT entity's distributive share of AFSI from a partnership investment under section 56A(c)(2)(D) of the Code, to take into account certain principles under subchapter K. Paragraph (b) of this section sets forth the scope of this section and provides a general rule for FSI resulting from transactions between a CAMT entity and a partnership in which the CAMT entity is a partner. Paragraph (c) of this section provides special rules for contributions of property by a CAMT entity to a partnership. Paragraph (d) of this section provides special rules for distributions of property by a partnership if one or more of its partners is a CAMT entity. Paragraph (e) of this section provides rules regarding the treatment of partner and partnership liabilities for purposes of the section 56A regulations. Paragraph (f) of this section provides special rules for partial nonrecognition transactions under sections 721(a) and 731(b) of the Code. Paragraph (g) of this section provides rules regarding the maintenance of books and records and reporting requirements to comply with the rules of this section. Paragraph (h) of this section provides examples illustrating the application of the rules in this section. Paragraph (i) of this section provides the applicability date of this section.

(2) *Scope of rules.* This section applies to contributions to or distributions from a partnership. However, this section does not apply to contributions to or distributions from a partnership of stock of a foreign corporation except with respect to the effect on the CAMT basis of a partnership investment for a distribution of stock of a foreign corporation that is distributed in the same transaction as other property under paragraph (d)(2)(iii) of this section. See § 1.56A-4(b) for rules that apply if stock of a foreign corporation is contributed to or distributed by a partnership.

(b) *General operating rules.* Except as otherwise provided in this section, in

the case of a transaction between a CAMT entity and a partnership, each of the CAMT entity, any other partners in that partnership, and the partnership in which the CAMT entity is a partner includes in its AFSI any income, expense, gain, or loss reflected in its FSI as a result of the transaction.

(c) *Contributions of property*—(1) *In general.* Subject to paragraph (e) of this section and except as provided in paragraph (f) of this section, if property is contributed by a CAMT entity (contributor) to a partnership in a transaction to which section 721(a) applies, any gain or loss reflected in the CAMT entity's FSI from the property transfer is included in the CAMT entity's AFSI in accordance with paragraphs (c)(2)(i) through (iv) of this section. As provided in paragraph (b) of this section, any other FSI amount resulting to the CAMT entity or the partnership from the transaction (for example, FSI gain or loss resulting from a deconsolidation or dilution, a revaluation to the fair market value of partnership assets for FSI purposes, or the application of paragraph (e) of this section) is not disregarded for AFSI purposes.

(2) *Contribution of property with financial accounting built-in gain or loss*—(i) *Deferred sale approach.* Subject to paragraph (e) of this section and except as provided in paragraphs (c)(2)(ii) through (iv) and (f) of this section, a contributor that contributes property to a partnership in a transaction described in paragraph (c)(1) of this section (deferred sale property) includes the amount of deferred sale gain or loss (as determined under paragraph (c)(2)(i)(A) of this section) in its AFSI ratably, on a monthly basis, over the applicable recovery period (as determined under paragraphs (c)(2)(i)(B) through (F) of this section) beginning on the first day of the month the deferred sale property is contributed to the partnership (in the case of deferred sale property described in paragraph (c)(2)(i)(B), (C), (D), or (F) of this section) or the first day of the month described in paragraph (c)(2)(i)(E) of this section (in the case of deferred sale property described in paragraph (c)(2)(i)(E) of this section). For purposes of the preceding sentence—

(A) The amount of *deferred sale gain or loss* is the amount of gain or loss reflected in the contributor's FSI resulting from the contribution of deferred sale property, and if the contribution is treated as a sale or exchange for AFS purposes, such gain or loss is redetermined by reference to the contributor's CAMT basis in the deferred sale property at the time of

contribution rather than the contributor's AFS basis;

(B) The applicable recovery period for deferred sale property that is section 168 property (as defined in § 1.56A-15(b)(6)) or qualified wireless spectrum (as defined in § 1.56A-16(b)(4)) and that is placed in service by the contributor in a taxable year prior to the taxable year in which the property becomes deferred sale property is the full recovery period that was assigned to the property by the contributor in the taxable year such property was placed in service for purposes of depreciating or amortizing the property for regular tax purposes;

(C) The applicable recovery period for deferred sale property that is section 168 property or qualified wireless spectrum and that is either placed in service and contributed to a partnership in the same taxable year or is contributed and placed in service by the partnership in the same taxable year as the contribution, is the recovery period used by the partnership to depreciate or amortize the deferred sale property for regular tax purposes;

(D) The applicable recovery period for deferred sale property subject to depreciation or amortization for AFS purposes that is not section 168 property or qualified wireless spectrum in the hands of the contributor or the partnership is the recovery period used by the partnership to depreciate or amortize the deferred sale property for AFS purposes;

(E) If the deferred sale property that is section 168 property or qualified wireless spectrum has not been placed in service in the same taxable year it is contributed to the partnership, but is placed in service by the partnership in the immediately subsequent taxable year and thus subject to depreciation in that subsequent taxable year, the applicable recovery period is the recovery period for regular tax purposes that is used by the partnership for the deferred sale property in the immediately subsequent taxable year, and the inclusion of the deferred sale gain or loss by the contributor begins on the first day of the first month of that subsequent taxable year; and

(F) The applicable recovery period for deferred sale property that is not described in paragraphs (c)(2)(i)(B) through (E) of this section is 15 years.

(ii) *Inclusion of deferred sale gain upon a decrease in contributor's distributive share percentage*—(A) *In general.* If the contributor's distributive share percentage (as determined under § 1.56A-5(e)(2)) in the partnership decreases by more than one-third following its contribution of deferred

sale property (whether by sale or exchange, liquidation of all or part of the contributor's interest in the partnership, dilution or deconsolidation, or otherwise), then the contributor includes in its AFSI for the taxable year in which the decrease occurs an amount of the deferred sale gain equal to the product of the amount described in paragraph (c)(2)(ii)(B) of this section and the percentage described in paragraph (c)(2)(ii)(C) of this section. Any amount of deferred sale gain remaining after application of this paragraph is included in the contributor's AFSI as provided in paragraph (c)(2)(ii)(D) of this section. Deferred sale loss, if any, is not accelerated under this paragraph (c)(2)(ii) as a result of decrease in in a contributor's distributive share percentage unless the decrease is the result of the contributor disposing of its entire investment in the partnership.

(B) *The amount.* The amount referenced in paragraph (c)(2)(ii)(A) of this section is the amount of deferred sale gain with respect to the deferred sale property that has not yet been included in the contributor's AFSI as of the date immediately before the transaction resulting in the decrease in the contributor's distributive share percentage.

(C) *The percentage.* The percentage referenced in paragraph (c)(2)(ii)(A) of this section is the percentage change in the contributor's distributive share percentage resulting from the transaction.

(D) *Continued ratable inclusion of remaining deferred sale gain or loss.* The amount (if any) of deferred sale gain or loss with respect to deferred sale property remaining after application of paragraph (c)(2)(ii)(A) of this section will continue to be included in the contributor's AFSI ratably on a monthly basis over the remaining applicable recovery period of the deferred sale property.

(iii) *Inclusion of deferred sale gain or loss upon disposition of deferred sale property.* If the partnership sells, distributes, or otherwise disposes of deferred sale property (including by distribution to the contributor or the partnership's contribution of the deferred sale property to another CAMT entity in a recognition or nonrecognition transaction), then the contributor includes in its AFSI in the taxable year of the disposition, the amount of any deferred sale gain or loss with respect to the deferred sale property that has yet to be included in the contributor's AFSI as of the date of the disposition. For rules regarding the effects of property distributions on the AFSI of a

partnership and its CAMT entity partner, *see* paragraphs (d)(1) and (2) of this section.

(iv) *Inclusion of deferred sale gain upon an acceleration event described in § 1.721(c)–4(b).* If section 721(a) applies to a contribution of deferred sale property due to the application of the gain deferral method described in § 1.721(c)–3 and an acceleration event described in § 1.721(c)–4(b) occurs, then the contributor includes in its AFSI for the contributor's taxable year of the event, the amount of any deferred sale gain with respect to the deferred sale property that has yet to be included in the contributor's AFSI as of the date of the acceleration event. If a partial acceleration event described in § 1.721(c)–5(d) occurs, then the contributor includes in its AFSI in the taxable year of the event an amount of deferred sale gain that bears the same ratio to the total amount of any deferred sale gain that has yet to be included in the contributor's AFSI immediately before the event, that the taxable gain required to be recognized under § 1.721(c)–5(d)(2) or (3) bears to the total amount of remaining built-in gain (as defined in § 1.721(c)–1(b)(13)) with respect to section 721(c) property, as computed for regular tax purposes. The amount (if any) of deferred sale gain with respect to deferred sale property remaining after application of this paragraph (c)(2)(iv) will continue to be included in the contributor's AFSI ratably on a monthly basis over the remaining applicable recovery period of the deferred sale property. These acceleration events are in addition to the acceleration events under paragraphs (c)(2)(ii) and (iii) of this section.

(v) *Tiered partnerships.* If the contributor is a partnership, the deferred sale gain or loss included in the contributor partnership's AFSI for a taxable year in accordance with this paragraph (c)(2) is included in the distributive share amounts of the partners of the contributor partnership (whether or not the partners were partners of the contributor at the time of contribution) in proportion to their distributive share percentages for the taxable year, as determined under § 1.56A–5(e)(2). Similar rules apply to any partner in the chain of partnerships that owns an interest directly or indirectly in the contributor.

(3) *Basis rules—(i) Basis of property contributed to partnership.* The partnership's initial CAMT basis in property contributed to a partnership by a CAMT entity at the time of the contribution is the partnership's initial AFS basis in the contributed property at

the time of the contribution, regardless of whether section 721(a) applies, in whole or in part, to the contribution.

(ii) *Basis of partnership investment for contributed property.* The initial CAMT basis of an interest in a partnership investment acquired by a contributor upon a contribution of property to the partnership to which section 721(a) applies is the contributor's AFS basis in the acquired partnership investment, decreased by any deferred sale gain or increased by any deferred sale loss that is required to be included in the contributor's AFSI in accordance with paragraph (c)(2) of this section. *See* § 1.56A–5(j) for rules that apply to adjustments to CAMT basis of a partnership investment for contributions of stock of a foreign corporation. The contributor's initial CAMT basis in the acquired partnership investment is subsequently increased or decreased—

(A) On the last day of each taxable year during the applicable recovery period by an amount equal to the deferred sale gain or loss, respectively, required to be included in AFSI in each taxable year in accordance with paragraph (c)(2)(i) of this section (without duplication of any increases or decreases to CAMT basis under paragraph (c)(3)(ii)(B) of this section); or

(B) Immediately prior to an event causing all or a portion of the deferred sale gain to be accelerated into AFSI in accordance with paragraph (c)(2)(ii) of this section, by an amount equal to the sum of the deferred sale gain or loss that accrued in accordance with paragraph (c)(2)(i) of this section prior to the event and the amount required to be included in AFSI under paragraph (c)(2)(ii) of this section.

(d) *Distributions of property—(1) Gain or loss recognized by partnership—(i) In general.* Except as provided in paragraph (f) of this section, if a partnership distributes property to a partner in a transaction to which section 731(b) applies, any gain or loss reflected in the partnership's FSI with respect to the property transferred is disregarded for purposes of determining the partnership's modified FSI and instead is included in the CAMT entity partners' distributive share amounts (as provided in § 1.56A–5(e)(1)(iv)) in accordance with paragraphs (d)(1)(ii) and (iii) and (d)(2) of this section. As provided in paragraph (b) of this section, any other FSI amount resulting from the transaction (for example, FSI gain or loss to a partner resulting from a deconsolidation or dilution, or a revaluation to fair market value of other partnership assets for FSI purposes) is not disregarded for purposes of

determining the AFSI of the partner or the modified FSI of the partnership.

(ii) *Deferred distribution gain or loss approach.* Subject to paragraph (e) of this section and except as provided in paragraphs (d)(1)(iii), (d)(2)(ii), and (f) of this section, if a partnership distributes property to a partner in a transaction to which section 731(b) applies (deferred distribution property), the amount of deferred distribution gain or loss (as determined under paragraph (d)(1)(ii)(A) of this section) is included in each CAMT entity partner's distributive share amount (in accordance with their allocable shares as provided in paragraph (d)(2) of this section) ratably, on a monthly basis, over the applicable recovery period (as determined under paragraphs (d)(1)(ii)(B) through (F) of this section) beginning on the first day of the month in which the distribution occurs (in the case of deferred distribution property described in paragraph (d)(1)(ii)(B), (C), (D), or (F) of this section), or the first day of the month described in paragraph (d)(1)(ii)(E) of this section (in the case of deferred distribution property described in paragraph (d)(1)(ii)(E) of this section). For purposes of the preceding sentence—

(A) The amount of *deferred distribution gain or loss* is the amount of gain or loss reflected in the partnership's FSI resulting from the distribution of deferred distribution property, and if the distribution is treated as a sale or exchange for AFS purposes, such gain or loss is redetermined by reference to the partnership's CAMT basis in the deferred distribution property at the time of distribution rather than the partnership's AFS basis;

(B) The applicable recovery period for deferred distribution property that is section 168 property (as defined in § 1.56A–15(b)(6)) or qualified wireless spectrum (as defined in § 1.56A–16(b)(4)) and that is placed in service by the partnership in a taxable year prior to the taxable year in which the property becomes deferred distribution property is the full recovery period that was assigned to the property by the partnership in the taxable year such property was placed in service for purposes of depreciating or amortizing the property for regular tax purposes;

(C) The applicable recovery period for deferred distribution property that is section 168 property or qualified wireless spectrum and that is either placed in service by a partnership and distributed by the partnership to a partner in the same taxable year or is distributed by the partnership to a partner and placed in service by the

partner in the same taxable year as the distribution is the recovery period used by the partner to depreciate or amortize the deferred sale property for the taxable year of the distribution for regular tax purposes;

(D) The applicable recovery period for deferred distribution property subject to depreciation or amortization for AFS purposes that is not section 168 property or qualified wireless spectrum is the recovery period that was used by the partnership to depreciate or amortize the deferred sale property for AFS purposes;

(E) If the deferred distribution property that is section 168 property or qualified wireless spectrum has not been placed in service in the same taxable year it is distributed to the partner, but is placed in service by the partner in the immediately subsequent taxable year and thus subject to depreciation in that subsequent taxable year, the applicable recovery period is the recovery period for regular tax purposes that is used by the partner for the deferred distribution property in the immediately subsequent taxable year, and the inclusion of the deferred sale gain or loss by the partnership begins on the first day of the first month of that subsequent taxable year; and

(F) The applicable recovery period for deferred distribution property that is not described in paragraphs (d)(1)(ii)(B) through (E) of this section is 15 years.

(iii) *Acceleration of deferred distribution gain or loss.* If a partnership described in paragraph (d)(1)(ii) of this section engages in an acceleration transaction, then the partners of the partnership that are CAMT entities include in their distributive share amounts, in the manner provided in paragraph (d)(2) of this section, the amount of any deferred distribution gain or loss with respect to the deferred distribution property that has yet to be included in such partners' distributive share amounts as of the date immediately before the acceleration transaction for the partnership's taxable year in which the acceleration transaction occurs. For purposes of this paragraph (d)(1)(iii), the term *acceleration transaction* means, with respect to a partnership described in paragraph (d)(1)(ii) of this section—

(A) A termination of the partnership under section 708(b)(1) of the Code as a result of a dissolution or liquidation;

(B) A sale or exchange of all or substantially all of the partnership's assets; or

(C) A merger or consolidation of the partnership with one or more partnerships in which the partnership is not the resulting partnership for regular

tax purposes (as determined under § 1.708–1(c)).

(2) *Partner inclusions of deferred distribution gain or loss.*—(i) *Partners' allocable shares of deferred distribution gain or loss.* Deferred distribution gain or loss is allocated among the CAMT entity partners in proportion to their distributive share percentages for the taxable year of the distribution, as determined under § 1.56A–5(e)(2).

(ii) *Acceleration of a partner's allocable share of deferred distribution gain or loss.* If a CAMT entity partner disposes of its entire investment in the partnership, including through a liquidating distribution by the partnership, the partner includes in its distributive share amount for the partner's taxable year in which the disposition occurs its allocable share of any deferred distribution gain or loss that has not yet been included in the partner's distributive share amount as of the disposition date.

(iii) *FSI resulting to a partner from a distribution of property or money.* If a distribution of property or money from a partnership to a CAMT entity partner results in any gain, loss, or other amount being reflected in the FSI of the partner, then such gain, loss or other amount is redetermined using the relevant CAMT basis, if applicable, and included in the partner's AFSI in the taxable year in which the property or money is distributed to the partner. For purposes of this paragraph (d)(2)(iii), if the relevant CAMT basis is the partner's CAMT basis in its partnership investment.

(A) Money distributed in the same transaction as property is treated as reducing CAMT basis, if applicable under § 1.56A–5(j)(3)(i), prior to any distribution of property;

(B) Stock in a foreign corporation distributed in the same transaction is treated as reducing CAMT basis under § 1.56A–5(j)(3)(xii) prior to any distribution of property other than stock in a foreign corporation; and

(C) Principles similar to § 1.731–1(a)(1)(ii) apply for purposes of calculating the effect of the distribution on AFSI.

(iv) *Tiered partnerships.* If any partner of the distributing partnership is a partnership for Federal tax purposes, the deferred distribution gain or loss included in the partner's distributive share amount for a taxable year in accordance with paragraph (d)(2)(i) of this section is included in its CAMT entity partners' distributive share amounts (whether or not the partners were partners in the partnership at the time of the distribution) in proportion to their distributive share percentages for

the taxable year, as determined under § 1.56A–5(e)(2). Similar rules apply to any CAMT entity partner in the chain of partnerships that owns an interest, directly or indirectly, in the partnership that is a partner in the distributing partnership.

(3) *Basis rules*—(i) *Basis of distributed property*. A CAMT entity partner's initial CAMT basis in property distributed by a partnership is the partner's initial basis in the property for AFS purposes, determined immediately after the distribution.

(ii) *Basis of partner's investment in partnership*. The CAMT basis of a CAMT entity partner's investment in a partnership following the partnership's distribution of property is increased or decreased—

(A) At the end of each taxable year during the applicable recovery period by the amount required to be included in the partner's distributive share amount in each taxable year in accordance with paragraph (d)(1)(ii) of this section; and

(B) Immediately prior to an acceleration event specified in paragraph (d)(1)(iii) or (d)(2)(ii) of this section by the amount of deferred distribution gain or loss not previously included in the partner's distributive share amount in accordance with paragraph (d)(1)(ii) of this section.

(e) *Liability allocation rules*—(1) *General rule*. The treatment of partner and partnership liabilities for purposes of determining a CAMT entity partner's or partnership's AFSI is based on the applicable liability treatment for AFS purposes and not under section 752 of the Code.

(2) *Application of rules to contributions and distributions*. For purposes of determining whether section 721(a) or 731(b) applies to a transaction, section 752 is inapplicable. As a result, any rules relating to liabilities for regular tax purposes, such as the rules relating to liabilities under §§ 1.707–5 and 1.707–6, do not apply.

(f) *Proportionate deferred sale approach for partial nonrecognition transactions under sections 721(a) and 731(b)*. This paragraph (f) applies if a transfer of property by a partner to a partnership does not constitute a nonrecognition transaction under section 721(a) for regular tax purposes (or would not constitute a nonrecognition transaction under section 721(a) for regular tax purposes considering the application of paragraph (e) of this section), in whole or in part, or if a transfer of property by a partnership to a partner would not constitute a nonrecognition transaction under section 731(b) for regular tax

purposes (or would not constitute a nonrecognition transaction under section 731(b) for regular tax purposes considering the application of paragraph (e) of this section), in whole or in part. If this paragraph (f) applies, then the CAMT entity partner or partnership includes in its AFSI or modified FSI, as applicable, for the taxable year of the transfer an amount (if any) of the FSI reflected on the partner's or the partnership's AFS resulting from the transaction that bears the same ratio to the total amount of gain or loss reflected in the partner's or partnership's FSI resulting from the transaction (with the amount of such gain or loss being redetermined using the CAMT basis of the property) that the taxable gain or loss that would be recognized without application of section 752 and the exceptions relating to liabilities in §§ 1.707–5 and 1.707–6 bears to the taxable gain or loss realized on the transfer as determined for regular tax purposes. Any FSI resulting from the transaction but not included in a CAMT entity partner's or partnership's AFSI or modified FSI, as applicable, because of the rules in paragraph (c) or (d) of this section is deferred and included in the partner's AFSI or the partners' distributive share amounts, as appropriate, in accordance with paragraph (c) or (d) of this section.

(g) *Maintenance of books and records and reporting requirements*—(1) *Information to be included in books and records*. A partnership and each CAMT entity that is a partner in the partnership must include in its respective books and records the information necessary for the partnership and each CAMT entity to comply with the rules of this section and § 1.56A–5. As applicable for a partnership or partner to comply with the rules of this section and § 1.56A–5, the information to be maintained in its respective books and records includes, without limitation—

(i) The recovery periods used to depreciate deferred sale property and deferred distribution property for regular tax purposes;

(ii) The properties contributed to the partnership that had a built-in gain or loss at the time of contribution and the amount of the built-in gain or loss with respect to each property for AFSI purposes;

(iii) The CAMT basis of any property contributed to or distributed from the partnership; and

(iv) The amount of deferred distribution gain or loss to be allocated among, and included in the distributive share amounts of, the partners of the partnership.

(2) *Reporting requirements*—(i) *In general*. Subject to the notice requirement in § 1.56A–5(i)(3)(iii), a partnership must report to a CAMT entity partner the information required for the CAMT entity partner to comply with the rules of this section and § 1.56A–5, including, without limitation—

(A) The recovery periods used to depreciate deferred sale property;

(B) The date on which the partnership sold, distributed, or otherwise disposed of deferred sale property;

(C) The date on which an acceleration event described in § 1.721(c)–4(b) occurred; and

(D) The amount of deferred distribution gain or loss resulting from a distribution of property that is included in the CAMT entity partner's distributive share amount under paragraph (d) of this section.

(ii) *Form of reporting*. A partnership may report information to a CAMT entity partner in any reasonable manner sufficient for a CAMT entity partner to comply with the rules of this section, provided, that if any information relates to the determination of a CAMT entity partner's distributive share amount with respect to its investment in the partnership, the partnership must report the information consistently with the reporting requirements described in § 1.56A–5(h).

(h) *Examples*. The following examples illustrate the application of the rules in this section.

(1) *Example 1: Contribution of property to an existing partnership with no deferred sale gain or loss*—(i) *Facts*. On July 1, 2024, X, a domestic corporation, contributes land with an AFS basis of \$20,000x and a fair market value of \$20,000x to PRS, a partnership, in exchange for a 20% interest in the capital and profits of PRS in a transaction to which section 721(a) applies. No gain or loss is reflected in X's FSI as a result of the property transfer. Following the transfer, X's AFS basis in its investment in PRS is \$20,000x. PRS's initial AFS basis in the land is \$20,000x. At the time of contribution, Y, a domestic corporation, held a 55% interest in the capital and profits of PRS, and various individuals owned the remaining 45%.

(ii) *Analysis*. Although this is a contribution of property to which paragraph (c)(1) of this section would apply, because no gain or loss is reflected in X's FSI as a result of the property transfer, there is no deferred sale gain or loss. Under paragraph (c)(3)(ii) of this section, X's initial CAMT basis in its partnership investment is equal to \$20,000x

(\$20,000x AFS basis of X's partnership investment following the transfer—\$0 deferred sale gain or loss). Under paragraph (c)(3)(i) of this section, PRS has an initial CAMT basis in the land equal to its initial AFS basis of the land, which is also \$20,000x. If X's receipt of the 20% interest in capital and profits of PRS causes PRS to become deconsolidated from Y for AFS purposes, then, under paragraph (b)(2) of this section, any gain or loss included in Y's FSI because of the deconsolidation for AFS purposes would not be excluded from Y's AFSI under this section.

(2) *Example 2: Contribution of property to a new partnership with deferred sale gain*—(i) *Facts*. X and Y, each a domestic corporation that uses the calendar year as its taxable year, form partnership PRS on July 1, 2024. X contributes Asset 1, which is section 168 property, in exchange for a 40% interest in the capital and profits of PRS in a transaction to which section 721(a) applies. Immediately before the contribution, Asset 1 had an AFS basis of \$4,000x, a CAMT basis of \$3,000x, and a fair market value of \$10,000x. The property transfer results in \$6,000x of FSI being reflected in X's AFS for 2024, which is calculated for AFS purposes by subtracting the AFS basis of Asset 1 from the fair market value (\$10,000x—\$4,000x). For regular tax purposes, X uses a 5-year recovery period for Asset 1. Following the transfer, X's initial AFS basis in its investment in PRS is \$10,000x. PRS's initial AFS basis in Asset 1 is \$10,000x.

(ii) *Analysis*. The FSI resulting from the transfer is included in X's AFSI in accordance with paragraph (c)(2) of this section under the deferred sale approach. First, the amount of FSI resulting from the transfer must be redetermined using the CAMT basis of the property instead of the AFS basis of the property, which results in a redetermined FSI amount of \$7,000x (\$10,000x—\$3,000x). This redetermined FSI amount is included in X's AFSI ratably over the applicable recovery period. Because Asset 1 is section 168 property, under paragraph (c)(2)(i)(B) of this section, the recovery period is the recovery period used by X to depreciate the deferred sale property for regular tax purposes, or 5 years. Accordingly, X includes \$700x in AFSI in 2024 $((\$7,000x \text{ deferred sale gain}) / (60 \text{ months (the 5-year recovery period determined on a monthly basis)}) \times 6 \text{ months (the number of months, including partial months, remaining in X's taxable year from the date of the contribution)})$. X will include the remaining \$6,300x of deferred sale gain in AFSI in 2025

through 2029. Under paragraph (c)(3)(i) of this section, PRS's initial CAMT basis in Asset 1 equals its AFS basis of Asset 1 following the transfer, or \$10,000x. Under paragraph (c)(3)(ii) of this section, X's initial CAMT basis in its investment in PRS is \$3,000x (the \$10,000x initial AFS basis of the partnership investment—the \$7,000x of deferred sale gain). X's CAMT basis in its partnership investment is increased by the amount of deferred sale gain included in its AFSI in accordance with paragraph (c)(3)(ii) of this section and § 1.56A–5(j)(3).

(3) *Example 3: Acceleration of deferred sale gain upon disposition of a portion of CAMT entity's partnership investment*—(i) *Facts*. The facts are the same as in paragraph (h)(2)(i) of this section (*Example 2*), except that, effective July 1, 2026, X sold a portion of its investment in PRS and, after the sale, X's distributive share percentage under § 1.56A–5(c)(2) is reduced from 40% to 25%.

(ii) *Analysis*—(A) *Determine the amount of deferred gain accelerated*. Under paragraph (c)(2)(ii) of this section, X includes \$1,575x in AFSI in 2026 because of the sale, determined as follows:

Deferred gain under paragraph (c)(2)(i) of this section	\$7,000x
Less deferred gain previously included in AFSI ...	(\$2,800x)
Remaining deferred gain under paragraph (b)(2)(i) of this section	\$4,200x
Distributive share percentage prior to sale	40%
Distributive share percentage after sale	25%
Percentage change in ownership $((40\% - 25\%) / 40\%)$	37.5%
Amount included in AFSI under paragraph (c)(2)(ii) of this section $(\$4,200x \times 0.375)$	\$1,575x

(B) *Calculation of CAMT basis upon disposition of a portion of a CAMT entity's partnership investment*. In addition to the \$1,575x that X includes in AFSI in 2026 because of the sale, X must also include in AFSI in 2026 the portion of the deferred sale gain that accrued from January 1 through June 30 of 2026, and a portion of the remaining deferred sale gain required to be included at the end of 2026 based on the remaining recovery period of Asset 1. Per the preceding calculation, there is \$2,625x deferred sale gain remaining (\$4,200x less \$1,575x). Accordingly, X includes in AFSI \$1,137.5x (\$700x deferred sale gain that accrued from

January 1 through June 30, 2026, plus \$437.5 $((\$2,625x \text{ deferred sale gain remaining after the sale}) / (36 \text{ months (the 3-year remaining recovery period determined on a monthly basis)}) \times 6 \text{ months (the number of months, including partial months, remaining in X's taxable year from the date of sale)})$. For purposes of determining the amount of gain or loss to be included in X's AFSI as a result of a sale of its partnership investment, X must, under paragraph (c)(3)(ii) of this section, increase its CAMT basis immediately prior to the sale of the partnership investment by the sum of \$2,275x (\$700x deferred sale gain required to be ratably included in AFSI through June 30, 2026 + \$1,575x deferred sale gain required to be included in AFSI in 2026 as a result of the sale).

(4) *Example 4: Partnership disposition of deferred sale property*—(i) *Facts*. The facts are the same as in paragraph (h)(2)(i) of this section (*Example 2*), except that PRS sells Asset 1 to an unrelated third party at the end of 2026.

(ii) *Analysis*. Under paragraph (c)(2)(iii) of this section, X includes in AFSI in 2026 all of the \$3,500x of remaining deferred sale gain with respect to Asset 1 as of the end of 2026. Under paragraph (c)(3)(ii) of this section and § 1.56A–5(k)(3), X's CAMT basis in its partnership investment will increase by the amount of deferred sale gain required to be included in AFSI, or \$3,500x.

(5) *Example 5: Part disguised sale of property to partnership and part deferred sale gain*—(i) *Facts*. The facts are the same as in paragraph (h)(2)(i) of this section (*Example 2*), except that, immediately after the contribution, PRS transfers \$5,000x cash to X, and X's initial AFS basis in its investment in PRS is \$5,000x. Assume that, under section 707(a)(2)(B) of the Code and § 1.707–3, PRS's transfer of cash to X is treated as part of a sale of Asset 1 by X to PRS. X's adjusted tax basis in Asset 1 is \$0x at the time of the transfer.

(ii) *Analysis: Treatment of transaction for regular tax purposes*. Under section 707(a)(2)(B) and § 1.707–3, X is treated as having sold a portion of Asset 1 with a value of \$5,000x to PRS in exchange for \$5,000 of cash. Accordingly, X recognizes \$5,000x of taxable gain for regular tax purposes (\$5,000x amount realized—\$0x adjusted tax basis $(\$0x \times \$5,000x / \$10,000x)$), and X is considered to have contributed to PRS in a transaction to which section 721(a) applies, a portion of Asset 1 with a \$5,000 fair market value and an adjusted tax basis of \$0x.

(iii) *Analysis: Proportionate deferred sale approach*—(A) *Determine X's AFSI*

inclusion amount. Under paragraph (f) of this section, X is required to include in AFSI an amount of gain or loss that bears the same ratio to the total amount of gain or loss reflected in X's FSI (but redetermined using the CAMT basis of the property) that taxable gain or loss recognized on the transfer bears to the taxable gain or loss realized on the transfer, as determined for regular tax purposes. Accordingly, X includes \$3,500x in AFSI in 2024 (\$7,000x of gain resulting from the transfer, redetermined using the CAMT basis of the property $(\$10,000x - \$3,000x) \times (\$5,000x \text{ taxable gain recognized} / \$10,000x \text{ taxable gain realized})$).

(B) *Determine X's deferred sale gain amount.* X is considered to have contributed to PRS in a transaction to which section 721(a) applies, \$5,000x of the fair market value of Asset 1 with an AFS basis of \$2,000x $(\$4,000x \times (\$5,000x / \$10,000x))$ and a CAMT basis of \$1,500x $(\$3,000x \times (\$5,000x / \$10,000x))$. Under paragraph (c)(2) of this section, the CAMT gain resulting from the transfer is included in X's AFSI in accordance with paragraph (c)(2)(i) of this section under the deferred sale approach. To do this, X first determines the amount of deferred sale gain using the CAMT basis of the property considered contributed in a deferred sale $(\$5,000x - \$1,500x)$ and includes this gain, or \$3,500x, in its AFSI ratably over the applicable recovery period. Because Asset 1 is section 168 property, under paragraph (c)(2)(i)(B) of this section, the applicable recovery period is the recovery period used by X to depreciate the deferred sale property for regular tax purposes, or 5 years.

(C) *Determine X's initial CAMT basis in its partnership investment and PRS's initial CAMT basis in Asset 1.* Under paragraph (c)(3)(ii) of this section, X's initial CAMT basis in its partnership investment is \$1,500x $(\$5,000x \text{ AFS basis of the partnership investment to X following the transfer} - \$3,500x \text{ deferred sale gain determined under paragraph (c)(2)(i) of this section})$. Under paragraph (c)(3)(i) of this section, PRS's initial CAMT basis in Asset 1 is equal to the AFS basis of the property, or \$10,000x.

(6) *Example 6: Contribution of encumbered property—(i) Facts.* The facts are the same as in paragraph (h)(2)(i) of this section (Example 2), except that Asset 1 was subject to a \$5,000x nonrecourse liability that would be a qualified liability under § 1.707–5, and that PRS took the property subject to such liability. Other than PRS's taking of Asset 1 subject to the liability, X received no other consideration as part of a transfer and

would not be deemed to have sold any portion of Asset 1 under §§ 1.707–3 and 1.707–5. X's adjusted tax basis in Asset 1 at the time of contribution is \$0x. For AFS purposes, X is required to recognize gain equal to the excess of the nonrecourse liability on Asset 1 upon contribution, and its AFS basis in the property contributed and X's initial AFS basis in its investment in PRS is \$5,000x.

(ii) *Analysis—(A) Proportionate deferred sale approach with application of paragraph (e) of this section.* Even though X is not considered to have sold any portion of Asset 1 to PRS for which taxable gain would be required to be recognized for regular tax purposes under §§ 1.707–3 and 1.707–5 because the nonrecourse liability is a qualified liability, paragraph (e)(2) of this section applies. Paragraph (e)(2) of this section provides that section 752 and the exceptions in § 1.707–5 concerning liabilities assumed or taken subject to property by a partnership do not apply for purposes of determining the portion of Asset 1 deemed contributed or sold under paragraphs (c) and (f) of this section. Accordingly, for purposes of determining the amount of the gain or loss to be included in AFSI in the taxable year of transfer under paragraph (f) of this section and the amount to be deferred under paragraph (c) of this section, X calculates the amount of taxable gain that would be recognized on the transfer under §§ 1.1001–2(a)(1) and 1.707–3, without application of section 752 and § 1.707–5.

(B) *Determine X's proportionate amount of AFSI inclusion and deferred sale gain.* Under § 1.1001–2(a)(1), X would have been treated as receiving consideration of \$5,000x on the transfer of Asset 1 to PRS because of PRS's taking Asset 1 subject to the \$5,000x nonrecourse liability. Applying § 1.707–3 to determine the portion of Asset 1 that is sold to PRS and the portion that is contributed under section 721(a), X would have been treated as having sold a portion of Asset 1 and recognized \$5,000x of gain for regular tax purposes $(\$5,000x \text{ amount realized} - \$0x \text{ adjusted tax basis } (\$0x \times \$5,000x / \$10,000x))$. X also would have been considered to have contributed to PRS under section 721(a) \$5,000x of the fair market value of Asset 1 with an adjusted tax basis of \$0x.

(C) *Remaining analysis.* The remaining analysis is the same as in paragraphs (h)(5)(iii)(A) through (C) of this section (Example 5).

(7) *Example 7: Current distribution of section 168 property to partner—(i) Facts.* Each of X and Y is a corporation and a partner in PRS. Each of X, Y and

PRS uses the calendar year as its taxable year. On July 1, 2024, PRS transfers Asset 1 to X, which is not an asset contributed to PRS by either X or Y. The distribution is not in liquidation of any part of X's financial interest in PRS. At the time of the distribution, Asset 1, which is section 168 property, had a fair market value of \$200,000x, an AFS basis of \$120,000x, and a CAMT basis of \$100,000x, and was being depreciated over a 5-year recovery period under the general depreciation system of section 168. For AFS purposes, PRS recognizes \$80,000x of FSI on the distribution, which is calculated by subtracting the AFS basis of Asset 1 from the fair market value of Asset 1. At the time of the distribution, X had an AFS basis in its partnership investment of \$125,000x, and a distributive share percentage of 40%, as determined under § 1.56A–5(e)(2).

(ii) *Analysis: Treatment of partnership-level gain.* Under paragraph (d)(1)(i) of this section, no part of the \$80,000x of FSI is included in PRS's modified FSI. Rather, under paragraph (d)(1)(ii) of this section, X and Y include their allocable portion (as determined under paragraph (d)(2)(i) of this section) of the deferred distribution gain (but redetermined using the CAMT basis of Asset 1) in their respective distributive share amounts over a period of 5 years (the applicable recovery period used by the partnership to depreciate the property for regular tax purposes), commencing on July 1, 2024. Accordingly, under paragraphs (d)(1)(ii) and (d)(2)(i) of this section, X and Y would include in their distributive share amounts in 2024 the sum of \$4,000x and \$6,000x, respectively (the \$100,000x of deferred distribution gain (as redetermined using the CAMT basis of Property) multiplied by X's or Y's distributive share percentage (40% or 60%, respectively), divided by 60 months (the 5 year recovery period determined on a monthly basis), and further multiplied by 6 (the number of months, including partial months, remaining in PRS's taxable year following the distribution of Asset 1)). In each of 2025 through 2028, X and Y would include in their respective distributive share amounts the sums of \$8,000x and \$12,000x, respectively, and in 2029, the sums of \$4,000x and \$6,000x, respectively.

(iii) *Analysis: Treatment of partner-level gain.* If, as a result of the distribution, X would be required to include \$75,000x of gain in FSI (calculated by the \$200,000x AFS value of Asset 1 over X's \$125,000x AFS basis in its partnership investment), then, under paragraph (d)(2)(iii) of this

section, X must redetermine the FSI amount using the CAMT basis it is partnership investment as of the last day of the taxable year under principles similar to § 1.731–1(a)(1)(ii) and include this amount in its AFSI. Under paragraph (d)(3)(i) of this section, X's initial CAMT basis in Asset 1 would be X's initial basis in the property for AFS purposes, determined immediately after the distribution.

(8) *Example 8: Acceleration of gain due to partnership dissolution—(i)*

Facts. The facts are the same as in paragraph (h)(7)(i) of this section (*Example 7*), except that at the beginning of 2026, Partnership XY dissolves and liquidates.

(ii) *Analysis.* Under paragraph (d)(1)(iii) of this section, PRS includes in X's and Y's distributive share amounts in 2026 the sums of \$28,000x (\$40,000x deferred distribution gain allocated to X – \$12,000x previously included in X's distributive share amount in 2024 and 2025), and \$42,000x (the \$60,000x of the deferred distribution gain allocated to Y – \$18,000x previously included in Y's distributive share amount in 2024 and 2025), respectively. Under paragraph (d)(3)(ii) of this section, X and Y would increase their CAMT bases in their partnership investments by the \$28,000x and \$42,000x, respectively, immediately prior to the dissolution and liquidation.

(9) *Example 9: Acceleration of gain due to liquidation of partner's interest—(i)*

Facts. The facts are the same as in paragraph (h)(7)(i) of this section (*Example 7*), except that at the beginning of 2027, Y sells its partnership investment to Z, an unrelated corporation.

(ii) *Analysis.* Under paragraph (d)(2)(ii) of this section, Y includes in its distributive share amount for 2027 the sum of \$30,000x, the remaining amount of deferred distribution gain allocated to it under paragraph (d)(2)(i) of this section (\$60,000x initial allocation – \$6,000x previously included in its distributive share amount in 2024 – \$12,000x previously included in its distributive share amount in each of 2025 and 2026). Under paragraph (d)(3)(ii) of this section, Y would increase its CAMT basis immediately prior to its sale of its partnership investment to Z by the \$30,000x of remaining deferred distribution gain required to be included in its AFSI under paragraph (d)(2)(ii) of this section. Under paragraph (d)(1)(ii) of this section, X would continue to include in its distributive share amount its proportionate amount of the deferred

distribution gain allocated to it under paragraph (d)(2)(i) of this section. Accordingly, X would include \$8,000x in its distributive share amount in 2027.

(i) *Applicability date.* This section applies to taxable years ending after [DATE OF PUBLICATION OF FINAL RULE IN THE Federal Register].

§ 1.56A–21 AFSI adjustments for troubled companies.

(a) *Overview—(1) Scope.* This section provides rules under section 56A of the Code for determining the CAMT consequences resulting from an insolvency or bankruptcy of a CAMT entity, including rules for determining any resulting AFSI and adjustments to CAMT basis or other CAMT attributes. This section also provides rules under section 56A for determining the CAMT consequences resulting from the receipt of Federal financial assistance. This section incorporates the definitions and rules regarding covered transactions in §§ 1.56A–18 and 1.56A–19. Paragraph (b) of this section provides additional definitions for purposes of this section. Paragraph (c) of this section provides rules regarding discharge of indebtedness income. Paragraph (d) of this section provides rules regarding fresh start accounting for the emergence from bankruptcy. Paragraph (e) of this section provides rules regarding investments in partnerships that realize discharge of indebtedness income. Paragraph (f) of this section provides rules regarding Federal financial assistance. Paragraph (g) of this section provides the applicability date of this section.

(2) *AFSI consequences resulting from disposition of property.* For rules for determining the CAMT consequences resulting from the disposition of any property by a CAMT entity in connection with a title 11 case or an insolvency, see § 1.56A–18(g) and (h), which address covered recognition transactions consisting of a sale of property by a CAMT entity.

(3) *AFS consequences resulting from certain covered nonrecognition transactions.* For rules for determining the CAMT consequences of acquisitive reorganizations and section 355 transactions, see § 1.56A–19(c) and (d), respectively.

(4) *Disregarded entities.* For rules regarding the application of paragraphs (c) and (d) of this section to disregarded entities, see paragraphs (c)(3) and (d)(5) of this section.

(b) *Definitions.* For purposes of this section:

(1) *CAMT attribute.* The term *CAMT attribute* means—

(i) CAMT basis;

(ii) CAMT foreign tax credits;

(iii) CFC adjustment carryovers (as defined in § 1.56A–6(b)(6)); and

(iv) FSNOLs.

(2) *Covered property.* The term *covered property* means section 168 property, qualified wireless spectrum, and ANCSA property (as defined in § 1.56A–11(b)(2)).

(3) *Discharge of indebtedness—(i) In general.* With respect to a CAMT entity, the term *discharge of indebtedness*, and any similar term, means any discharge of indebtedness of the CAMT entity reflected in its AFS.

(ii) *Adjustments to AFS basis.* For purposes of this paragraph (b)(3), the term *discharge of indebtedness*, and any similar term, includes income resulting from adjustments to the AFS basis of the indebtedness during the pendency of a title 11 case.

(iii) *Scope of discharge of indebtedness.* With respect to a CAMT entity, the term *discharge of indebtedness*, and any similar term, does not include the discharge of any indebtedness of the CAMT entity—

(A) To the extent incurring that indebtedness previously has resulted in a reduction in the FSI of the CAMT entity;

(B) That results from the satisfaction of a nonrecourse debt of the CAMT entity with the property that secures that debt; or

(C) That results from the satisfaction of recourse debt of the CAMT entity with property to the extent the aggregate fair market value of the property exceeds the aggregate CAMT basis of that property.

(4) *Federal financial assistance.* The term *Federal financial assistance* (FFA) has the meaning provided in section 597(c) of the Code and § 1.597–1(b).

(5) *Indebtedness.* With respect to a CAMT entity, the term *indebtedness*, and any similar term, means any indebtedness reflected on the AFS of the CAMT entity—

(i) For which the CAMT entity is liable; or

(ii) Subject to which the CAMT entity holds property (see section 108(d)(1) of the Code).

(6) *Insolvent—(i) In general.* The term *insolvent* has the meaning given the term in section 108(d)(3).

(ii) *Timing of determination.* With respect to any discharge of indebtedness of a CAMT entity, whether or not the CAMT entity is insolvent, and the amount by which the CAMT entity is insolvent, is determined on the basis of the CAMT entity's assets and liabilities (for regular tax purposes) immediately before the discharge of indebtedness. See section 108(d)(3).

(7) *Title 11 case.* The term *title 11 case* has the meaning given the term in section 108(d)(2).

(c) *Discharge of indebtedness income*—(1) *AFSI in title 11 cases.* If a CAMT entity that is under the jurisdiction of a court in a title 11 case realizes any discharge of indebtedness income, and if the discharge of indebtedness is granted by the court or is pursuant to a plan approved by the court—

(i) For purposes of determining the AFSI of the CAMT entity, the CAMT entity disregards the total amount of income that is reflected in the FSI of the CAMT entity resulting solely from the discharge of indebtedness of the CAMT entity; and

(ii) The CAMT entity applies the attribute reduction rules described in paragraphs (c)(4) and (5) of this section to the CAMT entity's CAMT attributes.

(2) *AFSI in cases of insolvency.* If a CAMT entity is insolvent and realizes any discharge of indebtedness income, and if paragraph (c)(1) of this section does not apply to the CAMT entity—

(i) For purposes of determining the AFSI of the CAMT entity, the CAMT entity disregards the income reflected in the FSI of the CAMT entity resulting solely from the discharge of indebtedness by an amount equal to the lesser of the amount of the discharge of indebtedness and the amount by which the CAMT entity is insolvent; and

(ii) The CAMT entity applies the attribute reduction rules in paragraph (c)(4) of this section to the CAMT entity's CAMT attributes.

(3) *Disregarded entities*—(i) *In general.* For purposes of applying paragraphs (c)(1) and (2) of this section to discharge of indebtedness of a disregarded entity, the disregarded entity is not considered to be the *taxpayer*, as that term is used in section 108. Instead, for purposes of paragraphs (c)(1) and (2) of this section, the CAMT entity owner of the disregarded entity is the *taxpayer*. See § 1.108–9.

(ii) *Title 11 cases.* If indebtedness of a disregarded entity is discharged in a title 11 case, paragraph (c)(1) of this section applies to that discharged indebtedness only if the CAMT entity owner of the disregarded entity is under the jurisdiction of the court in a title 11 case as the title 11 debtor.

(iii) *Insolvency.* If indebtedness of an insolvent disregarded entity is discharged, paragraph (c)(2) of this section applies to that discharged indebtedness only to the extent the CAMT entity owner of the disregarded entity is insolvent.

(4) *Attribute reduction*—(i) *Overview.* If income reflected in the FSI of a CAMT

entity is disregarded for AFSI purposes under paragraph (c)(1)(i) or (c)(2)(i) of this section (that is, with regard to a discharge of indebtedness resulting from a title 11 case or an insolvency), the CAMT entity reduces the CAMT attributes of the CAMT entity described in, and in the manner required by, this paragraph (c)(4) and paragraph (c)(5) of this section.

(ii) *Required attribute reduction amount*—(A) *In general.* Subject to paragraph (c)(4)(ii)(B) of this section, a CAMT entity described in paragraph (c)(4)(i) of this section reduces its CAMT attributes by an amount that corresponds to the amount of discharge of indebtedness of the CAMT entity excluded from AFSI under paragraph (c)(1) or (2) of this section. For rules that provide the amount of CAMT attributes that is reduced for each dollar of discharge of indebtedness excluded from AFSI, see paragraph (c)(5) of this section.

(B) *Maximum amount of attribute reduction.* The amount of CAMT attributes required to be reduced by a CAMT entity under paragraph (c)(4)(iii) of this section cannot exceed the aggregate amount of the CAMT entity's CAMT attributes, determined as of the time of the reduction under paragraphs (c)(4)(iv) and (v) of this section.

(iii) *Attribute reduction.* A CAMT entity described in paragraph (c)(4)(i) of this section reduces the following CAMT attributes of the CAMT entity in the following order:

(A) CAMT basis of covered property, but only to the extent the basis of the covered property is reduced by the CAMT entity under section 108 for regular tax purposes.

(B) FSNOLs.

(C) CFC adjustment carryovers.

(D) CAMT basis of property (other than covered property) that is depreciated or amortized for AFS purposes.

(E) CAMT basis of property (other than covered property) that is not depreciated or amortized for AFS purposes.

(F) CAMT foreign tax credits.

(G) Any remaining CAMT basis of covered property.

(iv) *Timing and allocation of reductions*—(A) *Reductions generally made after determination of CAMT liability for taxable year.* The reductions described in paragraph (c)(4)(iii) of this section are made after the determination of the tentative minimum tax under section 55(b)(2)(A) of the Code for the taxable year of the discharge of indebtedness of the CAMT entity. For taxable years beginning after December 31, 2019, and before January 1, 2023, the

reductions described in paragraph (c)(4)(iii) of this section are made after the determination of AFSI for the taxable year of the discharge of indebtedness of the CAMT entity. For any discharge of indebtedness of a CAMT entity that occurs in a taxable year beginning on or before December 31, 2019, the reductions described in paragraph (c)(4)(iii) of this section do not apply. See § 1.56A–1(d)(3).

(B) *CAMT basis of property.* The reductions of basis described in paragraphs (c)(4)(iii)(A), (D), (E), and (G) of this section apply solely to property of the CAMT entity that the CAMT entity holds on the first day of the taxable year following the taxable year in which the CAMT entity excludes discharge of indebtedness income from its AFSI. For additional rules that address covered nonrecognition transactions, see paragraph (d)(3)(ii) of this section.

(C) *Allocation of basis reductions.* The CAMT entity must reduce CAMT basis under paragraph (c)(4)(iii)(A) of this section for each individual item of property under section 108 for regular tax purposes. For basis reductions to property described in paragraph (c)(4)(iii)(D), (E), or (G) of this section, the CAMT entity applies § 1.1017–1(a) to determine the allocation of CAMT basis reductions to individual items of property. A CAMT entity that properly makes an election under section 108(b)(5) for regular tax purposes must apply the modifications of § 1.1017–1(c) to determine the allocation of CAMT basis reductions to individual items of property.

(v) *Order of reductions*—(A) *FSNOL carryovers.* The reductions described in paragraph (c)(4)(iii)(B) or (C) of this section, respectively, are made first to any FSNOL or CFC adjustment carryover arising for the taxable year of the discharge of indebtedness of the CAMT entity, and then to the FSNOL carryover or CFC adjustment carryover to that taxable year, in the order of the taxable years from which each FSNOL or CFC adjustment carryover arose, beginning with the earliest such taxable year.

(B) *CAMT foreign tax credits.* The reduction described in paragraph (c)(4)(iii)(F) of this section is made in the order in which the CAMT foreign tax credits are taken into account for the taxable year of the discharge of indebtedness of the CAMT entity.

(5) *Amount of attribute reduction*—(i) *CAMT basis, FSNOLs, and CFC adjustment carryovers.* For each dollar of AFSI that a CAMT entity excludes under paragraphs (c)(1) and (2) of this

section, the CAMT entity reduces, as appropriate—

- (A) A dollar of CAMT basis;
- (B) A dollar of FSNOL; or
- (C) A dollar of CFC adjustment

carryover.

(ii) *CAMT basis reduction limitation.*

Except as otherwise provided in paragraph (c)(5)(iii) of this section, the combined amount of CAMT basis reduced under paragraphs (c)(4)(iii)(D), (E), and (G) of this section cannot exceed the excess of—

(A) The aggregate CAMT basis and money of the CAMT entity immediately after the discharge of indebtedness of the CAMT entity, less the amount of basis reduced under paragraph (c)(4)(iii)(A) of this section; over

(B) The aggregate amount of liabilities reflected on the AFS of the CAMT entity immediately after the discharge of indebtedness of the CAMT entity.

(iii) *Election under section 108(b)(5).* The limitation in paragraph (c)(5)(ii) of this section does not apply if the CAMT entity has made an election under section 108(b)(5).

(iv) *CAMT foreign tax credits.* For each dollar of AFSI that a CAMT entity excludes under this paragraph (c), the CAMT entity reduces each dollar of the CAMT entity's CAMT foreign tax credits by an amount equal to—

(A) One dollar of the CAMT foreign tax credit; multiplied by

(B) The percentage specified in section 55(b)(2)(A)(i).

(6) *Examples.* The following examples illustrate the application of the rules in this paragraph (c). For purposes of these examples, each entity is a domestic corporation that uses the calendar year as its taxable year and is not a member of a tax consolidated group.

(i) *Example 1: Bankruptcy emergence in a covered nonrecognition transaction—*

(A) *Facts.* During its 2024 taxable year, X emerges from bankruptcy in a title 11 case by transferring all of its assets with a CAMT basis of \$60x and a fair value of \$160x to Y in a transaction that qualifies as a reorganization under section 368(a)(1)(G) of the Code (G Reorganization). In connection with the transaction, \$40x of X's \$200x indebtedness is discharged. On its AFS, X reports \$100x of gain from the G Reorganization and \$40x of income from the discharge of indebtedness, and Y reports the AFS basis of the assets it receives as \$160x on its AFS.

(B) *Analysis.* The G Reorganization is a covered nonrecognition transaction. See § 1.56A–18(b)(9). For purposes of determining X's AFSI for the 2024 taxable year, X disregards the \$100x of FSI resulting from the G Reorganization

and the \$40x of income from the discharge of indebtedness. See § 1.56A–19(c)(1)(i)(A). Y disregards any increase in the AFS basis of the assets it receives from X and takes a CAMT basis in those assets equal to X's \$60x CAMT basis. See § 1.56A–19(c)(3)(ii).

(ii) *Example 2: Bankruptcy emergence in a covered recognition transaction—*

(A) *Facts.* The facts are the same as in paragraph (c)(6)(i)(A) of this section (*Example 1*), except that, after the discharge of its indebtedness in a title 11 case, X sells all of its assets to Y for cash in a transaction that does not qualify for nonrecognition treatment under any provision of the Code. X then distributes the cash to its creditors and dissolves. On its AFS, X reports \$40x from the discharge of indebtedness and \$100x of gain from the sale.

(B) *Analysis.* X disregards any FSI that otherwise would result from the discharge of \$40x of X's indebtedness. See paragraph (c)(1)(i) of this section. X's AFSI for the 2024 taxable year includes the \$100x gain from the sale of its assets in a covered recognition transaction. See § 1.56A–18(h)(1). Y has a CAMT basis of \$160x in the assets it receives from X in the covered recognition transaction. See § 1.56A–18(h)(2)(ii).

(iii) *Example 3: Attribute reduction—*

(A) *Facts.* During its 2024 taxable year, X emerges from bankruptcy in a title 11 case. As a result of the bankruptcy reorganization, some of X's indebtedness is discharged. X has \$850x of discharge of indebtedness income for regular tax purposes prior to the application of section 108(b). On X's AFS, X reports \$1,000x from the discharge of indebtedness. At the time of the discharge, X has \$300x of net operating losses (NOLs), \$700x of FSNOLs, and \$800x of basis in its assets for both regular tax and CAMT purposes (including \$400x of basis in covered property). X does not make an election under section 108(b)(5).

(B) *Application of section 108.* For purposes of determining its income for regular tax purposes for the 2024 taxable year, X excludes \$850x of income from the discharge of indebtedness under section 108(a)(1)(A). Under section 108(b), X reduces its NOLs by \$300x and the basis of its assets by \$550x, of which \$275x is basis in covered property.

(C) *AFSI analysis.* For purposes of determining X's AFSI for the 2024 taxable year, X disregards any FSI that otherwise would result from the discharge of X's indebtedness. See paragraph (c)(1)(i) of this section. X's CAMT attributes are reduced by an amount equal to the amount of the

exclusion of FSI from X's AFSI (that is, \$1,000x). See paragraphs (c)(1)(ii) and (c)(4)(ii) of this section. X first reduces its CAMT basis of covered property to the extent its basis is reduced under section 108(b) for regular tax purposes, or \$275x. See paragraphs (c)(4)(iii)(A) and (c)(5)(i)(A) of this section. X then reduces X's FSNOLs by \$700x. Finally, X reduces X's CAMT basis in property other than covered property by \$25x. See paragraphs (c)(4)(iii)(B) and (D), (c)(5)(i)(A) and (B), and (c)(5)(ii) of this section. X does not further reduce its basis in covered property because X already has reduced \$1,000x of attributes for the \$1,000x of income from the discharge of indebtedness it has excluded. See paragraph (c)(4)(ii)(A) of this section.

(iv) *Example 4: Excluded income from the discharge of indebtedness of insolvent taxpayer—*

(A) *Facts.* The facts are the same as in paragraph (c)(6)(iii)(A) of this section (*Example 3*), except that X does not emerge from bankruptcy in a title 11 case; instead, some of X's indebtedness is discharged during the 2024 taxable year. Immediately before the discharge, X is insolvent by \$850x. Under section 108(b), X reduces its NOLs by \$300x and the basis of its assets by \$550x, of which \$275x is basis in covered property.

(B) *AFSI analysis.* For purposes of determining its AFSI for the 2024 taxable year, X disregards \$850x of its \$1,000x of FSI that otherwise would result from the discharge of its indebtedness. See paragraph (c)(2)(i) of this section. X takes the remaining \$150x of FSI from the discharge of its indebtedness into account for purposes of computing its AFSI. See *id.* X's CAMT attributes are reduced by an amount equal to the amount of the exclusion of financial accounting gain from X's AFSI (that is, \$850x). See paragraphs (c)(2)(ii) and (c)(4)(ii) of this section. X first reduces its CAMT basis of covered property to the extent its basis is reduced under section 108(b) for regular tax purposes, or \$275x. See paragraphs (c)(4)(iii)(A) and (c)(5)(i)(A) of this section. X then reduces its FSNOLs by \$575x. See paragraphs (c)(4)(iii)(B) and (c)(5)(i)(B) of this section.

(d) *Fresh start accounting for emergence from bankruptcy—*(1) *Scope.* This paragraph (d) provides rules for determining the CAMT consequences to a CAMT entity resulting from an emergence from bankruptcy of the CAMT entity.

(2) *AFSI consequences resulting from emergence from bankruptcy—*(i) *General rule.* Except to the extent

provided in paragraphs (d)(2)(ii) and (iii) of this section, a CAMT entity determines its CAMT consequences resulting from its emergence from bankruptcy by—

(A) Disregarding any resulting gain or loss that is reflected in the FSI of the CAMT entity;

(B) Determining the CAMT basis of any assets of the CAMT entity by disregarding any adjustment to the AFS basis of those assets resulting from the emergence from bankruptcy; and

(C) Adjusting the CAMT entity's CAMT earnings (in lieu of AFS retained earnings) resulting from the CAMT entity's emergence from bankruptcy by applying section 312 of the Code.

(ii) *Discharge of indebtedness.* A CAMT entity described in paragraph (d)(2)(i) of this section determines the CAMT consequences of any discharge of indebtedness of the CAMT entity resulting from the CAMT entity's emergence from bankruptcy in accordance with paragraph (c) of this section.

(iii) *Covered transactions.* A CAMT entity described in paragraph (d)(2)(i) of this section determines the CAMT consequences of any covered transaction in connection with the CAMT entity's emergence from bankruptcy in accordance with paragraph (d)(3) of this section.

(3) *AFSI consequences of title 11 cases—(i) Covered recognition transactions.* If a CAMT entity disposes of assets in a covered recognition transaction (solely with regard to the CAMT entity) as part of its title 11 case, the CAMT entity determines the CAMT consequences of the covered recognition transaction with regard to the CAMT entity by applying § 1.56A–18(g) and (h).

(ii) *Covered nonrecognition transactions—(A) In general.* If a CAMT entity disposes of assets in a covered nonrecognition transaction (solely with regard to the CAMT entity) as part of its title 11 case, the CAMT entity determines the CAMT consequences of the covered nonrecognition transaction with regard to the CAMT entity by applying § 1.56A–19(c) and (d), which provide rules for determining the CAMT consequences of acquisitive reorganizations and section 355 transactions, respectively.

(B) *CAMT attribute adjustments resulting from covered nonrecognition transactions.* If a CAMT entity described in paragraph (d)(2)(i) of this section is a target corporation in an acquisitive reorganization that qualifies as a covered nonrecognition transaction with regard to the CAMT entity (that is, the target corporation), the CAMT entity is

treated as reducing all CAMT attributes required by paragraphs (c)(5) and (6) of this section before the acquiror corporation would be treated as receiving those CAMT attributes under § 1.56A–19(c).

(4) *Discharge of indebtedness.* A CAMT entity described in paragraph (d)(3)(i) or (d)(3)(ii)(A) of this section determines the CAMT consequences of any discharge of indebtedness of the CAMT entity resulting from the CAMT entity's emergence from bankruptcy in accordance with paragraph (c) of this section.

(5) *Disregarded entities.* For purposes of applying this paragraph (d) to a disregarded entity, the disregarded entity is not considered to be the *taxpayer*, as that term is used in section 108. Instead, for purposes of this paragraph (d), the CAMT entity owner of the disregarded entity is the *taxpayer*. See paragraph (c)(1) of this section and § 1.108–9.

(6) *Example.* The following example illustrates the application of the rules in this paragraph (d).

(i) *Facts.* X is a domestic corporation that uses the calendar year as its taxable year and is not a member of a tax consolidated group. During its 2024 taxable year, X emerges from bankruptcy without being a party to a covered transaction. In connection with the transfer of ownership, X reports \$90× of gain on its AFS when it increases the AFS basis of its assets from \$40× to their fair value of \$130× at the time it emerges from bankruptcy.

(ii) *Analysis.* For purposes of determining its AFSI for the 2024 taxable year, X does not take into account the \$90× of FSI resulting from the increase in the AFS basis of its assets. See paragraph (d)(2)(i)(A) of this section. X does not make any adjustments to the CAMT basis of its assets resulting from X's emergence from bankruptcy. Accordingly, X's CAMT basis in its assets remains at \$40×. See paragraph (d)(2)(i)(B) of this section.

(e) *Application to investments in partnerships—(1) Scope.* This paragraph (e) provides rules for applying this section to a CAMT entity that is a partner in a partnership if the partnership realizes discharge of indebtedness income.

(2) *Discharge of indebtedness income of a partnership—(i) Calculation of partnership's AFSI.* Any discharge of indebtedness income reflected in a partnership's FSI is disregarded for purposes of determining the partnership's AFSI, and is instead taken into account by the CAMT entities that are partners in the partnership in

accordance with paragraphs (e)(2)(ii) and (iii) of this section.

(ii) *Exclusion from AFSI and attribute reduction at the partner level—(A) In general.* Subject to paragraph (e)(3) of this section, the AFSI exclusions provided in paragraphs (c)(1) and (2) of this section, and any resulting CAMT attribute reductions (as provided in paragraphs (c)(4) and (5) of this section), are applied at the partner level in the same manner as the rules in section 108(a) and section 108(b) are applied at the partner level for regular tax purposes. See section 108(d)(6) and § 1.108–9(b).

(B) *Special rules for covered property.* For purposes of applying the CAMT attribute reduction rules under paragraphs (c)(4) and (5) of this section at the partner level, a CAMT entity partner treats its partnership investment as covered property to the extent the basis of covered property held by the partnership is reduced by the partnership for regular tax purposes under § 1.1017–1(g)(2). In addition, if a CAMT entity partner treats its partnership investment as covered property under the immediately preceding sentence, the basis adjustment rules under § 1.1017–1(g)(2) with respect to covered property held by the partnership apply for purposes of determining the CAMT entity's distributive share amount under § 1.56A–5.

(iii) *Discharge of indebtedness income separately stated to partners.* Discharge of indebtedness income reflected in a partnership's FSI is separately stated to the partners in accordance with their distributive share percentages for the taxable year in which the income is reflected in the partnership's FSI. See also § 1.56A–5(e)(4)(iii).

(3) *Inclusion of partnership liabilities for purposes of determining insolvency.* In applying paragraph (e)(2) of this section, a CAMT entity that is a partner in a partnership includes its share of partnership's liabilities under section 752 of the Code in determining whether it is insolvent in the same manner as its share of partnership liabilities would be included for regular tax purposes.

(f) *Federal financial assistance—(1) In general.* AFSI does not include any financial accounting gain attributable to FFA any earlier than when the gain is included in gross income for purposes of section 597 and the regulations under section 597.

(2) *Example.* The following example illustrates the application of the rules in this paragraph (f).

(i) *Facts.* X is an Institution, as defined in § 1.597–1(b), that uses the calendar year as its taxable year. On July

1, 2024, X acquires assets and assumes liabilities of an unrelated Institution under Agency Receivership, as defined in § 1.597–1(b), in a Taxable Transfer, as defined in § 1.597–5(a)(1)(i)(A), in exchange for an up-front payment from an Agency, as defined in § 1.597–1(b). The contractual terms of the acquisition by X involve a transfer of assets to X that gives rise to \$10,000× of FSI that is attributable to FFA. Applicable financial accounting principles require X to include this \$10,000× in FSI in 2024. Pursuant to section 597 and the regulations under section 597, the gain is not recognized in 2024. As a result of subsequent events, X includes \$2,000× of gain attributable to that FFA in gross income for regular tax purposes in 2025.

(ii) *Analysis.* Under paragraph (f)(1) of this section, X does not include the \$10,000× of FSI in AFSI in 2024. Under paragraph (f)(1) of this section, X includes FSI of \$2,000× in AFSI in 2025.

(g) *Applicability date.* This section applies to taxable years ending after [DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER].

§ 1.56A–22 AFSI adjustments for certain insurance companies and other specified industries.

(a) *Overview.* This section provides rules under section 56A of the Code for determining AFSI for certain insurance companies and other specified industries. Paragraph (b) of this section provides additional definitions that apply to this section. Paragraph (c) of this section provides rules for determining AFSI as it relates to certain types of life insurance and annuity contracts. Paragraph (d) of this section provides rules for determining AFSI as it relates to funds withheld reinsurance or modified coinsurance agreements. Paragraph (e) of this section provides rules for determining AFSI as it relates to assets held by any one of several identified entities since the entity became fully subject to Federal income tax by an act of Congress. Paragraph (f) of this section provides the applicability date of this section.

(b) *Definitions.* For purposes of this section:

(1) *Covered insurance company.* The term *covered insurance company* means—

(i) A company subject to tax under subchapter L of the Code; or

(ii) A foreign company that is subject to regulation as an insurance (or reinsurance) company by its home country and is licensed, authorized, or regulated by the applicable insurance regulatory body for its home country to sell insurance, reinsurance, or annuity contracts.

(2) *Covered investment pool.* The term *covered investment pool* means a pool of investment assets that are designated to support one or more covered variable contracts and that are taken into account in determining FSI.

(3) *Covered obligations.* The term *covered obligations* means the AFSI liabilities, including contract reserves and claims or benefits payable, that reflect a covered insurance company's obligations with respect to one or more covered variable contracts and that are taken into account in determining FSI.

(4) *Covered reinsurance agreement.* The term *covered reinsurance agreement* means a funds withheld reinsurance or modified coinsurance agreement and any retrocession of all or part of the risk under either such agreement. Under these agreements, the reinsurance operates like conventional reinsurance, but from a legal title and financial accounting perspective, the ceding company retains the investment assets supporting the obligations to the holders of the underlying contracts (and for modified coinsurance, the ceding company also retains the reserves). The ceding company records a liability to the reinsurer to reflect the assets it has retained.

(5) *Covered variable contract.* The term *covered variable contract* means a contract—

(i) That is issued by a covered insurance company;

(ii) That is regulated as a life insurance or annuity contract in the jurisdiction in which it is issued; and

(iii) For which the amount of the covered insurance company's obligations to the contract holder depends in whole or in part (by law, regulation, or the terms of the contract) on the value of the assets that are designated to support the contract.

(6) *Withheld assets.* The term *withheld assets* means the assets held by a ceding company to support the risk reinsured under a covered reinsurance agreement.

(7) *Withheld assets payable.* The term *withheld assets payable* means a liability on the ceding company's AFS that reflects—

(i) The ceding company's obligation to the reinsurer under a covered reinsurance agreement with respect to the withheld assets; and

(ii) Changes in the value of the withheld assets.

(8) *Withheld assets receivable.* The term *withheld assets receivable* means an asset on the reinsurer's AFS that reflects—

(i) The reinsurer's right against the ceding company under a covered

reinsurance agreement with respect to the withheld assets; and

(ii) Changes in the value of the withheld assets.

(c) *AFSI adjustments for covered variable contracts—*(1) *Non-application of certain provisions—*(i) *In general.* If the requirements in paragraph (c)(1)(ii) of this section are satisfied, the AFSI adjustments (and corresponding adjustments to CAMT basis) provided in §§ 1.56A–4, 1.56A–5, and 1.56A–18 through 1.56A–20 do not apply to determine the AFSI of a covered insurance company with respect to the covered investment pool assets referenced in paragraph (c)(1)(ii)(B) of this section that are otherwise within the scope of such regulations. Thus, amounts reflected in the FSI of the covered insurance company with respect to the covered investment pool assets, including unrealized gains and losses, are included in AFSI without adjustment if the requirements of paragraph (c)(1)(ii) of this section are met.

(ii) *Requirements.* Paragraph (c)(1)(i) of this section applies if—

(A) A covered insurance company issues or reinsures covered variable contracts;

(B) Amounts reflected in the FSI of the covered insurance company with respect to covered investment pool assets result in a change in the amount of the obligations to the holders of the related covered variable contracts by reason of law, regulation, or the terms of one or more such covered variable contracts; and

(C) The change in the amount of the obligations results in a change in the amount of the covered obligations of the covered insurance company.

(2) *Example.* The following example illustrates the application of paragraph (c)(1) of this section.

(i) *Facts.* X is a life insurance company subject to tax under subchapter L of the Code. X uses the calendar year as its taxable year and has a calendar-year financial accounting period. X uses GAAP to prepare its AFS. On January 1, 2024, X issues a life insurance contract that is a variable contract, as described in section 817, to an individual, A. The contract is regulated as a life insurance contract in the jurisdiction in which it is issued. X owns assets that are designated to support X's contractual obligation to A and holds those assets in a separate account that is segregated from the general asset accounts of X. X accounts for these assets and its contractual obligations to A in its FSI. The separate account assets are stock in unrelated domestic corporations. At the end of

2024, no assets that support A's variable contract have been sold, and the fair market value of the assets has increased by \$10x. Under the terms of the variable contract, the increase in the value of the assets supporting A's variable contract caused X's contractual obligation to A to increase by \$10x. On X's AFS, the \$10x increase in the value of the assets supporting the variable contract is included in FSI and offsets the \$10x increase in X's contractual obligation to A (which reduces X's FSI).

(ii) *Analysis.* X is a covered insurance company, and the variable contract that X issued to A is a covered variable contract. The assets in the separate account that X holds to support its contractual obligations to A constitute a covered investment pool, and X's contractual obligations to A are reflected in X's AFS liabilities, which constitute covered obligations. Paragraph (c)(1) of this section provides that § 1.56A-18 does not apply to exclude from a covered insurance company's AFSI or otherwise adjust any gain or loss in a covered investment pool that is reflected in the FSI of the covered insurance company if the requirements in paragraph (c)(1)(ii) of this section are satisfied. In this case, the requirement in paragraph (c)(1)(ii)(A) of this section is satisfied because X is a covered insurance company that issues covered variable contracts. The requirement in paragraph (c)(1)(ii)(B) of this section is satisfied because the \$10x increase in value in the covered investment pool results in a change in X's obligation to A under the terms of the variable contract. The requirement in paragraph (c)(1)(ii)(C) of this section is satisfied because the change in the amount of the obligation results in a change in the amount of X's covered obligations. Accordingly, section § 1.56A-18 does not apply to exclude any of the \$10x unrealized gain from X's AFSI or otherwise adjust the amount. Thus, both the unrealized gain and the offsetting change in the covered obligations are taken into account for purposes of determining X's AFSI, which eliminates what would otherwise be a difference between X's AFSI and A's life insurance company taxable income.

(d) *AFSI adjustments for covered reinsurance agreements*—(1) *In general.* For a covered insurance company that is a party to a covered reinsurance agreement, the changes described in paragraphs (d)(1)(i) and (ii) of this section that are accounted for separately in the covered insurance company's AFS with respect to each agreement are excluded from the covered insurance company's AFSI.

(i) *Ceding company.* For the ceding company holding the withheld assets, changes in FSI of the ceding company as a result of changes in the amount of the withheld assets payable to the extent that—

(A) The changes in the amount of the withheld assets payable correspond to the ceding company's unrealized gains and losses in the withheld assets; and

(B) The unrealized gains and losses in the withheld assets are not included in the ceding company's AFSI (determined without regard to this section but after giving effect to all other sections in the section 56A regulations except for § 1.56A-23).

(ii) *Reinsurer.* For the reinsurer, changes in FSI of the reinsurer as a result of changes in the amount of the withheld assets receivable, provided that the changes in the amount of the withheld assets receivable correspond to the unrealized gains and losses in the withheld assets.

(2) *Effect of retrocession agreement.* The exclusion provided in paragraph (d)(1)(ii) of this section is reduced to the extent that the accounting for a retrocession of the reinsured risk results in the withheld assets receivable being offset on the AFS of the reinsurer by a withheld asset payable with respect to the retrocessionaire in the retrocession.

(3) *Fair value accounting.* The exclusions provided in paragraph (d)(1) of this section will not apply to a covered insurance company with respect to a covered reinsurance agreement if—

(i) The covered insurance company elects for AFS purposes to account for the covered reinsurance agreement at fair value in its FSI; or

(ii) The covered insurance company accounts for both of the following items at fair value in its FSI—

(A) The changes in the withheld assets payable that correspond to the unrealized gains and losses in the withheld assets (for the ceding company) or the withheld assets receivable that correspond to the unrealized gains and losses in the withheld assets (for the reinsurer); and

(B) The covered reinsurance agreement.

(4) *Examples.* The following examples illustrate the application of paragraphs (d)(1) and (3) of this section.

(i) *Example 1: Covered reinsurance transaction*—(A) *Facts.* X and Y are life insurance companies subject to tax under subchapter L of the Code. Each of X and Y uses the calendar year as its taxable year, has a calendar-year financial accounting period, and uses GAAP for purposes of preparing its AFS. On January 1, 2024, X, the ceding

company, enters into a funds withheld reinsurance agreement with Y, the reinsurer. Y does not retrocede any risk covered by the funds withheld reinsurance agreement. Under the terms of the agreement, from a legal title and financial accounting perspective, X retains the assets supporting the obligations to the holders of the reinsured contracts (the withheld assets) as security for the reinsurer's obligations under the reinsurance agreement. X has a liability to Y with respect to the withheld assets (the withheld assets payable). X reflects all unrealized gains and losses on the withheld assets in OCI on its AFS, and X accounts for the corresponding changes in the withheld assets payable in its FSI. Y records an asset that corresponds to X's withheld assets payable (the withheld assets receivable) on its AFS, and Y accounts for changes in the withheld assets receivable in its FSI. At the end of 2024, no withheld assets have been sold, and the fair market value of the withheld assets has increased by \$10x. On its AFS, X includes the \$10x unrealized gain in OCI and records the effect of the \$10x increase in its withheld assets payable in FSI. Y records the effect of a corresponding \$10x increase in its withheld assets receivable in its FSI.

(B) *Analysis.* Each of X and Y is a covered insurance company, and the funds withheld reinsurance agreement is a covered reinsurance agreement. The \$10x of unrealized gain in the withheld assets is included in OCI on X's AFS and thus is excluded from X's AFSI under the definition of FSI in § 1.56A-1(b)(20). Under paragraph (d)(1)(i) of this section, because the \$10x of unrealized gain is not included in X's AFSI, the \$10x increase in the withheld assets payable is also excluded from X's AFSI. The amount included in Y's FSI as a result of the \$10x increase in Y's withheld assets receivable corresponds to the unrealized gain in the withheld assets. Under paragraph (d)(1)(ii) of this section, this \$10x increase is excluded from Y's AFSI.

(ii) *Example 2: Fair value accounting*—(A) *Facts.* The facts are the same as in paragraph (d)(4)(i)(A) of this section (*Example 1*), except that Y had made an election to account for the covered reinsurance agreement at fair value on its AFS. In 2024, the value of Y's liability under the reinsurance agreement on its AFS increased by \$8x (determined in accordance with the relevant accounting valuation rules).

(B) *Analysis.* As a result of Y's election, Y accounts for both the \$10x increase in its withheld assets receivable and the \$8x increase in its reinsurance agreement liability at fair

value in FSI. Under paragraph (d)(3) of this section, the exclusion provided in paragraph (d)(1)(ii) of this section does not apply. Accordingly, Y includes both the \$10x increase in its withheld assets receivable and the \$8x increase in its reinsurance agreement liability in AFSI.

(e) *Use of fresh start basis.* For purposes of determining AFSI, the following rules apply.

(1) *Federal Home Loan Mortgage Corporation.* The adjusted basis rules provided in section 177(d)(2) of the Deficit Reduction Act of 1984, Public Law 98–369, 98 Stat. 494 (1984), apply to determine the CAMT basis of any asset held by the Federal Home Loan Mortgage Corporation (and any successor(s) under section 381) since January 1, 1985.

(2) *Existing Blue Cross or Blue Shield organizations.* The AFSI gain or loss (but not depreciation, amortization, or other amounts) for any asset held by an existing Blue Cross or Blue Shield organization, as defined in section 833(c)(2), as added by section 1012 of the Tax Reform Act of 1986, Public Law 99–514, 100 Stat. 2085 (1986) (and any successor(s) under section 381), since the first day of the entity's first taxable year beginning after December 31, 1986, is determined using the entity's adjusted basis for regular tax purposes for the asset.

(3) *Certain pension business entities.* The AFSI gain or loss (but not depreciation, amortization, or other amounts) for any asset held by Mutual of America or Teachers Insurance Annuity Association-College Retirement Equities Fund, as referenced in sections 1012(c)(4)(A) and (B) of the Tax Reform Act of 1986 (and any successor(s) under section 381) since the first day of the entity's first taxable year beginning after December 31, 1997, is determined using the entity's adjusted basis for regular tax purposes for the asset.

(f) *Applicability date.* This section applies to taxable years ending after [DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER].

§ 1.56A–23 AFSI adjustments for financial statement net operating losses and other attributes.

(a) *Overview.* This section provides rules under section 56A(d) of the Code for determining the AFSI adjustment for FSNOL carryovers, built-in losses, and other attributes. Paragraph (b) of this section defines the term financial statement net operating loss (FSNOL). Paragraph (c) of this section provides general rules regarding the adjustment to AFSI for the utilization of an FSNOL carryover. Paragraph (d) of this section provides rules regarding the amount of

an FSNOL that can be carried forward. Paragraph (e) of this section provides limitations on the utilization of certain FSNOL carryovers. Paragraph (f) of this section provides rules regarding the utilization of built-in losses. Paragraph (g) of this section provides the applicability date of this section.

(b) *Definition of financial statement net operating loss.* The term *financial statement net operating loss* (FSNOL) means, with respect to a corporation for any taxable year ending after December 31, 2019, the amount of the corporation's negative AFSI for the taxable year (determined after application of the section 56A regulations and without regard to this section).

(c) *AFSI adjustments for the utilization of an FSNOL.* Subject to the limitation in paragraph (e) of this section, if a corporation's AFSI for a taxable year is positive (determined after application of the section 56A regulations and without regard to this section), the corporation's AFSI is reduced by an amount equal to the lesser of—

(1) The aggregate amount of FSNOL carryovers to the taxable year (as determined under paragraph (d) of this section); or

(2) 80 percent of the AFSI of the corporation for the taxable year (determined after application of the section 56A regulations and without regard to this section).

(d) *FSNOL carryovers*—(1) *In general.* An FSNOL for any taxable year (including a taxable year in which the corporation is not an applicable corporation) is carried forward to each taxable year following the taxable year of the loss. The amount of an FSNOL carried forward to a taxable year is the amount of the FSNOL remaining (if any) after the application of paragraphs (c), (e), and (f) of this section. FSNOL carryovers used to reduce a corporation's AFSI under paragraph (c) of this section are used in the order of the taxable years in which the FSNOLs arose. For purposes of determining the amount of an FSNOL carried forward to the first taxable year a corporation is an applicable corporation (and any subsequent taxable year), paragraphs (c), (e), and (f) of this section apply to reduce the FSNOL in taxable years beginning after the taxable year of the loss and before the first taxable year in which the corporation is an applicable corporation.

(2) *Example.* The following example illustrates the application of paragraph (d)(1) of this section.

(i) *Facts.* X is a corporation that uses the calendar year as its taxable year. For

2020, X generated an FSNOL of \$3,000x. For 2021, 2022, and 2023, X's AFSI (determined without regard to this section) is \$900x, \$1,100x, and \$1,200x, respectively. X first becomes an applicable corporation for 2024. X's FSNOL is not subject to the limitations in paragraph (e) of this section.

(ii) *Analysis.* X calculates its FSNOL carryover to 2024 by first determining how much of the 2020 FSNOL is absorbed in 2021 through 2023. In 2021, \$720x (80% of \$900x) of the FSNOL carryover is absorbed, resulting in an FSNOL carryover to 2022 of \$2,280x (\$3,000x–\$720x). In 2022, \$880x (80% of \$1,100x) of the FSNOL carryover is absorbed, resulting in an FSNOL carryover to 2023 of \$1,400x (\$2,280x–\$880x). In 2023, \$960x (80% of \$1,200x) of the FSNOL carryover is absorbed, resulting in an FSNOL carryover to 2024 of \$440x (\$1,400x–\$960x).

(e) *Limitation on use of FSNOL carryovers following acquisitions*—(1) *In general.* If a corporation or a tax consolidated group (successor) succeeds to the FSNOL carryovers (acquired FSNOLs) of another corporation (predecessor corporation) in a successor transaction, as defined in paragraph (e)(2) of this section, the use of the acquired FSNOLs by the successor is subject to the limitation described in paragraph (e)(3) of this section.

(i) *Successor after stock acquisitions.* For purposes of this paragraph (e), the acquired corporation in a transaction described in paragraph (e)(2)(ii) of this section is treated as the successor to the acquired corporation after the acquisition.

(ii) *Tax consolidated groups.* If the consolidated group continues under § 1.1502–75(d)(1), this paragraph (e) applies to the tax consolidated group as if it were a single corporation.

(2) *Successor transaction.* For purposes of this paragraph (e), with respect to a particular acquired FSNOL, the term *successor transaction* means—

(i) A transaction described under section 381(a) of the Code; or

(ii) The acquisition of stock of a corporation in a transaction—

(A) That constitutes an ownership change within the meaning of § 1.59–2(f); or

(B) In which the predecessor corporation joins a tax consolidated group.

(3) *Limitation*—(i) *In general.* Acquired FSNOLs generated by an acquired business of a predecessor corporation can be used to reduce the AFSI of a successor under paragraph (c) of this section—

(A) Only if the business that generated the acquired FSNOLs (predecessor

business) is separately tracked in the successor's books and records (separately tracked business); and

(B) Only to the extent of the amount of AFSI generated by the separately tracked business after the successor transaction (separately tracked income), subject to the limitation in section 56A(d) and paragraph (e)(3)(ii)(E) of this section.

(ii) *Separately tracked income.* For purposes of paragraph (e)(3)(i) of this section, the separately tracked income of a business is determined as provided in this paragraph (e)(3)(ii).

(A) *Tracked register.* The aggregate of the acquired FSNOLs of a predecessor corporation that are utilized to reduce a successor's AFSI for all taxable years under this paragraph (e) may not exceed the aggregate AFSI for all separately tracked businesses (tracked register) for all taxable years computed under this paragraph (e)(3).

(B) *Taxable periods.* The tracked register applicable to a taxable year to which an FSNOL is carried includes items taken into account in AFSI solely in taxable periods following the successor transaction, but excludes items taken into account in AFSI in any taxable years ending after the taxable year to which the loss is carried. If the successor transaction does not occur at the close of the predecessor corporation's taxable year, separately tracked income is allocated to the portions of the taxable year before and after the successor transaction as if the predecessor corporation's books were closed on the acquisition date.

(C) *Computation of tracked register generally.* Except as provided in paragraph (e)(3)(ii)(D) of this section, the tracked register is computed by reference to only the items taken into account in AFSI that are generated by the separately tracked business without regard to FSNOLs that reduce that AFSI.

(D) *FSNOL reductions.* The tracked register takes into account the expenses, FSNOLs, and other losses of the separately tracked business actually absorbed by the successor corporation or the successor group in the taxable periods included in the tracked register (whether or not absorbed against income of the separately tracked business).

(E) *80-percent limitation.* The amount of acquired FSNOL that may be used in a taxable year is subject to limitation under paragraph (c)(2) of this section. The tracked register is decreased in a taxable year by the full amount of AFSI required to support the amount of FSNOL absorption in such taxable year.

(F) *Built-in losses.* The treatment under paragraph (f) of this section of a built-in loss as a hypothetical FSNOL in

the taxable year recognized for AFSI purposes applies solely for purposes of determining the limitation under this paragraph (e)(3) with respect to the loss in that taxable year.

(iii) *Separation of predecessor business from related FSNOLs—(A) In general.* If, following a successor transaction, the assets constituting a predecessor business are transferred to a corporation that is not a member of the same tax consolidated group as the transferor in exchange for stock of the transferee corporation, and if the exchange is not described in paragraph (e)(2)(i)(A) of this section, the amount of separately tracked income derived from those assets after the exchange for purposes of paragraph (e)(3)(ii) of this section is limited to the amount of AFSI resulting from the ownership of the stock received in the exchange (for example, dividends received with respect to the stock, or gain on the sale or exchange of the stock).

(B) *Transfer to member of same tax consolidated group.* If, following a successor transaction, the assets constituting a predecessor business are transferred from one member of the successor group to another member, this paragraph (e) applies as if all members of the successor group were a single corporation. See § 1.1502-56A(a)(2).

(iv) *Integration of predecessor and acquiror businesses.* If, following a successor transaction, a predecessor business is integrated with a business that previously had been separately tracked and reported on the successor's books and records, the acquired FSNOLs may be used—

(A) Only to the extent of the AFSI of the predecessor business that would have been separately tracked under paragraph (e)(3)(ii) of this section if the predecessor business had remained a separately tracked business; and

(B) Only if the successor generates and maintains pro forma income statements supporting any use of the acquired FSNOLs under this paragraph (e)(3)(iv).

(v) *Successor transaction involving multiple separately tracked businesses—(A) In general.* If a predecessor has more than one separately tracked business before the successor transaction, the acquired FSNOLs may be used to the extent of the combined AFSI from all separately tracked businesses of the predecessor corporation.

(B) *Subgroup acquisition.* If multiple members of the same tax consolidated group are acquired in a successor transaction and are members of a consolidated group immediately after the acquisition (limitation subgroup),

paragraph (e)(3)(v)(A) of this section applies to the limitation subgroup (during its period of consolidation immediately following the successor transaction) as if the subgroup's members were a single predecessor corporation.

(4) *Examples.* The following examples illustrate the application of the rules in this paragraph (e). Except as otherwise provided: each entity is a domestic corporation that uses the calendar year as its taxable year and is not a member of a tax consolidated group; Target and Acquiror are unrelated before the transaction; and the successor in the transaction has available AFSI in each year in excess of the amount of FSNOL available for use under this section.

(i) *Example 1: Acquisition of Target stock followed by contribution of assets—(A) Facts.* Acquiror purchases all of Target's stock for cash (Acquisition) on December 31, 2023. At the time of the Acquisition, Target operates Business X, and Target has a \$200x FSNOL. Target has no other separately tracked businesses. Following the Acquisition, Acquiror contributes assets to Target to expand Business X (Expansion). Following the Expansion, Business X (including the contributed assets) is separately tracked in Target's books and records. In 2024, Business X has separately tracked income of \$25x.

(B) *Analysis.* The Acquisition is a successor transaction. See paragraph (e)(2)(ii)(A) of this section. Target is treated as the successor after the Acquisition. See paragraph (e)(1)(ii) of this section. Because Business X is a separately tracked business, the tracked register at the end of 2024 is \$25x. See paragraph (e)(3)(i) of this section. Accordingly, \$25x of the \$200x FSNOL can be applied against the \$25x of tracked income for the year, subject to the 80-percent limitation in paragraph (c)(2) of this section. See paragraph (e)(3)(ii) of this section. As a result, Target may deduct \$20x (80% of \$25x) of the acquired FSNOL in 2024, and the tracked register is reduced to \$0x. See paragraph (e)(3)(ii)(E) of this section. The remaining \$180x of acquired FSNOL (\$200x–\$20x) is carried forward to 2025.

(ii) *Example 2: Acquisition of Target assets—(A) Facts.* On January 1, 2024, Target merges with and into Acquiror in a transaction described under section 381(a) (Merger). At the time of the Merger, Target operates Business X, and Target has a \$400x FSNOL. Acquiror also operates Business X. Following the Merger, Acquiror integrates Target's Business X operations with Acquiror's historic Business X operations and

separately tracks the combined Business X operations on Acquiror's books and records. In 2024, Business X generates AFSI of \$40x, with \$15x attributable to the Business X operations acquired from Target in the Merger, and \$25x attributable to Acquiror's historic Business X operations, as reflected in pro forma income statements generated and maintained by Acquiror.

(B) *Analysis: In general.* The Merger is a successor transaction. See paragraph (e)(2)(i) of this section. An acquired FSNOL may be used only to the extent the business that generated that FSNOL is separately tracked, and only to the extent of the separately tracked income of that business (as determined under paragraph (e)(3)(ii) of this section). See paragraph (e)(3)(i) of this section. Although Target's Business X is integrated with Acquiror's Business X after the Merger, the acquired FSNOL may be used to the extent of the income that would have been separately tracked under paragraph (e)(3)(ii) of this section if Target's Business X had remained a separately tracked business, provided that the successor generates and maintains pro forma income statements. See paragraph (e)(3)(iv) of this section.

(C) *Analysis: Computation of limitation.* Because Acquiror generates and maintains pro forma income statements for Target's Business X, the tracked register for 2024 is \$15x. Accordingly, \$15x of the \$400x FSNOL can be applied against the \$15x of tracked income for the year, subject to the 80-percent limitation in paragraph (c)(2) of this section. See paragraph (e)(3)(ii) of this section. As a result, Acquiror may include \$12x (80% of \$15x) of the acquired FSNOL in its aggregate FSNOL deduction for 2024, and the tracked register is reduced to \$0x. See paragraph (e)(3)(ii)(E) of this section. The remaining \$388x of acquired FSNOL (\$400x–\$12x) is carried forward to 2025.

(iii) *Example 3: Acquisition of multiple lines of business—(A) Facts.* Acquiror is the common parent of a tax consolidated group (Acquiror group). Acquiror purchases all the stock of Target for cash (Acquisition) on December 31, 2023. As a result, Target becomes a member of the Acquiror group. At the time of the Acquisition, Target operates two lines of business (Business X and Business Y), and Target has a \$400x FSNOL, all of which is allocable to Business X. Following the Acquisition, each of Business X and Business Y is separately tracked in the Acquiror group's books and records. In 2024, Business X generates AFSI of \$25x, and Business Y generates AFSI of \$20x.

(B) *Analysis.* The Acquisition is a successor transaction. See paragraph (e)(2)(ii)(B) of this section. Target is treated as the successor after the Acquisition. See paragraph (e)(1)(ii) of this section. Because each of Business X and Business Y is a separately tracked business, the tracked register at the end of 2024 is \$45x (\$25x + \$20x). See paragraphs (e)(3)(i) and (v) of this section. Accordingly, \$45x of the \$400x FSNOL can be applied against the \$45x of tracked income for the year, subject to the 80-percent limitation in paragraph (c)(2) of this section. See paragraph (e)(3)(ii) of this section. As a result, the Acquiror group may include \$36x (80% of \$45x) of the acquired FSNOL in its aggregate FSNOL deduction for 2024, and the tracked register is reduced to \$0. See paragraph (e)(3)(ii)(E) of this section. The remaining \$364x of acquired FSNOL (\$400x–\$36x) is carried forward to 2025.

(iv) *Example 4: Negative tracked register.* The facts are the same as in paragraph (e)(4)(iii)(A) of this section (Example 3), except that, in 2024, Business Y generates AFSI of -\$30x. The tracked register at the end of 2024 is -\$5x (\$25x + -\$30x). See paragraphs (e)(3)(i) and (v) of this section. Because the tracked register is not a positive number, the Acquiror group may include none of the \$400x acquired FSNOL in its aggregate FSNOL deduction in 2024. See paragraph (c)(2) of this section. The entire \$400x of acquired FSNOL is carried forward to 2025.

(v) *Example 5: Acquisition of subgroup.* The facts are the same as in paragraph (e)(4)(iii)(A) of this section (Example 3), except that, at the time of the Acquisition, Target is the common parent of a tax consolidated group that includes subsidiary member T1. Target operates Business X, and T1 operates Business Y. The results are the same as in paragraph (e)(4)(iii)(B) of this section. See paragraph (e)(3)(v)(B) of this section.

(vi) *Example 6: Asset transfer to affiliate that is not a member of the transferor's tax consolidated group—(A) Facts.* Acquiror is the common parent of a tax consolidated group (Acquiror group). Acquiror also owns 70 percent of the stock of Affiliate, which is engaged in Business X. Acquiror is not engaged in Business X or Business Y. On January 1, 2024, Target merges with and into Acquiror in a transaction described in section 381(a) (Merger). At the time of the Merger, Target operates Business X and Business Y, and Target has a \$400x FSNOL, all of which is allocable to Business Y. Following the Merger, Acquiror operates and

separately tracks Business Y, which generates AFSI of \$12x in 2024. Acquiror contributes Business X to Affiliate in exchange for an additional five percent of Affiliate stock. Business X generates AFSI of \$45x in 2024. On December 31, 2024, Affiliate pays a dividend to Acquiror, \$8x of which (net of DRD) is attributable to the stock issued to Acquiror in exchange for Target's Business X assets.

(B) *Analysis.* The Merger is a successor transaction. See paragraph (e)(2)(i) of this section. Because Acquiror transferred Target's Business X assets to a corporation that is not a member of Acquiror's tax consolidated group, the tracked register at the end of 2024 with respect to Business X includes only AFSI attributable to stock received in the exchange, or \$8x. See paragraph (e)(3)(iii)(A) of this section. Because Business Y is a separately tracked business, the tracked register at the end of 2024 with respect to Business Y is \$12x. See paragraph (e)(3)(i) of this section. Accordingly, the tracked register at the end of 2024 is \$20x (\$8x + \$12x). As a result, \$20x of the \$400x FSNOL can be applied against the \$20x of tracked income for the year, subject to the 80-percent limitation in paragraph (c)(2) of this section. See paragraph (e)(3)(ii) of this section. The Acquiror group may include \$16x (80% of \$20x) of the acquired FSNOL in its aggregate FSNOL deduction for 2024, and the tracked register is reduced to \$0x. See paragraph (e)(3)(ii)(E) of this section. The remaining \$384x of the acquired FSNOL (\$400x–\$16x) is carried forward to 2025.

(f) *Limitation on use of built-in losses following acquisitions—(1) Scope.* This paragraph (f) applies if a predecessor corporation (as defined in paragraph (e)(1)(i) of this section) has a CAMT net unrealized built-in loss (as defined in paragraph (f)(4) of this section) immediately before a successor transaction (as defined in paragraph (e)(2) of this section). Under this paragraph (f), the limitation in paragraph (e) of this section applies to the use of the built-in losses (as defined in paragraph (f)(3) of this section) recognized for AFSI purposes following the successor transaction.

(2) *Operating rules—(i) General rule.* For purposes of applying the limitation in paragraph (e) of this section, all built-in losses are treated as if they were acquired FSNOLs.

(ii) *Asset acquisition.* For purposes of applying this paragraph (f), assets and liabilities acquired directly from the same transferor (whether corporate or non-corporate, and whether foreign or domestic) pursuant to the same plan are

treated as the assets and liabilities of a corporation that becomes a member of the consolidated group on the date of the acquisition. See paragraph (e)(2)(ii)(B) of this section.

(iii) *Association of built-in loss with separately tracked acquired business.* Every built-in loss is treated as allocable to the separately tracked acquired business with which it was associated immediately before the successor transaction, regardless of whether the built-in loss is associated with that separately tracked acquired business when the built-in loss is recognized for AFSI purposes.

(iv) *Ordering rule.* To the extent that a built-in loss is allowed to reduce AFSI of the successor under paragraph (e) of this section in the taxable year the built-in loss is recognized for AFSI purposes, the built-in loss reduces AFSI for the taxable year before any acquired FSNOLs are allowed to reduce AFSI for the taxable year.

(v) *Carryover of built-in loss not allowed in year of recognition.* To the extent that a built-in loss is not allowed to reduce AFSI under paragraph (e) of this section in the taxable year the built-in loss is recognized for AFSI purposes, the built-in loss is treated for purposes of paragraph (e) of this section as a separate FSNOL carryover arising in a taxable period immediately preceding the successor transaction.

(3) *Built-in losses*—(i) *Definition.* All losses of a separately tracked business that are recognized for AFSI purposes during the five-year period beginning on the date of the successor transaction are built-in losses subject to limitation under this paragraph (f), except to the extent the successor establishes that—

(A) The asset at issue was not held by the predecessor corporation immediately before the successor transaction; or

(B) The loss exceeds the built-in loss in the asset, measured as of the date of the successor transaction, taking into account the CAMT basis of any relevant property.

(ii) *Timing rule.* A loss that is recognized but disallowed or deferred for AFSI purposes (see, for example, § 1.56A–26(b)) is not treated as a built-in loss unless and until the loss would be allowed to be taken into AFSI without regard to the application of this paragraph (f).

(4) *CAMT net unrealized built-in loss*—(i) *Successor transaction results in a section 382 ownership change.* If a successor transaction results in an ownership change, as defined in section 382(g) of the Code or § 1.1502–92, then the predecessor corporation in the successor transaction is treated as

having a CAMT net unrealized built-in loss (CAMT NUBIL) if the predecessor corporation has a net unrealized built-in loss (NUBIL), as defined in section 382(h)(3), based on CAMT basis.

(ii) *Successor transaction does not result in a section 382 ownership change.* This paragraph (f)(4)(ii) applies if a successor transaction does not result in an ownership change. Under this paragraph (f)(4)(ii), a predecessor corporation has a CAMT NUBIL if that predecessor corporation would have a NUBIL under section 382(h)(3) on the day of the successor transaction, taking into account—

(A) The CAMT basis of property; and

(B) Income, expenses, gains, and losses for AFSI purposes that are attributable to periods before the successor transaction.

(iii) *Inapplicability of NUBIL limitation.* For purposes of paragraphs (f)(4)(i) and (ii) of this section, section 382(h)(1)(B)(ii) does not apply to the extent it limits the amount of RBIL that may be treated as a pre-change loss to the amount of the NUBIL.

(iv) *Successor transaction treated as ownership change.* In applying section 382(h) to identify a NUBIL for purposes of paragraph (f)(4)(ii) of this section, every successor transaction is treated as if it were an ownership change under section 382(g).

(v) *No consideration in excess of fair market value.* For purposes of determining CAMT NUBIL under this paragraph (f)(4), no consideration or deemed consideration in excess of fair market value is taken into account.

(5) *Example: Determination of recognized built-in loss.* The following example illustrates the application of the rules in this paragraph (f).

(i) *Facts.* Target and Acquiror are unrelated domestic corporations, each of which uses the calendar year as its taxable year. Target merges with and into Acquiror in a successor transaction described in paragraph (e)(2)(i) of this section (Merger). At the time of the Merger, Target holds two assets that are used in the same business. Asset 1 has an unrealized loss for AFSI purposes of \$55x (CAMT basis \$75x, value \$20x), and Asset 2 has an unrealized gain for AFSI purposes of \$20x (CAMT basis \$30x, value \$50x). Target has no other income or expense items that would be treated as built-in items under section 382(h)(6).

(ii) *Analysis: Computation of NUBIL.* The Merger results in an ownership change under section 382(g). Under section 382(h)(3)(A), computed using CAMT basis, Target has a \$35x NUBIL at the time of the Merger ($-\$55x + \$20x = -\$35x$). Under paragraph (f)(4)(i) of

this section, Target has a CAMT NUBIL. Assume that \$35x exceeds the threshold requirement in section 382(h)(3)(B).

(iii) *Analysis: Imposition of limitation.* Under paragraph (f)(4)(iii) of this section, the restriction under section 382(h)(1)(B)(ii), which limits the amount of recognized built-in loss that is treated as pre-change loss to the amount of the NUBIL, does not apply for purposes of this paragraph (f). As a result, the entire \$55x of unrealized loss (and not just the \$35x net unrealized loss) is treated under paragraphs (f)(2) and (3) of this section as a built-in loss to the extent it is recognized within 5 years of the Merger. Under paragraph (e)(1) of this section, this \$55x built-in loss is subject to limitation under paragraph (e)(3) of this section. The use of the \$55x built-in loss is not limited by section 382.

(g) *Applicability date.* This section applies to taxable years ending after [DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER].

§ 1.56A–24 AFSI adjustments for hedging transactions and hedged items.

(a) *Overview.* This section provides rules under section 56A of the Code for determining AFSI for certain hedging transactions and hedged items.

Paragraph (b) of this section provides definitions that apply for purposes of this section. Paragraph (c) of this section provides general rules that may apply to disregard a fair value measurement adjustment for purposes of determining AFSI of a CAMT entity for a taxable year. Paragraph (d) of this section provides a rule for determining AFSI if a CAMT entity marks to market a net investment hedge for regular tax purposes. Paragraph (e) of this section provides operative rules for the application of paragraphs (c) and (d) of this section. Paragraph (f) of this section provides examples illustrating the application of the rules in this section. Paragraph (g) of this section provides the applicability date of this section.

(b) *Definitions.* For purposes of this section:

(1) *AFSI hedge*—(i) *In general.* Except as provided in paragraph (b)(1)(ii) of this section, the term *AFSI hedge* means an asset or a liability of a CAMT entity for which there are fair value measurement adjustments and that—

(A) Is entered into as a hedging transaction, as defined in § 1.1221–2(b) (whether or not the character of gain or loss from the transaction is determined under § 1.1221–2), a § 1.1275–6 hedge that is part of an integrated transaction subject to § 1.1275–6, a section 1256(e) hedging transaction, a section 988(d) hedging transaction that is part of a

transaction that is integrated under § 1.988–5 or other regulations issued under section 988(d) of the Code (or an advance ruling described in § 1.988–5(e)) that govern the character or timing of gain or loss from the transaction, or a position that is a hedge under section 475(c)(2)(F) of the Code;

(B) Is a hedge that qualifies for, and is properly treated by the CAMT entity as subject to, hedge accounting (for example, under Accounting Standards Codification paragraph 815–20–25–1 or IFRS 9 Chapter 6) and reported on a CAMT entity's AFS; or

(C) Is described in both paragraphs (b)(1)(i)(A) and (B) of this section.

(ii) *Exception for certain insurance hedges.* The term *AFSI hedge* does not include an asset or a liability that is entered into as a hedging transaction, as defined in § 1.1221–2(b) (whether or not the character of gain or loss from the transaction is determined under § 1.1221–2), by a covered insurance company, as defined in § 1.56A–22(b)(1), to manage risk of fluctuations in the value of one or more assets or indices that are taken into account in determining—

(A) The obligations of the covered insurance company to holders of life insurance or annuity contracts; or

(B) The obligations of the covered insurance company to another covered insurance company with respect to obligations to holders of life insurance or annuity contracts.

(2) *AFSI subsequent adjustment date*—(i) *In general.* Except as provided in paragraph (b)(2)(ii) of this section, the term *AFSI subsequent adjustment date* means the earliest day on which any of the following events occur—

(A) An AFSI hedge or a hedged item (as applicable) subject to paragraph (c)(2) of this section matures or is sold, disposed of, or otherwise terminated;

(B) An AFSI hedge or a hedged item (as applicable) that corresponds to the hedged item or the AFSI hedge subject to paragraph (c)(2) of this section matures or is sold, disposed of, or otherwise terminated; or

(C) An asset or liability ceases to constitute an AFSI hedge or hedged item (as applicable) subject to paragraph (c)(2) of this section.

(ii) *Certain corporate and partnership transactions*—(A) *Covered nonrecognition transactions.* The acquisition of an AFSI hedge and the corresponding hedged item subject to paragraph (c)(2) of this section by a CAMT entity in a covered nonrecognition transaction (as defined in § 1.56A–18(b)(9)) is not an AFSI subsequent adjustment date. As a result, this section continues to apply to the

AFSI hedge and hedged item that were acquired by the CAMT entity. The acquisition of an AFSI hedge or hedged item subject to paragraph (c)(2) of this section without the corresponding hedged item or AFSI hedge (as applicable) by a CAMT entity in a covered nonrecognition transaction (as defined in § 1.56A–18(b)(9)) is an AFSI subsequent adjustment date.

(B) *Covered recognition transactions and certain partnership transactions.* The acquisition of an AFSI hedge or hedged item (as applicable) subject to paragraph (c)(2) of this section with or without the corresponding hedged item or AFSI hedge (as applicable) by a CAMT entity in a covered recognition transaction (as defined in § 1.56A–18(b)(10)), a contribution of an AFSI hedge or hedged item (as applicable) subject to paragraph (c)(2) of this section with or without the corresponding hedged item or AFSI hedge (as applicable) to a partnership in a transaction to which section 721(a) applies, or a distribution of an AFSI hedge or hedged item (as applicable) subject to paragraph (c)(2) of this section with or without the corresponding hedged item or AFSI hedge (as applicable) from a partnership to a partner in a transaction to which section 731(b) applies is an AFSI subsequent adjustment date.

(3) *Fair value measurement adjustment.* The term *fair value measurement adjustment* means a change in the value of an asset or a liability due to required periodic determinations at least annually of the increases or decreases in fair value of that asset or liability included in a CAMT entity's FSI, regardless of whether the determinations are required due to the type of asset or liability or due to an election by the CAMT entity. The term *fair value measurement adjustment* does not include an impairment loss or impairment loss reversal.

(4) *Hedged item.* The term *hedged item* means an asset or a liability that is reported on a CAMT entity's AFS and for which there are one or more AFSI hedges managing a risk of interest rate or price changes, a risk of currency fluctuations, or another risk that is eligible to be managed by an AFSI hedge.

(5) *Net investment hedge.* The term *net investment hedge* means an asset or a liability entered into by a CAMT entity to manage the foreign currency exposure of a net investment in a foreign operation (including under Accounting Standards Codification paragraph 815–20–25–66 or IFRS 9 Chapter 6.5.13) for which there are changes in the value of

the asset or liability due to required periodic determinations (at least annually) of the increases or decreases in fair value of that asset or liability that are included in the CAMT entity's equity accounts on the CAMT entity's AFS, such as retained earnings or OCI.

(c) *Fair value measurement adjustments for an AFSI hedge or a hedged item*—(1) *Scope.* For purposes of determining AFSI of a CAMT entity for a taxable year, paragraph (c)(2) of this section applies to a fair value measurement adjustment for an AFSI hedge or a hedged item if the fair value measurement adjustment would otherwise be included in the CAMT entity's AFSI (determined without regard to this section but after giving effect to all other sections in the section 56A regulations except for § 1.56A–23). Paragraph (c)(2) of this section provides the exclusive rules for the treatment of such a fair value measurement adjustment for purposes of determining AFSI.

(2) *Treatment of fair value measurement adjustment for certain AFSI hedges or hedged items.* A fair value measurement adjustment for an AFSI hedge or a hedged item for a taxable year is disregarded by a CAMT entity for purposes of determining the CAMT entity's AFSI if the CAMT entity either—

(i) Has a fair value measurement adjustment described in paragraph (c)(1) of this section with respect to an AFSI hedge but not the hedged item, and marks to market neither the AFSI hedge nor the hedged item for regular tax purposes; or

(ii) Has a fair value measurement adjustment described in paragraph (c)(1) of this section with respect to a hedged item but not the AFSI hedge, and marks to market neither the hedged item nor the AFSI hedge for regular tax purposes.

(3) *Application to prior taxable years.* Adjustments to AFSI under paragraph (c)(2) of this section are required to be made for all taxable years prior to the taxable year in which the AFSI hedge or hedged item matures or is sold, disposed of, or otherwise terminated, including taxable years that end on or before December 31, 2019.

(d) *Net investment hedge adjustments.* To the extent a CAMT entity marks to market a net investment hedge for regular tax purposes for a taxable year, the CAMT entity includes in AFSI for the taxable year the gain or loss resulting from marking to market the net investment hedge for regular tax purposes.

(e) *Operative rules*—(1) *Inclusion of certain taxable amounts in AFSI.* If a fair value measurement adjustment that

is disregarded under paragraph (c)(2) of this section in a taxable year includes amounts corresponding to items of income, gain, deduction, or loss under chapter 1 in that taxable year, the CAMT entity includes such amounts in AFSI in that taxable year. See paragraph (f)(5) of this section (*Example 5*).

(2) *Subsequent adjustments for AFSI hedges and hedged items.* Paragraphs (e)(2)(i) and (ii) of this section apply in the taxable year in which there is an AFSI subsequent adjustment date.

(i) In the taxable year of an AFSI subsequent adjustment date, the CAMT entity includes in AFSI the cumulative fair value measurement adjustments previously disregarded in determining AFSI under paragraph (c)(2) of this section, net of any amounts included in AFSI under paragraph (e)(1) of this section. In the case of multiple AFSI hedges with respect to a single hedged item, the preceding sentence applies only to the AFSI hedge for which there was an AFSI subsequent adjustment date.

(ii) Following an event described in paragraph (b)(2)(i)(B) or (C) of this section, the CAMT entity uses the AFS basis of the AFSI hedge or hedged item that was subject to paragraph (c)(2) of this section immediately following the AFSI subsequent adjustment date as the CAMT basis in order to determine any further recognized gain or loss included in AFSI with respect to the AFSI hedge or hedged item.

(3) *Subsequent adjustments for net investment hedges.* In the taxable year in which the net investment hedge subject to paragraph (d) of this section matures or is sold, disposed of, or otherwise terminated, or in which the asset or liability that was a net investment hedge subject to paragraph (d) of this section ceases to constitute a net investment hedge, the CAMT entity adjusts the amount included in AFSI by the cumulative mark-to-market gain or loss for regular tax purposes included in AFSI under paragraph (d) of this section. If the asset or liability that was a net investment hedge subject to paragraph (d) of this section ceases to constitute a net investment hedge but does not mature or is not sold, disposed of, or otherwise terminated, as of the date it ceases to constitute a net investment hedge, the CAMT entity redetermines the CAMT basis of the net investment hedge that was subject to paragraph (d) of this section in accordance with § 1.56A-1(d)(4). For purposes of the preceding sentence, the CAMT basis of the net investment hedge is the initial AFS basis of the net investment hedge (that is, the AFS basis as of the date the CAMT entity enters

into the net investment hedge), adjusted to take into account the cumulative mark-to-market gain or loss for regular tax purposes included in AFSI under paragraph (d) of this section (and disregarding for this purpose any changes in AFS basis resulting from items with respect to the net investment hedge not included in AFSI).

(f) *Examples.* The following examples illustrate the application of the rules in this section. For purposes of these examples, X is a corporation and, except as otherwise provided, the AFSI hedge and hedged item do not mature and are not sold, disposed of, or otherwise terminated during the taxable years involved, and the gain and loss occur in the same taxable year.

(1) *Example 1: Fair value measurement adjustment for an AFSI hedge—(i) Facts.* X has an outstanding forward contract constituting an AFSI hedge with respect to a commodity delivery obligation constituting a hedged item. X has a fair value measurement adjustment described in paragraph (c)(1) of this section on the AFSI hedge of \$20x of gain. There is no fair value measurement adjustment described in paragraph (c)(1) of this section on the hedged item. X does not mark to market the AFSI hedge or the hedged item for regular tax purposes.

(ii) *Analysis.* For purposes of determining AFSI of X, X will disregard the fair value measurement adjustment of \$20x of gain under paragraph (c)(2)(i) of this section because the forward contract is an AFSI hedge, there is no fair value measurement adjustment described in paragraph (c)(1) of this section on the hedged item, and X does not mark to market the AFSI hedge or the hedged item for regular tax purposes.

(2) *Example 2: AFSI hedge marked to market for regular tax purposes—(i) Facts.* X has an outstanding futures contract constituting an AFSI hedge with respect to a purchased debt instrument constituting a hedged item. X has a fair value measurement adjustment described in paragraph (c)(1) of this section on the AFSI hedge of \$15x of gain. There is no fair value measurement adjustment described in paragraph (c)(1) of this section on the hedged item. For regular tax purposes, the AFSI hedge is marked to market, resulting in X including \$15x of gain on the AFSI hedge in X's taxable income.

(ii) *Analysis.* For purposes of determining AFSI of X, X will not disregard the fair value measurement adjustment on the AFSI hedge of \$15x of gain because the AFSI hedge is marked to market for regular tax

purposes, and therefore paragraph (c)(2)(i) of this section does not apply.

(3) *Example 3: Fair value measurement adjustment for AFSI hedge and hedged item—(i) Facts.* X has an outstanding futures contract constituting an AFSI hedge with respect to a fixed-rate obligation constituting a hedged item. X has a fair value measurement adjustment described in paragraph (c)(1) of this section on the AFSI hedge of \$10x of gain, and a fair value measurement adjustment described in paragraph (c)(1) of this section on the hedged item of \$10x of loss. For regular tax purposes, neither the AFSI hedge nor the hedged item is marked to market.

(ii) *Analysis.* For purposes of determining the AFSI of X, X will not disregard either the fair value measurement adjustment of \$10x of gain or the fair value measurement adjustment of \$10x of loss because there are fair value measurement adjustments described in paragraph (c)(1) of this section for both the AFSI hedge and the hedged item, and therefore paragraphs (c)(2)(i) and (ii) of this section do not apply.

(4) *Example 4: Net investment hedge marked to market—(i) Facts.* X has an outstanding futures contract constituting a net investment hedge. For regular tax purposes, the futures contract is marked to market, resulting in X including \$10x of unrealized loss on the net investment hedge in X's taxable income. X includes \$8x of unrealized loss on the net investment hedge in OCI.

(ii) *Analysis.* Because the futures contract is a net investment hedge, X will include the mark-to-market loss of \$10x for regular tax purposes on the futures contract in AFSI under paragraph (d) of this section, rather than the \$8x of unrealized loss included in OCI.

(5) *Example 5: Inclusion of original issue discount (OID) in AFSI—(i) Facts.* X holds a debt instrument with OID subject to section 1272 of the Code that is a hedged item and that has a fair value measurement adjustment described in paragraph (c)(1) of this section. X also holds an AFSI hedge that does not have a fair value measurement adjustment described in paragraph (c)(1) of this section. The fair value measurement adjustment includes amounts corresponding to the OID on the debt instrument. For regular tax purposes, neither the AFSI hedge nor the hedged item is marked to market. The fair value measurement adjustment is disregarded under paragraph (c)(2)(ii) of this section.

(ii) *Analysis.* Under paragraph (c)(2)(ii) of this section, X disregards the fair value measurement adjustment on the debt instrument in determining AFSI. Instead, X will include the taxable income from the OID on the debt instrument in determining AFSI under paragraph (e)(1) of this section.

(6) *Example 6: Subsequent adjustments for AFSI hedge—(i) Facts.* X has an AFSI hedge with an initial AFS basis of \$100x. There are fair value measurement adjustments described in paragraph (c)(1) of this section for the AFSI hedge of \$10x of gain in 2024 and \$2x of loss in 2025 that were disregarded under paragraph (c)(2) of this section. There is no fair value measurement adjustment for the hedged item, and X does not mark to market the AFSI hedge or the hedged item for regular tax purposes. This gain and loss results in an increase in the AFS basis to \$110x in 2024 and a decrease in the AFS basis to \$108x in 2025. In 2026, the AFSI hedge is sold for \$115x when the AFS basis is still \$108x, giving rise to an FSI gain of \$7x.

(ii) *Analysis.* Under paragraph (e)(2)(i) of this section, X includes in AFSI the cumulative fair value measurement adjustments of \$8x previously disregarded in determining AFSI under paragraph (c)(2) of this section. X also includes in AFSI the FSI gain of \$7x from the taxable year that includes the AFSI subsequent adjustment date to take into account the net difference between the \$115x received in the sale and the AFS basis as of the AFSI subsequent adjustment date of \$108x. As a result, the sale of the AFSI hedge gives rise to \$15x of gain in 2026 for purposes of determining AFSI for that taxable year.

(7) *Example 7: Subsequent adjustments for AFSI hedge with negative carrying value—(i) Facts.* In 2024, X enters into a forward contract constituting an AFSI hedge with respect to a purchase obligation constituting a hedged item. The forward contract has a three-year term and an initial carrying value (AFS basis) of \$0. At the end of 2024, there is a fair value measurement adjustment described in paragraph (c)(1) of this section for the forward contract of \$15x of loss that is included in X's FSI for that year and was disregarded under paragraph (c)(2) of this section. There is no fair value measurement adjustment for the purchase obligation, and X does not mark to market the forward contract or the purchase obligation for regular tax purposes. Applicable financial accounting principles treat the forward contract as a liability with a negative carrying value (AFS basis) at the end of 2024 of \$15x.

In 2025 and at a time when the forward contract still has a negative carrying value (AFS basis) of \$15x, the purchase obligation is sold, which sale gives rise to an AFSI subsequent adjustment date. Because the forward contract has not yet matured or been sold, disposed of, or otherwise terminated, there is no gain or loss included in X's FSI as of the AFSI subsequent adjustment date.

(ii) *Analysis.* Under paragraph (e)(2)(i) of this section, X includes in AFSI in 2025 the \$15x of loss to take into account the fair value measurement adjustment for the forward contract that was previously disregarded under paragraph (c)(2) of this section. Under paragraph (e)(2)(ii) of this section, for purposes of determining any future gain or loss included in the AFS basis (and the CAMT basis) of the forward contract immediately following the AFSI subsequent adjustment date is –\$15x.

(g) *Applicability date.* This section applies to taxable years ending after [DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER].

§ 1.56A–25 AFSI adjustments for mortgage servicing income.

(a) *Overview.* This section provides rules under section 56A(c)(10) of the Code for adjusting AFSI with respect to mortgage servicing income.

(b) *In general.* AFSI is adjusted so as not to include any item of income in connection with a mortgage servicing contract any earlier than the date such income is included in gross income under chapter 1.

(c) *Applicability date.* This section applies to taxable years ending after [DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER].

§ 1.56A–26 AFSI adjustments for certain related party transactions and CAMT avoidance transactions.

(a) *Overview.* This section provides rules under section 56A of the Code for adjusting AFSI for losses that arise in certain related party transactions and for CAMT avoidance transactions.

Paragraph (b) of this section provides rules for adjusting AFSI for losses that arise from the sale or exchange of property between CAMT entities that are related. Paragraph (c) of this section provides an anti-abuse rule to adjust AFSI for transactions undertaken with a principal purpose of avoiding applicable corporation status or reducing or avoiding a CAMT liability under section 55 of the Code. Paragraph (d) of this section provides for the clear reflection of income under the principles of section 482 of the Code. Paragraph (e) of this section provides the applicability date of this section.

(b) *Deferral of loss from disposition between or among certain related entities—(1) CAMT-related group.* For purposes of this paragraph (b), the term *CAMT-related group* means any two or more CAMT entities that are treated as a single employer under section 52(a) and (b) of the Code. See § 1.59–2(e).

(2) *Required deferral.* If the AFSI of a CAMT entity (as determined after the application of all other sections of the section 56A regulations other than § 1.56A–23) reflects a loss resulting from a sale, exchange, or any other disposition of property (including stock) between that CAMT entity and one or more CAMT entities that are part of that CAMT entity's CAMT-related group (including after application of paragraph (d) of this section), that loss is deferred for AFSI purposes until no member of that CAMT entity's CAMT-related group holds that property (in whole or in part).

(c) *General anti-abuse rule.*

Arrangements entered into with a principal purpose of avoiding the application of the corporate alternative minimum tax rules under sections 55 through 59 of the Code, the section 56A regulations, or §§ 1.59–2 through 1.59–4, including avoiding treatment as an applicable corporation or reducing or otherwise avoiding a liability under section 55(a), may be disregarded or recharacterized by the Commissioner to the extent necessary to carry out the purposes of the corporate alternative minimum tax, the section 56A regulations, and §§ 1.59–2 through 1.59–4.

(d) *Clear reflection of income requirement—(1) In general.* For purposes of determining AFSI, if any item of income, expense, gain, or loss reflected in the FSI of the CAMT entity with respect to a controlled transaction or controlled transfer (as defined in § 1.482–1(i)(8)) between two or more CAMT entities does not reflect the principles of section 482 and the regulations under section 482, then the CAMT entity must make appropriate adjustments to CAMT basis to reflect these principles (regardless of whether section 482 is otherwise considered to apply).

(2) *Appropriate adjustments.* For purposes of calculating AFSI following a transaction described in paragraph (d)(1) of this section that does not reflect the principles of section 482 and the regulations under section 482, the CAMT entity must make appropriate adjustments to CAMT basis to reflect the adjustments required by paragraph (d)(1) of this section.

(3) *Example: Transfer accounted for at historical cost for accounting purposes.* The following example

illustrates the application of paragraphs (d)(1) and (2) of this section.

(i) *Facts.* X is a domestic corporation that owns all the stock of FC, a controlled foreign corporation. FC's functional currency is the U.S. dollar. X's and FC's financial results are consolidated in the financial statement included with X's Form 10-K, filed with the SEC and prepared using GAAP, and which serves as both X's and FC's AFS. On July 1, FC sells to X self-created intangible property with a zero AFS basis in the financial accounts of FC, a zero CAMT basis and a zero basis for regular tax purposes on the date of transfer. GAAP measures the transferred intangible property at the carrying value of the intangible property in the accounts of FC on the date of the transfer. No gain is reflected in the AFS for the transfer of the intangible property. Under the arm's length standard in the regulations under section 482, the arm's length sale price of the intangible property at the time of transfer is \$10x.

(ii) *Analysis.* The sale of the self-created intangible property by FC to X is a controlled transaction or controlled transfer under § 1.482-1(i)(8). Under paragraph (d)(1) of this section, X's AFSI with respect to the sale is adjusted to reflect the arm's length price at the time of the sale, or \$10x, rather than the \$0 properly shown for financial accounting purposes. Accordingly, FC recognizes a gain of \$10x, and X's AFSI is increased by its pro rata share, or 100%, of the additional FC income. Going forward, under paragraph (d)(2) of this section, X's CAMT basis in the intangible property is appropriately adjusted to reflect the \$10x that X is treated as paying for the intangible property.

(e) *Applicability date.* This section applies to taxable years ending after September 13, 2024.

§ 1.56A-27 AFSI adjustments for foreign governments.

(a) *Overview.* This section provides rules under section 56A of the Code for adjusting AFSI with respect to income of foreign governments.

(b) *In general.* AFSI of a foreign government is adjusted so as not to take into account any amount of FSI that, if it were properly treated as gross income for regular tax purposes, would be excluded from gross income and exempt from taxation under subtitle A pursuant to section 892 of the Code.

(c) *Applicability date.* This section applies to taxable years ending after September 13, 2024.

■ **Par. 10.** Sections 1.59-2 through 1.59-4 are added to read as follows:

*	*	*	*	*
Sec.				
1.59-2	General rules for determining			
	applicable corporation status.			
1.59-3	Foreign-parented multinational			
	group.			
1.59-4	CAMT foreign tax credit.			
*	*	*	*	*

§ 1.59-2 General rules for determining applicable corporation status.

(a) *Overview.* This section provides rules under section 59(k) of the Code for determining whether a corporation is an applicable corporation for purposes of sections 53 and 55 through 59 of the Code and §§ 1.56A-1 through 1.56A-27, this section, and §§ 1.59-3, 1.59-4, 1.1502-53, and 1.1502-56A. Paragraph (b) of this section provides defined terms, including the definition of an applicable corporation, that apply for purposes of this section. Paragraph (c) of this section provides general rules regarding the average annual AFSI test under section 59(k)(1)(B) and the determination of AFSI for purposes of the test, including rules to implement section 59(k)(1)(D) and (k)(2)(A). Paragraph (d) of this section provides special rules pursuant to section 59(k)(1)(E) that apply for purposes of the average annual AFSI test. Paragraph (e) of this section provides special rules pursuant to section 59(k)(1)(D) for determining whether a person and a corporation are treated as a single employer under section 52(a) or (b) of the Code. Paragraph (f) of this section provides special rules for determining the AFSI history of a corporation that joins or leaves a test group. Paragraph (g) of this section provides a safe harbor for purposes of determining whether a corporation is an applicable corporation. Paragraph (h) of this section provides rules under section 59(k)(1)(C) regarding the termination of applicable corporation status. Paragraph (i) of this section provides a substantiation requirement. Paragraph (j) of this section provides a reporting requirement. Paragraph (k) of this section provides the applicability date of this section.

(b) *Defined terms.* The following definitions apply for purposes of this section. Terms used in this section that are not defined in this section have the meanings provided in the section 56A regulations.

(1) *Applicable corporation.* Except as provided in paragraph (h) of this section, the term *applicable corporation* means, with respect to any taxable year, any corporation (other than an S corporation, a regulated investment

company, or a real estate investment trust) that meets the average annual AFSI test (as described in paragraph (c) of this section) for one or more taxable years that—

- (i) Are prior to such taxable year; and
- (ii) End after December 31, 2021.

(2) *FPMG corporation.* The term *FPMG corporation* means a corporation being tested for applicable corporation status if that corporation is a member of an FPMG (as determined under § 1.59-3) on the first or last day of its taxable year.

(3) *Relevant aggregation entity.* The term *relevant aggregation entity* has the meaning provided in paragraph (c)(2)(ii)(A) of this section.

(4) *Relevant relationship criteria.* The term *relevant relationship criteria* means the relationship criteria set forth in paragraph (c)(1)(ii)(A), (c)(2)(ii)(A), or (c)(2)(iii)(A) of this section, as applicable.

(5) *Section 56A regulations.* The term *section 56A regulations* means §§ 1.56A-1 through 1.56A-27 and 1.1502-56A.

(6) *Test group.* The term *test group* means, with respect to a corporation, the corporation and all persons that are treated as related to such corporation under the relevant relationship criteria.

(7) *Test group parent.* The term *test group parent* means—

(i) In the case of a parent-subsidary controlled group (as defined in paragraph (e)(1)(ii) of this section), the common parent of such group as described in paragraph (e)(1)(ii) of this section;

(ii) In the case of a brother-sister controlled group (as defined in paragraph (e)(1)(iii) of this section), the collective group of persons described in paragraph (e)(1)(iii) of this section that satisfy the ownership requirements under paragraphs (e)(1)(iii)(A) and (B) of this section with respect to each corporation that is a member of the brother-sister controlled group;

(iii) In the case of a combined group, as defined in paragraph (e)(1)(iv) of this section, either the common parent of the relevant parent-subsidary controlled group or the collective group of persons described in paragraph (b)(7)(ii) of this section with respect to the relevant brother-sister controlled group, as applicable;

(iv) In the case of parent-subsidary group under common control, as defined in § 1.52-1(c), the common parent organization of such group as described in § 1.52-1(c);

(v) In the case of a brother-sister group under common control, as defined in § 1.52-1(d), the collective group of persons described in § 1.52-1(d) that

satisfy the ownership requirements under § 1.52–1(d)(1) with respect to each organization, as defined in § 1.52–1(b), that is a member of the brother-sister controlled group;

(vi) In the case of a combined group under common control, as defined in § 1.52–1(e), either the common parent organization of the relevant parent-subsubsidiary group under common control or the collective group of persons described in paragraph (b)(7)(v) of this section with respect to the relevant brother-sister group under common control, as applicable; or

(vii) In the case of an FPMG, the FPMG common parent, as defined in § 1.59–3(b)(9).

(c) *Average annual AFSI test*—(1) *Corporations other than FPMG corporations*—(i) *In general*. A corporation that is not an FPMG corporation meets the average annual AFSI test for a taxable year if the average annual AFSI of the corporation (as determined under paragraph (c)(1)(ii) of this section) for the 3-taxable-year period ending with such taxable year exceeds \$1,000,000,000.

(ii) *Aggregation required to determine AFSI for purposes of the average annual AFSI test*—(A) *In general*. For purposes of applying the average annual AFSI test described in paragraph (c)(1)(i) of this section to a corporation described in paragraph (c)(1)(i) of this section, the AFSI of the corporation and all persons treated as a single employer with the corporation under section 52(a) or (b) is treated as the AFSI of the corporation. For purposes of this paragraph (c)(1)(ii)(A), if a person treated as a single employer with a corporation described in paragraph (c)(1)(i) of this section has a taxable year that differs from the taxable year of the corporation, then the corporation's AFSI includes such person's AFSI for the taxable year of such person that ends with or within the taxable year of the corporation. See paragraph (e) of this section for rules that apply to determine whether persons are treated as a single employer with the corporation under section 52(a) or (b). See paragraph (f) of this section for rules that apply to determine AFSI of the corporation if a person joins or leaves the corporation's test group.

(B) *Certain AFSI adjustments disregarded*. For purposes of applying the average annual AFSI test described in paragraph (c)(1)(i) of this section to a corporation described in paragraph (c)(1)(i) of this section, the AFSI of the corporation and the AFSI of any person treated as a single employer with the corporation under section 52(a) or (b) is determined without regard to the AFSI adjustments provided in §§ 1.56A–5,

1.56A–6(b)(2), 1.56A–8(c), 1.56A–13, 1.56A–20, 1.56A–23, and 1.56A–27. Because the AFSI adjustments provided in §§ 1.56A–5, 1.56A–13, 1.56A–20, and 1.56A–27 disregard, disregard and replace, or otherwise adjust amounts reflected in FSI, determining AFSI without regard to those AFSI adjustments means that such FSI amounts are included in AFSI without adjustment. See § 1.56A–1(c) for rules that apply to determine FSI.

(C) *Adjustments to prevent duplications with respect to partnership investments*. For purposes of the average annual AFSI test described in paragraph (c)(1)(i) of this section to a corporation described in paragraph (c)(1)(i) of this section, and to prevent the duplication of income or loss from a partnership investment, if a partnership is treated as a single employer with the corporation under section 52(a) or (b), the AFSI of any partner in the partnership that is either that corporation, or treated as a single employer with that corporation, is determined without regard to any amount reflected in that partner's FSI that is derived from, and included in, the FSI of the partnership. See § 1.56A–5(d) for a description of FSI amounts that are not treated as derived from, or included in, the FSI of the partnership.

(D) *Adjustments to account for discharge of indebtedness income with respect to partnership investments*. For purposes of the average annual AFSI test described in paragraph (c)(1)(i) of this section to a corporation described in paragraph (c)(1)(i) of this section, if a partnership is treated as a single employer with the corporation under section 52(a) or (b), the exclusions from AFSI for discharge of indebtedness income pursuant to § 1.56A–21(c) apply to the partnership's AFSI, but are based on a determination of whether the relevant partner meets any of the exclusions provided in § 1.56A–21(c)(1) and (2), including the application of any resulting CAMT attribute reductions provided in § 1.56A–21(c)(5) and (6).

(2) *FPMG corporations*—(i) *In general*. An FPMG corporation meets the average annual AFSI test for a taxable year if—
(A) The average annual AFSI of the FPMG corporation (as determined under paragraph (c)(2)(ii) of this section) for the 3-taxable-year period ending with such taxable year exceeds \$1,000,000,000; and

(B) The average annual AFSI of the FPMG corporation (as determined under paragraph (c)(2)(iii) of this section) for the 3-taxable-year period ending with such taxable year is \$100,000,000 or more.

(ii) *Aggregation required to determine AFSI for purposes of the average annual AFSI test in paragraph (c)(2)(i)(A) of this section (\$1,000,000,000 test for FPMG corporations)*—(A) *In general*. For purposes of applying the average annual AFSI test described in paragraph (c)(2)(i)(A) of this section to an FPMG corporation, the AFSI of the FPMG corporation and all other members of its FPMG and persons (other than persons that are members of the FPMG) treated as a single employer with the FPMG corporation under section 52(a) or (b) (each such member or person other than the FPMG corporation, a relevant aggregation entity) is treated as AFSI of the FPMG corporation. For purposes of this paragraph (c)(2)(ii)(A), if a relevant aggregation entity has a taxable year that differs from the taxable year of the FPMG corporation, then the FPMG corporation's AFSI includes the relevant aggregation entity's AFSI for the taxable year of the relevant aggregation entity that ends with or within the taxable year of the FPMG corporation. Additionally, for purposes of this paragraph (c)(2)(ii)(A), if a relevant aggregation entity does not have a taxable year for regular tax purposes, the relevant aggregation entity treats its AFS reporting year as its taxable year. See paragraph (e) of this section for rules that apply to determine whether persons are treated as a single employer with the FPMG corporation under section 52(a) or (b). See § 1.59–3 for rules that apply to determine the members of the FPMG corporation's FPMG. See paragraph (f) of this section for rules that apply to determine AFSI of the FPMG corporation if a person joins or leaves the FPMG corporation's test group.

(B) *Certain AFSI adjustments disregarded*. For purposes of applying the average annual AFSI test described in paragraph (c)(2)(i)(A) of this section to an FPMG corporation, and subject to paragraph (c)(2)(i)(C) of this section, the AFSI of the FPMG corporation and each relevant aggregation entity with respect to the FPMG corporation is determined without regard to the AFSI adjustments provided in §§ 1.56A–5 through 1.56A–7, 1.56A–8(c), 1.56A–13, 1.56A–20, 1.56A–23, and 1.56A–27. Because the AFSI adjustments provided in §§ 1.56A–5, 1.56A–7, 1.56A–13, 1.56A–20, and 1.56A–27 disregard, disregard and replace, or otherwise adjust amounts reflected in FSI, determining AFSI without regard to those AFSI adjustments means that such FSI amounts are included in AFSI without adjustment. See § 1.56A–1(c) for rules that apply to determine FSI.

(C) *Special rule for foreign persons with items that are not taken into*

account for regular tax purposes. For purposes of the average annual AFSI test described in paragraph (c)(2)(i)(A) of this section, an FPMG corporation that is a foreign corporation or any relevant aggregation entity with respect to the FPMG corporation that is not a United States person (as defined in section 7701(a)(30) of the Code) does not make any AFSI adjustment described in the section 56A regulations that is dependent on the treatment of an item for regular tax purposes if the FPMG corporation or relevant aggregation entity, as applicable, does not take that item into account for regular tax purposes. If an AFSI adjustment provides for disregarding an item reflected in FSI and replacing that item with an amount that is taken into account for regular tax purposes, and the FPMG corporation or relevant aggregation entity, as applicable, does not take that item into account for regular tax purposes, then the item reflected in the FPMG corporation's or relevant aggregation entity's FSI is not disregarded or replaced with any other amount. Further, for purposes of this paragraph (c)(2)(ii)(C), any adjustment described in § 1.56A–26 is not an adjustment that is dependent on the treatment of an item for regular tax purposes.

(D) *Adjustments to prevent duplications with respect to partnership investments.* For purposes of the average annual AFSI test described in paragraph (c)(2)(i)(A) of this section to an FPMG corporation and preventing the duplication of income or loss from a partnership investment, if a partnership is a relevant aggregation entity (as described in paragraph (c)(2)(ii)(A) of this section) with respect to the FPMG corporation, then the AFSI of any partner in the partnership that is either the FPMG corporation or a relevant aggregation entity with respect to the FPMG corporation is determined without regard to any amount reflected in the partner's FSI that is derived from, and included in, the FSI of the partnership. See § 1.56A–5(d) for a description of FSI amounts that are not treated as derived from, or included in, the FSI of the partnership.

(E) *Adjustments to account for discharge of indebtedness income with respect to partnership investments.* For purposes of the average annual AFSI test described in paragraph (c)(2)(i)(A) of this section to an FPMG corporation, if a partnership is a relevant aggregation entity with respect to the FPMG corporation, the exclusions from AFSI for discharge of indebtedness income pursuant to § 1.56A–21(c) apply to the partnership's AFSI, but are based on a

determination of whether the relevant partner meets any of the exclusions provided in § 1.56A–21(c)(1) and (2), including the application of any resulting CAMT attribute reductions provided in § 1.56A–21(c)(5) and (6).

(F) *Adjustments to prevent duplications with respect to ownership of certain stock.* For purposes of applying the average annual AFSI test described in paragraph (c)(2)(i)(A) of this section, the AFSI of a shareholder of a foreign corporation that is the FPMG corporation or a relevant aggregation entity with respect to the FPMG corporation (corporate aggregation entity) is determined without regard to any item reflected in the FSI of the shareholder that is attributable to FSI of the FPMG corporation or corporate aggregation entity and that, under paragraph (c)(2)(ii)(C) of this section, is not disregarded, if either—

(1) The shareholder is the FPMG corporation and is a foreign corporation; or

(2) The shareholder is a relevant aggregation entity with respect to the FPMG corporation and is not a United States person (as defined in section 7701(a)(30) of the Code).

(iii) *Aggregation required to determine AFSI for purposes of the average annual AFSI test in paragraph (c)(2)(i)(B) of this section (\$100,000,000 test for FPMG corporations).*—(A) *In general.* For purposes of the average annual AFSI test described in paragraph (c)(2)(i)(B) of this section to an FPMG corporation, the AFSI of the FPMG corporation and all persons treated as a single employer with the FPMG corporation under section 52(a) or (b) is treated as the AFSI of the FPMG corporation. For purposes of this paragraph (c)(2)(iii)(A), if a person treated as a single employer with an FPMG corporation has a taxable year that differs from the taxable year of the corporation, then the FPMG corporation's AFSI includes the person's AFSI for the taxable year of the person that ends with or within the taxable year of the FPMG corporation. See paragraph (e) of this section for rules that apply to determine whether persons are treated as a single employer with the FPMG corporation under section 52(a) or (b). See paragraph (f) of this section for rules that apply to determine AFSI of the FPMG corporation if a person joins or leaves the FPMG corporation's test group.

(B) *Certain AFSI adjustments disregarded.* For purposes of applying the average annual AFSI test described in paragraph (c)(2)(i)(B) of this section to an FPMG corporation, the AFSI of the

FPMG corporation and the AFSI of any person treated as a single employer with the FPMG corporation under section 52(a) or (b) is determined without regard to the AFSI adjustments provided in §§ 1.56A–5, 1.56A–6(b)(2), 1.56A–8(c), 1.56A–13, 1.56A–20, 1.56A–23, and 1.56A–27. Because the AFSI adjustments provided in §§ 1.56A–5, 1.56A–13, 1.56A–20, and 1.56A–27 disregard, disregard and replace, or otherwise adjust amounts reflected in FSI, determining AFSI without regard to those AFSI adjustments means that such FSI amounts are included in AFSI without adjustment. See § 1.56A–1(c) for rules that apply to determine FSI.

(C) *Adjustments to prevent duplications with respect to partnership investments.* For purposes of the average annual AFSI test described in paragraph (c)(2)(i)(B) of this section to an FPMG corporation and preventing the duplication of income or loss from a partnership investment, if a partnership is treated as a single employer with the FPMG corporation under section 52(a) or (b), then the AFSI of any partner in the partnership that is either that FPMG corporation or treated as a single employer with that FPMG corporation is determined without regard to any amount reflected in the partner's FSI that is derived from, and included in, the FSI of the partnership. See § 1.56A–5(d) for a description of FSI amounts that are not treated as derived from, or included in, the FSI of the partnership.

(D) *Adjustments to account for discharge of indebtedness income with respect to partnership investments.* For purposes of the average annual AFSI test described in paragraph (c)(2)(i)(B) of this section to an FPMG corporation, if a partnership is treated as a single employer with the FPMG corporation under section 52(a) or (b), the exclusions from AFSI for discharge of indebtedness income pursuant to § 1.56A–21(c) apply to the partnership's AFSI, but are based on a determination of whether the relevant partner meets any of the exclusions provided in § 1.56A–21(c)(1) and (2), including the application of any resulting CAMT attribute reductions provided in § 1.56A–21(c)(5) and (6).

(d) *Special rules for applying the average annual AFSI test.*—(1) *Corporations in existence for less than three taxable years.* If a corporation has been in existence for less than three taxable years, the average annual AFSI tests described in paragraphs (c)(1)(i) and (c)(2)(i) of this section, as applicable, are applied on the basis of the period during which the corporation was in existence. For purposes of the immediately preceding sentence, the

period during which a corporation has been in existence includes the period during which any predecessor of the corporation has been in existence. See paragraph (d)(3) of this section.

(2) *Short taxable years*—(i) *In general.* For purposes of the average annual AFSI tests described in paragraphs (c)(1)(i) and (c)(2)(i) of this section and determining AFSI under paragraphs (c)(1)(ii) and (c)(2)(ii) and (iii) of this section, as applicable, the AFSI for any taxable year of less than 12 months is annualized by multiplying the AFSI for the short period by 12 and dividing the result by the number of months in the short period.

(ii) *Nonrecurring items in short taxable years.* For purposes of paragraph (d)(2)(i) of this section, AFSI for the short period to be annualized does not include those items described as extraordinary items in § 1.6655–2(f)(3)(ii)(A) to the extent that the items are not otherwise disregarded in determining AFSI, either because of an AFSI adjustment or because the items are not included in FSI. However, the items are included in AFSI for the annualized 12-month period after the AFSI for the short period is annualized under paragraph (d)(2)(i) of this section.

(3) *Treatment of predecessors.* For purposes of this section, any reference to a corporation includes a reference to any predecessor of the corporation.

(e) *Special rules for applying section 52(a) and (b) in determining applicable corporation status under paragraph (c) of this section.* This paragraph (e) provides rules for determining whether a corporation and another person are treated as a single employer under section 52(a) or (b) for purposes of determining the AFSI of the corporation under paragraphs (c)(1)(ii)(A), (c)(2)(ii)(A), and (c)(2)(iii)(A) of this section, as applicable.

(1) *Persons treated as a single employer under section 52(a)*—(i) *In general.* Persons are treated as a single employer under section 52(a) if those persons are members of a controlled group of corporations. The term *controlled group of corporations* has the same meaning as under section 1563(a) of the Code, determined without regard to section 1563(a)(4) and (e)(3)(C), except that *more than 50 percent* is substituted for *at least 80 percent* each place it appears in section 1563(a)(1), and is any group of corporations that is—

(A) A parent-subsidiary controlled group, as defined in paragraph (e)(1)(ii) of this section;

(B) A brother-sister controlled group, as defined in paragraph (e)(1)(iii) of this section; or

(C) A combined group, as defined in paragraph (e)(1)(iv) of this section.

(ii) *Parent-subsidiary controlled group.* The term *parent-subsidiary controlled group* means one or more chains of corporations connected through stock ownership with a common parent if the ownership of each corporation satisfies the following ownership requirements—

(A) Stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each of the corporations, except the parent corporation, is owned (directly and with the application of section 1563(e)(1), (2), and (3), relating to options, partnerships, and estates or trusts, respectively) by one or more of the other corporations; and

(B) The common parent owns (directly and with the application of section 1563(e)(1), (2), and (3)) stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of at least one of the other corporations, excluding, in computing the voting power or value, stock owned directly by the other corporations.

(iii) *Brother-sister controlled group.* The term *brother-sister controlled group* means two or more corporations if the ownership of each corporation satisfies the controlling interest requirement of paragraph (e)(1)(iii)(A) of this section and the effective control requirement of paragraph (e)(1)(iii)(B) of this section.

(A) *Controlling interest requirement.* The same five or fewer persons who are individuals, estates, or trusts own (directly and with the application of section 1563(e)) stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of the shares of all classes of stock in each corporation.

(B) *Effective control requirement.* Taking into account the ownership of each of the same five or fewer persons whose ownership is considered for purposes of paragraph (e)(1)(iii)(A) of this section only to the extent that each person's ownership is identical with respect to each corporation, those persons own stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of the shares of all classes of stock of each corporation.

(iv) *Combined group.* The term *combined group* means a group of three or more corporations, if—

(A) Each corporation is a member of either a parent-subsidiary controlled group of corporations or brother-sister controlled group of corporations; and

(B) At least one corporation is the common parent of a parent-subsidiary controlled group and also a member of a brother-sister controlled group.

(2) *Persons treated as a single employer under section 52(b)*—(i) *In general.* Similar to the rules that apply under sections 52(a) and 1563(a), persons are treated as a single employer under section 52(b) if those persons are members of a group of trades or businesses that are under common control.

(ii) *Trades or businesses that are under common control.* The term *trades or businesses that are under common control* means any group of trades or businesses that is either—

(A) A parent-subsidiary group under common control, as defined in § 1.52–1(c);

(B) A brother-sister group under common control, as defined in § 1.52–1(d); or

(C) A combined group under common control, as defined in § 1.52–1(e).

(3) *Component members.* In determining whether a corporation is included in a controlled group of corporations under sections 52(a) and 1563(a) and whether a group of trades or businesses are under common control under sections 52(b), 1563(b) and § 1.1563–1(b) (relating to component members of a controlled group of corporations) are not taken into account. For example, a foreign corporation subject to income tax under section 881 of the Code may be a member of a controlled group of corporations or group of trades or businesses that are under common control and treated as a single employer for purposes of paragraphs (c)(1)(ii)(A), (c)(2)(ii)(A), and (c)(2)(iii)(A) of this section, as applicable. See § 1.1563–1(a)(1)(ii).

(4) *Application of section 52 to an S corporation, a regulated investment company, or a real estate investment trust.* Although an S corporation, a regulated investment company, or a real estate investment trust cannot be an applicable corporation, an S corporation, a regulated investment company, or a real estate investment trust can be a member of a controlled group under section 52(a) or (b) and treated as a single employer for purposes of paragraphs (c)(1)(ii)(A), (c)(2)(ii)(A), and (c)(2)(iii)(A) of this section, as applicable.

(5) *Example.* The following example illustrates the application of the rules in this paragraph (e).

(i) *Facts.* X is a corporation that owns 80% of the capital and profits interest in PRS, a partnership. PRS owns 80% of the total combined voting power of all classes of stock entitled to vote of Y, a corporation.

(ii) *Analysis.* In accordance with section 1563(e)(2), X is deemed to own stock owned, directly or indirectly, by or for PRS in proportion to its interest in the capital or profits of PRS. X is deemed to own 64% of the total combined voting power of all classes of stock entitled to vote of Y (80% of PRS x 80% of Y). X is the common parent of a parent-subsidiary controlled group consisting of X and Y. Because PRS is not a corporation, it is not a member of the controlled group under section 52(a). However, under paragraph (e)(2) of this section, if PRS is engaged in a trade or business, it may be a member of a group of trades or businesses under common control under section 52(b) that includes X and Y.

(f) *Special rules for applying the average annual AFSI test if persons join or leave a corporation's test group—(1) In general.* Except as provided in paragraph (f)(2) of this section, under paragraph (c)(1)(ii)(A), (c)(2)(ii)(A), or (c)(2)(iii)(A) of this section, as applicable, a corporation includes in its AFSI for a taxable year of the corporation the AFSI of all persons treated as related to the corporation (determined by applying the relevant relationship criteria) at any point during the taxable year. For purposes of the immediately preceding sentence, if a person is treated as related to the corporation under the relevant relationship criteria for a portion of the corporation's taxable year, the corporation includes in its AFSI for that taxable year the AFSI of the person for the portion of the taxable year in which the relevant relationship criteria are satisfied. For purposes of computing the AFSI of such person for the relevant portion of the taxable year under this paragraph (f)(1), the person performs an interim closing of its books as of the end of the day before a change in status (that is, the relevant relationship criteria are newly satisfied or are no longer satisfied).

(2) *Exceptions for ownership changes—(i) In general.* For purposes of paragraph (f)(1) of this section, if a corporation experiences a change in ownership during a taxable year that results in the corporation and a person no longer being treated as related under the relevant relationship criteria, then following the change in ownership the corporation does not include that person's AFSI in the corporation's AFSI for any period prior to the change in

ownership (notwithstanding that the corporation and the person were treated as related under the relevant relationship criteria during some, or all, of that period) to determine whether the corporation meets the average annual AFSI test (as described in paragraph (c) of this section) for the taxable year in which the change in ownership occurs or for any subsequent taxable year in which the corporation and the person are not treated as related under the relevant relationship criteria. For purposes of the immediately preceding sentence, a corporation experiences a change in ownership during a taxable year of the corporation if—

(A) The corporation is not a test group parent (as defined in paragraph (b)(6) of this section);

(B) The corporation is treated as related to a test group parent under the relevant relationship criteria as of the first day of the taxable year; and

(C) As a result of a transaction (or series of related transactions) the corporation and the test group parent no longer satisfy the relevant relationship criteria as of the last day of the taxable year.

(ii) *Corporation joins a new tax consolidated group.* If a corporation experiences a change in ownership during a taxable year, as described in paragraph (f)(2)(i) of this section, that results in the corporation joining a tax consolidated group, as defined in § 1.56A–1(b)(43), that is an applicable corporation for the taxable year that includes the corporation's first taxable year in which it is a member of the tax consolidated group, then the corporation is treated as an applicable corporation beginning with the first taxable year in which it is a member of the tax consolidated group. For the taxable years in which the corporation is a member of the tax consolidated group, the corporation's AFSI is included in the tax consolidated group's AFSI under § 1.1502–56A.

(iii) *Multiple test group parents.* If a corporation is treated as related to multiple test group parents under the relevant relationship criteria as of the first day of the taxable year, then the determination of whether the corporation has a change in ownership (but not whether the corporation and a person are related under the relevant relationship criteria) during the taxable year is made under this paragraph (f)(2) separately with respect to each test group parent.

(iv) *Treatment of successors.* For purposes of this paragraph (f)(2), any reference to a test group parent includes a reference to any successor of that test group parent.

(3) *Examples.* The following examples illustrate the application of the rules in this paragraph (f). For purposes of these examples, the relevant CAMT entities are X, Y, PRS1, PRS2, PRS3 and PRS4. For regular tax purposes, X and Y are domestic corporations and PRS1, PRS2, PRS3, and PRS4 are partnerships engaged in trades or businesses. X, Y, PRS1, PRS2, PRS3, and PRS4 use a calendar year for both regular tax purposes and financial accounting purposes. X and Y each file stand-alone Federal income tax returns on Form 1120 and PRS1, PRS2, PRS3, and PRS4 each file a Federal income tax return on Form 1065.

(i) *Example 1: No change in ownership—(A) General facts.* X and Y were not applicable corporations for their 2023 taxable years and are determining whether they are applicable corporations for their 2024 taxable years. X and Y are not members of an FPMG (as defined in § 1.59–3(c)) for their 2024 taxable years. At all times during taxable years 2021 and 2022, X and Y were members of a group of trades or business under common control under paragraph (e)(2)(ii)(A) of this section as they were members of a parent-subsidiary group under common control (as defined in § 1.52–1(c)) of which PRS1 was the common parent (PRS1 group). Specifically, at all times during 2021 and 2022, PRS1 directly owned 80% of the total value of the shares of all classes of stock of X, X owned 60% the total value of the shares of all classes of stock of Y, and Y owned 75% of the capital and profits interests of PRS2. X, Y, PRS1, and PRS2 comprise a financial statement group that issues a consolidated AFS, as defined in § 1.56A–1(c)(3) (PRS1 financial statement group).

(B) *Facts: Taxable year 2023.* On April 1, 2023, Y sold its 75% interest in the capital and profits of PRS2 to PRS4, a common parent of a different parent-subsidiary group under common control (PRS4 group) that also comprises a financial statement group that issues a consolidated AFS (PRS4 financial statement group). On July 1, 2023, PRS1 acquired 60% of the capital and profits interests of PRS3 in a taxable transaction. Accordingly, during 2023, PRS2 leaves the PRS1 group and PRS3 joins the PRS1 group. X and Y remain in the PRS1 group at all times during 2023.

(C) *Analysis: Relevant relationship criteria for X and Y's applicable corporation status test.* Because X and Y are not members of a FPMG for 2024, X and Y each apply the average annual AFSI test under paragraph (c)(1) of this section to determine whether they are

applicable corporations for 2024 (using the 2021 through 2023 three-taxable-year period). Accordingly, the relevant relationship criteria for determining whether X and Y are applicable corporations for 2024 are the rules provided under paragraph (c)(1)(ii)(A) of this section and the special rules for determining whether persons are treated as a single employer under paragraph (e) of this section. Therefore, under paragraph (c)(1)(ii)(A) of this section, X includes in its AFSI the AFSI of all persons treated as a single employer with X under section 52(a) or (b) for purposes of its applicable corporation status test, and Y includes in its AFSI the AFSI of all persons treated as a single employer with Y under section 52(a) or (b) for its applicable corporation status test. Specifically, as PRS1 group includes both domestic corporations and partnerships, X and Y each apply the special rules in paragraph (e)(2) of this section for persons treated a single employer under section 52(b) and include in AFSI the persons that are members of a group of trades or businesses that are under common control with X and Y, respectively, for purposes of each of X and Y's applicable corporation status test.

(D) *Analysis: X's test group for taxable years 2021 through 2023.* Because X remained in the PRS1 group at all times during 2023, such that X's test group parent, as defined in paragraph (b)(6) of this section, was the same as the beginning and end 2023, X did not experience a change in ownership under paragraph (f)(2) of this section in 2023 notwithstanding that PRS2 left the PRS1 group and PRS3 joined the PRS1 group during 2023. Therefore, under paragraph (f)(1) of this section, for each taxable year in X's three-taxable-year test period, X's AFSI includes the AFSI of any person related to it under the relevant relationship criteria (the rules under paragraphs (c)(1)(ii)(A) and (e) of this section) at any point during the taxable year. If such person was not related to X for the entire taxable year, X's AFSI includes such person's AFSI for the portion of the taxable year in which X and such person were related. Accordingly, X's AFSI for 2021 and 2022 includes the AFSI of Y, PRS1, and PRS2 for 2021 and 2022, as X, Y, PRS1 and PRS2 were related under paragraph (e)(2)(ii)(A) of this section at all times during this period. For 2023, X was related to Y and PRS1 under paragraph (e)(2)(ii)(A) of this section for the entire taxable year and related to PRS2 and PRS3 under paragraph (e)(2)(ii)(A) of this section for portions of the 2023 taxable year. Accordingly, X's AFSI for

2023 includes the AFSI of Y and PRS1 for 2023, PRS2's AFSI attributable to the period beginning January 1, 2023 and ending March 31, 2023, and PRS3's AFSI attributable to the period beginning July 1, 2023 and ending December 31, 2023.

(E) *Analysis: Y's test group for taxable years 2021 through 2023.* The analysis for determining Y's test group for 2021–2023 is the same as in paragraph (f)(3)(i)(D) of this section. Because Y remained in the PRS1 group at all times during 2023, such that Y's test group parent, as defined in paragraph (b)(6) of this section, was the same at the beginning and end 2023, Y did not experience a change in ownership under paragraph (f)(2) of this section in 2023 notwithstanding that PRS2 left the PRS1 group and PRS3 joined the PRS1 group during 2023. Accordingly, under paragraph (f)(1) of this section, Y's AFSI for 2021 and 2022 includes the AFSI of X, PRS1, and PRS2 for 2021 and 2022, as X, Y, PRS1 and PRS2 were related under paragraph (e)(2)(ii)(A) of this section at all times during this period. For 2023, Y was related to X and PRS 1 under paragraph (e)(2)(ii)(A) of this section for the entire taxable year and related to PRS2 and PRS3 under paragraph (e)(2)(ii)(A) of this section for portions of the taxable year. Accordingly, Y's AFSI for 2023 includes the AFSI of X and PRS1 for 2023, PRS2's AFSI attributable to the period January 1, 2023 through March 31, 2023, and PRS3's AFSI attributable to the period July 1, 2023 through December 31, 2023.

(ii) *Example 2: Change in ownership—(A) Facts.* The facts are the same as in paragraph (f)(3)(i) of this section (*Example 1*), except, on September 1, 2023, 70% of the stock of Y was acquired by PRS4. Accordingly, during its 2023 taxable year, Y leaves the PRS1 group and joins the PRS4 group.

(B) *Analysis: Relevant relationship criteria for X and Y's applicable corporation status test.* The analysis for determining the relevant relationship criteria for purposes of determining X and Y's applicable corporation status for 2024 is the same as in paragraph (f)(3)(i)(D) of this section. Accordingly, the relevant relationship criteria for determining whether X and Y are applicable corporations for 2024 are the rules provided under paragraph (c)(1)(ii)(A) of this section and the special rules for determining whether persons are treated as a single employer under paragraph (e) of this section (specifically the rules in paragraph (e)(2) of this section for persons treated a single employer under section 52(b)).

(C) *Analysis: X's test group for taxable years 2021 through 2023.* The analysis for determining X's test group for 2021–2023 is the same as in paragraph (f)(3)(i)(D) of this section. Because X remained in the PRS1 group at all times during 2023, such that X's test group parent, as defined in paragraph (b)(6) of this section, was the same at the beginning and end of 2023, X did not experience a change in ownership under paragraph (f)(2) of this section in 2023 notwithstanding that Y and PRS2 left the PRS1 group and PRS3 joined the PRS1 group during 2023. Therefore, pursuant to paragraph (f)(1) of this section, X's AFSI for 2021 and 2022 includes the AFSI of Y, PRS1, and PRS2 for 2021 and 2022. For 2023, X was related to PRS1 under paragraph (e)(2)(ii)(A) of this section for the entire taxable year and related to Y, PRS2 and PRS3 under paragraph (e)(2)(ii)(A) of this section for portions of that taxable year. Accordingly, X's AFSI for 2023 includes the AFSI of PRS1 for 2023, Y's AFSI attributable to the period beginning January 1, 2023 and ending August 31, 2023, PRS2's AFSI attributable to the period beginning January 1, 2023 and ending March 31, 2023, and PRS3's AFSI attributable to the period beginning July 1, 2023 and ending December 31, 2023.

(D) *Analysis: Y's change in ownership and test group for taxable years 2021 through 2023.* On September 1, 2023, Y leaves the PRS1 group and joins the PRS4 group. Accordingly, Y experiences a change in ownership under paragraph (f)(2) of this section for 2023 as Y was related to PRS1 (the test group parent of PRS1 group) under paragraph (e)(2)(ii)(A) of this section on January 1, 2023 and Y was no longer related to PRS1 under paragraph (e)(2)(ii)(A) of this section on December 31, 2023 (Y joined the PRS4 group of which PRS4 is the test group parent on September 1, 2023). Therefore, following this change in ownership, Y does not include in its AFSI the AFSI of relevant members of the PRS1 group for any period prior to the change in ownership under paragraph (f)(2) of this section. Accordingly, for purposes of determining its AFSI for the 2021 through 2023 three-taxable-year test period and pursuant to paragraph (f)(2) of this section, Y's AFSI for 2021, 2022, and for the period beginning January 1 and ending August 31, 2023, includes only the AFSI of itself. Y's AFSI for that period does not include the AFSI of X, PRS1, PRS2, or PRS3 (as applicable), even though X, Y, PRS1, PRS2, and PRS3 were related under paragraph (e)(2)(ii)(A) of this section for some or

all of that period. For the period beginning September 1, 2023, and ending December 31, 2023, pursuant to paragraph (f)(1) of this section, Y's AFSI includes the AFSI of the members of the PRS4 group as Y was related to those members of the PRS4 group under paragraph (e)(2)(ii)(A) of this section for that period.

(g) *Simplified method for determining applicable corporation status*—(1) *In general.* A corporation may choose to apply the safe harbor method described in paragraph (g)(2) of this section (simplified method) in lieu of the average annual AFSI test and rules described in paragraphs (c) through (f) of this section for purposes of determining whether it is an applicable corporation under paragraph (b)(1) of this section.

(2) *Simplified method.* Under the simplified method, a corporation determines whether it is an applicable corporation under paragraph (b)(1) of this section by applying the average annual AFSI test and paragraphs (c) through (f) of this section with the following modifications:

(i) The average annual AFSI test in paragraphs (c)(1)(i) and (c)(2)(i)(A) of this section, as applicable, is applied by substituting \$500,000,000 (or such other amount specified in IRB guidance the IRS may publish) for \$1,000,000,000.

(ii) The average annual AFSI test in paragraph (c)(2)(i)(B) of this section, as applicable, is applied by substituting \$50,000,000 (or such other amount specified in IRB guidance the IRS may publish) for \$100,000,000.

(iii) The rules for determining AFSI under paragraphs (c)(1)(ii)(B), (c)(2)(ii)(B), and (c)(2)(iii)(B) of this section are disregarded and AFSI is instead determined by—

(A) Determining FSI by treating those members of the test group whose financial results are reflected on the same AFS as a single CAMT entity for purposes of § 1.56A–1(c)(3) and (4) (that is, AFS consolidation entries between the members of the test group are not disregarded); and

(B) Making no AFSI adjustments other than the AFSI adjustment in § 1.56A–8(b) and, solely for purposes of paragraph (c)(2)(i)(B) of this section, the AFSI adjustment in § 1.56A–7.

(iv) For a corporation that has an AFS that covers a period (AFS year) that differs from its taxable year—

(A) Paragraphs (c)(1)(i) and (c)(2)(i) of this section are applied by substituting 3-AFS-year period ending during such taxable year for 3-taxable-year period ending with such taxable year in each place that phrase appears;

(B) Paragraphs (c)(1)(ii)(B), (c)(2)(ii)(B), (c)(2)(iii)(B), and (d) of this section are applied by substituting AFS year for taxable year in each place that phrase appears.

(3) *Examples.* The following examples illustrate the application of the rules in paragraphs (g)(2)(i) through (iv) of this section.

(i) *Example 1: AFS consolidation entries*—(A) *Facts.* X, Y, and Z are domestic corporations that are members of a financial statement group (XYZ group). X and Y (but not Z) are treated as a single employer under section 52(a). X, Y, and Z choose to apply the simplified method described in paragraph (g)(2) of this section. During the 2024 taxable year, X provides services to Y and Z. For purposes of the 2024 AFS for the XYZ group, AFS consolidation entries are made to eliminate income and expense from the provision of service transactions between X and Y, and between X and Z.

(B) *Analysis.* Under paragraph (g)(2)(iii)(A) of this section and for purposes of the simplified method described in paragraph (g)(2) of this section, the AFSI of X and Y for the 2024 taxable year is determined by treating X and Y as a single CAMT entity for purposes of § 1.56A–1(c)(3), which means the AFS consolidation entries that eliminate the income and expense from the transactions between X and Y are not disregarded. However, the AFS Consolidation Entries that eliminate income and expense from the provision of service transactions between X and Z are disregarded for purposes of determining the FSI and AFSI of X, Y, and Z under the simplified method because X and Z are not treated as a single employer under section 52(a).

(ii) *Example 2: Mismatched tax and AFS year*—(A) *Facts.* W is a corporation that uses the calendar year as its taxable year and has a fiscal AFS year that ends on September 30. W has been in existence since before calendar year 2020 and has never had a short taxable year or short AFS year. W is not an FPMG corporation. W chooses to use the simplified method described in paragraph (g)(2) of this section.

(B) *Analysis.* In determining whether W is an applicable corporation for its taxable year ending December 31, 2024, W applies paragraph (c)(1)(i) of this section (as modified by paragraph (g)(2) of this section) by using the AFSI (as determined under paragraph (g)(2)(iii) of this section) for the 3-AFS-year period ending during its taxable year ending December 31, 2023. That is, W uses AFSI from the AFS years that ended

September 30, 2021, September 30, 2022, and September 30, 2023.

(4) *Effect of not meeting the safe harbor.* If a corporation applies the simplified method described in paragraph (g)(2) of this section, and determines that its AFSI (as determined under paragraph (g)(2) of this section) exceeds the relevant simplified method thresholds in paragraphs (g)(2)(i) and (ii) of this section, for example, because it has AFSI in excess of \$500 million and is not an FPMG corporation, then the corporation is an applicable corporation for such year only if it is determined to be an applicable corporation under paragraphs (b) through (f) of this section (determined without regard to the modifications described in paragraph (g)(2) of this section).

(h) *Termination of status as an applicable corporation*—(1) *In general.* A corporation's status as an applicable corporation terminates as of the first day of the first taxable year following the taxable year in which the corporation—

(i) Experiences a change in ownership, as described in paragraph (f)(2)(i) of this section, provided that if the corporation is described in paragraph (f)(2)(iii) of this section, the corporation experiences a change in ownership with respect to all test group parents it was related to under the relevant relationship criteria as of the first day of the taxable year; or

(ii) Satisfies the termination test described in paragraph (h)(2) of this section.

(2) *Termination test.* A corporation satisfies the termination test for a taxable year if the corporation does not meet the average annual AFSI test (as described in paragraph (c) of this section, and taking into account the application of paragraphs (c) through (f) of this section), for 5 consecutive taxable years ending with the taxable year.

(3) *Later change in status*—(i) *In general.* Except as provided in paragraph (h)(3)(ii) of this section, a corporation whose status as an applicable corporation terminates for the taxable year described in paragraph (h)(1) of this section continues to apply the rules in this section to determine whether the corporation is an applicable corporation under paragraph (b)(1) of this section for the taxable year described in paragraph (h)(1) of this section (that is, the corporation may become an applicable corporation for the same taxable year in which its status terminates under paragraph (h)(1) of this section) and each taxable year thereafter.

(ii) *Joining a tax consolidated group.* If a corporation whose status as an

applicable corporation terminates for the taxable year described in paragraph (h)(1)(i) of this section due to a change in ownership that results in the corporation joining a tax consolidated group that is an applicable corporation for the tax consolidated group's taxable year that includes such taxable year, then the corporation is treated as an applicable corporation beginning with such taxable year and subsequent taxable years, as applicable. See paragraph (f)(2)(ii) of this section.

(i) *Substantiation requirement.* A corporation (other than an S corporation, a regulated investment company, or a real estate investment trust) must maintain books and records sufficient to demonstrate whether it is an applicable corporation for any taxable year, including the identification of all persons treated as a single employer with such corporation under section 52(a) or (b) and whether the corporation is a member of an FPMG under § 1.59–3. See § 1.6001–1(a).

(j) *Reporting requirement.* A corporation (other than an S corporation, a regulated investment company, or a real estate investment trust) that does not satisfy the simplified method under paragraph (g) of this section must provide information to demonstrate whether it is an applicable corporation, in such form and manner as Form 4626, *Alternative Minimum Tax-Corporations* (or any successor form), the Federal income tax return required to be filed by such corporation, or their respective instructions prescribe. See §§ 1.6011–1 and 601.602 of this chapter.

(k) *Applicability date.* This section applies to taxable years of the corporation determining its applicable corporation status ending after September 13, 2024.

§ 1.59–3 Foreign-parented multinational group.

(a) *Overview.* This section provides rules under section 59(k) of the Code for determining a foreign-parented multinational group (FPMG) for purposes of sections 53 and 55 through 59 of the Code and §§ 1.56A–1 through 1.56A–27, 1.59–2, this section, and §§ 1.59–4, 1.1502–53, and 1.1502–56A. Paragraph (b) of this section provides definitions that apply for purposes of this section. Paragraph (c) of this section provides the rules for determining an FPMG. Paragraph (d) of this section describes the treatment of a U.S. trade or business. Paragraph (e) of this section provides for the treatment of certain parent entities as foreign corporations. Paragraph (f) of this section defines the term controlling interest. Paragraph (g)

of this section defines the term applicable financial accounting standard. Paragraph (h) of this section defines the term included in the same applicable financial statement for that taxable year. Paragraph (i) of this section specifies who is a member of an FPMG. Paragraph (j) of this section provides examples illustrating the application of the rules in this section. Paragraph (k) of this section provides the applicability date of this section.

(b) *Definitions.* The following definitions apply for purposes of this section. Terms used in this section that are not defined in this section have the meanings provided in § 1.56A–1(b).

(1) *Applicable financial accounting standard for that taxable year.* The term *applicable financial accounting standard for that taxable year* has the meaning provided in paragraph (g) of this section.

(2) *Controlling interest.* The term *controlling interest* has the meaning provided in paragraph (f) of this section.

(3) *Deemed domestic corporation.* The term *deemed domestic corporation* has the meaning provided in paragraph (d) of this section.

(4) *Deemed foreign corporation.* The term *deemed foreign corporation* means any entity treated as a foreign corporation under paragraph (e) of this section.

(5) *Domestic corporation.* The term *domestic corporation* includes any domestic corporation for regular tax purposes, as well as any deemed domestic corporation, except as otherwise provided in this section.

(6) *Entity.* The term *entity* means any CAMT entity and any deemed domestic corporation. Any disregarded entity or branch that is owned by a CAMT entity (including through ownership of one or more disregarded entities or branches) is treated as part of that CAMT entity, except to the extent the disregarded entity or branch is a deemed domestic corporation.

(7) *Foreign corporation.* The term *foreign corporation* includes any foreign corporation for regular tax purposes, as well as any deemed foreign corporation, except as otherwise provided in this section.

(8) *Foreign-parented multinational group (FPMG).* The term *FPMG* has the meaning provided in paragraph (c) of this section.

(9) *FPMG common parent.* The term *FPMG common parent* means an ultimate parent that is a foreign corporation.

(10) *Included in the same applicable financial statement for that taxable year.* The term *included in the same applicable financial statement for that*

taxable year has the meaning provided in paragraph (h) of this section.

(11) *Section 52 group.* The term *section 52 group* means, with respect to a person, that person and the group of persons whose AFSI is required to be aggregated with the AFSI of that person under § 1.59–2(c)(1)(ii)(A).

(12) *Ultimate parent.* The term *ultimate parent* means an entity that has a controlling interest in at least one other entity and in which no entity has a controlling interest.

(c) *FPMG.* For purposes of this section, the term *FPMG* means, with respect to any taxable year of a corporation, two or more entities, one of which is the corporation, if—

(1) At least one of the entities is a domestic corporation and at least one of the entities is a foreign corporation;

(2) The entities are included in the same applicable financial statement for that taxable year; and

(3) One of the entities is an FPMG common parent.

(d) *Treatment of U.S. trade or business as separate domestic corporation.* For purposes of this section, if a foreign corporation (excluding a deemed foreign corporation) is or is treated as engaged in a trade or business within the United States for purposes of section 882 of the Code (including through one or more disregarded entities or pass-through entities), the trade or business will be treated as a separate domestic corporation (a deemed domestic corporation) that is wholly owned by the foreign corporation.

(e) *Treatment of certain ultimate parents as foreign corporations.* For purposes of this section, an ultimate parent that is not a corporation (determined without regard to this paragraph (e)) is treated as a foreign corporation if—

(1) The ultimate parent directly or indirectly owns (other than through a domestic corporation, excluding a deemed domestic corporation) a foreign trade or business (as defined in § 1.989(a)–1(c)); or

(2) The ultimate parent directly or indirectly owns (other than through a domestic corporation, excluding a deemed domestic corporation) any equity interest in a foreign corporation and the ultimate parent has a controlling interest (including through a domestic corporation) in such foreign corporation.

(f) *Controlling interest*—(1) *In general.* An entity (upper-tier entity) has a controlling interest in another entity (lower-tier entity) if the applicable financial accounting standard requires that a consolidated financial statement

of the upper-tier entity reflects the assets, liabilities, equity, income, and expenses of the lower-tier entity (regardless of whether or not a consolidated financial statement is or is required to be prepared or is prepared correctly).

(2) *Treatment of certain entities.* For purposes of this section, an upper-tier entity has a controlling interest (if it does not otherwise have a controlling interest under the applicable financial accounting standard) in any of the following entities—

(i) A deemed domestic corporation if either—

(A) The upper-tier entity is the foreign corporation; or

(B) The upper-tier entity has a controlling interest in the foreign corporation;

(ii) Any entity if—

(A) The entity and the upper-tier entity are in the same section 52 group;

(B) The upper-tier entity directly or indirectly (through one or more CAMT entities) owns an interest in the entity; and

(C) The upper-tier entity is a member of an FPMG without regard to this paragraph (f)(2)(ii); or

(iii) Any entity in which the upper-tier entity would be treated as having a controlling interest but for the fact that the entity is (or would be) excluded from the upper-tier entity's consolidated financial statement under the applicable financial accounting standard—

(A) Based on size or materiality;

(B) Because the entity is held for sale;

(C) Because the entity or business of the entity is winding down, liquidating, or otherwise ceasing operations or being terminated or disposed of; or

(D) Because the entity is permitted but not required to be excluded under the applicable financial accounting standard from a consolidated financial statement of the upper-tier entity, regardless of whether or not a consolidated financial statement is (or is required to be) prepared.

(3) *Tiered controlling interests.* For purposes of this section, if an upper-tier entity has a controlling interest in a lower-tier entity, the upper-tier entity will also have a controlling interest in any entity in which the lower-tier entity has a controlling interest under paragraph (f)(2)(ii) of this section. This rule applies iteratively, starting at the bottom of the controlling interest chain and ending with the FPMG common parent.

(g) *Applicable financial accounting standard—(1) In general.* For purposes of this section, the term *applicable financial accounting standard* means

GAAP except as provided in paragraph (g)(2) of this section.

(2) *Exceptions—(i) Rules for applying exceptions.* The exceptions in paragraphs (g)(2)(ii) and (iii) of this section apply in descending order of priority. For example, if an applicable financial accounting standard is determined pursuant to paragraph (g)(2)(ii) of this section, then paragraph (g)(2)(iii) of this section does not apply. Similarly, if an applicable financial accounting standard is determined pursuant to paragraph (g)(2)(iii)(A) of this section, then paragraph (g)(2)(iii)(B) of this section does not apply. For purposes of this paragraph (g)(2), all references to an ultimate parent are to the ultimate parent as determined by treating the accounting standard used to prepare the relevant consolidated financial statement as the applicable financial accounting standard. For example, in paragraph (g)(2)(ii) of this section, the ultimate parent of a consolidated financial statement described in § 1.56A–2(c)(2)(i) is determined by treating IFRS as the applicable financial accounting standard and, in paragraph (g)(2)(iii)(B) of this section, each of the ultimate parents would be determined based on the accounting standard used to prepare the applicable consolidated financial statement. If the assets, liabilities, equity, income, and expenses of a corporation are reflected in a consolidated financial statement described in § 1.56A–2(c)(1) (qualifying GAAP financial statement) that is of its ultimate parent, the exceptions in this paragraph (g)(2) do not apply.

(ii) *IFRS.* If the assets, liabilities, equity, income, and expenses of a corporation are reflected in a consolidated financial statement described in § 1.56A–2(c)(2)(i) that is of its ultimate parent, then the applicable financial accounting standard means the accounting standard used to prepare that consolidated financial statement.

(iii) *Other accounting standard—(A) Single accounting standard.* If the assets, liabilities, equity, income, and expenses of a corporation are reflected in a single consolidated financial statement described in § 1.56A–2(c)(3)(i) that is of its ultimate parent, then the applicable financial accounting standard means the accounting standard used to prepare that consolidated financial statement.

(B) *Multiple accounting standards.* If the assets, liabilities, equity, income, and expenses of a corporation are reflected in more than one consolidated financial statements described in § 1.56A–2(c)(3)(i) that are of their ultimate parents and all of those

consolidated financial statements have the same ultimate parent (each, a parented financial statement), then the applicable financial accounting standard means:

(1) If the accounting standard used to prepare one of those parented financial statements was the applicable financial accounting standard in the prior taxable year, that accounting standard; and

(2) If no accounting standard is described in paragraph (g)(2)(iii)(B)(1) of this section, the accounting standard chosen by the corporation from among the accounting standards used to prepare those parented financial statements, provided that the choice of accounting standard is specified on a statement attached to the Form 4626, *Alternative Minimum Tax-Corporations* (or any successor form), of the corporation or as otherwise directed in the instructions to the form for the first applicable taxable year (statement requirement). If the corporation does not choose an accounting standard, chooses one that is not permitted, or fails to satisfy the statement requirement and does not establish to the Commissioner's satisfaction that the corporation has used the chosen applicable financial accounting standard, the Commissioner has discretion either to treat the applicable financial accounting standard as GAAP or to treat the applicable financial accounting standard as one of the accounting standards used to prepare one of those parented financial statements.

(3) *Reflected in a consolidated financial statement.* For purposes of this paragraph (g), the assets, liabilities, equity, income, and expenses of a corporation are treated as reflected in a consolidated financial statement if either they are reflected in the consolidated financial statement, or they would have been reflected in the consolidated financial statement but for the entity being excluded for a reason specified in paragraphs (f)(2)(iii)(A) through (D) of this section.

(4) *Disclosure requirement.* The corporation must specify the applicable financial accounting standard on a statement attached to the Form 4626 (or any successor form) of the corporation or as otherwise directed in the instructions to the form for each taxable year the applicable financial accounting standard is relevant in determining if the corporation is a member of an FPMG.

(h) *Included in the same applicable financial statement for that taxable year.* For purposes of this section, the FPMG common parent and all entities in which the FPMG common parent has

a controlling interest at any time during the taxable year are treated as included in the same applicable financial statement for that taxable year. For purposes of this paragraph (h), it is irrelevant whether a consolidated financial statement of the FPMG common parent is prepared or whether a particular entity is reflected in the consolidated financial statement of the FPMG common parent or would be reflected if a consolidated financial statement of the FPMG common parent were prepared. The entities included in the same applicable financial statement for that taxable year for this purpose may differ from the entities included in the applicable financial statement(s) determined under § 1.56A-2.

(i) *Member of an FPMG.* Each entity included in the same applicable financial statement for that taxable year as the FPMG common parent is a member of that FPMG (including the FPMG common parent).

(j) *Examples.* The following examples illustrate the application of the rules in this section.

(1) *Example 1: Determining if there is an FPMG and its members when there is a single foreign corporation that is engaged in U.S. trade or business—(i) Facts.* FC is a foreign corporation engaged in a trade or business in the United States for purposes of section 882 of the Code. FC does not own an interest in any entity. FC does not have a controlling interest in any entity under its applicable financial accounting standard and does not prepare a consolidated financial statement. No entity has a controlling interest in FC, within the meaning of paragraph (f) of this section, and FC is not a member of any section 52 group. FC is being tested for applicable corporation status.

(ii) *Analysis.* Under paragraph (d) of this section, the U.S. trade or business is treated as a separate domestic corporation that is wholly owned by FC (the deemed domestic corporation, DC). Under paragraph (f)(2) of this section, FC is treated as having a controlling interest in DC because DC and FC are described in paragraph (d) of this section. As a result, FC is an ultimate parent under paragraph (b)(12) of this section because it has a controlling interest in DC and no entity has a controlling interest in it. Because FC is the ultimate parent and a foreign corporation, it is the FPMG common parent under paragraph (b)(9) of this section. Under paragraph (h) of this section, FC and DC are treated as included in the same applicable financial statement for that taxable year because FC, the FPMG common parent, has a controlling interest in DC. As a

result, there is an FPMG comprised of FC and DC under paragraph (c) of this section because the following three requirements are satisfied: there is at least one foreign corporation (FC) and one domestic corporation (DC); the entities (FC and DC) are included in the same applicable financial statement for that taxable year; and one of the entities (FC) is an FPMG common parent.

(2) *Example 2: Partnership treated as a deemed foreign corporation—(i) Facts.* PRS is a partnership that directly owns all the stock of X, a domestic corporation, and 15% of the stock of FC, a foreign corporation. The remaining 85% of the stock of FC is directly owned by X. PRS is the ultimate parent and has a controlling interest in X and FC.

(ii) *Analysis.* PRS is treated as a foreign corporation under paragraph (e) of this section because the following three requirements of paragraph (e)(2) of this section are satisfied: PRS is the ultimate parent; PRS owns an interest in FC that is not owned through a domestic corporation; and PRS has a controlling interest in FC because of its direct interest in FC and its indirect interest in FC through X.

(3) *Example 3: Controlling interest—(i) Facts.* FC is a foreign corporation that is not required (for example, by regulators or creditors) to prepare a consolidated financial statement and therefore does not prepare a consolidated financial statement. FC directly owns 100% of the stock of X, and X directly owns 100% of the stock of Y. X and Y are domestic corporations. Y is held for sale. If FC were to prepare a consolidated financial statement under GAAP, FC would be required to reflect the assets, liabilities, equity, income, and expenses of X but not Y. However, if Y were not held for sale, FC also would be required to reflect the assets, liabilities, equity, income, and expense of Y on its consolidated financial statement under GAAP.

(ii) *Analysis.* Under paragraph (g) of this section, the applicable financial accounting standard is GAAP because FC does not prepare a consolidated financial statement and therefore none of the exceptions in paragraph (g)(2) of this section apply. FC has a controlling interest in X under paragraph (f)(1) of this section because the applicable financial accounting standard (which is GAAP) requires that FC's consolidated financial statement include the assets, liabilities, equity, income, and expenses of X. Neither the fact that no consolidated financial statement is required to be prepared nor the fact that no consolidated financial statement is prepared is relevant to the controlling interest determination under paragraph

(f) of this section. FC also has a controlling interest in Y under paragraph (f)(2)(iii) of this section because Y would have been included on FC's consolidated financial statement under the applicable financial accounting standard (GAAP) but for being excluded because Y was held for sale, and therefore FC would have had a controlling interest under the applicable financial accounting standard (GAAP) but for the exclusion. Therefore, for purposes of this section, FC has a controlling interest in X and Y.

(4) *Example 4: Determining the members of an FPMG—(i) Facts.* FC is a foreign corporation. FC has a controlling interest under paragraph (f)(1) of this section in X and A and under paragraph (f)(2)(iii) of this section in B and C. No entity has a controlling interest in FC, and FC does not have any controlling interests other than those specified. In addition, B is part of a section 52 group that includes B, D, and E, and B owns an interest in each of D and E. X is a domestic corporation.

(ii) *Analysis—(A) FPMG membership determined without regard to paragraph (f)(2)(ii) of this section.* In determining whether an upper-tier entity has a controlling interest in a lower-tier entity, paragraph (f)(2)(ii) of this section applies only if the upper-tier entity is a member of an FPMG without regard to paragraph (f)(2)(ii) of this section. Accordingly, the first step in determining whether an upper-tier entity may have a controlling interest in a lower-tier entity under paragraph (f)(2)(ii) of this section is to determine whether the upper-tier entity is a member of an FPMG without regard to paragraph (f)(2)(ii) of this section. Without regard to paragraph (f)(2)(ii) of this section, FC is the ultimate parent under paragraph (b)(12) of this section because FC has a controlling interest in X, A, B, and C and no entity has a controlling interest in FC. Because FC is the ultimate parent and a foreign corporation, it is the FPMG common parent under paragraph (b)(9) of this section. Under paragraph (h) of this section, FC, X, A, B, and C are included in the same applicable financial statement for that taxable year because FC is the FPMG common parent and has a controlling interest in X, A, B, and C. There is an FPMG because the requirements of paragraph (c) of this section are satisfied: there is at least one domestic corporation (X) and at least one foreign corporation (FC); the entities are included in the same applicable financial statement for that taxable year; and FC is an FPMG common parent. The members of the FPMG under

paragraph (i) of this section are FC, X, A, B, and C.

(B) *FPMG membership determined taking into account paragraph (f)(2)(ii) of this section.* After determining if there is an FPMG and the members of the FPMG without regard to paragraph (f)(2)(ii) of this section, paragraph (f)(2)(ii) of this section needs to be taken into account to determine whether there are any additional members. Under paragraphs (f)(2)(ii) and (f)(3) of this section, if an entity is owned by a member of the FPMG without regard to paragraph (f)(2)(ii) of this section, is part of the same section 52 group, and the FPMG member directly or indirectly owns an interest in the entity, the FPMG common parent will have a controlling interest in the entity. B is a member of the FPMG without regard to paragraph (f)(2)(ii) of this section. B is in the same section 52 group as D and E. B owns an interest in D and E. Consequently, FC has a controlling interest in D and E under paragraphs (f)(2)(ii) and (f)(3) of this section. As a result, because all entities in which the FPMG common parent has a controlling interest are included in the same applicable financial statement for that taxable year under paragraph (h) of this section, D and E are included in the same applicable financial statement for that taxable year as FC, X, A, B, and C. Therefore, the members of the FPMG under paragraph (i) of this section are FC, X, A, B, C, D, and E. This result is not dependent on which entity is being tested for applicable corporation status.

(5) *Example 5: Determining the applicable financial accounting standard*—(i) *Facts.* X, a domestic corporation, is the corporation who is being tested for applicable corporation status. X owns interests in A and B. X is owned by FC, a foreign corporation, and FC owns interests in other entities. Country A is a foreign country. FC is listed on a stock exchange in Country A and required to file a consolidated financial statement of FC under the generally accepted accounting principles of Country A (Country A Accounting Standard) with the agency of Country A that is equivalent to the United States Securities and Exchange Commission (SEC) (Agency A). FC files the required audited consolidated financial statement that is certified (within the meaning of § 1.56A–3(d)) with Agency A. FC is the ultimate parent under Country A Accounting Standard. In addition, an audited consolidated financial statement is prepared in accordance with GAAP that is certified (within the meaning of § 1.56A–3(d)) and includes the assets, liabilities, equity, income, and expenses

of only X, A, and B. Under GAAP, the ultimate parent is FC. Further, an audited consolidated financial statement is prepared in accordance with IFRS that is certified (within the meaning of § 1.56A–3(d)) and includes the assets, liabilities, equity, income, and expenses of X; however, it is not filed with the SEC or an agency of a foreign government that is equivalent to the SEC. The financial statements described in this paragraph (j)(5) are the only consolidated financial statements that are prepared that include the assets, liabilities, equity, income, and expenses of X.

(ii) *Analysis.* Unless an exception applies, the applicable financial accounting standard is GAAP. If there is a GAAP consolidated financial statement that meets the description in the last sentence of paragraph (g)(2)(i) of this section, then none of the exceptions in paragraph (g)(2) of this section can apply and therefore the default rule in paragraph (g)(1) of this section that the applicable financial accounting standard is GAAP applies. As FC is the ultimate parent under GAAP and there is not a GAAP consolidated financial statement that includes the assets, liabilities, equity, income, and expenses of FC, an exception may apply. As provided in paragraph (g)(2)(i) of this section, the exceptions apply in descending order. Therefore, the exception in paragraph (g)(2)(ii) of this section is tested first. In this case, there is not an IFRS consolidated financial statement that is described in § 1.56A–2(c)(2)(i) because the IFRS consolidated financial statement is not filed with the SEC or an agency of a foreign government that is equivalent to the SEC. Because the exception in paragraph (g)(2)(ii) of this section does not apply, the exception in paragraph (g)(2)(iii)(A) of this section is tested next. There is only one consolidated financial statement described in § 1.56A–2(c)(3)(i), and that consolidated financial statement is filed with Agency A and is of FC, the ultimate parent under Country A Accounting Standard. As a result, the exception applies, and the applicable financial accounting standard is Country A Accounting Standard.

(k) *Applicability date.* This section applies to taxable years of the corporation determining its applicable corporation status ending after September 13, 2024.

§ 1.59–4 CAMT foreign tax credit.

(a) *Overview.* This section provides rules under section 59(l) of the Code for computing the CAMT foreign tax credit, as defined in proposed § 1.56A–1(b)(9). Paragraph (b) of this section provides

definitions that apply for purposes of this section. Paragraph (c) of this section describes how to compute the CAMT foreign tax credit. Paragraph (d) of this section provides rules for determining an applicable corporation's pro rata share of taxes of a controlled foreign corporation. Paragraph (e) of this section provides for the carryover of unused CFC taxes. Paragraph (f) of this section provides rules for foreign tax redeterminations. Paragraph (g) of this section describes the treatment of partnership taxes. Paragraph (h) of this section describes the treatment of members of a tax consolidated group for purposes of this section. Paragraph (i) provides examples illustrating the application of the rules in this section. Paragraph (j) of this section provides the applicability dates of this section.

(b) *Definitions.* The following definitions apply for purposes of this section. Terms used in this section that are not defined in this section have the meanings provided in § 1.56A–1(b).

(1) *Eligible tax.* The term *eligible tax* means a foreign income tax, other than a foreign income tax for which a credit is disallowed or suspended for regular tax purposes under section 245A(d), 245A(e)(3), 901(e), 901(f), 901(i), 901(j), 901(k), 901(l), 901(m), 907, 908, 909, 965(g), 999, or 6038(c) of the Code.

(2) *Income group.* The term *income group* has the meaning provided in § 1.960–1(b)(13).

(3) *Pro rata share percentage.* The term *pro rata share percentage* means, with respect to a controlled foreign corporation in which an applicable corporation is a United States shareholder and a taxable year of the controlled foreign corporation, a fraction, the numerator of which is the applicable corporation's pro rata share of the adjusted net income or loss of the controlled foreign corporation, as determined under § 1.56A–6, for its taxable year, and the denominator of which is the adjusted net income or loss of the controlled foreign corporation for its taxable year.

(4) *Residual income group.* The term *residual income group* has the meaning provided in § 1.960–1(b)(22).

(5) *Section 904 category.* The term *section 904 category* has the meaning provided in § 1.960–1(b)(23).

(6) *Subpart F income group.* The term *subpart F income group* has the meaning provided in § 1.960–1(b)(31).

(7) *Tested income group.* The term *tested income group* has the meaning provided in § 1.960–1(b)(34).

(8) *Unused CFC taxes.* The term *unused CFC taxes* means, with respect to any taxable year of an applicable corporation, the excess (if any) of the

amount described in paragraph (c)(1)(i) of this section for the taxable year, over the amount described in paragraph (c)(1)(ii) of this section for the taxable year.

(c) *Computation of CAMT foreign tax credit.* If an applicable corporation chooses to have the benefits of subpart A of part III of subchapter N of chapter 1 for a taxable year, the amount of the CAMT foreign tax credit allowed to the applicable corporation under section 59(l) for the taxable year equals the sum of—

(1) The lesser of—

(i) The aggregate of the applicable corporation's pro rata shares of taxes of controlled foreign corporations, as determined under paragraph (d) of this section; or

(ii) The product of the amount of the adjustment under § 1.56A–6(b)(1) and the percentage specified in section 55(b)(2)(A)(i) of the Code; and

(2) The amount of eligible taxes paid, within the meaning of § 1.901–2(g)(5), by the applicable corporation during the taxable year, to the extent the taxes have been taken into account, within the meaning of § 1.56A–8(d), on the applicable corporation's AFS.

(d) *Applicable corporation's pro rata share of taxes of a controlled foreign corporation—(1) In general.* If an applicable corporation is a United States shareholder of a controlled foreign corporation, the applicable corporation's pro rata share of the taxes of the controlled foreign corporation for a taxable year is equal to the sum of the amounts described in paragraphs (d)(2) and (3) of this section, reduced to reflect the suspensions and disallowances described in paragraph (b)(1) of this section that apply at the level of the United States shareholder.

(2) *Aggregate pro rata share of taxes under section 960(b) of the Code.* The amount described in this paragraph (d)(2) is equal to the sum of the amount of foreign income taxes deemed paid by the applicable corporation under § 1.960–3(b) for the taxable year of the applicable corporation, to the extent the taxes have been taken into account, within the meaning of § 1.56A–8(d), on the AFS of the applicable corporation or any controlled foreign corporation with respect to which the applicable corporation is a United States shareholder.

(3) *Aggregate pro rata share of the eligible current year taxes.* The amount described in this paragraph (d)(3) is equal to the sum of—

(i) The amount of eligible current year taxes, as defined in § 1.960–1(b)(5), deemed paid by the applicable corporation under § 1.960–2(b) for the

taxable year of the applicable corporation, to the extent the taxes have been taken into account, within the meaning of § 1.56A–8(d), on the AFS of the controlled foreign corporation or the applicable corporation;

(ii) The aggregate of the applicable corporation's proportionate share of eligible current year taxes, as defined in § 1.960–1(b)(5), of the controlled foreign corporation for each tested income group within each section 904 category of the controlled foreign corporation, as determined under § 1.960–2(c)(5) for the taxable year of the applicable corporation, to the extent the taxes have been taken into account, within the meaning of § 1.56A–8(d), on the AFS of the controlled foreign corporation or applicable corporation;

(iii) Solely with respect to any subpart F income group and tested income group within a section 904 category of the controlled foreign corporation for which the denominator of the applicable corporation's proportionate share fraction (as described in § 1.960–2(b)(3)(i) and (c)(5), respectively) is zero or less than zero, the aggregate amount of eligible current year taxes of the controlled foreign corporation for each such income group within each section 904 category of the controlled foreign corporation, for the controlled foreign corporation's taxable year that ends with or within the taxable year of the applicable corporation, to the extent the taxes have been taken into account, within the meaning of § 1.56A–8(d), on the AFS of the controlled foreign corporation or applicable corporation, multiplied by the pro rata share percentage, as defined in paragraph (b)(3) of this section, for such taxable year of the controlled foreign corporation; and

(iv) The aggregate amount of eligible current year taxes, as defined in § 1.960–1(b)(5), of the controlled foreign corporation for each residual income group, as defined in § 1.960–1(d)(2)(ii)(D), of the controlled foreign corporation, for the controlled foreign corporation's taxable year that ends with or within the taxable year of the applicable corporation, to the extent the taxes have been taken into account, within the meaning of § 1.56A–8(d), on the AFS of the controlled foreign corporation or applicable corporation, multiplied by the pro rata share percentage, as defined in paragraph (b)(3) of this section, for such taxable year of the controlled foreign corporation.

(e) *Carryover of unused CFC taxes—*

(1) *In general.* If an applicable corporation chooses to have the benefits of subpart A of part III of subchapter N

of chapter 1 for a taxable year, any unused CFC taxes for the taxable year are carried to each of the five succeeding taxable years, in chronological order, to increase the amount described in paragraph (c)(1)(i) of this section, but only to the extent not absorbed as taxes deemed paid under paragraph (e)(2) of this section in a prior taxable year. The amount of taxes deemed paid under paragraph (e)(2) of this section in a carryover taxable year is absorbed regardless of whether the taxpayer chooses to have the benefits of subpart A of part III of subchapter N of chapter 1 for the carryover taxable year.

(2) *Amount of unused CFC taxes deemed paid in a carryover taxable year.* The amount of unused CFC taxes deemed paid in any taxable year is equal to the lesser of—

(i) The amount of unused CFC taxes that are carried to the taxable year under paragraph (e)(1) of this section; or

(ii) The excess (if any) of the amount described in paragraph (c)(1)(ii) of this section for the taxable year over the amount described in paragraph (c)(1)(i) of this section for the taxable year.

(3) *Ordering rule.* If, as a result of the limitation in paragraph (e)(2)(ii) of this section, the amount of unused CFC taxes deemed paid under paragraph (e)(2) of this section is less than the full amount of unused CFC taxes that are carried to the taxable year under paragraph (e)(1) of this section, then the unused CFC taxes that are absorbed as deemed paid under paragraph (e)(2) of this section are first the unused CFC taxes from the fifth preceding taxable year, followed sequentially by the unused CFC taxes from the fourth, third, second, and first preceding taxable year, respectively, up to the amount described in paragraph (e)(2)(ii) of this section.

(f) *Foreign tax redetermination.*

Foreign income taxes paid or accrued as a result of a foreign tax redetermination, as defined in § 1.905–3(a), are eligible to be claimed as a CAMT foreign tax credit only if the domestic corporation is an applicable corporation in the taxable year to which the foreign tax redetermination relates (relation-back year). A CAMT foreign tax credit with respect to such foreign income taxes may be claimed only in the relation-back year, even if the taxes are reflected in a journal entry of an AFS within a taxable year that is later than the relation-back year.

(g) *Treatment of partnership taxes.* For purposes of paragraph (c)(2) of this section, if an applicable corporation is a partner in a partnership (or an indirect partner in the partnership through one or more other partnerships or other

pass-through entities), the amount of eligible taxes paid or accrued by the applicable corporation for the taxable year includes the amount of creditable foreign tax expenditures (within the meaning of § 1.704–1(b)(4)(viii)) allocated to the applicable corporation for regular tax purposes, reduced to reflect the suspensions and disallowances described in paragraph (b)(1) of this section that apply at the level of the partner.

(h) *Tax consolidated groups.* Members of a tax consolidated group are treated as a single entity for purposes of this section. *See also* § 1.1502–56A(a)(2). For rules regarding the use of consolidated unused CFC taxes, *see* § 1.1502–56A(i).

(i) *Examples.* The following examples illustrate the application of the rules in this section. For purposes of these examples, each entity uses the calendar year as its taxable year and for AFS purposes and has a U.S. dollar functional currency.

(1) *Example 1: Eligible tax—(i) Facts.* X is an applicable corporation for its taxable year ending on December 31, 2024. In 2024, X paid \$100x of foreign withholding taxes on dividend payments received on stock in a foreign corporation that X holds for investment purposes. For regular tax purposes, a foreign tax credit is disallowed for the \$100x of foreign withholding taxes because X's holding period in the stock did not meet the minimum holding period required under section 901(k).

(ii) *Analysis.* Under paragraph (b)(1) of this section, X's eligible taxes for CAMT foreign tax credit purposes do not include the \$100x of foreign withholding taxes for which a credit is disallowed for regular tax purposes under section 901(k).

(2) *Example 2: Pro rata share of taxes of a controlled foreign corporation—(i) Facts.* X, a domestic corporation, is an applicable corporation for its taxable year ending on December 31, 2024. X owns 60% of the stock of FC, a controlled foreign corporation. X's pro rata share percentage, as defined in paragraph (b)(3) of this section, with respect to FC is also 60%. FC earns subpart F income, tested income, and residual income. In 2024, X is deemed to pay \$4x of foreign income tax under § 1.960–2(b) with respect to the subpart F income. In 2024, X's proportionate share, as defined in § 1.960–2(c)(5), of eligible current year taxes of FC for the tested income group of FC is \$4x. In 2024, FC has \$2x of eligible current year taxes in the residual income group. All the taxes paid by FC in 2024 are eligible current year taxes, as defined in § 1.960–1(b)(5). All the taxes paid by FC in 2024 are also eligible taxes within the

meaning of paragraph (b)(1) of this section, and no suspensions or disallowances described in paragraph (b)(1) of this section apply at the level of X, the United States shareholder of FC. Finally, all the taxes paid by FC in 2024 are taken into account, within the meaning of § 1.56A–8(d), in the 2024 AFS of FC or X.

(ii) *Analysis.* Under paragraph (d)(3) of this section, X's aggregate pro rata share of FC's eligible current year taxes is \$9.2x. This includes the \$4x of foreign income tax X is deemed to pay under § 1.960–2(b), X's \$4x proportionate share of eligible current year taxes of FC for the tested income group of FC, and X's \$1.2x pro rata share of eligible current year taxes of FC in the residual income group ($60\% \times \$2x$).

(3) *Example 3: Partnership taxes—(i) Facts.* X, a domestic corporation, is an applicable corporation for its taxable year ending on December 31, 2024. In 2024, X is a partner in PRS, a domestic partnership that uses the calendar year as its taxable year. In 2024, PRS paid \$300x of foreign income taxes to Country G, which PRS accounted for as a current tax expense in its AFS. The \$300x of foreign income taxes paid to Country G are creditable foreign tax expenditures (within the meaning of § 1.704–1(b)(4)(viii)) of PRS, \$180x of which are allocated to X for regular tax purposes. None of the suspensions or disallowances described in paragraph (b)(1) of this section apply at the level of X.

(ii) *Analysis.* Under paragraph (g) of this section, the amount of eligible taxes paid by X for purposes of computing the amount of CAMT foreign tax credit under paragraph (c)(2) of this section includes \$180x of creditable foreign tax expenditures of PRS that are allocated to X for regular tax purposes. Under § 1.56A–8(d)(3), the foreign income taxes taken into account in the AFS of PRS are considered taken into account in the AFS of X.

(j) *Applicability date.* This section applies to taxable years of applicable corporations ending after September 13, 2024.

■ **Par. 11.** Add an undesignated center heading to read “Base Erosion and Anti-Abuse Tax” above § 1.59A–0.

■ **Par. 12.** Section 1.1502–2 is amended:

■ a. In paragraph (a)(8), by removing the word “and” at the end of the paragraph;

■ b. In paragraph (a)(9), by removing the period from the end of the paragraph and adding “; and” in its place;

■ c. Adding paragraph (a)(10); and

■ d. Revising paragraph (d).

The addition and revision read as follows:

§ 1.1502–2 Computation of tax liability.

(a) * * *

(10) The alternative minimum tax imposed by section 55(a).

* * * * *

(d) *Applicability date—(1) In general.* Paragraphs (a)(1) through (9), (b), and (c) of this section apply to taxable years for which the original consolidated Federal income tax return is due (without extension) after December 6, 2019.

(2) *Paragraph (a)(10) of this section.* Paragraph (a)(10) of this section applies to taxable years for which the original consolidated Federal income tax return is due (without extension) after [DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER].

§ 1.1502–3 [Amended]

■ **Par. 13.** Section 1.1502–3 is amended by removing and reserving paragraph (d)(4).

■ **Par. 14.** Section 1.1502–53 is added to read as follows:

§ 1.1502–53 Consolidated minimum tax credit.

(a) *Overview.* Subject to section 53 of the Code and paragraph (b) of this section, a group's consolidated minimum tax credit is allowed under this section against the group's consolidated liability for tax with respect to consolidated return years after the group's first consolidated return year beginning after 2022. Paragraph (c) of this section provides rules regarding separate return year minimum tax credits arising in separate return limitation years after the first separate return limitation year beginning after 2022. Paragraph (d) of this section provides rules regarding the allocation of the consolidated MTC to a corporation that ceases to be a member (and thus may be carried to the member's separate return years). Paragraph (e) of this section provides the date of applicability.

(b) *Consolidated MTC—(1)*

Definitions. The definitions in § 1.1502–56A(b) apply for purposes of this section, with the following additions:

(i) *Consolidated MTC.* The term *consolidated MTC* means the MTC that is attributable to a tax consolidated group's CAMT liability under section 55 of the Code.

(ii) *MTC.* The term *MTC* means the minimum tax credit, within the meaning of section 53(b) of the Code (as modified by section 53(e)).

(2) *Consolidated MTC earned in taxable year.* For any consolidated return year beginning after 2022, the consolidated MTC earned in the taxable year is the tax imposed on the tax

consolidated group by section 55(a) for the taxable year.

(3) *MTC allowed for a taxable year.* Subject to the limitations in paragraphs (b)(5) and (c) of this section, the credit allowed to the tax consolidated group for a taxable year equals the sum of the consolidated MTCs of the group and the separate year MTCs of members of the group for earlier taxable years to the extent they have not been absorbed in earlier years. See paragraph (b)(4) of this section.

(4) *Absorption of MTCs.* For purposes of determining the amount, if any, of an unused credit (whether consolidated or separate) that can be allowed in a taxable year (consolidated or separate), the amount of such unused credit that is absorbed in a prior consolidated return year is determined by:

(i) Applying all unused credits that can be carried to such prior year in the order of the taxable years in which such unused credits arose, beginning with the taxable year which ends earliest; and

(ii) Applying all such unused credits that can be carried to such prior year from taxable years ending on the same date on a pro rata basis.

(5) *Limitation.* Under section 53(c), the MTC allowed for any consolidated return year cannot exceed the excess (if any) of—

(i) The group's consolidated regular tax liability for such consolidated return year reduced by the sum of the credits allowable under subparts B, D, E, and F of part IV of subchapter A of chapter 1 of the Code, increased by the amount of tax imposed under section 59A of the Code for the consolidated return year; over

(ii) The group's consolidated tentative minimum tax for the consolidated return year.

(c) *Separate return year MTC—(1) Limitation on portion of separate return year MTC arising in separate return limitation years.* The aggregate of a member's minimum tax credits arising in SRLYs that are included in the consolidated MTCs allowed for all consolidated return years of the group may not exceed—

(i) The aggregate for all consolidated return years of the member's contributions to the consolidated section 53(c) limitation for each consolidated return year (determined under paragraph (c)(2) of this section); reduced by

(ii) The aggregate of consolidated MTCs attributable to the member (determined in the manner provided in § 1.1502–56A(j)) that are absorbed in all consolidated return years (whether or not absorbed by the member).

(2) *Member's contribution to the consolidated section 53(c) limitation—*
(i) *Year in which CAMT is not incurred.* For a year in which consolidated regular tax liability is greater than consolidated tentative minimum tax, a member's contribution to the consolidated section 53(c) limitation for a consolidated return year equals the member's share of the consolidated regular tax liability minus its share of consolidated tentative minimum tax. The group computes the member's share of consolidated regular tax liability by applying to the respective consolidated amounts the principles of section 1552 and the percentage method under § 1.1502–33(d)(3), assuming a 100 percent allocation of any decreased tax liability. The group computes the member's share of consolidated tentative minimum tax by multiplying the consolidated tentative minimum tax by a fraction. The denominator of the fraction is the group's AFSI, and the numerator of the fraction is the member's positive separate AFSI as defined in § 1.1502–56A(j)(2).

(ii) *Year in which CAMT is incurred.* For a consolidated return year for which consolidated tentative minimum tax is greater than consolidated regular tax liability, the group reduces the member's aggregate contribution to the consolidated section 53(c) limitation by the member's share of the consolidated CAMT for the year as determined under § 1.1502–56A(j).

(iii) *Years included in computation.* For purposes of computing the member's contribution under this paragraph (c)(2), the consolidated return years of the group include only those years, including the year to which a credit is carried, that the member has been continuously included in the group's consolidated return, but exclude any years after the year to which the credit is carried.

(iv) *Subgroup principles.* The SRLY subgroup principles under § 1.1502–21(c)(2) apply for purposes of this paragraph (c)(2). The predecessor and successor principles under § 1.1502–21(f) also apply for purposes of this paragraph (c)(2).

(v) *Overlap with section 383.* The principles under § 1.1502–21(g) apply for purposes of this paragraph (c)(2). For example, an overlap of this paragraph (c)(2) and the application of section 383 of the Code with respect to a credit carryover occurs if a corporation becomes a member of a consolidated group (that is, the SRLY event) within six months of the change date of an ownership change giving rise to a section 383 credit limitation with respect to that carryover (that is, the

section 383 event), with the result that the limitation of this paragraph (c)(2) does not apply. See §§ 1.1502–21(g)(2)(ii)(A) and 1.383–1; see also § 1.1502–21(g)(4) (subgroup rules).

(d) *Carryovers of tax consolidated MTC to separate return years—(1) In general.* If any consolidated MTC that is attributable to a member may be carried to a separate return year of the member, the amount attributable to the member is apportioned to the member and carried to the separate return year. If carried over to a separate return year, the apportioned MTC may not be carried over to an equivalent, or later, consolidated return year of the group. The amount attributable to the member is determined in the manner provided in § 1.1502–56A(j) (with regard to allocation of CAMT liability).

(2) *Recomputed percentage.* If, for any reason, a member's portion of a consolidated MTC is absorbed or reduced on a non-pro rata basis, the percentage of the consolidated MTC attributable to each member is recomputed as provided in paragraph (d)(3) of this section. In addition, if a member with a separate MTC ceases to be a member, or if a member that ceases to be a member is allocated and apportioned MTC of the group under this paragraph (d)(2), the percentage of the consolidated MTC attributable to each remaining member is recomputed. For purposes of this paragraph (d)(2), an MTC that is permanently disallowed, eliminated, or reduced under section 108(b) of the Code or § 1.1502–28 is treated as absorbed.

(3) *Recomputation.* The recomputed percentage of the consolidated MTC attributable to each member equals the remaining MTC attributable to the member at the time of the recomputation, divided by the sum of the remaining MTC attributable to all of the remaining members at the time of the recomputation.

(4) *Example.* The following example illustrates the application of the rules in this paragraph (d).

(i) *Facts.* P, S, and T are members of the P tax consolidated group (P Group), which uses the calendar year as its taxable year. P, S, and T report their financial results on a tax consolidated group AFS. For 2024, if AFSI were computed by reference to only each member's items of income, expense, gain, and loss, P would have separate AFSI of \$1,000x, S would have a separate FSNOL of \$100x, and T would have separate AFSI of \$200x. The P Group has no regular tax liability, no liability for tax on base erosion payments under section 59A of the Code, and no CAMT foreign tax credit

for 2024. Thus, the P Group's AFSI for 2024 is \$1,100x, and the P Group's liability for the tentative minimum tax under section 55(b)(2)(A) is \$165x ($\$1,100x \times 15\% = \$165x$). On December 31, 2024, T is acquired by an unrelated party and ceases to be a member of the P Group.

(ii) *Analysis*. Of the P Group's tax consolidated MTC of \$165x, as determined under section 53(b), \$27.5x is apportioned to T ($(\$200x/(\$200x + \$1,000x)) \times \$165x = \$27.5x$), and \$137.5x remains to offset the P Group's regular income tax liability.

(e) *Applicability date*. This section applies to consolidated return years for which the due date of the income tax return (without extensions) is after [DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER].

§ 1.1502–55 [Removed and Reserved]

■ **Par. 15.** Remove and reserve § 1.1502–55.

■ **Par. 16.** Section 1.1502–56A is added to read as follows.

§ 1.1502–56A Corporate alternative minimum tax.

(a) *Overview*—(1) *Scope*. This section provides rules for applying the corporate alternative minimum tax (CAMT) under sections 55, 56A, and 59(k) and (l) of the Internal Revenue Code (Code) to tax consolidated groups. Paragraph (b) of this section provides definitions that apply for purposes of this section. Paragraph (c) of this section provides rules for calculating the FSI of a tax consolidated group. Paragraph (d) of this section provides rules regarding the disposition of stock of a tax consolidated group member by another member. Paragraph (e) of this section provides rules regarding tax items relating to intercompany transactions (as defined in § 1.1502–13(b)(1)(i)). Paragraph (f) of this section provides rules regarding the use of financial statement net operating loss (FSNOL) carryovers. Paragraph (g) of this section provides a cross-reference to § 1.56A–23 for rules regarding the use of attributes from separate return years. Paragraph (h) of this section provides rules regarding the use of CFC adjustment carryovers. Paragraph (i) of this section provides rules regarding the use of consolidated unused CFC taxes. Paragraph (j) of this section provides rules regarding the allocation of the tentative minimum tax under section 55(b)(2)(A). Paragraph (k) of this section provides rules regarding the allocation of adjusted financial statement income (AFSI) when a corporation ceases to be a member of a tax consolidated group.

Paragraph (l) of this section provides the applicability date of this section.

(2) *General rule*. Except as otherwise provided in this section, for purposes of determining the AFSI of the tax consolidated group, the tentative minimum tax under section 55(b)(2)(A), and status as an applicable corporation under section 59(k), members of a tax consolidated group are treated as a single CAMT entity solely during the period in which those members are members of that tax consolidated group.

(b) *Definitions*. The following definitions apply for purposes of this section:

(1) *AFS*. The term *AFS* has the meaning given the term *applicable financial statement* (AFS) in § 1.56A–2(b). For special rules regarding the AFS of a tax consolidated group, *see* §§ 1.56A–1(c)(2)(i) and 1.56A–2(g).

(2) *AFSI*. The term *AFSI* has the meaning given the term *adjusted statement financial income* (AFSI) in § 1.56A–1(b)(1).

(3) *CAMT entity*. The term *CAMT entity* has the meaning given the term in § 1.56A–1(b)(8).

(4) *CFC adjustment carryover*. The term *CFC adjustment carryover* has the meaning given the term in § 1.56A–6(b).

(5) *Chapter 1; Code*—(i) *Chapter 1*. The term *chapter 1* means chapter 1 of subtitle A of the Code.

(ii) *Code*. The term *Code* means the Internal Revenue Code.

(6) *Consolidated FSNOL*. The term *consolidated FSNOL* means the portion of an FSNOL that is attributable to a tax consolidated group, as determined under paragraph (f) of this section.

(7) *FSI*. The term *FSI* has the meaning given the term *financial statement income* (FSI) in § 1.56A–1(b)(20).

(8) *FSNOL*. The term *FSNOL* has the meaning given the term *financial statement net operating loss* (FSNOL) in § 1.56A–23(b).

(9) *Section 56A regulations*. The term *section 56A regulations* means §§ 1.56A–1 through 1.56A–27 and this section.

(10) *Tax consolidated group*. The term *tax consolidated group* has the meaning given the term *consolidated group* in § 1.1502–1(h).

(11) *Tax consolidated group AFS*. The term *tax consolidated group AFS* means the AFS of a tax consolidated group and all its members, as determined under §§ 1.56A–1(c)(2)(i) and 1.56A–2(g). A tax consolidated group AFS may include one or more CAMT entities that are not members of the tax consolidated group.

(c) *Calculation of FSI of a tax consolidated group*. A tax consolidated group determines the group's FSI for a

taxable year based on the tax consolidated group AFS in the following manner:

(1) *AFS comprising solely tax consolidated group members*. If the financial statement group (including tax consolidated group members described in § 1.56A–1(c)(2)(i)) for which the tax consolidated group AFS for a taxable year is prepared includes only members of the tax consolidated group, the FSI of the tax consolidated group for the taxable year equals the consolidated FSI reflected on that AFS. *See* § 1.56A–1(c).

(2) *AFS comprising members and non-members*. If the financial statement group (including tax consolidated group members described in § 1.56A–1(c)(2)(i)) for which the tax consolidated group AFS for a taxable year is prepared includes one or more CAMT entities that are not members of the tax consolidated group, the tax consolidated group's FSI for the taxable year is determined from that AFS under § 1.56A–1(c)(3) by treating all members of the tax consolidated group as a single CAMT entity. Accordingly, for example, the FSI of the tax consolidated group is determined by:

(i) Disregarding each AFS consolidation entry regarding—

(A) A transaction between a member and a non-member;

(B) A member's investment in a non-member; and

(C) A non-member's investment in a member.

(ii) Taking into account each AFS consolidation entry regarding—

(A) A transaction between members; and

(B) A member's investment in another member.

(3) *Operating rules regarding AFS consolidation entries*. For purposes of determining the AFSI of a tax consolidated group for a taxable year:

(i) *Conditions for taking into account AFS consolidation entries*. The tax consolidated group takes into account each AFS consolidation entry that eliminates the effect of a transaction

between or among members of the group, provided that—

(A) Each member that was a party to the transaction, that continued to exist after the transaction, and that had effects from that transaction (or the member's successor in a section 381(a) transaction) continues to be a member of that tax consolidated group at the end of the group's taxable year; and

(B) All property that is the subject of the transaction continues to be held by the tax consolidated group at the end of the group's taxable year.

(ii) *Conditions for disregarding AFS consolidation entries and applying*

section 56A regulations. Except as provided in paragraph (c)(3)(ii)(C) of this section, to the extent that any requirement in paragraph (c)(3)(i) of this section is not satisfied at any time during the taxable year of the tax consolidated group, then on the earliest date on which that requirement is not satisfied certain AFS consolidation entries described in paragraph (c)(2)(i) of this section cease to be taken into account as provided in paragraphs (c)(3)(ii)(A) through (D) of this section, immediately before the earliest date that any requirement of paragraph (c)(3)(i) of this section is not satisfied.

(A) *Property ceases to be held by group.* If one or more pieces of property that were the subject of the transaction cease to be held by the tax consolidated group during the group's taxable year, any AFS consolidation entry described in paragraph (c)(2)(i) of this section that pertains to that property ceases to be taken into account immediately before that earliest date.

(B) *Party to the transaction ceases to be a member of group.* If a party to the transaction (or a successor to that member in a section 381(a) transaction) ceases to be a member of the tax consolidated group during the group's taxable year, then all AFS consolidation entries with regard to that party cease to be taken into account immediately before that earliest date.

(C) *Whole-group exception.* Paragraphs (c)(3)(ii)(A) and (B) of this section do not apply to the extent that § 1.1502–13(j)(5) applies to an acquisition of the tax consolidated group. Therefore, AFS consolidation entries continue to be taken into account.

(D) *Determination of CAMT consequences based on section 56A regulations.* If an AFS consolidation entry of a tax consolidated group ceases to be taken into account under paragraph (c)(3)(ii)(A) through (C) of this section, the CAMT consequences of the transaction(s) to which that AFS consolidation entry pertains are determined by applying the section 56A regulations. *See generally* § 1.56A–1.

(iii) *Example.* The rules of this paragraph (c)(3) are illustrated by the following example.

(A) *Facts.* P is the common parent of a tax consolidated group that uses the calendar year as its taxable year, of which S1, S2, and S3 are members (P group). S2 owns all of the stock of S3. On February 1, 2023, S3 merges into S1 in a transaction that qualifies as a reorganization under section 368(a)(1)(A) of the Code (Merger). In the Merger, S2 receives both S1 voting stock and cash. On December 31, 2024, P sells

S1 to X, a corporation unrelated to P or any member of P's tax consolidated group.

(B) *Analysis.* The Merger is a covered nonrecognition transaction. At the end of the P group's 2023 taxable year, S1 remains a member of the group, and no property transferred in the Merger has left the P group. As a result, under paragraph (c)(3)(i) of this section, any AFS consolidating entries related to the Merger continue to be given effect and the section 56A regulations do not apply to the Merger. At the end of the P group's 2024 taxable year, S1 is no longer a member of the P group. As a result, under paragraph (c)(3)(ii)(B) of this section, all AFS consolidating entries relating to the Merger cease to be taken into account immediately before S1 ceases to be a member of the P group, and, under paragraph (c)(3)(ii)(D) of this section, the CAMT consequences of the Merger are determined under the section 56A regulations. *See generally* § 1.56A–19(c) (providing the CAMT consequences of acquisitive reorganizations).

(4) *Captive partnership.* Treating a tax consolidated group as a single CAMT entity for purposes of this section does not change the Federal tax classification of an entity classified as a partnership owned solely by members of the group.

(5) *Examples.* The following examples illustrate the application of the rules in this paragraph (c). For purposes of these examples: each of P, S, B, and Z is a domestic corporation that uses the calendar year as its taxable year and has only one class of stock outstanding, and S and B are the sole subsidiary members of the P tax consolidated group (P Group).

(i) *Example 1: Tax consolidated group AFS that includes corporations other than tax consolidated group members—*

(A) *Facts.* P owns 60 percent of the stock of Z. The remaining stock of Z is held by unrelated persons. The financial results of corporations P, B, S, and Z are reported on a tax consolidated group AFS (PBSZ Consolidated AFS) for all relevant financial reporting periods. P, B, S, and Z are the only taxpayers whose financial results are reported on the PBSZ Consolidated AFS. Under § 1.56A–2(g), the PBSZ Consolidated AFS is the AFS of P, B, S, and Z. In 2024, B sells Asset N to S for \$10x. Books and records used to prepare the PBSZ Consolidated AFS, including trial balances, show that B has gain of \$2x (\$10x – \$8x) on the sale of Asset N. The \$2x of gain is eliminated from consolidated FSI through AFS consolidation entries made in preparing the PBSZ Consolidated AFS. In 2025, S sells Asset N to Z for \$13x. Books and

records used to prepare the PBSZ Consolidated AFS, including trial balances, show that S has gain of \$3x (\$13x – \$10x) on the sale of Asset N. The gain is eliminated from consolidated FSI through AFS consolidation entries made in preparing the PBSZ Consolidated AFS.

(B) *Analysis: In general.* The PBSZ Consolidated AFS includes items of Z, an entity that is not a member of the P Group. Therefore, the FSI of the P Group is determined under paragraph (c)(2) of this section. Under paragraph (c)(2) of this section, the P Group's FSI is determined from the PBSZ Consolidated AFS by treating the P Group as a single CAMT entity. Accordingly, AFS consolidation entries eliminating transactions between Z and a member of the P Group (that is, P, S, or B) are disregarded in determining the FSI of the P Group, (that is, such consolidation entries are reversed) but AFS consolidation entries eliminating transactions between P, S, and B are taken into account.

(C) *Analysis: 2024.* In 2024, because the AFS consolidation entries eliminate a transaction between S and B (that is, a transaction between members of the P Group), those consolidation entries are taken into account. *See* paragraph (c)(2)(ii)(A) of this section. Therefore, B's \$2x gain on the sale of Asset N to S is not included in the P Group's FSI in 2024.

(D) *Analysis: 2025.* In 2025, because the AFS consolidation entries eliminate a transaction between S (a member of the P Group) and Z (a CAMT entity that is not a member of the P Group), these AFS consolidation entries are disregarded (that is, these consolidation entries are reversed). In addition, because Asset N leaves the P Group in 2025, immediately before the sale of Asset N to Z, the consolidating entries between S and B are disregarded with regard to their transaction with regard to Asset N. *See* paragraph (c)(3) of this section. Therefore, the P Group's FSI in 2025 includes \$5x of gain on the sale of Asset N—\$2x of gain to B, and \$3x of gain to S.

(ii) *Example 2: Tax consolidated group AFS that includes solely tax consolidated group members; buying member leaves the group—*(A) *Facts.* The financial results of the members of the P Group are reported on the tax consolidated group AFS of the P Group (P Group AFS) for all relevant financial reporting periods. P, S, and B are the only entities whose financial results are reported on the P Group AFS. Under § 1.56A–2(g), the P Group AFS is the AFS of P, S, and B. Z is unrelated to the P Group. In 2024, S sells Asset N to B

for \$10x. Books and records used to prepare the P Group AFS, including trial balances, show that S has gain of \$2x on the sale of Asset N. The gain is eliminated from consolidated FSI through AFS consolidation entries made in preparing the P Group AFS. In 2025, P sells all the stock of B to Z, and B joins the Z consolidated AFS. At the time of the sale of its stock, B continues to hold Asset N, which has a value of \$13x.

(B) *Analysis: In general.* The P Group AFS includes items solely of members of the P Group. Therefore, the FSI of the P Group is determined under paragraph (c)(1) of this section to be the FSI reflected on the group's AFS for the taxable year. Under paragraph (a)(2) of this section, P, S, and B are treated as a single CAMT entity for purposes of computing the P Group's AFSI and liability for the tentative minimum tax under section 55(b)(2)(A).

(C) *Analysis: 2024.* In 2024, because the AFS consolidation entries eliminate a transaction between S and B (that is, a transaction between members of the P Group), those consolidation entries are taken into account. Therefore, S's \$2x of gain on the sale of Asset N is not included in the P Group's FSI in 2024.

(D) *Analysis: 2025.* In 2025, upon P's sale of all of the B stock to Z, B ceases to be a member of the P Group, and B's FSI ceases to be reflected in the P Group AFS. Because B ceases to be a member of the P Group, the AFS consolidation entries eliminating the sale of Asset N from S to B are disregarded (that is, these consolidation entries are reversed). See paragraph (c)(3) of this section. As a result, immediately before the sale of the B stock, S takes into account its \$2x of gain on its sale of Asset N to B. B carries Asset N into the Z consolidated AFS with a basis of \$10x, reflecting the reversal of the consolidating entries on the sale of Asset N. Compare § 1.56A-18(c)(3) (disregarding purchase accounting and push down accounting adjustments to AFS basis in assets resulting from stock acquisitions).

(iii) *Example 3: Tax consolidated group AFS that includes solely tax consolidated group members; selling member leaves the group.* The facts are the same as in paragraph (c)(5)(ii)(A) of this section (*Example 2*), except that, in 2025, P sells all the stock of S (rather than B) to Z. Consistent with the results described in paragraph (c)(5)(ii)(D) of this section, immediately before S leaves the P group, the consolidating entries relating to the sale of Asset N from S to B are disregarded (that is, the consolidating entries are reversed). Therefore, S's \$2x of gain is taken into account in determining the FSI of the P

Group for 2025. B's CAMT basis in Asset N equals \$10x.

(d) *Gain or loss on disposition of member stock by another member—(1) In general.* Notwithstanding paragraph (a)(2) of this section, the AFSI of a tax consolidated group for a taxable year includes gain or loss from one member's sale or exchange of stock of another member, as determined under this paragraph (d). For rules regarding the timing of the inclusion of the gain or loss, see paragraph (c) of this section.

(2) *Computation of gain or loss.* A tax consolidated group computes AFSI resulting from the sale or exchange of stock of one member by another member by—

(i) Applying the rules that otherwise apply to the sale or exchange under the section 56A regulations; and

(ii) Using the CAMT basis (as determined under paragraph (d)(3) of this section).

(3) *CAMT basis of member stock—(i) Stock held by group members on the first day of the first taxable year beginning after December 31, 2019.* The CAMT basis in a share of stock of a subsidiary member held by another member of a tax consolidated group (shareholder member) equals the sum of:

(A) The regular tax basis of the subsidiary member stock in the hands of the shareholder member on the first day of the shareholder member's first taxable year beginning after December 31, 2019 (see § 1.56A-18(c)(6));

(B) Any adjustments described in § 1.56A-18(c)(2); and

(C) Any adjustments described in paragraph (d)(3)(iii) of this section.

(ii) *Stock acquired by group members after the first day of the first taxable year beginning after December 31, 2019.* The CAMT basis in a share of stock of a subsidiary member acquired by a shareholder member from a taxpayer that is not a member of the same tax consolidated group equals the sum of:

(A) The CAMT basis of the subsidiary member stock immediately after the acquisition of that stock;

(B) Any adjustments described in § 1.56A-18(c)(2); and

(C) Any adjustments described in paragraph (d)(3)(iii) of this section.

(iii) *Adjustment to basis during consolidation—(A) In general.* CAMT stock basis is adjusted under this paragraph (d)(3)(iii) to take into account adjustments to the AFS basis of the member stock for the period during which the member was a member of a tax consolidated group (including adjustments to reflect all other adjustments to FSI in determining AFSI under the section 56A regulations).

(B) *Negative basis adjustments.* For purposes of this paragraph (d)(3)(iii), the CAMT basis of stock includes negative adjustments for expenses or losses of a member only to the extent that those items are absorbed by a member of the tax consolidated group under the section 56A regulations.

(e) *Tax items relating to intercompany transactions—(1) In general.* Certain AFSI adjustments under the section 56A regulations disregard items reflected in a CAMT entity's FSI and replace those items with items that are taken into account for regular tax purposes (regular tax items) (for example, under §§ 1.56A-15 and 1.56A-16). This paragraph (e) applies if the regular tax item relates to an intercompany transaction, in order to ensure that the regular tax item reflects the treatment of members of a tax consolidated group as divisions of a single corporation (single entity treatment) within the meaning of § 1.1502-13(a)(2). See also paragraph (a)(2) of this section.

(2) *Disregarding impact of intercompany transaction.* Except as provided in paragraph (e)(3) of this section, any increase or decrease in the amount of a regular tax item described in paragraph (e)(1) of this section that results from an intercompany transaction is disregarded for purposes of inclusion of the item in AFSI.

(3) *Acceleration of impact of intercompany transaction.* This paragraph (e)(3) applies if, pursuant to paragraph (c)(3)(ii) of this section, AFS consolidation entries related to an item described in paragraph (e)(1) of this section become disregarded. Under this paragraph (e)(3), immediately before the AFS consolidation entries become disregarded, AFSI of the tax consolidated group is increased or decreased by the regular tax items that previously were disregarded under paragraph (e)(2) of this section.

(4) *Examples.* The following examples illustrate the application of the rules in this paragraph (e). For purposes of these examples, S and B are members of the P consolidated group (P Group), which uses the calendar year as its taxable year.

(i) *Example 1: Intercompany sale—(A) Facts.* On January 1, 2024, S buys section 168 property (as defined in § 1.56A-15(b)(6)) for \$100x (Asset A) and depreciates it using the straight-line method and a 10-year recovery period for regular tax purposes. For AFS purposes, S depreciates Asset A over 20 years using the straight-line method. On January 1, 2026, S sells Asset A to B for \$130x and S recognizes a \$40x net gain for AFS purposes (\$130x consideration—\$90x AFS basis (\$100x cost—\$10x

accumulated book depreciation)). However, the P Group's AFS includes AFS consolidating entries that eliminate the effect of the sale of Asset A to B. For regular tax purposes, under section 168(i)(7) of the Code, B is treated as S to the extent B's \$130x basis does not exceed S's adjusted basis at the time of the sale. Accordingly, B takes a \$80x carryover basis (S's \$100x cost–S's \$20x accumulated tax depreciation) in Asset A and continues to depreciate the \$80x basis using S's depreciation methods. B has additional basis of \$50x in Asset A (\$130x consideration–\$80x section 168(i)(7) basis) which B treats as new 10-year recovery section 168 property and depreciates using the straight-line method. (To simplify the example, the half-year convention is disregarded by both S and B for AFS and regular tax purposes, and any depreciation on Asset A is not subject to capitalization under any other Code provision.)

(B) *Analysis.* Under § 1.56A–15(d)(1)(iii), covered book depreciation expense (as defined in § 1.56A–15(b)(3)) taken into account in FSI by S or B with respect to Asset A is disregarded in computing AFSI and replaced with deductible tax depreciation (as defined in § 1.56A–15(b)(5)). In each of 2024 and 2025, the P Group's AFSI therefore reflects S's \$10x of deductible tax depreciation from Asset A (\$100x cost/10 years). In 2026, for regular tax purposes, B takes into account \$15x of deductible tax depreciation from Asset A (\$10x under section 168(i)(7) + \$5x ((\$130x–\$80x)/10 years) relating to B's additional depreciable basis in Asset A). However, pursuant to paragraph (e)(2) of this section, the P Group's AFSI disregards the \$5x increase resulting from the intercompany transaction between S and B. Thus, the P Group's AFSI in 2026 reflects only \$10x of deductible tax depreciation from Asset A. Pursuant to paragraph (c)(2)(i) of this section, the P Group's AFSI for 2026 takes into account the AFS consolidation entries that eliminate the effect of the sale of Asset A to B and, pursuant to § 1.56A–15(e)(7), the P Group does not adjust AFSI for 2026 for S's AFSI adjustment determined under § 1.56A–15(e)(1) of \$10x (S's redetermined gain or loss from the sale of Asset A on January 1, 2026 of \$50x (\$130x consideration–\$80x CAMT basis (\$90x AFS basis + \$10x covered book depreciation expense–\$20x deductible tax depreciation) minus the \$40x net gain included in S's FSI prior to elimination). Accordingly, the P Group's AFSI in 2026 does not reflect any gain from the intercompany sale.

(ii) *Example 2: Sale of property to a non-member—(A) Facts.* The facts are

the same as in paragraph (e)(4)(i)(A) of this section (*Example 1*), except that, on January 1, 2028, B sells Asset A to non-member X for \$110x. As of January 1, 2028, B's accumulated book depreciation for Asset A is \$13x (computed using a recovery period of 20 years and the straight-line method), and B has an AFS basis in Asset A of \$117x (\$130x consideration–\$13x accumulated book depreciation). B's net loss included in FSI from the sale of Asset A to non-member X is \$7x (\$110x consideration–\$117x AFS basis). For regular tax purposes, as of January 1, 2028, B's accumulated deductible tax depreciation for Asset A is \$30x (\$20x under section 168(i)(7) + \$10x from B's additional depreciable basis in Asset A).

(B) *Analysis.* Under paragraph (c)(3)(ii) of this section, immediately before Asset A leaves the P Group, the AFS consolidating entries relating to the intercompany sale of Asset A on January 1, 2026, become disregarded for purposes of computing the P Group's AFSI for 2028. Therefore, S takes into account its \$40x net gain in FSI for 2028 and B takes into account its increased \$40x of basis in Asset A for AFS purposes from that intercompany sale immediately before Asset A leaves the P Group. Due to the \$40x net gain being included in FSI for 2028, pursuant to § 1.56A–15(e)(7), S redetermines its gain taken into account in FSI for 2028, and the P Group adjusts AFSI for 2028 for the difference between the net gain included in FSI and the redetermined gain or loss (computed as of January 1, 2026) under § 1.56A–15(e). Accordingly, the P Group's AFSI adjustment under § 1.56A–15(e) for 2028 is a positive adjustment of \$10x, which equals S's \$50x redetermined gain (\$130x consideration – \$80x CAMT basis (\$90x AFS basis + \$10x covered book depreciation expense – \$20x deductible tax depreciation)) minus the \$40x net gain in FSI. Additionally, under paragraph (e)(3) of this section, immediately before Asset A leaves the P Group, B takes into account in AFSI for 2028 the \$10x of deductible tax depreciation that was disregarded in 2026 and 2027 under paragraph (e)(2) of this section (\$5x + \$5x).

(iii) *Example 3: Buying member leaves the group—(A) Facts.* The facts are the

same as in paragraph (e)(4)(ii)(A) of this section (*Example 2*), except that, instead of selling Asset A, on January 1, 2028, all the stock of B is sold to non-member X, causing B to leave the P Group.

(B) *Analysis.* Under paragraph (c)(3)(ii) of this section, immediately before B leaves the P Group, the AFS consolidating entries relating to the intercompany sale of Asset A become disregarded for purposes of computing the P Group's AFSI. Therefore, S takes into account its \$40x net gain attributable to the sale of Asset A on January 1, 2026 in FSI for 2028 and B takes into account its increased \$40x of basis in Asset A for AFS purposes from that intercompany sale immediately before B leaves the P Group. Due to the \$40x net gain included in FSI for 2028, pursuant to § 1.56A–15(e)(7), S redetermines its gain taken into account in FSI with respect to Asset A, and the P Group adjusts AFSI for the difference between the net gain in FSI and the redetermined gain or loss (computed as of January 1, 2026) under § 1.56A–15(e). Accordingly, the P Group's AFSI adjustment under § 1.56A–15(e) for 2028 is a positive adjustment of \$10x, which equals S's \$50x redetermined gain (\$130x consideration – \$80x CAMT basis (\$90x AFS basis + \$10x covered book depreciation expense – \$20x deductible tax depreciation)) minus the \$40x net gain in FSI. Additionally, under paragraph (e)(3) of this section, immediately before B leaves the P Group, B takes into account in AFSI for 2028 the \$10x of deductible tax depreciation that was disregarded in 2026 and 2027 under paragraph (e)(2) of this section (\$5x + \$5x).

(f) *Use of FSNOL carryovers—(1) Amount of consolidated AFSI reduced.* Subject to the limitations under § 1.56A–23 and this paragraph (f), the amount of consolidated FSNOL carryovers of a tax consolidated group that can be used to reduce the AFSI of the group for any consolidated return year is the aggregate of the group's consolidated FSNOL carryovers to that year.

(2) *Composition of consolidated FSNOL carryovers.* The consolidated FSNOL carryovers described in paragraph (f)(1) of this section consist of—

(i) Any consolidated FSNOL of the tax consolidated group; and

(ii) Any FSNOLs of the members of the group arising in the respective separate return years (as defined in § 1.1502–1(e)) of those members (to the extent available for use under § 1.56A–23 and this section).

(3) *Application of 80-percent limitation—(i) Group application.* With

regard to a consolidated return year of a tax consolidated group, the 80-percent limitation under section 56A(d)(1) applies to the consolidated AFSI of the group for that year.

(ii) *Group limitation.* The amount of FSNOL that a tax consolidated group can use to reduce the AFSI of the group for a consolidated return year equals the lesser of—

(A) The aggregate amount of FSNOLs carried to that consolidated return year; or

(B) The amount determined by multiplying 80 percent by the consolidated AFSI for the group for that year, computed without regard to the FSNOL deduction allowable under section 56A(d).

(4) *General ordering rules for use of FSNOLs*—(i) *Taxable year in which FSNOL arose.* Except as provided in paragraph (f)(4)(ii) of this section, FSNOLs permitted to be used by a tax consolidated group to reduce the AFSI of the group in its consolidated return year are used to reduce the group's AFSI in the order of the taxable years in which the FSNOLs arose.

(ii) *FSNOLs carried from same taxable year.* Except as otherwise provided in paragraph (f)(5) of this section, FSNOLs carried from taxable years ending on the same date, and that are available to reduce the AFSI of the tax consolidated group for the consolidated return year, are used to reduce the group's AFSI on a pro rata basis.

(iii) *Apportionment of consolidated FSNOL.* Except as otherwise provided in paragraph (f)(5) of this section, the amount of any consolidated FSNOL absorbed by a tax consolidated group in any year is apportioned among members based on the percentage of the FSNOL eligible for carryover that is attributable to each member and is available for absorption. The percentage of the consolidated FSNOL attributable to a member is determined pursuant to paragraph (f)(5)(iv) of this section.

(iv) *Certain adjustments to CAMT basis of member stock.* For rules regarding adjustments to the CAMT basis of member stock resulting from the absorption of loss, see paragraph (d)(3)(ii) of this section.

(5) *Carryovers of FSNOLs to separate return years*—(i) *In general.* If any consolidated FSNOL that is attributable to a member may be carried to a separate return year of the member, the amount of the FSNOL that is attributable to the member is apportioned to the member and carried to the separate return year. If carried over to a separate return year of the member, the apportioned loss may not

be carried over to an equivalent, or later, consolidated return year of the group.

(ii) *Special rules*—(A) *Year of departure from group.* If a corporation ceases to be a member of a group during a consolidated return year of the group, consolidated FSNOL carryovers attributable to the corporation are first carried to the consolidated return year. Only the amount of consolidated FSNOL carryover that is not absorbed by the group in that year may be carried to the corporation's first separate return year.

(B) *Equivalent years.* Taxable years are equivalent if they bear the same numerical relationship to the consolidated return year in which a consolidated FSNOL arises, counting forward or backward from the year in which the FSNOL arose.

(C) *Short years in connection with transactions to which section 381(a) of the Code applies.* If a member distributes or transfers assets to a corporation that is a member immediately after the distribution or transfer in a transaction to which section 381(a) applies, the transaction does not cause the distributor or transferor to have a short year within the consolidated return year of the group in which the transaction occurred that is counted as a separate year for purposes of determining the years to which a consolidated FSNOL may be carried.

(iii) *Amount of FSNOL attributable to a member.* The amount of a consolidated FSNOL of a tax consolidated group that is attributable to a member equals the product obtained by multiplying the consolidated FSNOL and the percentage of the FSNOL attributable to the member.

(iv) *Percentage of FSNOL attributable to a member*—(A) *In general.* Except as provided in paragraph (f)(5)(iv)(C) of this section, the percentage of the consolidated FSNOL for the consolidated return year attributable to a member equals the separate FSNOL of the member for the consolidated return year divided by the sum of the separate FSNOLs for that year of all members having FSNOLs for that year.

(B) *Separate FSNOL.* For purposes of paragraph (f)(5)(iv)(A) of this section, the separate FSNOL of a member is determined by computing the FSNOL by reference to only the member's items of income, expense, gain, and loss, including the member's losses and expenses actually absorbed by the group in the consolidated return year (whether or not absorbed by the member).

(C) *Recomputed percentage.* If, for any reason, a member's portion of a consolidated FSNOL is absorbed or

reduced on a non-pro rata basis, the percentage of the consolidated FSNOL attributable to each member is recomputed as provided in paragraph (f)(5)(iv)(D) of this section. In addition, if a member with a separate FSNOL ceases to be a member, or if a member that ceases to be a member is allocated and apportioned FSNOL of the group under this paragraph (f)(5), the percentage of the consolidated FSNOL attributable to each remaining member is recomputed. For purposes of this paragraph (f)(5)(iv), an FSNOL that is permanently disallowed, eliminated, or reduced under § 1.56A-21(c)(5) and (6) is treated as absorbed.

(D) *Recomputation.* The recomputed percentage of the consolidated FSNOL attributable to each member equals the remaining FSNOL attributable to the member at the time of the recomputation divided by the sum of the remaining FSNOL attributable to all of the remaining members at the time of the recomputation.

(6) *Example.* The following example illustrates the application of the rules in this paragraph (f).

(i) *Facts.* P, M1, M2, and M3 are members of the P tax consolidated group (P Group), which uses the calendar year as its taxable year. P, M1, M2, and M3 report their financial results on a tax consolidated group AFS. In 2026, the P Group generates an FSNOL of \$55x, computed by the P Group as a single CAMT entity. See paragraph (a)(2) of this section. In that year, P has a separate FSNOL of \$40x, M1 has separate AFSI of \$10x, M2 has a separate FSNOL of \$20x, and M3 has a separate FSNOL of \$5x. On December 31, 2026, M2 ceases to be a member of the P group, but M2's FSI continues to be reported on P's consolidated AFS.

(ii) *Analysis: Allocation and apportionment of FSNOL.* Under paragraph (f)(5) of this section, a portion of the P Group's \$55x FSNOL is apportioned to M2 because M2 ceases to be a member of the P Group. Specifically, \$16.9x of FSNOL is apportioned to M2 ($(\$20x/(\$20x + \$40x + \$5x)) \times \$55x = \$16.9x$). See paragraphs (f)(5)(iii) and (f)(5)(iv)(A) and (B) of this section. The remaining \$38.1x of FSNOL remains with the P Group.

(iii) *Analysis: Year of departure from group.* Under paragraph (f)(5)(iv)(C) of this section, the percentages of the remaining FSNOL attributable to P and to M3 are recomputed when M2 ceases to be a member of the P Group. The recomputed percentage attributable to P is 89% ($\$40x/(\$40x + \$5x) = 89\%$), and the recomputed percentage attributable to M3 is 11% ($\$5x/(\$40x + \$5x) = 11\%$).

The result would be the same if M2's FSI had ceased to be reported on P's consolidated AFS in 2027.

(g) *Limitation on the use of attributes from separate return years.* For the use of FSNOLs, built-in losses, and other attributes generated in separate return years, see § 1.56A–23(e) through (g) and paragraphs (h) and (i) of this section.

(h) *Use of CFC adjustment carryovers of a tax consolidated group—(1) Amount of consolidated § 1.56A–6(b)(1) adjustment reduced.* Subject to the limitations under § 1.56A–6 and this paragraph (h), the amount of CFC adjustment carryovers of a tax consolidated group that can be used to reduce the group's adjustment to AFSI under § 1.56A–6(b)(1) is the aggregate of the group's consolidated CFC adjustment carryovers to that year.

(2) *Composition of consolidated CFC adjustment carryovers.* The consolidated CFC adjustment carryovers described in paragraph (h)(1) of this section consist of—

(i) Any consolidated CFC adjustment carryovers of the tax consolidated group; and

(ii) Any CFC adjustment carryovers of the members of the group arising in the respective separate return years (as defined in § 1.1502–1(e)) of those members to the extent available for use under § 1.56A–6 and this section.

(3) *Limitation on use of CFC adjustment carryovers.* In any consolidated return year, the aggregate amount of CFC adjustment carryovers from all separate return years of a member of a tax consolidated group that can be used to reduce the group's adjustment to AFSI under § 1.56A–6(b)(1) cannot exceed the adjustment to AFSI under § 1.56A–6(b)(1) generated by the member.

(4) *General ordering rules for use of CFC adjustment carryovers—(i) Taxable year in which CFC adjustment carryover arose.* Except as provided in paragraph (h)(4)(ii) of this section, CFC adjustment carryovers permitted to be used by a tax consolidated group to reduce the group's adjustment to AFSI under § 1.56A–6(b)(1) in its consolidated return year are used in the order of the taxable years in which the CFC adjustment carryovers arose.

(ii) *CFC adjustment carryovers carried from same taxable year.* Except as otherwise provided in paragraph (h)(5) of this section, CFC adjustment carryovers carried from taxable years ending on the same date, and that are available to reduce the tax consolidated group's adjustment to AFSI under § 1.56A–6(b)(1) for the consolidated return year, are used to reduce the

group's adjustment to AFSI under § 1.56A–6(b)(1) on a pro rata basis.

(iii) *Apportionment of consolidated CFC adjustment carryovers.* Except as otherwise provided in paragraph (h)(5) of this section, the amount of any consolidated CFC adjustment carryover absorbed by a tax consolidated group in any year is apportioned among members based on the percentage of the consolidated CFC adjustment carryover that is attributable to each member as of the beginning of the year. The percentage of the consolidated CFC adjustment carryover attributable to a member is determined applying the principles of paragraph (f)(5)(iv) of this section.

(5) *Carryover of CFC adjustment carryovers to separate return years.* If any consolidated CFC adjustment carryover that is attributable to a member may be carried to a separate return year of the member, the amount of the CFC adjustment carryover that is attributable to the member is apportioned to the member and carried to the separate return year of the member, and the amount of the CFC adjustment carryover attributable to each remaining member is recomputed applying the principles of paragraph (f)(5) of this section.

(6) *Example.* The following example illustrates the application of the rules in this paragraph (h).

(i) *Facts—(A) General.* P, M1, M2 and M3 are members of the P consolidated group (P group), which uses the calendar year as its taxable year. Each of P, M1, M2 and M3 is a United States shareholder of controlled foreign corporations. Prior to 2025, the P group had not generated a CFC adjustment carryover for any taxable year.

(B) *2025 taxable year.* In 2025, the P group generates a CFC adjustment carryover of \$60x, computed by the P group as a single corporation. In that year, P's pro rata share of the adjusted net income or loss of the controlled foreign corporations of which it was a United States shareholder is –\$10x, M1's pro rata share of the adjusted net income or loss of the controlled foreign corporations of which it was a United States shareholder is –\$20x, M2's pro rata share of the adjusted net income or loss of the controlled foreign corporations of which it was a United States shareholder is –\$10x, and M3's pro rata share of the adjusted net income or loss of the controlled foreign corporations of which it was a United States shareholder is –\$20x.

(C) *2026 taxable year.* In 2026, the P group generates a CFC adjustment carryover of \$40x, computed by the P group as a single corporation. In that

year, P's pro rata share of the adjusted net income or loss of the controlled foreign corporations of which it was a United States shareholder is \$10x, M1's pro rata share of the adjusted net income or loss of the controlled foreign corporations of which it was a United States shareholder is –\$10x, M2's pro rata share of the adjusted net income or loss of the controlled foreign corporations of which it was a United States shareholder is –\$20x, and M3's pro rata share of the adjusted net income or loss of the controlled foreign corporations of which it was a United States shareholder is –\$20x. On December 31, 2026, M2 ceases to be a member of the P group.

(ii) *Analysis—(A) Allocation and apportionment of 2025 CFC adjustment carryover.* Under the principles of paragraph (f)(5) of this section, a portion of the P group's CFC adjustment carryover from 2025 (\$60x) is apportioned to M2 because M2 ceases to be a member of the P group. Specifically, \$10x of the CFC adjustment carryover from 2025 is apportioned to M2 ($(\$10x/(\$10x + \$20x + \$10x + \$20x) \times \$60x) = \$10x$). The remaining \$50x of the CFC adjustment carryover from 2025 remains with the P group. The percentages of the remaining CFC adjustment carryover from 2025 attributable to P, M1 and M3 are recomputed when M2 ceases to be a member of the P group. The recomputed percentage attributable to P is 20% ($\$10x/(\$10x + \$20x + \$20x) = 20\%$), the recomputed percentage attributable to M1 is 40% ($\$20x/(\$10x + \$20x + \$20x) = 40\%$), and the recomputed percentage attributable to M3 is 40% ($\$20x/(\$10x + \$20x + \$20x) = 40\%$).

(B) *Allocation and apportionment of 2026 CFC adjustment carryover.* Under the principles of paragraph (f)(5) of this section, a portion of the P group's CFC adjustment carryover from 2026 (\$40x) is apportioned to M2 because M2 ceases to be a member of the P group. Specifically, \$16x of the CFC adjustment carryover from 2026 is apportioned to M2 ($(\$20x/(\$10x + \$20x + \$20x) \times \$40x) = \$16x$). The remaining \$24x of the CFC adjustment carryover from 2026 remains with the P group. The percentages of the remaining CFC adjustment carryover from 2026 attributable to M1 and M3 are recomputed when M2 ceases to be a member of the P group. The recomputed percentage attributable to M1 is 33.3% ($\$10x/(\$10x + \$20x) = 33.3\%$), and the recomputed percentage attributable to M3 is 66.7% ($\$20x/(\$10x + \$20x) = 66.7\%$).

(i) *Use of consolidated unused CFC taxes—(1) Determination of*

consolidated tentative minimum tax. Subject to the limitations under § 1.59–4 and this paragraph (i), the amount of consolidated unused CFC taxes that can be used to determine the consolidated tentative minimum tax under section 55(b)(2)(A) of the group for any consolidated return year is the aggregate of the group's consolidated unused CFC taxes for that year.

(2) *Composition of consolidated unused CFC taxes.* The consolidated unused CFC taxes described in paragraph (i)(1) of this section consist of—

(i) Any unused CFC taxes of the tax consolidated group to the extent available for use under § 1.59–4(e); and

(ii) Any unused CFC taxes of members of the group arising in the respective separate return years (as defined in § 1.1502–1(e)) of those members (or predecessors of those members within the meaning of § 1.1502–1(f)(4)) to the extent available for use under § 1.59–4(e).

(3) *Limitation on use of unused CFC taxes.* In any consolidated return year, the aggregate amount of unused CFC taxes from all separate return years of a member (or predecessor of the member within the meaning of § 1.1502–1(f)(4)) of a tax consolidated group that can be used cannot exceed the excess (if any) of—

(i) The product of the § 1.56A–6(b)(1) adjustment generated by the member and the percentage specified in section 55(b)(2)(A)(i) for the consolidated return year; over

(ii) The aggregate of the member's pro rata shares of taxes of controlled foreign corporations with regard to which it is a United States shareholder, as determined under § 1.59–4(d), for the consolidated return year.

(4) *Amount of unused CFC taxes that can be used in a consolidated return year—(i) In general.* For purposes of § 1.59–4(e), and except as provided in paragraph (i)(4)(ii) of this section, the amount of unused CFC taxes that can be used in any consolidated return year is determined by applying all unused CFC taxes that may be carried to the consolidated return year in the order of the taxable years (whether a consolidated return year or a separate return year) in which those unused CFC taxes arose, beginning with the taxable year that ends earliest.

(ii) *Unused CFC taxes carried from same taxable year.* Except as otherwise provided in paragraph (i)(5) of this section, unused CFC taxes carried from taxable years ending on the same date, and that are available to determine the consolidated tentative minimum tax of the group for the consolidated return

year, are used to determine the group's consolidated tentative minimum tax on a pro rata basis.

(5) *Carryover of consolidated unused CFC taxes to separate return years—(i) Unused CFC taxes attributable to a departing member.* If a corporation ceases to be a member of a tax consolidated group during a consolidated return year, the consolidated unused CFC taxes that are attributable to the departing member consist of—

(A) All unused CFC taxes of the departing member arising in all separate return years of the departing member that have not been absorbed by the tax consolidated group; and

(B) The portion of the consolidated unused CFC taxes for each consolidated return year of which the departing member was a member of the group that have not been absorbed by the group multiplied by a fraction, the numerator of which is the amount of CFC taxes described in § 1.59–4(c)(1)(i) of the member for the year, and the denominator of which is the amount of CFC taxes described in § 1.59–4(c)(1)(i) of the group for the year.

(ii) *Year of departure from group.* If a corporation ceases to be a member of a tax consolidated group during a consolidated return year of the group, consolidated unused CFC taxes attributable to the corporation are first carried to the consolidated return year.

(iii) *Carryover to first separate return year.* The amount of consolidated unused CFC taxes attributable to the corporation that is not absorbed by the group in the year of departure from the group is carried to the corporation's first separate return year and is not carried to any consolidated return year of the group.

(iv) *Short years in connection with transactions to which section 381(a) of the Code applies.* If a member distributes or transfers assets to a corporation that is a member immediately after the distribution or transfer in a transaction to which section 381(a) applies, the transaction does not cause the distributor or transferor to have a short year within the consolidated return year of the group in which the transaction occurred that is counted as a separate year for purposes of determining the years to which a consolidated unused CFC tax may be carried.

(v) *Example.* The following example illustrates the application of the rules in this paragraph (i)(5).

(A) *Facts.* P, S, and T are members of the P tax consolidated group (P Group), which uses the calendar year as its taxable year. P, S, and T report their

financial results on a tax consolidated group AFS. For 2024, the P Group has \$1000x of CFC taxes described in § 1.59–4(c)(1)(i), of which \$200x are attributable to T. After determining its consolidated tentative minimum tax under section 55(b)(2)(A) for 2024, P Group has \$300x of unused CFC taxes for the year. P Group has no unused CFC taxes for any other taxable year. On December 31, 2024, T is acquired by an unrelated party and ceases to be a member of the P Group.

(B) *Analysis.* Under paragraph (i)(5)(i) of this section, \$60x of the P Group's 2024 unused CFC taxes are attributable to T ($\$300x \times (\$200x/\$1000x)$). Under paragraph (i)(5)(iii) of this section, the \$60x of unused CFC taxes attributable to T is carried to T's first separate return year and is not carried to any consolidated return year of the P Group.

(j) *CAMT liability—(1) Allocation.* Liability for the tentative minimum tax under section 55(b)(2)(A) for a consolidated return year is apportioned among members of the tax consolidated group based on the percentage of AFSI that is attributable to each member for the year, as determined under paragraph (j)(2) of this section.

(2) *Percentage of AFSI attributable to a member.* The percentage of AFSI for the consolidated return year attributable to a member equals the separate positive AFSI of the member for the consolidated return year divided by the sum of the AFSI for that year of all members having separate positive AFSI for that year. For this purpose, the separate AFSI of a member is determined by computing AFSI by reference to only the member's items of income, expense, gain, and loss.

(3) *Example.* The following example illustrates the application of the rules in paragraphs (j)(1) and (2) of this section.

(i) *Facts.* P, S, and T are members of the P tax consolidated group (P Group), which uses the calendar year as its taxable year. P, S, and T report their financial results on a tax consolidated group AFS. For 2024, if AFSI were computed by reference to only each member's items of income, expense, gain, and loss, P would have separate AFSI of \$1,000x, S would have a separate FSNOL of \$100x, and T would have separate AFSI of \$200x. The P Group has no regular tax liability, no liability for tax on base erosion payments under section 59A of the Code, and no CAMT foreign tax credit for 2024. Thus, the P Group's AFSI for 2024 is \$1,100x, and the P Group's liability for the tentative minimum tax under section 55(b)(2)(A) is \$165x ($\$1,100x \times 15\% = \$165x$).

(ii) *Analysis.* Under paragraphs (j)(1) and (2) of this section, $\$137.5x$ of the P Group's 2024 liability for the tentative minimum tax under section 55(b)(2)(A) is apportioned to P $((\$1,000x/(\$1,000x + \$200x)) \times \$165x = \$137.5x)$, and $\$27.5x$ is apportioned to T $((\$200x/(\$200x + \$1,000x)) \times \$165x = \$27.5x)$.

(4) *Cross-reference.* See § 1.1502–53 for rules regarding the allocation of any consolidated MTC attributable to a separate return year of a member.

(k) *Allocation of AFSI when members leave the group—(1) Treatment of departing member.* When a member leaves a tax consolidated group (departing member), the group allocates

to the departing member the member's AFSI (for purposes of applying the average annual AFSI test under § 1.59–2(c)) for each taxable year (or portion thereof) in which the departing member was a member of the tax consolidated group (for taxable years relevant under § 1.59–2(c)(1)(i) and (c)(2)(i)). The amount of AFSI allocated to the departing member under this paragraph (k)(1) is determined as if the member had been a separate CAMT entity during the period in which it was a member of the tax consolidated group.

(2) *Treatment of group.* The AFSI allocated to the departing member is not

subtracted from the AFSI of the tax consolidated group of which the departing member ceased to be a member. See § 1.59–2(f).

(l) *Applicability date.* This section applies to consolidated return years for which the due date of the income tax return (without extensions) is after [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**].

Douglas W. O'Donnell,

Deputy Commissioner.

[FR Doc. 2024–20089 Filed 9–12–24; 8:45 am]

BILLING CODE 4830–01–P



FEDERAL REGISTER

Vol. 89

Friday,

No. 178

September 13, 2024

Part III

Securities and Exchange Commission

Self-Regulatory Organizations; Cboe C2 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. 34–100937; File No. SR–C2–2024–014]

Self-Regulatory Organizations; Cboe C2 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 C2 Exchange, Inc. (the “Exchange” or “C2”) 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 C2 Exchange, Inc. (the “Exchange” or “C2”) 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/ctwo/), 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 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 The Exchange and each of its affiliated exchanges (Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe Exchange, Inc., Cboe EDGA Exchange, Inc., and Cboe EDGX 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

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:

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. 99370 (January 17, 2024), 89 FR 10430 (February 13, 2024) (SR-C2-2024-002).

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").

²¹ *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)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 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.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 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.”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 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
Insurance	880,419

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) of the CAT NMS Plan.

Operating expense	Historical CAT costs 1 for Pre-FAM Period (prior to June 22, 2020) *
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, 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

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. 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.

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.

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.

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;

- 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;

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).

- 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 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

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.

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>.

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.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 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

⁴⁶ Section 9.2 of the CAT NMS Plan.

⁴⁷ See Section 6.5(a)(ii) of the CAT NMS Plan.

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 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.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 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

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.

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 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:

⁵¹ Note that the volume data described in this table does not include CAIS data.

- 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 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
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

	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

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
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
<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.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

	Date range: 1/1/21 to 4/25/21	Date range: 4/26/21 to 12/31/21 *
Average Daily Volume in Billions:		

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 *
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 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,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

(g) Consulting Costs

The consulting costs of \$1,408,209 represent the fees paid to Deloitte as

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.

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	
Legal	6,143,278

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 *
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 Operating Committee determined that such an approach was reasonable as the CAT's annual executed equivalent share

\$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.

⁶⁶ 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

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 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.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.

(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

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 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.

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.

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.

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.

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.

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 basis points, or (ii) the maximum rate permitted by applicable law.

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.

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 Members—excluding Small Industry Members that are not OATS reporters—

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).

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;

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").

- 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.

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.

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>.

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."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, 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."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

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.

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.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.

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.

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.”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

¹⁸⁴ 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>).

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>).

- The full, final CAIS Technical Specifications were published on January 29, 2021.

- 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.

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.

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.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

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).

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.

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.

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

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,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. 99370 (January 17, 2024), 89 FR 10430 (February 13, 2024) (SR-C2-2024-002).

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-C2-2024-014 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-C2-2024-014. 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-C2-2024-014 and should be submitted on or before October 4, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷⁴

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-20462 Filed 9-12-24; 8:45 am]

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).



FEDERAL REGISTER

Vol. 89

Friday,

No. 178

September 13, 2024

Part IV

Securities and Exchange Commission

Self-Regulatory Organizations; Cboe EDGA 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. 34–100942; File No. SR–CboeEDGA–2024–035]

Self-Regulatory Organizations; Cboe EDGA 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 EDGA Exchange, Inc. (the “Exchange” or “Cboe EDGA”) 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 EDGA Exchange, Inc. (the “Exchange” or “Cboe EDGA”) 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/equities/regulation/rule_filings/edga/), 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 EDGX 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. 99374 (January 17, 2024), 89 FR 10468 (February 13, 2024) (SR-CboeEDGA-2024-002).

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

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.

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.

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.

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>.

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."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, 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."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

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.

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.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.

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/markreg/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.

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.”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

¹⁸⁴ 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>).

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>).

- The full, final CAIS Technical Specifications were published on January 29, 2021.

- 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.

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.

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.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

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).

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.

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.

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

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,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. 99374 (January 17, 2024), 89 FR 10468 (February 13, 2024) (SR-CboeEDGA-2024-002).

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-CBOEEDGA-2024-035 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-CBOEEDGA-2024-035.

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-CBOEEDGA-2024-035 and should be submitted on or before October 4, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷⁴

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024-20467 Filed 9-12-24; 8:45 am]

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).



FEDERAL REGISTER

Vol. 89

Friday,

No. 178

September 13, 2024

Part V

Securities and Exchange Commission

Self-Regulatory Organizations; Nasdaq GEMX, 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. 34–100944; File No. SR–GEMX–2024–30]

Self-Regulatory Organizations; Nasdaq GEMX, 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 GEMX, LLC (“GEMX” 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) (GEMX 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. 34–99365 (January 17, 2024), 89 FR 10278 (February 13, 2024) (“SR–GEMX–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

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) *
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 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,

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

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.

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.

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 CAT LLC'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;

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).

- 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

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, 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;

⁴⁹ Note that the volume data described in this table does not include CAIS data.

- 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 CEBSSs 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.

⁵⁰ Section 11.6(a)(i)(B) 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
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.

Operating expense	Historical CAT costs 1 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

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 *
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;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from Participants;

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.

- 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.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
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.

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.

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

Such information would provide CEBBs and CEBSS 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

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.

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

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

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.

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 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

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 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, 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 Securities Exchange Act Rel. No. 34-99365 (January 17, 2024), 89 FR 10278 (February 13, 2024) ("SR-GEMX-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.

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 CEBSSs 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

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 119b-4(f)(2) thereunder.²⁷¹

²⁷⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁷¹ 17 CFR 240.119b-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-GEMX-2024-30 on the subject line.

Paper Comments

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

All submissions should refer to file number SR-GEMX-2024-30. 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-GEMX-2024-30 and should be submitted on or before October 4, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷²

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-20469 Filed 9-12-24; 8:45 am]

BILLING CODE 8011-01-P

²⁷² 17 CFR 200.30-3(a)(12).



FEDERAL REGISTER

Vol. 89

Friday,

No. 178

September 13, 2024

Part VI

Securities and Exchange Commission

Self-Regulatory Organizations; Nasdaq PHLX 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. 34–100954; File No. SR–PHLX–2024–43]

Self-Regulatory Organizations; Nasdaq PHLX 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 PHLX LLC (“PHLX” 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) (PHLX 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. 34–99359 (January 17, 2024), 89 FR 10164 (February 13, 2024) (“SR-PHLX–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
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
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 CEBs 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 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 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 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 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. 34–99359 (January 17, 2024), 89 FR 10164 (February 13, 2024) ("SR-PHLX–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-PHLX-2024-43 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-PHLX-2024-43. 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-PHLX-2024-43 and should be submitted on or before October 4, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷²

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-20479 Filed 9-12-24; 8:45 am]

BILLING CODE 8011-01-P

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).

Reader Aids

Federal Register

Vol. 89, No. 178

Friday, September 13, 2024

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202-741-6000**

Laws **741-6000**

Presidential Documents

Executive orders and proclamations **741-6000**

The United States Government Manual **741-6000**

Other Services

Electronic and on-line services (voice) **741-6020**

Privacy Act Compilation **741-6050**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: www.govinfo.gov.

Federal Register information and research tools, including Public Inspection List and electronic text are located at: www.federalregister.gov.

E-mail

FEDREGTOC (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to <https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new>, enter your email address, then follow the instructions to join, leave, or manage your subscription.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to <http://listserv.gsa.gov/archives/publaws-l.html> and select *Join or leave the list (or change settings)*; then follow the instructions.

FEDREGTOC and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: fedreg.info@nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

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
74829-75444.....	13

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
10807.....	74829

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

7 CFR

Proposed Rules:

989.....	74851

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	872.....71153, 72320	33 CFR	705.....72362
18.....71803	876.....72715, 72984	100.....71821, 71823, 71824,	
20.....71803	882.....71155	72323, 72327, 72721	42 CFR
23.....71803	886.....72322	117.....71184	88.....73592
30.....71803	888.....71157	165.....71824, 72329, 72987,	423.....72998
31.....71803	890.....71159	72989, 73289, 73291, 74132,	Proposed Rules:
37.....71803	1141.....74831	74135	121.....74174
41.....71803		Proposed Rules:	
43.....71803	24 CFR	100.....72348	43 CFR
45.....71803	Proposed Rules:	165.....73054, 73055	8360.....72999
46.....71803	5.....72766		
49.....71803		36 CFR	
140.....71803	26 CFR	214.....72990	45 CFR
142.....71803	1.....73568	251.....72990	170.....72998
144.....71803	Proposed Rules:	Proposed Rules:	
145.....71803	1.....71193, 71214, 71864,	1191.....71215	46 CFR
146.....71803	75061		Proposed Rules:
147.....71803	301.....71214, 72348	38 CFR	401.....71877
148.....71803		Proposed Rules:	
149.....71803	27 CFR	4.....74162	47 CFR
150.....71803	Proposed Rules:	21.....72351	11.....72724
155.....71803	4.....73050	40 CFR	63.....73601
160.....71803	5.....73050	52.....71185, 71826, 71830,	64.....71848
162.....71803	19.....73050	72721, 73568, 74834, 74836,	73.....72738
165.....71803	24.....73050	74847	Proposed Rules:
170.....71803	26.....73050	60.....74135	1.....74184
171.....71803	27.....73050	63.....73293	64.....73321, 74184
270.....73764		81.....71830	90.....72780
274.....73764	30 CFR	84.....73588	96.....72780
	550.....71160	98.....71838	
18 CFR		180.....72994	50 CFR
Proposed Rules:	31 CFR	271.....73592	17.....72739, 73308
35.....74161	501.....74832	300.....72331	300.....73602
19 CFR	548.....72717	705.....72336	622.....71860
12.....73274, 73280	587.....72717, 72718, 72719	Proposed Rules:	648.....72758
21 CFR	591.....72986	52.....71230, 71237, 71872,	679.....71861, 72340, 73002
573.....72315	1010.....72156	72353, 72770, 74165, 74171	Proposed Rules:
862.....72982	1032.....72156	55.....73617	17.....72362, 73330, 73512
864.....72315	32 CFR	63.....72355	622.....72794
866.....73565	Proposed Rules:	180.....72775	635.....72796
870.....72317	3.....71865	300.....72356	

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

Public Laws Electronic Notification Service (PENS)

PENS is a free email notification service of newly

enacted public laws. To subscribe, go to https://portalguard.gsa.gov/__layouts/PG/register.aspx.

Note: This service is strictly for email notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.